

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

May 31, 2010

To Her Excellency  
The Governor General in Council

May it please your Excellency:

Pursuant to an Order in Council dated June 12, 2008, I have inquired into certain allegations respecting business and financial dealings between Karlheinz Schreiber and the Right Honourable Brian Mulroney, P.C. With this letter, I respectfully submit my Report.

A handwritten signature in black ink, appearing to read 'J. Oliphant'.

Jeffrey J. Oliphant  
Commissioner

P.O. Box 2740, Station D  
Ottawa, Canada K1P 5W7  
613 995-0756  
Fax: 613 995-0785

C.P. 2740 Succursale D  
Ottawa, Canada K1P 5W7  
613 995-0756  
Télécopieur : 613 995-0785

Canada



# Oliphant Commission

The Report consists of three volumes: 1 *Executive Summary*; 2 *Factual Inquiry*; and 3 *Policy and Consolidated Findings and Recommendations*. The table of contents in each volume is complete for that volume and abbreviated for the other two volumes. The Consolidated Findings and Recommendations are also included in Volume 1. In addition, three independent research studies prepared for the Commission have been published separately in a volume entitled *Public Policy Issues and the Oliphant Commission*.

COMMISSION OF INQUIRY INTO CERTAIN ALLEGATIONS  
RESPECTING BUSINESS AND FINANCIAL DEALINGS  
BETWEEN KARLHEINZ SCHREIBER AND  
THE RIGHT HONOURABLE BRIAN MULRONEY

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Report

VOLUME 1  
EXECUTIVE SUMMARY

The Honourable Jeffrey J. Oliphant  
Commissioner

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# Executive Summary

## The Integrity of Government

The genesis of this Inquiry is a relationship between a former prime minister of Canada, the Right Honourable Brian Mulroney, and Karlheinz Schreiber, a German-Canadian businessman. The relationship spanned two decades and included a secret agreement between the two men made approximately two months after Mr. Mulroney left the office of prime minister and was sitting as a member of parliament. For many years Mr. Mulroney concealed the fact that, on three separate occasions, in three different hotels in two countries, he had received thousands of dollars in cash, in envelopes, from Mr. Schreiber. There was no contemporary documentation, as is normally found in legitimate business dealings, for any of these transactions. No invoices or receipts were provided, no correspondence or reporting letters were written. I conclude that the covert manner in which Mr. Mulroney and Mr. Schreiber carried out their transactions was designed to conceal their business and financial dealings.

Mr. Mulroney accepted the first instalment of cash on August 27, 1993, while he was still a sitting member of parliament, and the other two instalments on December 18, 1993, and December 8, 1994. He had several opportunities to disclose these dealings – when he filed his tax forms between 1993 and 1999, for instance; when he gave evidence under oath in his lawsuit against the Government of Canada in 1996; and when he or his spokespersons were interviewed by various journalists

– but he chose not to do so. Instead, at all times he attempted to prevent the public disclosure of his dealings with Mr. Schreiber.

Another opportunity for disclosure arose when William Kaplan, a lawyer and legal historian, wrote his first book, *Presumed Guilty: Brian Mulroney, the Airbus Affair and the Government of Canada*, to defend Mr. Mulroney’s reputation after the Canadian government sent a letter of request to the Swiss government, which contained allegations of criminal wrongdoing by Mr. Mulroney. In the course of several interviews for this book, Mr. Mulroney told Mr. Kaplan that his relationship with Mr. Schreiber was merely “peripheral,” and he never mentioned his commercial relationship with Mr. Schreiber.

According to Mr. Kaplan, when he subsequently found out about these business dealings and the payments Mr. Mulroney had received from Mr. Schreiber, this “changed everything” for him. During the Inquiry, when cross-examined by Mr. Mulroney’s counsel, Guy Pratte, Mr. Kaplan expressed the following opinion:

[Y]ou can accuse me of being old-fashioned, but I believe that when someone is Prime Minister, the public trust doesn’t just involve their activities when they are Prime Minister but it involves their activities before they are Prime Minister [and] after Prime Minister. And they can’t rely on the legal technicalities that are open to ordinary litigants who appear before our courts. I think, sir, that they should come forward and tell the Canadian people everything and let the Canadian people ... decide whether their behaviour is appropriate or not.

I agree with Mr. Kaplan on this point. In my view, Canadians are entitled to expect from those who govern, particularly the holders of high office, exemplary conduct in their professional and personal lives. Further, those who are making the transition from public life to private life must live up to the standards of conduct expected of them in order to preserve the integrity of government.

Mr. Mulroney expressed a view similar to mine in September 1985, when he tabled the Conflict of Interest and Post-Employment Code for Public Office Holders (1985 Ethics Code) in the House of Commons. On that occasion, Mr. Mulroney said:

It is a great principle of public administration – I could even say an imperative – that to function effectively the government and the public service of a democracy must have the trust and confidence of the public they serve. In order to reinforce that trust, the government must be able to provide competent management *and, above all, to be guided by the highest standards of conduct.* [Emphasis added.]

This Inquiry provided Mr. Mulroney with the opportunity to clear the air and put forward cogent, credible evidence to support his assertions that there was nothing untoward about his dealings with Mr. Schreiber. I regret that he has not done so. I express this regret on behalf of all Canadians, who are entitled to expect their politicians to conserve and enhance public confidence and trust in the

integrity, objectivity, and impartiality of government. Mr. Mulroney's actions failed to enhance public confidence in the integrity of public office holders.

## Background to This Inquiry

In September 1995 the Government of Canada forwarded a letter of request (LOR) to the Competent Legal Authority of Switzerland seeking assistance in the gathering of evidence pertaining to an investigation of Mr. Mulroney and Frank Moores. Mr. Moores had been the premier of Newfoundland; after leaving that office, he became a principal member of the lobbying firm Government Consultants International. The investigation was in relation to three government contracts where, it was alleged, improper commissions had been paid to Mr. Schreiber (or companies controlled by him), with portions set aside for Mr. Moores and Mr. Mulroney. The contracts involved the purchase of numerous aircraft by Air Canada from Airbus Industrie; the purchase of helicopters by the Canadian Coast Guard from Messerschmitt-Bolkow-Blohm GmbH (MBB); and the proposed Bear Head Project involving Thyssen Industrie AG (Thyssen). The LOR and its contents were to be kept confidential. However, they were not. The LOR was leaked to the media.

Subsequent to that leak, several news agencies published articles on the alleged scandal. They continued to do so while the matter was under investigation. The RCMP conducted a lengthy and extensive investigation that spanned a period of more than eight years. Charges of fraud were laid in relation to the MBB contract, but no charges were ever brought against Messrs. Schreiber, Moores, or Mulroney.

Following the initial media reporting of the LOR, Mr. Mulroney sued the Government of Canada and others for injury to his reputation. In connection with the lawsuit he had commenced, Mr. Mulroney was questioned under oath on April 17 and 19, 1996, on an examination before plea that was held in public at the Montreal courthouse. On January 5, 1997, the litigation between Mr. Mulroney and the Government of Canada was settled by way of a public apology by the Government of Canada to Mr. Mulroney as well as payment by the Government of Canada to him in the sum of \$2.1 million to cover his legal costs. There was extensive coverage by the media of the litigation, Mr. Mulroney's testimony, and the settlement. The announcement by the RCMP in 2003 that its investigation was concluding without further charges was also the subject of wide media coverage.

In March 2007 Mr. Schreiber filed a lawsuit against Mr. Mulroney. In it, Mr. Schreiber sought repayment of \$300,000 plus interest from Mr. Mulroney because, he alleged, Mr. Mulroney had failed to provide any services for those payments. On November 7, 2007, Mr. Schreiber swore an affidavit in this lawsuit in which he made specific allegations pertaining to Mr. Mulroney, including allegations that, on each of three separate occasions, he (Mr. Schreiber) had paid \$100,000 cash to Mr. Mulroney.

On November 14, 2007, after learning of the allegations, Prime Minister Stephen Harper appointed Dr. David Johnston, the president and vice-chancellor of the University of Waterloo, as an independent adviser, to review Mr. Schreiber's allegations and provide the government with recommendations for an appropriate mandate for a public inquiry.

On November 22, 2007, the House of Commons Standing Committee on Access to Information, Privacy and Ethics (Ethics Committee) announced that it would hold hearings and call evidence pertaining to the relationship and dealings between Mr. Schreiber and Mr. Mulroney. Both men testified before the Committee, as did a number of other individuals, including Fred Doucet, a long-time friend and confidant of Mr. Mulroney.

When Dr. Johnston issued his report on January 9, 2008 (*First Report*), the Ethics Committee had not yet heard from all its witnesses. The Committee completed its examination of witnesses on February 25, 2008.

On March 19, 2008, by order in council, Dr. Johnston was given his second mandate to determine whether he had any further recommendations, based on a review of any relevant additional information, including that garnered by the Ethics Committee's hearings. Dr. Johnston submitted another report (*Second Report*) to Prime Minister Harper on April 4, 2008.

## The Commission of Inquiry

I was appointed by Order in Council PC 2008-1092 dated June 12, 2008, to conduct an inquiry into certain allegations respecting the business and financial dealings between Mr. Schreiber and Mr. Mulroney.

The Terms of Reference direct me to determine:

1. What were the business and financial dealings between Mr. Schreiber and Mr. Mulroney?
2. Was there an agreement reached by Mr. Mulroney while still a sitting prime minister?
3. If so, what was that agreement, when and where was it made?
4. Was there an agreement reached by Mr. Mulroney while still sitting as a Member of Parliament or during the limitation periods prescribed by the 1985 ethics code?
5. If so, what was that agreement, when and where was it made?
6. What payments were made, when and how and why?
7. What was the source of the funds for the payments?
8. What services, if any, were rendered in return for the payments?
9. Why were the payments made and accepted in cash?
10. What happened to the cash; in particular, if a significant amount of cash was received in the U.S., what happened to that cash?
11. Were these business and financial dealings appropriate considering the position of Mr. Mulroney as a current or former prime minister and Member of Parliament?

12. Was there appropriate disclosure and reporting of the dealings and payments?
13. Were there ethical rules or guidelines which related to these business and financial dealings? Were they followed?
14. Are there ethical rules or guidelines which currently would have covered these business and financial dealings? Are they sufficient or should there be additional ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office?
15. What steps were taken in processing Mr. Schreiber's correspondence to Prime Minister Harper of March 29, 2007?
16. Why was the correspondence not passed on to Prime Minister Harper?
17. Should the Privy Council Office have adopted any different procedures in this case?

## THE MANDATE

The scope of any public inquiry is determined by its Terms of Reference, which are legally binding. In this Inquiry, the Terms of Reference directed me to “investigate and report” on 17 questions relating to the business and financial dealings between Mr. Schreiber and Mr. Mulroney. These questions are identical to those that Dr. Johnston articulated in his *First Report*. Accordingly, I took his views into consideration in my interpretation of the mandate. I set out my interpretation of the parameters of this mandate at the first hearing of this Commission on October 2, 2008. At that time I indicated my view that my mandate was to conduct a focused inquiry, first, into the business and financial dealings of Mr. Mulroney and Mr. Schreiber in relation to the Bear Head Project and, second, the cash payments made by Mr. Schreiber to Mr. Mulroney in 1993 and 1994.

In his *First Report*, Dr. Johnston discussed those issues of public concern which, in his opinion, should form the basis of any inquiry. He stated:

Despite the closure of the RCMP file, there remain public concerns expressed in the media, in Parliament and by Canadians concerning Mr. Mulroney's receipt of cash from Mr. Schreiber, and the appropriateness of their dealings. Was there an agreement between them? What was the agreement? Why was it entered into? When was it entered into? Was it appropriate? Prior to the Ethics Committee hearings, there had been insufficient disclosure of the facts surrounding these payments to allay public concern about their integrity and propriety. Prior to Mr. Mulroney's testimony, the former prime minister had provided no clear explanation of their nature and details. Numerous details have yet to be explored, and the Ethics Committee chair has indicated that Mr. Mulroney may be asked to return for further questioning.

The issue I have struggled with is whether and to what extent a public inquiry exploring these further details would be in the public interest, keeping in mind the purpose and constraints on such inquiries. The answer depends on what public interest is legitimately engaged by the exploration of these events. In my view, the public interest issue is the integrity of Government and whether there was a breach of

constraints; and if not, whether there is a need for further constraints on former high office holders after they leave office.

Dr. Johnston suggested placing a limit on the manner in which an inquiry, as contemplated by him, should be conducted. He stated at pages 22–23 of his *First Report*:

In determining the scope of any public inquiry, the Government must make a “cost benefit analysis” to determine how wide-ranging the public inquiry should be. In this case, I conclude that the integrity concerns described above do not warrant a lengthy inquiry into matters that have been investigated by the RCMP since 1995. Nor should there be an inquiry with respect to facts already known. Focused questions and a strong Commissioner who can maintain that focus are essential if this inquiry is to avoid becoming an excessive and expensive exploration of ground already covered, which will not answer the legitimate concerns the public has about whether these dealings were ethical.

In his second mandate, Dr. Johnston was given the task of determining whether he had any further recommendations. In his *Second Report* he wrote:

I have considered whether, in light of the additional information that I reviewed, the questions that I set out in my first report are adequate to address these matters of legitimate public interest, or whether there are further questions that an inquiry might pursue. In my view the 17 questions that I listed remain the relevant questions for an inquiry into matters of legitimate public interest to answer.

To ensure that I properly interpreted this Commission’s mandate, I applied the modern approach to statutory interpretation: it directs that one look at the words used not only in their grammatical and ordinary sense but also in their entire context. Applying this approach, I concluded that the mandate of this Commission of Inquiry was to be a focused inquiry into, first, the business and financial dealings of Mr. Mulrone and Mr. Schreiber in relation to the Bear Head Project and, second, the payments made by Mr. Schreiber to Mr. Mulrone in 1993 and 1994.

The Terms of Reference in paragraph (l) specifically direct me to perform my duties “without expressing any conclusion or recommendation regarding the civil or criminal liability of any person or organization.” Accordingly, nothing written in this Report should be construed as an indication that I have come to any conclusions or opinions on the subject of the possible civil or criminal liability of any person.

## THE HEARINGS

As provided for in the Commission’s Rules of Procedure and Practice, the Inquiry was conducted in two phases. The first phase dealt with my hearing testimony regarding the factual matters raised in paragraph (a) Questions 1 through 16 (except for Question 14) of the Terms of Reference. The second phase dealt with the policy issues in the questions set out in paragraph (a) numbers 14 and 17. This policy phase of the Inquiry looked

at the ethical rules and guidelines applicable to the holders of public office as they make the transition from public office to private life. The Inquiry also considered, in the policy phase, the Privy Council Office procedures for handling the prime minister's correspondence.

The public hearings commenced in Ottawa on October 2, 2008. On that day, I delivered a statement that dealt with my interpretation of the Terms of Reference. I also heard motions for standing and funding in the Factual Inquiry. I granted the applications for party standing to Mr. Mulroney, Mr. Schreiber, Mr. Fred Doucet, and the Attorney General of Canada. I also heard motions for standing in the policy phase on January 21, 2009. I granted applications for party standing to Mr. Schreiber, the Attorney General of Canada, and Democracy Watch.

The public hearings of the Factual Inquiry commenced on March 30, 2009, and continued until June 10, 2009, when I heard closing submissions. The Policy Review began on June 15, 2009, and ended on July 28, 2009. Over the course of 39 days of hearings, I heard the testimony of 28 witnesses in the Factual Inquiry and 16 participants in the Policy Review. Thousands of pages of documents were filed as exhibits.

## The Business and Financial Dealings Between Mr. Schreiber and Mr. Mulroney

### THE RELATIONSHIP

Question 1 of the Terms of Reference reads:

1. *What were the business and financial dealings between Mr. Schreiber and Mr. Mulroney?*

The overarching question of the Inquiry, as reflected by the questions in the Terms of Reference, was to determine what the business and financial dealings were between Mr. Mulroney and Mr. Schreiber. I considered this question in Chapter 5, where I examined the relationship between Mr. Schreiber and Mr. Mulroney from its inception in the 1980s to its termination in the early 2000s. Although these two men disagree on many aspects of their relationship, I considered these disputed areas and reached conclusions on what I found to be the relevant facts about their relationship as it concerns their business and financial dealings.

The initial meeting between Mr. Schreiber and Mr. Mulroney occurred in the early 1980s, before Mr. Mulroney became prime minister. Mr. Schreiber testified that, during this period, he supported Mr. Mulroney's rise to high government office by donating \$50,000 to his campaign. According to Mr. Schreiber, the money was to be used to fly delegates from Quebec to Winnipeg in January 1983 for the leadership review that preceded the leadership race held in June of that same year. Mr. Schreiber

said the objective was to ensure the defeat of the Right Honourable Joe Clark as leader of the Progressive Conservative (PC) Party. Mr. Schreiber also testified that, during the early years of their relationship, he had a number of meetings with Mr. Mulroney of both a social and a political component.

Despite what Mr. Schreiber has said, I do not accept that, before Mr. Mulroney became prime minister, their relationship was nearly as close as he would have me believe. While Mr. Schreiber was testifying before me, I was struck by his proclivity for exaggeration as he described the nature of his relationships with people, particularly those in positions of influence and power. Furthermore, with respect to Mr. Schreiber's testimony regarding the leadership review, there is no evidence on which I was able to rely to support this testimony. Because his evidence is self-contradictory, I found Mr. Schreiber's evidence respecting the leadership review to be unreliable.

After assuming the leadership of the PC Party, Mr. Mulroney served as leader of the official opposition in the House of Commons for a little more than a year before he became prime minister. During his tenure as opposition leader, there was some infrequent contact between Mr. Schreiber and Mr. Mulroney. I am satisfied that, whatever relationship existed between them while Mr. Mulroney was the leader of the official opposition, it was not a business relationship.

Mr. Mulroney served as prime minister of Canada from September 17, 1984, until June 24, 1993. The evidence discloses that meetings were held between Mr. Mulroney and Mr. Schreiber during the early years of Mr. Mulroney's tenure as prime minister. Those meetings were held infrequently, not as described by Mr. Schreiber. They always took place in the company of one or more other persons.

However, as time passed and events evolved, Mr. Schreiber gained an increasing amount of access to Mr. Mulroney. As the frequency of the meetings with Mr. Mulroney increased, Mr. Schreiber came to believe that he and Mr. Mulroney had become friends. When he testified before me, Mr. Schreiber portrayed the relationship between them as one of close friendship. My perspective of the relationship is markedly different from that of Mr. Schreiber. To put it bluntly, I hold the view that Mr. Schreiber is deluding himself if he believes that Mr. Mulroney was ever a close friend.

Mr. Schreiber nevertheless succeeded in gaining a remarkable degree of access to Mr. Mulroney when he was the prime minister. He used his relationships with two close friends of Mr. Mulroney – Elmer MacKay, the member of parliament for Central Nova who held various ministerial portfolios throughout Mr. Mulroney's government, and Fred Doucet, a former senior adviser to Mr. Mulroney – to gain that access to the prime minister. I am satisfied that, with the help of these men, Mr. Schreiber could get to see Mr. Mulroney just about whenever he wished to do so.

I have scrutinized the evidence regarding the relationship between Mr. Schreiber and Mr. Mulroney to determine if there was anything untoward about it during Mr. Mulroney's tenure as prime minister of Canada. My examination of that evidence



discloses nothing that causes me concern so far as the relationship of the two men goes, except for what I view as the excessive amount of access granted to Mr. Schreiber.

The evidence discloses, for example, that between December 1987 and November 1992, at least nine documented meetings took place between Mr. Schreiber and Mr. Mulroney. Mr. Schreiber was able to meet with Mr. Mulroney twice during Mr. Mulroney's final month in office: once on June 3, 1993, and again on June 23, 1993.

I found the context of these meetings to be important. During Mr. Mulroney's tenure as prime minister, Mr. Schreiber was attempting to influence the Government of Canada to accept proposals on behalf of Thyssen of Germany, through Bear Head Industries Limited (Bear Head Industries), to establish a plant that would manufacture military vehicles in Canada. It is also important to remember that it was Mr. Doucet who, on behalf of Mr. Schreiber, arranged a number of the meetings concerning the Bear Head Project with Mr. Mulroney, and that Mr. Doucet accompanied Mr. Schreiber to at least some of those meetings. For Mr. Schreiber, the financial stakes were high. He stood to gain a considerable commission, estimated by him at \$1.8 billion, if the project came to fruition and Thyssen was able to sell its military vehicles both in Canada and in the international market.

Of concern to me is the fact that Mr. Doucet registered as a lobbyist on behalf of the Bear Head Project shortly after his departure from government in 1988. Notwithstanding the fact that Mr. Mulroney was aware that Mr. Doucet was working for Mr. Schreiber, lobbying on behalf of the Bear Head Project, the evidence is clear that Mr. Doucet still had the ear of the prime minister and was able to arrange for Mr. Schreiber's access to Mr. Mulroney whenever Mr. Schreiber wanted to meet with him. In the context, that access was not appropriate. I believe that Mr. Mulroney ought to have been far more circumspect in his dealings with Mr. Doucet, knowing that he was actively lobbying on behalf of Mr. Schreiber and the Bear Head Project.

Commission counsel called evidence on the Bear Head Project to enable me to examine any potential link between the Bear Head Project and the business and financial dealings of Mr. Schreiber and Mr. Mulroney. As detailed in Chapter 4 of my Report, the Bear Head Project can be viewed as a series of four proposals made to the Canadian government by Thyssen through its Canadian subsidiary, Bear Head Industries.

In 1985 Bear Head Industries submitted its first proposal to the Progressive Conservative government led by Mr. Mulroney. The initial proposal was to establish an export-oriented, heavy-duty manufacturing plant for the production of military vehicles on the Bear Head Peninsula on Cape Breton, Nova Scotia, where the economy had been devastated and where unemployment was a very serious problem. From a political perspective, anything the government could do to assist the ailing economy and create jobs would have found favour with the electorate.

In the three subsequent proposals submitted by Bear Head Industries, military vehicles were again an essential component of production. Each proposal required some form of assistance from the Canadian government – some combination of grants, loans, tax credits, free land, and guaranteed sales. The final proposal, initially formulated in 1992 while the Mulroney government was still in power, sought to establish a research and development facility for light armoured vehicles and, subsequently, a manufacturing facility in the east end of Montreal. This proposal was pursued until the late summer of 1995, when the Liberal government of Prime Minister Jean Chrétien finally terminated all consideration of the project. Bear Head Industries was later dissolved, bringing this 10-year saga to an end.

The evidence I heard and read convinces me that, throughout the lifespan of the Bear Head Project, despite whatever political support existed for the project, those at the most senior levels of the federal bureaucracy and military, for understandable, well-documented reasons set out in Chapter 4 of my Report, were opposed to the Thyssen / Bear Head proposals.

Mr. Schreiber was well aware of the strong opposition he was facing. He had to know that, without political support, especially support from the highest office in the land – that of the prime minister – the various proposals he advanced from time to time were doomed to fail. It comes, then, as no surprise to me that Mr. Schreiber would want to have ongoing access to Mr. Mulroney in order to ensure that the project had the prime minister's support, despite opposition from the bureaucrats.

Other than an understandable desire to succeed in establishing an industry that would create jobs on Cape Breton Island initially, and elsewhere later on, I am unable to discern what motivated Mr. MacKay to use his influence with Mr. Mulroney to arrange meetings between him and Mr. Schreiber.

I believe that Mr. Doucet, like Mr. MacKay a native Nova Scotian, was similarly motivated. However, I am also convinced that Mr. Doucet had another motive for seeing the project succeed. I have already referred to Mr. Doucet's financial interest as a lobbyist. I heard and read evidence that Mr. Schreiber arranged to pay Mr. Doucet \$90,000 within a very few months of Mr. Doucet's resignation from government. That payment took place on the signing of a document entitled the understanding in principle (UIP) by various ministers in the government led by Mr. Mulroney, as detailed in Chapter 4. I am unable to conclude that Mr. Doucet played a role that was influential in obtaining the signatures of any of the ministers on the UIP, which was, in my view, a totally worthless document because it committed the Government of Canada to absolutely nothing.

Whatever motivated Mr. MacKay and Mr. Doucet, it must be painfully obvious to them now that, as an unintended consequence of their activities in arranging for Mr. Schreiber to have almost unlimited access to Mr. Mulroney while he was prime minister, great harm has been done to Mr. Mulroney and his reputation, which he

obviously values highly. This harm was openly admitted by Mr. Mulroney when he testified before me.

I am unable to conclude, however, that all the blame for that harm can be laid on Mr. MacKay and Mr. Doucet. Mr. Mulroney, an intelligent, sophisticated businessperson, had to recognize that Mr. Schreiber was attempting to manipulate him to use his power and influence as prime minister to move the Bear Head Project forward despite all the advice to the contrary he was receiving from trusted advisers such as Paul Tellier, the clerk of the privy council and secretary to the cabinet from 1985 to 1992.

Even after he says he “killed” the Bear Head Project in 1991, Mr. Mulroney permitted Mr. Schreiber to have continued access to him. In my opinion, that is the principal reason why the Bear Head Project, albeit proposed for locations other than the Bear Head Peninsula, refused to die and, like Phoenix, kept rising from the ashes.

In my view, Mr. Mulroney was ultimately responsible for permitting Mr. Schreiber to meet with him whenever he (Mr. Schreiber) desired to do so. I respectfully suggest that Mr. Mulroney could simply have said no to Mr. MacKay and Mr. Doucet on those occasions when either or both of them attempted to arrange meetings with him on behalf of Mr. Schreiber.

I must also observe that it can hardly be said that Mr. Mulroney’s knowledge of Mr. Schreiber was merely “peripheral,” given the degree of access Mr. Mulroney granted to Mr. Schreiber and the number of meetings they had over the years. That description is simply not in accord with the evidence I heard. Although the two men were not friends, in my view their relationship was much more than peripheral.

Mr. Mulroney resigned as prime minister effective June 24, 1993. His resignation, however, did not end his relationship with Mr. Schreiber. Once again, with the assistance of Mr. Doucet, approximately two months after Mr. Mulroney’s departure from the prime minister’s office, Mr. Schreiber met with him on August 27, 1993, at the CP Hotel at Mirabel Airport, Quebec.

There was consensus between Mr. Mulroney and Mr. Schreiber that the meeting at Mirabel culminated in their entering into an undocumented commercial agreement. There was no consensus between them, however, as to what that agreement entailed. Based on my review of the evidence, I concluded that Mr. Schreiber retained Mr. Mulroney to promote the sale in the international market of military vehicles produced by Thyssen.

During the course of the Mirabel meeting, Mr. Schreiber paid Mr. Mulroney in cash by way of Canadian \$1,000 bills in what turned out to be the first of three instalments pursuant to the retainer. This payment is considered in more detail in my analysis of the agreement these two men made that day. I will now turn to this agreement.

## THE AGREEMENT

The Terms of Reference direct me to investigate and report on the agreement between Mr. Schreiber and Mr. Mulroney and the payment of monies by Mr. Schreiber to Mr. Mulroney. Questions 2 through 6, inclusive, and Question 8 of the Terms of Reference relate directly to the agreement and to the payment of money. I deal with these questions in Chapter 6 of my Report:

2. *Was there an agreement reached by Mr. Mulroney while still a sitting prime minister?*
3. *If so, what was that agreement, when and where was it made?*
4. *Was there an agreement reached by Mr. Mulroney while still sitting as a Member of Parliament or during the limitation periods prescribed by the 1985 ethics code?*
5. *If so, what was that agreement, when and where was it made?*
6. *What payments were made, when and how and why?*
8. *What services, if any, were rendered in return for the payments?*

Questions 2 and 3 of the Terms of Reference require me to investigate and report on whether Mr. Mulroney reached an agreement with Mr. Schreiber while he was still a sitting prime minister. If so, I am directed to investigate and report on the timing of the agreement, the location in which it was made, and the nature of the agreement.

Neither Mr. Schreiber nor Mr. Mulroney disputed the fact that they made an agreement. However, they did not agree on either the date on which the agreement was made or the nature of its terms.

Mr. Schreiber, for example, gave several different versions of when the agreement was made. Ultimately, however, he testified before me that he entered into an agreement with Mr. Mulroney at Harrington Lake, the prime minister's official residence in the Gatineau Hills, Quebec, on June 23, 1993, to work together in the future. Following that agreement, he said, they met on August 27, 1993, at the CP Hotel at Mirabel Airport to finalize the agreement.

According to Mr. Mulroney, however, nothing was established during their meeting at Harrington Lake. He testified that they made their agreement during the Mirabel meeting.

The date on which they entered into the agreement is of consequence because, on June 23, 1993, Mr. Mulroney was still the prime minister, while on August 27 of that year, having stepped down as prime minister on June 24, he remained a member of parliament. In terms of the rules governing ethics and conflict of interest, different regimes were in place at that time for ministers of the Crown, including the prime minister, and for members of parliament – as is the case today.

My assessment of Mr. Schreiber's evidence respecting the Harrington Lake meeting is that some of it is true, some of it is partly true, and some of it is not true at all. I confess to having considerable difficulty dealing with Mr. Schreiber's evidence about what occurred because, ultimately, I am called on to make a choice as to which one of his versions, if any, is true. In assessing Mr. Schreiber's evidence, I have therefore considered the evidence of other witnesses who also testified about the Harrington Lake meeting in order to ascertain whether, and to what degree, that evidence coincides with Mr. Schreiber's.

Having considered all the evidence, I have no doubt that it was at Mr. Schreiber's behest that Mr. Doucet arranged for him to meet with Mr. Mulroney at Harrington Lake. In my view, Mr. Schreiber is a man enthralled by people in positions of power. He became accustomed to using Mr. Mulroney, a person in a position of power, in an attempt to achieve his objectives. He wanted to meet with Mr. Mulroney one last time while he still held the office of prime minister – the highest office that any elected official in Canada can hold. It is plausible that Mr. Schreiber hoped to ensure, by this meeting, that he would have an ongoing relationship with Mr. Mulroney after he stepped down as prime minister.

The evidence of both Mr. Schreiber and Mr. Mulroney satisfies me that, during the course of their meeting at Harrington Lake, they discussed a number of subjects, including the Bear Head Project, to the extent that Mr. Mulroney expressed regret that the government he had led had not succeeded in bringing the project to fruition. I am satisfied they also discussed the reunification of Germany and the upcoming Canadian election, including Mr. Mulroney's prediction that Kim Campbell would succeed in winning a majority government.

Although Mr. Schreiber testified that one of his purposes in meeting with Mr. Mulroney on June 23 was to help him with his financial troubles as he moved out of public office and into the private sector, the subject was not discussed. I note also, on the subject of money, that Mr. Schreiber said in his evidence that he told Mr. Mulroney he would check to see what amount was available for the Bear Head Project in Montreal. That statement, if it was made by Mr. Schreiber, was misleading because, as he subsequently acknowledged, he knew the amount of money that was still available for the project.

Mr. Mulroney denied that Mr. Schreiber made any mention of having to check if any money remained in an account regarding the Bear Head Project. In my opinion, it is unlikely that such a comment was made by Mr. Schreiber.

As I observed in Chapter 6 of the Report, Mr. Schreiber gave four different versions during the course of testifying before me as to how he arrived at the agreement he made with Mr. Mulroney. In his evidence, Mr. Mulroney took the position that he made absolutely no agreement with Mr. Schreiber on June 23. He testified that nothing was established at Harrington Lake. I accept what Mr. Mulroney said as true.

Subsequent to the meeting of June 23, 1993, Mr. Schreiber gave a number of interviews to Mr. Kaplan. In the course of those interviews Mr. Schreiber again gave four different versions of what had occurred during the meeting at Harrington Lake. What was clear from all four versions was that the meeting had occurred and the Bear Head Project was discussed. Mr. Mulroney's position was that Bear Head was discussed to a limited extent only.

In my view, Mr. Schreiber's statements to Mr. Kaplan on March 31, 2004, could be taken to support Mr. Mulroney's denial that any agreement was reached between him and Mr. Schreiber at Harrington Lake. During that interview Mr. Schreiber told Mr. Kaplan that, after Mr. Mulroney left office, he hoped to get his support for the Bear Head Project. That is markedly different from saying that an agreement had been reached at Harrington Lake on June 23, 1993, when Mr. Mulroney was still the prime minister. Mr. Schreiber also told Mr. Kaplan in that same interview that Mr. Mulroney, as a former prime minister, would make a good representative for Thyssen to support the sale of peacekeeping and environmental protection equipment out of Canada. However, I am not willing to draw a firm conclusion as to what Mr. Mulroney and Mr. Schreiber discussed at this meeting based only on Mr. Kaplan's notes of what Mr. Schreiber told him.

Before Mr. Schreiber met with Mr. Mulroney two months later at the CP Hotel at Mirabel Airport, on August 27, 1993, he withdrew funds from a bank in Switzerland and had the cash ready to give to Mr. Mulroney in an envelope during the course of the meeting. This fact lends some credence to the claim that the two men did discuss some sort of continuing relationship during their meeting at Harrington Lake. However, having considered all the evidence on the issue of what transpired, or did not transpire, at the meeting at Harrington Lake on June 23, 1993, I concluded that no agreement was reached between Mr. Schreiber and Mr. Mulroney on that date.

Because I have concluded that no agreement was reached by Mr. Mulroney while he was still a sitting prime minister, I need not answer Question 3 of my Terms of Reference: if an agreement was reached before June 24, 1993, what was the agreement, and when and where was it made.

Questions 4 and 5 of the Terms of Reference direct me to consider whether an agreement was reached by Mr. Mulroney while he was still sitting as a member of parliament or during the limitation periods prescribed by the 1985 Ethics Code. If there was an agreement, I am asked to determine what the agreement constituted and where it was made. As I stated in Chapter 6, if my answer is in the negative, there is no need to proceed further. However, if my answer is in the affirmative, it is necessary to go on to determine the nature of the agreement made by Mr. Schreiber and Mr. Mulroney as well as when and where it was made.

Although Mr. Mulroney ceased to be the prime minister on June 24, 1993, he remained a member of parliament until September 8, 1993, when Parliament was dissolved and an election called for October 25, 1993. It follows that, if Mr. Mulroney entered into an agreement with Mr. Schreiber between June 25, 1993, and September 8, 1993, he did so while still sitting as a member of parliament.

I have no difficulty in finding that an agreement was made between Mr. Schreiber and Mr. Mulroney while he was a member of parliament. It was made at a hotel at Mirabel Airport near Montreal on August 27, 1993. Both Mr. Schreiber and Mr. Mulroney agree on these facts. Each of them asserts that they met alone in the hotel room and entered into some sort of retainer agreement during the course of that meeting. Cash, in an amount of \$75,000, by Mr. Mulroney's account, or \$100,000 by Mr. Schreiber's account, in Canadian \$1,000 bills, was paid by Mr. Schreiber and accepted by Mr. Mulroney on this occasion.

That said, my task in determining the nature of the agreement made during the course of the Mirabel meeting was fraught with difficulty in light of two factors: the failure of Mr. Schreiber and Mr. Mulroney to memorialize their agreement in writing or to create any kind of paper trail; and the significant conflict in the evidence they each gave concerning what they agreed to at the Mirabel meeting.

Briefly put, Mr. Schreiber's position was that, on August 27, 1993, he retained Mr. Mulroney for the purpose of lobbying government on behalf of Thyssen or Bear Head Industries with the objective of establishing a production facility in the east end of Montreal. Mr. Mulroney's position, in contrast, was that his mandate, as at August 27, 1993, was to work internationally to promote the sale of light armoured vehicles produced by Thyssen.

For the reasons that follow, I reject Mr. Schreiber's evidence that he retained Mr. Mulroney to work domestically. Rather, I accept Mr. Mulroney's evidence that the retainer was international in scope.

Mr. Doucet testified that Mr. Schreiber requested him to arrange a meeting with Mr. Mulroney. Mr. Schreiber told him, he said, that the purpose of the meeting was to discuss with Mr. Mulroney the possibility of retaining him to promote Thyssen vehicles internationally. For his part, Mr. Schreiber denied telling Mr. Doucet anything about the purpose of the meeting he was seeking with Mr. Mulroney. According to Mr. Doucet, he related to Mr. Mulroney what Mr. Schreiber had said about the purpose of the meeting. Mr. Mulroney agreed, testifying that Mr. Doucet told him that Mr. Schreiber wanted to discuss an international mandate on behalf of his company or himself or a group of companies.

Mr. Doucet knew that Mr. Schreiber had met with Mr. Mulroney only two months earlier, at Harrington Lake. In my opinion, Mr. Doucet would have expected that, when he spoke to Mr. Mulroney about the proposed meeting, Mr. Mulroney would want to know why Mr. Schreiber wished to meet with him. It is reasonable to infer, as I

do, that Mr. Doucet would have asked Mr. Schreiber about the purpose of the meeting he was asking him to arrange with Mr. Mulroney so he (Mr. Doucet) could relate it to Mr. Mulroney when he called to arrange the meeting.

Mr. Mulroney testified that, during the course of a discussion he had with Mr. Doucet following the Mirabel meeting, he told him he would be proceeding with the mandate he had earlier discussed with Mr. Doucet – to promote Thyssen vehicles internationally.

Mr. Schreiber strikes me as a man who is politically astute when it comes to knowing where the power in government lies and how to gain access to the person or people who wield that power. The evidence discloses that he did not hesitate to use others to assist him in gaining access to people who wield real power in government. A good example of Mr. Schreiber's ability to gain such access can be seen from the numerous times, assisted by Mr. MacKay and Mr. Doucet, he was able to meet with Mr. Mulroney while he was prime minister.

A second example of Mr. Schreiber's political acumen can be seen in his retaining the services of Marc Lalonde, for the purpose of lobbying the federal government, shortly after the Liberal Party was elected to govern in the federal election held on October 25, 1993. Mr. Lalonde was, and remains, a well-respected lawyer. More important to Mr. Schreiber, though, Mr. Lalonde had served in various portfolios as a cabinet minister in earlier, successive Liberal governments. It is evident that Mr. Lalonde was well acquainted with those who walked in the corridors of power after the October 1993 electoral victory.

When Mr. Schreiber and Mr. Mulroney entered into their agreement on August 27, 1993, Mr. Schreiber was painfully aware that, despite all the meetings he had attended with Mr. Mulroney during his years as prime minister and despite the access that Mr. Mulroney had arranged for him with senior bureaucrats, no proposal for construction of the manufacturing facility by Bear Head Industries had ever been approved. In my view, it defies common sense to think that a man with Mr. Schreiber's political acumen would retain Mr. Mulroney after he resigned as prime minister to achieve an objective – the construction of a manufacturing facility by Bear Head Industries – that had not been achieved during Mr. Mulroney's tenure as prime minister.

I have referred to Mr. Schreiber's political acumen in order to make this observation: if, as Mr. Schreiber testified, he had retained Mr. Mulroney to lobby the government with the objective of establishing a production facility in Montreal, he had to realize that Mr. Mulroney's usefulness as a domestic lobbyist for Thyssen ended with the election of a Liberal government on October 25, 1993, at least so far as the Bear Head Project was concerned. That is why, in my opinion, he retained the services of Mr. Lalonde, a well-known Liberal. However, despite the change in government, Mr. Schreiber paid Mr. Mulroney two further instalments, one on December 18, 1993, at the Queen Elizabeth Hotel in Montreal, and the other on December 8, 1994, at the Pierre Hotel in New York City, totalling either \$150,000 or \$200,000.



In light of the fact that Mr. Schreiber continued to pay Mr. Mulroney significant sums of cash pursuant to the retainer after the change of government that occurred on October 25, 1993, when Mr. Mulroney's usefulness as a lobbyist had come to an end, I am unable to accept Mr. Schreiber's evidence that he retained Mr. Mulroney to lobby government domestically. The payments lend credence, in my opinion, to Mr. Mulroney's assertion that the retainer was international in scope.

Mr. Schreiber testified that, given Mr. Mulroney's status and connections, he was an influential person even after he left the office of prime minister. Mr. Schreiber was well aware of Mr. Mulroney's abilities to work on an international basis. He gave great credit to Mr. Mulroney for work he did that assisted in the reunification of Germany – an international task of major proportions.

At the time of the Mirabel meeting, Thyssen was advancing with the Government of Canada the concept of producing vehicles in Canada to be sold internationally. That was the testimony of Greg Alford, the vice-president of corporate affairs of Bear Head Industries at the relevant time. Mr. Alford also testified that, in his position with Bear Head Industries, he would have known if Mr. Mulroney was active domestically.

I note that neither Mr. Alford nor Mr. Lalonde was aware of any work being done by Mr. Mulroney, either domestically or internationally. I believe the reason they never heard of Mr. Mulroney doing work domestically is that Mr. Mulroney was not retained to do so. In terms of the international market, Mr. Alford agreed that, if someone had been hired for the purpose of promoting the company and its efforts through the international market, it would have been done through Jürgen Massman, the president of Bear Head Industries, and that he (Mr. Alford) would not necessarily have been made aware of that fact.

It is clear from the evidence before me that Thyssen, a German corporation with a long history dating back to the 19th century, wanted to obtain assistance from the Government of Canada in establishing a manufacturing facility and in using Canada as a springboard to gain access to particular international markets. For historical and political reasons since the Second World War, these markets were not available to Thyssen in terms of selling military vehicles produced in Germany.

Having heard the evidence of the Right Honourable Kim Campbell, I am satisfied that, when she succeeded Mr. Mulroney as prime minister, he did nothing whatsoever to pressure or influence her respecting the promotion or approval of the Bear Head Project domestically. Similarly, on the basis of the evidence of others I heard who served in government during and after Mr. Mulroney's tenure as prime minister, I am satisfied that Mr. Mulroney did nothing to promote Thyssen or its objectives domestically after he left office.

As noted below, I am not able to find that Mr. Mulroney actually provided any services for the monies Mr. Schreiber paid him. That, however, does not detract from

Mr. Mulroney's position that the agreement into which he entered with Mr. Schreiber on August 27, 1993, was international, as opposed to domestic, in scope.

Question 6 of the Terms of Reference directs me to determine what payments were made, when and how and why.

There is absolutely no doubt that, over a period of something less than one-and-a-half years, Mr. Schreiber paid Mr. Mulroney a considerable amount of money. There is no disagreement between Mr. Schreiber and Mr. Mulroney that, on three separate occasions following the resignation of Mr. Mulroney as prime minister, they met and that, on each of those occasions, Mr. Schreiber gave Mr. Mulroney an envelope containing cash. They also agree that the cash given by Mr. Schreiber consisted of \$1,000 bills in Canadian currency.

The first meeting occurred in a suite at a hotel at Mirabel Airport near Montreal on August 27, 1993. Mr. Schreiber and Mr. Mulroney were alone at this first meeting.

The second meeting occurred in a room where coffee is served at the Queen Elizabeth Hotel in Montreal on Saturday, December 18, 1993. When this meeting occurred, as Mr. Mulroney testified, other persons were present in the room. Given that the cash Mr. Schreiber handed over to Mr. Mulroney was concealed in an envelope, however, the presence of other people in the room does nothing to change the secretive nature of the transaction.

The third meeting took place in a suite at the Pierre Hotel in New York City on December 8, 1994. In addition to Mr. Schreiber and Mr. Mulroney, Mr. Doucet was present when the cash, again concealed in an envelope, was handed by Mr. Schreiber to Mr. Mulroney. Mr. Doucet said he did not know what was in the envelope, nor was he told about the contents by either Mr. Schreiber or Mr. Mulroney.

As I have mentioned, the evidence of Mr. Schreiber and Mr. Mulroney diverges on the issue of the amount of cash Mr. Schreiber paid to Mr. Mulroney. Mr. Schreiber's evidence is that he paid Mr. Mulroney a total of \$300,000, by three equal instalments of \$100,000. According to Mr. Mulroney, the cash payments he received from Mr. Schreiber totalled \$225,000, paid by three equal instalments of \$75,000.

There is not one single document where any one of these cash transactions is disclosed or recorded. I therefore have no independent, credible evidence before me that would, in any way, tend to support the position of either Mr. Schreiber or Mr. Mulroney respecting the amount of cash that changed hands. There is evidence that, within a relatively short period before each of the three occasions when Mr. Schreiber provided cash to Mr. Mulroney, Mr. Schreiber withdrew \$100,000 in Canadian funds from an account he had established at a bank in Switzerland.

I have considered the evidence of Luc Lavoie, Mr. Mulroney's spokesperson, who told at least one journalist that the amount paid was \$300,000, but then retracted that statement, saying that it was substantially less than \$300,000. I have

also considered the mandate document prepared by Mr. Doucet, which indicates that the amount of the retainer was neither \$225,000 nor \$300,000 but \$250,000. In addition, I have considered the fact that Mr. Mulroney declared \$225,000 in income when he made his voluntary tax disclosure several years after the transactions took place.

One of the consequences of failing to create a paper trail when cash changes hands, something that could easily have been done by either Mr. Schreiber or Mr. Mulroney, is that there is no record to substantiate the fact that the transaction or transactions have occurred.

I have considered very carefully the evidence with respect to the amount of cash paid by Mr. Schreiber to Mr. Mulroney. I have decided not to accept the evidence of either of them unless there is independent, credible evidence to support one of the two positions taken. In my view, no such evidence exists. I am therefore left in the position of not being able to say what amount of money Mr. Schreiber paid to Mr. Mulroney beyond that Mr. Mulroney was paid at least \$225,000.

The payments were made pursuant to a retainer agreement entered into by Mr. Schreiber and Mr. Mulroney at the hotel at Mirabel Airport on August 27, 1993. The payments were made in cash as part of a scheme on the part of both Mr. Schreiber and Mr. Mulroney to avoid creating a paper trail, thereby concealing the fact that a relationship existed between them which included the payment of money.

Question 8 of the Terms of Reference directs me to determine what services, if any, were rendered in return for the payments.

Both Mr. Schreiber and Mr. Mulroney addressed the issue raised by Question 8. In addition, I heard evidence from Mr. Doucet, Mr. Kaplan, and Mr. Lavoie regarding services rendered. I also had before me documents created by Mr. Doucet, all of which were prepared subsequent to the events referred to in those documents. The documents to which I refer are the notes Mr. Doucet composed either as an *aide-mémoire* or following meetings he had with Mr. Schreiber as well as what has been referred to as the “mandate document.”

Mr. Mulroney’s position is that, pursuant to the mandate he received from Mr. Schreiber, he developed a concept for the sale of military vehicles produced by Thyssen to the United Nations. These vehicles, according to Mr. Mulroney’s concept, would be sold to the United Nations for peacekeeping purposes and located in various countries either in or near to places where they might be required.

Mr. Mulroney’s concept included an approach to the secretary-general of the United Nations for his approval and support before placing the idea before the Security Council. First, however, Mr. Mulroney said he believed it desirable, if not necessary, to approach the leaders of the United States, the United Kingdom, France, China, and Russia. Those countries each occupy a permanent seat on the Security Council of the

United Nations and have a veto power with respect to any resolution brought before the Security Council. They are referred to in my Report as the P5.

In his testimony before me, Mr. Mulroney stated that, with all the foregoing in mind, he first visited the leaders of China, France, and Russia. He also testified about speaking to two prominent Americans, James Baker and Caspar Weinberger. The representative from France to whom Mr. Mulroney says he spoke was François Mitterrand, the president of France, and in Russia it was Boris Yeltsin, the president of Russia.

For different reasons, none of the people to whom Mr. Mulroney says he spoke were available to the Commission. Mr. Mitterrand and Mr. Yeltsin are dead, as is Mr. Weinberger. The Chinese leaders are inaccessible. Although Mr. Mulroney asserts he spoke to Mr. Baker, he was unable to remember whether he had addressed procurement issues with him.

I must view with skepticism Mr. Mulroney's claim to have spoken to the leaders referred to in the preceding paragraphs. As I said in Chapter 6, I am unable to conclude that Mr. Mulroney spoke to the Chinese leaders, as asserted by him. The evidence of Fred Bild, a former Canadian ambassador to China, caused me to question seriously the credibility of Mr. Mulroney's evidence respecting his meeting with and talking to the Chinese leaders on Mr. Schreiber's behalf.

It is troubling that, in the one instance where there is independent, credible evidence with respect to the discussions Mr. Mulroney had with various leaders of the P5 countries, the evidence detracts from his credibility.

Mr. Mulroney testified that he expended approximately \$45,000 by way of expenses in the course of his international travels on behalf of Thyssen pursuant to his mandate. However, he was not able to provide any documents to support the expenses he claims to have incurred. When he made his voluntary tax disclosure, he did not claim any expenses because he had no documents to support those expenses. Mr. Mulroney testified that he disposed of the expense records in the ordinary course of business.

I observe that the meetings Mr. Mulroney had with the various leaders all seem to coincide with trips he took for other business purposes or for personal reasons such as vacations. For example, Mr. Mulroney travelled to China with other clients in a corporate jet owned by one of those clients in October 1993. He was on vacation in Russia when he says he met with Mr. Yeltsin. And his meeting in Paris with President Mitterrand can be fairly described as pure happenstance. Mr. Mulroney testified about receiving a call from Mr. Mitterrand while he was in Paris with his wife and that, as a result of that call, they visited with President Mitterrand and his wife at the Élysée palace during the course of an evening.

For his part, Mr. Schreiber denies that Mr. Mulroney's mandate was international in scope. He also refutes the claim made by Mr. Mulroney that he (Mr. Mulroney) spoke to various international leaders. Mr. Schreiber denies that Mr. Mulroney referred

to his first trip to China, which took place in October 1993, when the two men met at the Queen Elizabeth Hotel in Montreal on December 18 of that same year. In addition, Mr. Schreiber denies that Mr. Mulroney provided him with a full report as to his efforts internationally when they met at the Pierre Hotel in New York on December 8, 1994.

Mr. Mulroney's evidence as to his providing a full report to Mr. Schreiber at the Pierre Hotel is supported, however, by Mr. Doucet, who was present at that meeting.

Throughout his evidence covering meetings he said he had with various world leaders, Mr. Mulroney testified about being the beneficiary of the hospitality of those leaders. Yet Mr. Mulroney was not able to produce any correspondence forwarded to those leaders thanking them for their hospitality. I know from other evidence before me that Mr. Mulroney characteristically wrote letters of thanks to people who had assisted or supported him in one way or another. It seemed to me to be uncharacteristic of Mr. Mulroney not to have written to any of the world leaders to whom he says he spoke, confirming the discussions about his concept of selling Thyssen-produced military vehicles to the United Nations and thanking them for their hospitality.

During the course of the Inquiry, I also heard evidence about Mr. Mulroney's involvement with respect to a pasta business that Mr. Schreiber was attempting to establish in Canada. I have concluded that, whatever Mr. Mulroney did respecting Mr. Schreiber's pasta business, it was not done as part of the mandate he received from Mr. Schreiber on August 27, 1993. Any work done by Mr. Mulroney in respect of the pasta business was done on behalf of his friend and former colleague Mr. MacKay, as well as a friend of Mr. MacKay's who was involved with Mr. Schreiber in the pasta business.

Having considered all the evidence that in any way touches on the services provided by Mr. Mulroney in return for the cash paid to him by Mr. Schreiber, it seems to me that I am left only with the evidence of Mr. Mulroney, except, as noted above, for the discussions he says he had with the Chinese leaders. In that instance, as already noted, I have serious reservations, because of Mr. Bild's evidence, about the credibility of Mr. Mulroney's testimony.

On the issue of what services Mr. Mulroney provided in return for the payments from Mr. Schreiber, I have grave concerns about the total absence of any independent evidence, whether documentary or otherwise, that might tend to support Mr. Mulroney's testimony.

If expenses had been incurred that were related to the mandate Mr. Mulroney received from Mr. Schreiber, one would reasonably expect to see a claim for those expenses supported by receipts or statements of account for travel, meals, and accommodation. There was no such claim. No such documentation was placed in evidence before me. Bearing in mind that concealing the fact they were doing business with each other seemed to be of major importance to both Mr. Schreiber

and Mr. Mulroney, the failure of either of them to document anything related to that business ought not to come as any surprise.

There is an absence of independent evidence that Mr. Mulroney provided any services pursuant to the international mandate that he received from Mr. Schreiber. Given this vacuum, I am not able to find that any services were ever provided by Mr. Mulroney for the monies paid to him by Mr. Schreiber.

## **THE SOURCE OF THE FUNDS AND WHAT HAPPENED TO THE CASH**

The Terms of Reference direct me to investigate and report on the following questions:

- 7. What was the source of the funds for the payments?*
- 9. Why were the payments made and accepted in cash?*
- 10. What happened to the cash; in particular, if a significant amount of cash was received in the U.S., what happened to that cash?*

I dealt with these questions in Chapter 7 of my Report, where I examined the origin of the cash that was transacted, what became of the cash once it was in the hands of Mr. Mulroney, and why these payments were made and accepted in cash.

The relevant evidence regarding the source of the funds paid by Mr. Schreiber to Mr. Mulroney came from two sources, Mr. Schreiber and Navigant Consulting (Navigant), a firm of forensic accountants. I accept Mr. Mulroney's evidence that he had no knowledge as to the source of the funds he received.

The Commission retained Navigant, and I directed Commission counsel to instruct the firm to review, analyze, and trace funds into and out of various bank accounts relating to the activities of Mr. Schreiber, many of which were foreign numbered accounts. The Commission received into evidence a report detailing Navigant's work and heard testimony from Steven Whitla, a managing director of Navigant's Ottawa office, who was qualified as an expert in forensic accounting during Commission proceedings.

Navigant did not have access to all the pertinent source documents. Many, if not most, of the financial documents in the possession of the Government of Canada pertaining to Mr. Schreiber's finances were obtained by the government in response to letters of request sent by Canada in the mid-1990s to the governments of Switzerland and Germany during the course of investigations by the RCMP. The governments of Switzerland and Germany imposed strict constraints on the use that the Government of Canada could make of documents provided at that time. Commission counsel requested that the Government of Canada seek permission from the governments of Switzerland and Germany to enable the Commission to use the documents. The Government of Switzerland refused the Government of Canada's request. The Government of Germany agreed to review the documents requested but did not

provide the Government of Canada with a waiver. As a result, neither Navigant nor the Commission was able to use or rely on documents received by the Government of Canada from Switzerland or Germany.

Although the evidence adduced through Navigant is suggestive, given its fragmentary nature it is impossible to present a financial picture that is complete. That said, the lack of a complete financial picture did not prevent me from being able to draw certain conclusions with regard to the source of the funds.

In his testimony, Mr. Schreiber said the money paid to Mr. Mulroney came from a Swiss Bank account with an associated code name of Britan. On separate occasions, Mr. Schreiber gave distinct, different accounts as to the source of the funds in the Britan account. That fact made it difficult to accept any of Mr. Schreiber's evidence on this issue unless it was supported by other evidence. I found evidence on the point provided by Navigant to be credible.

To summarize, Mr. Schreiber told Commission counsel when he was interviewed before testifying that the funds came from three sources – MBB, Thyssen, and Airbus. In an interview Mr. Schreiber gave to Mr. Kaplan, he said the funds came from \$500,000 that Thyssen agreed to spend on the Bear Head Project. In his letter to the Ethics Committee dated March 3, 2008, Mr. Schreiber said the \$2 million success fee paid by Thyssen to International Aircraft Leasing (IAL) after the understanding in principle was signed in September 1988 was divided among a group of people that included Mr. Moores, who deposited \$500,000 into a Swiss bank account with an associated code name, Frankfurt. Mr. Schreiber said the money sat dormant for five years until payment out of it was made to Mr. Mulroney. That cannot be true because, as Mr. Whitla testified, there was only \$11,560 in the account as at January 22, 1990.

Despite the difficulties I have with Mr. Schreiber's testimony, I am prepared to accept Mr. Schreiber's testimony that the money he paid to Mr. Mulroney came from the Britan account. Mr. Schreiber's evidence on the point was not successfully challenged by anyone during the course of his testifying. Moreover, in addition to Mr. Schreiber's evidence, there is confirmation in Mr. Whitla's expert evidence and the report by Navigant to support what I view as the correct conclusion – that the money paid to Mr. Mulroney came from the Britan account.

Having heard and read the evidence of Mr. Whitla and Navigant, I have little difficulty in accepting their analysis or in concluding that the funds that made up the Britan account can be traced back to commission payments made to IAL by Airbus Industries in connection with sales of aircraft to Air Canada. IAL is a company incorporated in Vaduz, Liechtenstein.

Question 9 of the Terms of Reference directs that I investigate and report on why the payments were made and accepted in cash. I have interpreted the concept of "accepted in cash" to include Mr. Mulroney's maintenance of the funds in cash after he received

them. When they each gave evidence before me, Mr. Schreiber and Mr. Mulroney were questioned numerous times about their reasons for making and accepting payments in cash, particularly in reference to their three meetings.

Mr. Schreiber's evidence leads me to conclude that he dealt both in cash and by cheque when transacting business. It appears to me, on the basis of the evidence I heard and saw, that the method of payment Mr. Schreiber used depended on whether the party or parties with whom he was dealing wanted to have a transaction that was documented. I also have the evidence of Mr. Mulroney on the issue of why the payments were made and accepted in cash. I found Mr. Mulroney's evidence on this issue to be troubling at best and, at worst, not worthy of any credence.

The basic reason proffered by Mr. Mulroney for accepting and maintaining the monies he received from Mr. Schreiber in cash is that he made a significant error in judgment. I confess to having a considerable problem with that explanation. Mr. Mulroney testified that he hesitated before accepting the first instalment in cash. Nonetheless, he accepted the cash. If it was a significant error in judgment that caused him to accept cash in the context in which that occurred, the judgmental error could easily have been rectified by Mr. Mulroney. He could have asked Mr. Schreiber to replace the cash with a cheque or, at the very least, he could have issued an invoice and a receipt for the cash or deposited it in a bank or other financial institution. In my view, the fact that Mr. Mulroney did nothing of the sort detracts from his credibility on that point.

Even if I were to believe that Mr. Mulroney accepted and maintained the money he received in the first instalment in cash as a result of a significant error in judgment, I am unable to comprehend why, after thinking about what had occurred, he would have accepted any further cash, or why he would not have dealt differently with the cash he received in the second and third instalments.

Mr. Mulroney was and is a sophisticated businessman. He had just completed almost nine years as prime minister of Canada. I am therefore unable to accept as credible that he would repeat the exact same error in judgment that he made on August 27, 1993, by accepting cash from Mr. Schreiber on two further occasions, on December 18, 1993, and on December 8, 1994. While testifying, Mr. Mulroney addressed his failure to document the transactions he had with Mr. Schreiber. Essentially, while emphasizing that nothing about the transaction was illegal, he acknowledged that an undocumented transaction could give rise to legitimate suspicions by reasonable people, or that reasonable people could conclude, as do I, that something was amiss.

In the circumstances, I am driven to conclude that it is virtually impossible that Mr. Mulroney committed the same significant error in judgment on three separate occasions. It seems to me that, given Mr. Mulroney's education, background, experience, and business acumen, his every instinct would have been, and should have been, to document the transaction in some manner.



It is clear from Mr. Mulroney's evidence that, on none of the three occasions when he received cash from Mr. Schreiber, did he deposit the cash to a bank or other financial institution. Had that been done, one or more documents would have been created. However, placing the cash in a safe at his home and a safety deposit box in New York avoided the creation of a document or record.

In my view, an error in judgment cannot excuse conduct that can reasonably be described as questionable if that conduct, as is the case here, occurred on three distinct occasions. I therefore conclude that the reason Mr. Schreiber made the payments in cash and Mr. Mulroney accepted them in cash was that they both wanted to conceal the fact that cash transactions had occurred between them.

Question 10 of the Terms of Reference requires me to determine what happened to the cash; in particular, if a significant amount of cash was received in the United States, what happened to that cash. The only evidence on this issue came from Mr. Mulroney.

In summary, Mr. Mulroney testified that the money he received at the Pierre Hotel meeting remained in a safety deposit box in New York, while the money he received at both the Mirabel and the Queen Elizabeth Hotel meetings remained in his home safe in Montreal. That was the case until Mr. Mulroney, many years later, declared it as income. At that point, according to Mr. Mulroney, he "disbursed it to members of [his] immediate and extended family in Canada and in the United States." Mr. Mulroney explained that at least two, if not three, of his children were at school in the United States, and that was what the money in the United States was "principally" used for. Mr. Mulroney testified that he removed the money from the safety deposit box in New York "in increments," starting at the end of the year 2000.

Having considered Mr. Mulroney's evidence, I am unable to determine, with specificity, what happened to the cash Mr. Mulroney received from Mr. Schreiber, including the cash that he received from Mr. Schreiber at the Pierre Hotel in New York. There was no documentary evidence to support Mr. Mulroney's assertion that he principally used the money in the United States for educating his children who were attending university in that country. There was no documentary evidence to support the assertion that the money that was held in the safe in his home in Montreal was disbursed among family members in Canada and the United States. Nor was there any documentary evidence to support Mr. Mulroney's claim that he did not bring the money paid to him in New York City back into Canada. He offered no explanation for how he spent or used Canadian currency in \$1,000 bills in the United States. Finally, there was no documentary evidence to support Mr. Mulroney's claim that, out of the cash he received, he paid approximately \$45,000 for expenses he incurred in performing what he described as the international mandate given to him by Mr. Schreiber.

Notwithstanding the absence of documentary support, I am prepared to accept that Mr. Mulroney spent all the cash he received from Mr. Schreiber on himself or

family members. Further, I have no reason to believe that he brought any of the cash that was paid to him in New York into Canada. Therefore, I accept that he spent or used this portion of the cash received from Mr. Schreiber in the United States.

## **APPROPRIATENESS**

I come now to a central issue in this Inquiry: the appropriateness of Mr. Mulroney's conduct. The first part of this analysis deals with the appropriateness of his business and financial dealings with Mr. Schreiber. The second part looks at whether Mr. Mulroney's disclosure and reporting of those dealings and the payments he received from Mr. Schreiber were appropriate. And the third part considers whether ethical rules and guidelines were in place which related to Mr. Mulroney's business and financial dealings with Mr. Schreiber, and, if so, whether they were followed. These matters fall within Questions 11 through 13 of the Commission's Terms of Reference:

- 11. Were these business and financial dealings appropriate considering the position of Mr. Mulroney as a current or former prime minister and Member of Parliament?*
- 12. Was there appropriate disclosure and reporting of the dealings and payments?*
- 13. Were there ethical rules or guidelines which related to these business and financial dealings? Were they followed?*

On November 12, 2008, before the start of the hearings in the Factual Inquiry, this Commission issued a Notice on Standards of Conduct in which the four parties to the Factual Inquiry were invited to make submissions in relation to Questions 11, 12, and 13 of the Terms of Reference.

I issued my Standards Ruling on February 25, 2009. I set out my conclusions here in full, because I think they are important for an appreciation of the matters dealt with in Questions 11 and 12 of the Terms of Reference.

[60] In assessing whether Mr. Mulroney's conduct or behaviour was appropriate, I will be guided by the standard that he himself set during his tenure as the holder of the highest elected office in Canada. It is noteworthy that at page 46 of *Guidance for Ministers*, it is stated that "the *Prime Minister will hold Ministers personally accountable* for acting in accordance with the spirit of the highest standards of conduct, as well as complying with the letter of the Government's rules" [emphasis in original]. As the person responsible for applying standards of ethics to his ministers while he was prime minister, Mr. Mulroney must be taken to understand fully what those standards were.

[61] I intend to determine, on an objective basis, whether Mr. Mulroney, in the business and financial dealings he had with Mr. Schreiber (if any) and in disclosing these dealings and payments (if any), conformed with the highest standards of conduct – conduct that, objectively, is so scrupulous that it can bear the closest possible scrutiny.

[62] A finding of inappropriateness will be made only if there is credible evidence that Mr. Mulroney acted in a manner that falls short of conduct that, objectively, is so scrupulous that it can bear the closest possible scrutiny. This is the standard that will apply to whatever business and financial dealings Mr. Mulroney may have had with Mr. Schreiber. Similarly, with respect to disclosure and reporting of the dealings and payments, I will not find that Mr. Mulroney has acted in a manner that is inappropriate unless evidence of a like nature is before me.

[63] I believe that this standard is one that reflects the importance to Canadian democracy of the office of prime minister, as well as the public trust reposed in the integrity, objectivity, and impartiality of public office holders. It is a standard familiar to Mr. Mulroney, one accepted by him in the 1985 Ethics Code and in the 1988 *Guidance for Ministers*. It is a standard that reflects the need, as noted by Mr. Mulroney in his September 9, 1985, letter, to reinforce the trust and confidence of the public in both the government and the public service. As he noted in his letter, in order to reinforce that trust and confidence, the government must be guided by the highest standards of conduct. *Guidance for Ministers* states that there is an obligation on ministers not simply to observe the law but to act in both official and personal capacities in a manner so scrupulous that it will bear the closest public scrutiny. One of the purposes of an Inquiry is to bring that public scrutiny to bear. If the Prime Minister intended to hold ministers personally accountable to that level, then it follows that he himself would be accountable on the same basis.

After I issued my Standards Ruling, Mr. Mulroney filed an application for a clarification of certain aspects of it. On behalf of Mr. Mulroney, Mr. Pratte asserted that the application of the standard should be confined to the period during which Mr. Mulroney served as prime minister of Canada and the period defined by the 1985 Ethics Code. Mr. Pratte also sought clarification on whether I intended to make findings as to the appropriateness of conduct in respect of the Standing Orders of the House of Commons, Nos. 21 and 23(2), and to statutes such as the *Parliament of Canada Act*, the *Financial Administration Act*, the *Income Tax Act*, the *Excise Act*, and the *Criminal Code* as they existed at the time of the events being investigated. He asked that I clarify what I intended to derive from these statutes. In his submissions at the clarification hearing, Mr. Pratte asserted that these statutes and instruments should play no role in my assessment of appropriateness.

After hearing submissions from counsel on Mr. Mulroney's application, I published a ruling clarifying my Standards Ruling. Regarding Mr. Mulroney's request for clarification about the period to which the standard I articulated in my Standards Ruling applies, I stated the following:

I have no interest in delving into the private life or private business affairs of Mr. Mulroney. My interest is restricted to those issues set forth in the Terms of Reference as established

by the Governor in Council. As regards the timeframe, if there is evidence of conduct on the part of Mr. Mulroney that occurred after he left the high office of prime minister but that relates to the matters before me under the Terms of Reference, I will apply the standard set in the Standards Ruling for assessing that conduct.

In my Clarification Ruling, I said that I may look to statutes for the purpose of finding relevant information, and for the purpose of avoiding the use of language found in the statute that “may lead members of the public to perceive that specific findings of criminal or civil liability have been made.”

The Standards Ruling and the clarification of that ruling were made before I began to hear evidence. Having now heard the evidence, with one exception I have determined that there is no need for me to look to the statutes to which I was referred in order to “inform myself” in making my finding on appropriateness. The one exception concerns the *Income Tax Act*. I heard from representatives of Canada Revenue Agency (CRA) who explained the parameters of the voluntary disclosure program as it existed in 2000 and the retainer provisions of the Act. This relevant information helped me in understanding these tax matters.

With respect to Question 13, the ethical rules or guidelines that I identified as having possible relevance to the Commission’s work were all contained in the 1985 Ethics Code and *Guidance for Ministers*.

In answering Question 11 of the Terms of Reference, I was required to consider whether both the business dealings and the financial dealings between Mr. Schreiber and Mr. Mulroney were appropriate. Accordingly, I first turned to the question of whether Mr. Mulroney’s business dealings with Mr. Schreiber were appropriate, considering Mr. Mulroney’s position as a current or former prime minister and member of parliament, and then I considered whether the financial dealings between them were appropriate.

### **Business Dealings**

I found in Chapter 6 that Mr. Mulroney entered into an agreement with Mr. Schreiber while he (Mr. Mulroney) was still sitting as a member of parliament. I found that the agreement was made on August 27, 1993, at the hotel at the Mirabel Airport near Montreal and that, pursuant to that agreement, Mr. Schreiber retained the services of Mr. Mulroney to promote the sale in the international market of military vehicles produced by Thyssen.

I asked myself the question, “Would a reasonable, fair-minded observer, being informed of all the circumstances surrounding Mr. Mulroney’s business dealings with Mr. Schreiber, say that those dealings conformed to the highest standards of conduct and were so scrupulous that they can bear the closest possible scrutiny?” After having carefully considered all the relevant evidence related to these business dealings, it is patently obvious to me that they neither conformed to the highest standards of conduct nor were scrupulous enough that they can bear the closest possible scrutiny.

Mr. Mulroney had just completed serving almost nine years as prime minister of Canada. During his tenure in that office, he had a significant number of dealings, on an official basis, with Mr. Schreiber. All those dealings related to work Mr. Schreiber was doing on behalf of Thyssen, its Bear Head Project, or both.

Mr. Mulroney testified that he had “killed” the Bear Head Project in 1991, but the project was not dead. It kept coming back as different proposals. It was possible for that to occur only because Mr. Mulroney continued to meet with Mr. Schreiber, even after Mr. Mulroney said he had killed the project.

Although there is no evidence to suggest that Mr. Mulroney applied improper pressure to anyone regarding the Bear Head Project while he was prime minister, I found that the degree of access granted to Mr. Schreiber was not appropriate for the following reasons. Mr. Schreiber was not registered as a lobbyist on behalf of either Thyssen or Bear Head Industries, but he was in fact lobbying Mr. Mulroney on behalf of both entities. What is of more concern is that Mr. Doucet, Mr. Mulroney’s close friend and confidant, who was responsible for arranging many of the meetings between Mr. Mulroney and Mr. Schreiber as well as attending at least some of those meetings, was registered as a lobbyist for Bear Head Industries. The evidence discloses that, when Mr. Doucet resigned from his position with the government, he received a waiver entitling him to commence work as a lobbyist within a very short period following his resignation.

When Mr. Mulroney left the office of prime minister, he went back into the practice of law at a respected law firm in Montreal, Ogilvy Renault. Because of his status on the international stage, he decided to do consulting work, including work in the international arena. Mr. Mulroney had an agreement with Ogilvy Renault that the income he derived from his consulting work would be his alone, with no need to share that income with his partners in the law firm. Mr. Mulroney took steps to incorporate a company, Cansult, as the vehicle to be used to conduct his consulting business. The evidence before me is clear that Mr. Mulroney did not use Cansult for his business dealings with Mr. Schreiber, despite the fact that conducting his consulting business was the reason for incorporating Cansult.

The evidence is also clear that there was no attempt by Mr. Mulroney, a sophisticated businessperson, or anyone on his behalf, to document the business dealings he had with Mr. Schreiber until the year 2000, when Mr. Doucet prepared what has been referred to as the mandate document. According to Mr. Doucet, he prepared this document to memorialize the otherwise undocumented agreement between Mr. Schreiber and Mr. Mulroney.

I note that Mr. Doucet prepared the mandate document only after Mr. Schreiber had been arrested on an extradition warrant and was talking to the media about his relationship with Mr. Mulroney. The evidence before me is that Mr. Doucet was in contact with Mr. Mulroney, who agreed that preparing the document was desirable.

If such a document were advisable then, years after the contract was made, arguably it was just as desirable to have the contract reduced to writing when it was made.

In my opinion, if the dealings were appropriate, there would have been a contract, an exchange of letters, or some other documentation confirming the agreement Mr. Mulroney and Mr. Schreiber made on August 27, 1993. If the dealings were appropriate, Mr. Mulroney would have used his corporation, Cansult, as a party to the agreement. The fact of the dealings Mr. Mulroney had with Mr. Schreiber would have been recorded in the company's books.

I recognize that the dealings Mr. Mulroney had with Mr. Schreiber were private and that he (Mr. Mulroney) made efforts to ensure that they continued to be private. I ask myself, why did Mr. Mulroney not want the fact of those dealings to be publicized? The answer, I believe, is that, when he made the agreement with Mr. Schreiber on August 27, 1993, and accepted the first instalment of cash from him, he had been out of office as prime minister for only nine weeks and was now dealing on a private basis with the man with whom he had been dealing officially for a period of five years while he occupied the office of prime minister.

In my view, legitimate questions as to the propriety of what Mr. Mulroney was doing would have arisen in the mind of any reasonable, informed, objective observer. Even Mr. Mulroney conceded that point while testifying before me.

I feel constrained to say that, if Mr. Mulroney had made a written agreement with Mr. Schreiber, or if he had used Cansult as the vehicle through which his dealings with Mr. Schreiber were conducted, neither one of these standard business practices would have brought the fact of those dealings into the public arena. They would have remained private. Why, then, was there a need for such secrecy? And why did Mr. Mulroney not use Cansult to conduct his business dealings with Mr. Schreiber? The answer is that Mr. Mulroney wanted to conceal the fact that he had received money from Mr. Schreiber.

In Chapter 9 of my Report, I found, applying Mr. Mulroney's own test, that his business dealings with Mr. Schreiber were not appropriate. Those dealings did not conform to the highest standards of conduct, nor were they so scrupulous that they can bear the closest possible scrutiny.

### **Financial Dealings**

The evidence before me discloses that the financial dealings between Mr. Mulroney and Mr. Schreiber consisted of three separate occasions on which Mr. Schreiber made large cash payments to Mr. Mulroney. On each of these occasions, the cash consisted of \$1,000 bills in Canadian currency which was concealed in paper envelopes.

The first cash transaction between the two men occurred on August 27, 1993, in a room at a hotel at Mirabel Airport. Mr. Schreiber and Mr. Mulroney were alone in that room. Although Mr. Mulroney made a point of telling me while

testifying that he was driven to and from the hotel at Mirabel Airport by two members of the RCMP, who were stationed outside the door of the room when the cash transaction took place, that did nothing so far as I am concerned to legitimize what was occurring in that room. Needless to say, neither member of the RCMP was aware of what was happening behind the closed door. When Mr. Mulroney left the room carrying the envelope, neither officer could be aware that it contained a considerable amount of cash.

The second occasion on which a large number of \$1,000 bills was given by Mr. Schreiber to Mr. Mulroney, again in an envelope, was on Saturday, December 18, 1993, in a room at the Queen Elizabeth Hotel in Montreal where coffee is served. With respect to this particular occasion, Mr. Mulroney testified that other people were also in the room, some of whom came over to the table where he and Mr. Schreiber were seated in order to speak to him and, in some cases, to ask for an autograph. If that evidence was an attempt by Mr. Mulroney to somehow legitimize what was transpiring, the attempt failed. Again, it has to be noted that no one in the room besides Mr. Schreiber and Mr. Mulroney could possibly have known what was going on when Mr. Schreiber handed the envelope containing the cash to Mr. Mulroney.

On December 8, 1994, the third cash transaction took place. It occurred in a suite at the Pierre Hotel in New York City. On this occasion, Mr. Doucet was present. He testified that he had no idea what was in the envelope that changed hands that day and that Mr. Mulroney never told him after the event what had occurred insofar as the exchange of cash is concerned.

In my view, the manner in which Mr. Mulroney dealt with the cash subsequent to each of the three occasions on which he received it is as significant as the fact that he accepted the cash from Mr. Schreiber. The evidence is that, for a period of time, the first payment received by Mr. Mulroney at the hotel at Mirabel was stored in a portable safe at the cottage he and his family were renting at Estérel, Quebec. When they moved into their home in Montreal, Mr. Mulroney transferred this cash to a safe in the house. Mr. Mulroney also put the cash paid to him by Mr. Schreiber on December 18, 1993, into the safe at the Mulroney residence in Montreal. He placed the cash he received from Mr. Schreiber in New York City on December 8, 1994, in a safety deposit box that he (Mr. Mulroney) had opened in a bank in that city. No record of that deposit was made.

Mr. Mulroney made a point of telling me during the course of his testimony that there was nothing illegal about his accepting three separate payments of cash in Canadian \$1,000 bills from Mr. Schreiber. While I agree with Mr. Mulroney that cash transactions in Canadian currency are legal, that fact does not necessarily mean that it is appropriate. To determine whether these three cash transactions were appropriate, I have considered the circumstances and context in which they were made.

It is important to remember that, when Mr. Mulroney received the cash payments on three separate occasions from Mr. Schreiber, he did absolutely nothing to record the fact of the payments to him. The cash payments were made in connection with the agreement that Mr. Schreiber and Mr. Mulroney made on August 27, 1993. It was seemingly a straightforward business transaction, but, again, one that was not recorded or documented in any way whatsoever.

Surely standard business practice and business acumen dictate that the details of the contract should have been documented, as should the receipt of the money on each of the three occasions. Surely a man with the education and business background of Mr. Mulroney could reasonably be expected to follow standard business practice by documenting a contract, by recording the receipt of cash monies paid, by depositing those monies into a bank or other financial institution and thereby creating a record, and by declaring a reserve under the *Income Tax Act* where cash is received by way of a retainer. Given the business acumen Mr. Mulroney possessed, his failure to follow standard business practice raises questions as to the legitimacy of the agreement and the appropriateness of the cash transactions.

When the first payment of cash was made, Mr. Mulroney said he was taken aback and that he hesitated. One can reasonably infer from that description that Mr. Mulroney knew very well that what was occurring was not appropriate or in compliance with standard business practice. Mr. Mulroney testified that when he hesitated to take the envelope containing the cash, Mr. Schreiber told him that he was an international businessman and dealt only in cash. The evidence is clear that, while Mr. Schreiber on more than one occasion did deal in cash, he also used cheques to pay for services rendered. Mr. Schreiber always paid Mr. Lalonde by cheque made payable to his law firm, Stikeman Elliott. He paid Mr. Doucet and others by cheque in 1988, following the signing of the understanding in principle.

With respect to the second cash payment he received, Mr. Mulroney said that he did not expect the payment to be in cash. That statement, with respect, is inconsistent with his statement that Mr. Schreiber told him that he always dealt in cash.

There was more than one option open to Mr. Mulroney. First, he could have insisted on receiving cheques rather than cash. Second, he could have issued receipts for the cash he received. Third, instead of squirrelling the cash away in a safe in his residence or a safety deposit box in New York (where no record of the deposit was kept), he could have deposited the cash into an account or accounts at a bank or financial institution where he did business. Mr. Mulroney chose to do none of the foregoing.

I pause here to point out as well that, in years subsequent to his accepting the cash payments from Mr. Schreiber, as I outline below, Mr. Mulroney had several opportunities during which he could have disclosed the cash payments. He failed to do so on each of those occasions.



The conduct exhibited by Mr. Mulroney in accepting cash-stuffed envelopes from Mr. Schreiber on three separate occasions, failing to record the fact of the cash payments, failing to deposit the cash into a bank or other financial institution, and failing to disclose the fact of the cash payments when given the opportunity to do so goes a long way, in my view, to supporting my position that the financial dealings between Mr. Schreiber and Mr. Mulroney were inappropriate. These dealings do not reflect the highest standards of conduct, nor do they represent conduct that is so scrupulous it will bear the closest public scrutiny.

### **Disclosure and Reporting**

Question 12 of the Terms of Reference directs me to determine whether there was appropriate disclosure and reporting by Mr. Mulroney of his dealings with Mr. Schreiber and the cash paid to him as a result of those dealings.

I dealt with this issue by examining the evidence received by the Commission as it relates to the various occasions when Mr. Mulroney had opportunities to disclose and report on his business dealings with Mr. Schreiber or both the business dealings and the payments in cash.

Mr. Mulroney had numerous opportunities when he could have disclosed and reported on his dealings with Mr. Schreiber. In each of those instances, Mr. Mulroney chose not to make disclosure. Those occasions, briefly put, were as follows:

- 1 When Mr. Mulroney and Mr. Schreiber entered into their agreement on August 27, 1993, and on each of the two subsequent occasions when Mr. Mulroney received cash from Mr. Schreiber.
- 2 On seven occasions, in each of the years 1993 to 1999, inclusive, when Mr. Mulroney could have declared a reserve under the *Income Tax Act* for monies paid to him by way of retainer.
- 3 Subsequent to Mr. Mulroney's commencing a lawsuit against the Government of Canada and others when Mr. Mulroney was examined under oath in the course of that lawsuit by one of the lawyers for certain of the defendants, including the Government of Canada.
- 4 When Mr. Lavoie, Mr. Mulroney's spokesperson, advised him to make disclosure of his dealings with Mr. Schreiber.
- 5 When Mr. Mulroney provided information to Mr. Kaplan, who was in the process of writing a book entitled *Presumed Guilty* and thereafter.

#### ***When the Agreement Was Made and When the Subsequent Payments Were Made***

Mr. Mulroney did nothing by way of disclosure and reporting on the first occasion on which he had the opportunity – immediately after the Mirabel meeting. There was no documentation to memorialize the agreement they made. Mr. Mulroney rendered no receipt for the money paid to him by Mr. Schreiber. Moreover, Mr. Mulroney, who was a sophisticated businessman, failed then, and on the two

subsequent occasions when he received cash from Mr. Schreiber, to deposit the money into an account at a bank or other financial institution. Such deposits would have been in keeping with basic business acumen.

In my view, the failure to memorialize the agreement and to acknowledge in writing the payment of cash was in keeping with the desire on the part of both Mr. Mulroney and Mr. Schreiber to conceal the fact that they were doing business with each other.

### ***Non-Declaration of Reserve Under the Income Tax Act***

Mr. Mulroney testified that the agreement he made with Mr. Schreiber was to provide services in the future, including conducting what he described as a watching brief. In my view, each tax year from 1993 to 1999, inclusive, presented Mr. Mulroney with an opportunity to disclose and report on his dealings with, and payments received from, Mr. Schreiber. The opportunity to which I refer is declaration of a reserve pursuant to the *Income Tax Act*. This option is available to taxpayers when they receive money by way of a retainer, and no income tax is payable until services are provided. Let me emphasize that I am not suggesting that Mr. Mulroney violated any provision of the *Income Tax Act* by failing to declare a reserve. All I am saying is that he had an opportunity on seven separate occasions to declare and report on his dealings with, and payments received from, Mr. Schreiber, and that he chose not to take advantage of the opportunities presented. Mr. Mulroney's decision not to do so supports my finding that he wished to conceal his business relationship with Mr. Schreiber.

### ***The Examination Before Plea***

The next opportunity Mr. Mulroney had to disclose and report on his dealings with Mr. Schreiber and the payments he received arose in April 1996, when he was examined under oath in connection with the \$50 million lawsuit he initiated against the Government of Canada and others claiming damages for injury to his reputation. This lawsuit stemmed from the letter of request (LOR) sent by the Government of Canada to the Competent Legal Authority of Switzerland.

The Province of Quebec has a unique legal process called an examination before plea. By virtue of this process, the lawyer for a defendant named in a lawsuit is entitled to question the plaintiff even before the defendant has filed a formal statement of defence to the plaintiff's claim. However, the questions asked on an examination before plea must be confined to the allegations set out in the statement of claim.

The examination before plea of Mr. Mulroney was conducted by Claude-Armand Sheppard, counsel for the Attorney General of Canada in the lawsuit, at the courthouse in Montreal on April 17 and 19, 1996.

I note that Mr. Lavoie told Mr. Kaplan in the course of an interview that, while he was on the way to the law courts with Mr. Mulroney for the proceeding, Mr. Mulroney told him that Mr. Sheppard was going to have a problem: "He is going

to ask me questions and he expects me to answer them,” he said. In his testimony, Mr. Mulroney did not deny making this comment to Mr. Lavoie, though he stated that he made it in jest. Given what transpired during the course of the examination before plea, the nature of that comment by Mr. Mulroney seems to me to be more ominous than humorous.

Commission counsel Richard Wolson pressed Mr. Mulroney more than once as to why, during the course of his being examined before plea, he had failed to disclose his dealings with and the payments from Mr. Schreiber. On each occasion, Mr. Mulroney responded in one or more of the following ways: that he had been advised by his counsel not to answer any question that was not within the parameters of the statement of claim; that he had also been advised by his counsel not to volunteer information; and that Mr. Sheppard had failed to ask the right question.

Mr. Mulroney acknowledged that, when examined by Mr. Sheppard, he had taken an oath to tell the truth, the whole truth, and nothing but the truth. He also acknowledged that he was well represented by counsel, who could have objected and who did object to Mr. Sheppard’s questions when they deemed them to be improper.

The LOR makes reference not only to Airbus but also to the Bear Head Project and payments made to Mr. Mulroney while he was the prime minister of Canada, as a result of a conspiracy to which he was allegedly a party along with Mr. Schreiber and Frank Moores. Mr. Mulroney’s statement of claim expressly pleaded the injury to his reputation arising from the fraud allegedly committed by Mr. Mulroney on the Government of Canada in relation to the Bear Head Project and to payments to Mr. Mulroney by Bear Head Industries through Mr. Schreiber. This plea is important because it brings questions about Mr. Mulroney’s relationship with Mr. Schreiber within the parameters of the statement of claim. As far as I am concerned, that means that such questions were proper and should have been answered fully and truthfully.

Advice to a person about to be examined not to volunteer information is good legal advice. However, in my view, not volunteering information is substantially different from avoiding answering legitimate, proper questions to which no objection has been taken by counsel for the person being examined. I found that Mr. Mulroney avoided answering such questions as summarized below. I also note that, while a witness being examined before plea is required to answer only those questions that fall within the confines of the statement of claim, if a person does not object to a question and chooses to answer it, he or she must do so fully and truthfully.

On November 2, 1995, Mr. Schreiber advised Mr. Mulroney by telephone of the LOR. Mr. Sheppard asked Mr. Mulroney about that conversation. He also asked Mr. Mulroney about conversations he may have had subsequent to November 2, 1995, dealing with commissions paid to Mr. Schreiber by Airbus. Mr. Mulroney responded that he did not know what arrangements, if any, had been made by Mr. Schreiber or anyone else in respect of any commercial transaction.

When he gave that answer, Mr. Mulroney knew about his commercial transaction with Mr. Schreiber. He also knew that, within a few miles of the courthouse in Montreal, he had at least \$150,000 in cash sitting dormant in a safe in his residence, not to mention at least a further \$75,000, again in cash, sitting in a safety deposit box in a bank in New York.

In response to another question Mr. Sheppard asked about discussions he might have had with Mr. Schreiber after he knew about the LOR, Mr. Mulroney responded that his principal preoccupation was not Mr. Schreiber's business dealings. He then stated, "I had never had any dealings with him."

Mr. Mulroney's position is that the answers he gave to those questions were given in the context of Airbus. However, as I have already noted, both the LOR and the statement of claim also referred to the Bear Head Project.

Mr. Sheppard asked Mr. Mulroney about his relationship with Mr. Schreiber while he (Mr. Mulroney) was in office, about meetings he had with Mr. Schreiber during that time, and where those meetings took place. In response, Mr. Mulroney gave an expansive answer that included a reference to meetings in his office and others that might have taken place in other circumstances. He did not mention his meeting with Mr. Schreiber at Harrington Lake on June 23, 1993.

When asked by Mr. Wolson why, in his answer to Mr. Sheppard, he had not mentioned the Harrington Lake meeting, Mr. Mulroney replied that he had not been asked to detail all the meetings he had with Mr. Schreiber.

Mr. Sheppard also asked Mr. Mulroney whether he maintained contact with Mr. Schreiber after he ceased being the prime minister. In his answer, Mr. Mulroney failed to disclose the true state of affairs, including his agreement with Mr. Schreiber; the two cash payments in envelopes he received from Mr. Schreiber in hotel rooms at Mirabel and in New York, respectively; or the cash payment he received, again in an envelope, in the coffee shop at the Queen Elizabeth Hotel in Montreal. Mr. Mulroney's response would lead anyone not knowing the true situation about Mr. Mulroney's dealings with Mr. Schreiber or the money he had received from Mr. Schreiber to believe that the post-prime ministerial contact consisted of a couple of brief meetings to have a cup of coffee.

For Mr. Mulroney to attempt to justify his failure to make disclosure in those circumstances by asserting that Mr. Sheppard did not ask the correct question is, in my view, patently absurd. It was not Mr. Sheppard's question that was problematic; rather, it was Mr. Mulroney's answer to the question. Mr. Mulroney's answer to Mr. Sheppard's question failed to disclose appropriately the facts of which Mr. Mulroney was well aware when such disclosure was clearly called for. I suggest that Mr. Sheppard did ask the right question in attempting to ascertain what contact, if any, Mr. Mulroney and Mr. Schreiber maintained subsequent to Mr. Mulroney's departure from the office of prime minister. There was no objection to the question by counsel for

Mr. Mulroney because it was not an objectionable question. Nor did the question call for the volunteering of information by Mr. Mulroney. What the question called for was a clear, complete, forthright answer. And that answer was not forthcoming from Mr. Mulroney.

### *The Advice from Mr. Lavoie*

Another opportunity arose for Mr. Mulroney to disclose and report on his dealings with Mr. Schreiber and the payments he received from him when his trusted spokesperson, Mr. Lavoie, advised him to inform Canadians about the transactions.

The evidence before me discloses that Mr. Lavoie knew nothing about Mr. Schreiber's cash payments to Mr. Mulroney until 2000, some six years after the fact, when Mr. Mulroney's lawyer, Gérald Tremblay, told him about them. Mr. Lavoie immediately gave Mr. Mulroney advice that I consider to be very sage – that Mr. Mulroney should himself disclose the fact of the dealings and the payments. Mr. Lavoie went on to discuss this matter with Mr. Mulroney on four or five separate occasions. Mr. Mulroney acknowledged in his testimony before me the wisdom of this advice.

Mr. Lavoie testified that Mr. Mulroney panicked at the thought of the information about his dealings and the payments becoming public. Mr. Mulroney testified that his dealings with Mr. Schreiber and the payments he had received from him were a private matter in the private sector after he left office. He said there was nothing illegal about what he had done and that he had never knowingly done anything wrong in his life.

Rather than personally disclosing and reporting on the dealings and payments, however, Mr. Mulroney had Mr. Lavoie do so on his behalf. Rather than having Mr. Lavoie do so immediately, Mr. Mulroney had him wait another two years, until 2002, to disclose the payments.

As for the amount of the payments, in 2002 Mr. Lavoie told Mr. Kaplan that the monies paid amounted to substantially less than \$300,000. According to Mr. Lavoie, Mr. Mulroney had told him so. Mr. Lavoie provided Mr. Kaplan with several different explanations for the payments.

On November 5, 2007, Mr. Lavoie disclosed in an email message sent to journalist Bruce Champion-Smith that Mr. Mulroney's mandate involved assistance in building a factory for Thyssen and launching a chain of pasta restaurants. Mr. Mulroney testified that he was not consulted before Mr. Lavoie provided that information, though he stated that what Mr. Lavoie said about the purpose for the payments was unintentionally inaccurate.

Mr. Lavoie made statements in an interview given to Jack Aubry of Canwest News Services on November 21, 2007, that Mr. Mulroney made a colossal mistake in taking \$300,000 in cash. In his testimony before me, Mr. Lavoie confirmed those statements

and said it was possible that he had mentioned the figure of \$300,000. Once again, in his testimony before me, Mr. Mulroney denied the accuracy of what Mr. Lavoie had said. In my view, it is not surprising that Mr. Lavoie was making inaccurate statements to the media: Mr. Mulroney was not candid as he ought to have been with Mr. Lavoie and did not provide him with an accurate account of his dealings with Mr. Schreiber.

### ***When Mr. Kaplan Was Writing Presumed Guilty and Thereafter***

Mr. Mulroney had another opportunity to disclose and report on his dealings with Mr. Schreiber and the payments he received from him on various occasions when he was interviewed by William Kaplan.

*Presumed Guilty*, the first of two books Mr. Kaplan wrote dealing with Mr. Mulroney, was published in 1998. Mr. Kaplan was offended at the treatment afforded Mr. Mulroney by the Government of Canada regarding Airbus. He wrote this book to set the record straight and to defend Mr. Mulroney's reputation. In preparing to write this first book, Mr. Kaplan interviewed Mr. Mulroney on several occasions and often for many hours on end. In all these discussions, Mr. Mulroney said nothing to Mr. Kaplan about his commercial relationship with Mr. Schreiber. During an interview on December 2, 1997, Mr. Mulroney told Mr. Kaplan that he knew Mr. Schreiber in a "peripheral way."

Mr. Kaplan's second book, *A Secret Trial*, was published in 2004. He wrote that book after he learned about the cash payments Mr. Schreiber made to Mr. Mulroney. Mr. Kaplan testified that, as a historian of the Airbus affair, he felt he had a professional and moral obligation to set the record straight.

In January 2002 Mr. Kaplan had a discussion with Mr. Lavoie regarding the fact that Mr. Mulroney had received a substantial amount of money from Mr. Schreiber. Understandably, Mr. Kaplan was dismayed to get this information, and he felt he had been "duped" by Mr. Mulroney about his relationship with Mr. Schreiber. Also, according to Mr. Kaplan, while he was writing *Presumed Guilty*, other people associated with Mr. Mulroney had contributed to his belief that Mr. Mulroney and Mr. Schreiber really didn't know each other, when in fact the two men had been involved in business together and Mr. Schreiber had made three large cash payments to Mr. Mulroney.

One week after speaking to Mr. Lavoie, Mr. Kaplan received a telephone call from Mr. Mulroney. During the course of that conversation, Mr. Mulroney told Mr. Kaplan something he also said to me several times while he was testifying – that, to the best of his recollection, he had never in his life done anything wrong, unethical, or illegal. Mr. Mulroney also reiterated to Mr. Kaplan that his knowledge of Mr. Schreiber was peripheral. Mr. Kaplan told Mr. Mulroney that he felt he had been misled by him. Mr. Mulroney responded that these were matters of context and nuance.

More than once while testifying before me, Mr. Mulroney sought refuge under the umbrellas of context and nuance when it came to things he had told others. What I think

he was trying to convey was that words can mean different things, depending on the context in and nuance with which they are used.

While I recognize that the word “peripheral” is a term of relativity, when Mr. Mulroney told Mr. Kaplan that his knowledge of Mr. Schreiber was peripheral, it was more than reasonable for Mr. Kaplan to infer that Mr. Schreiber and Mr. Mulroney hardly knew each other. The manner in which Mr. Mulroney described his relationship with Mr. Schreiber did not, in my view, accurately reflect a business relationship that had endured over a period of several years and involved the payment to him of at least \$225,000 in cash. From my perspective, any objective observer would have drawn the same inference.

In an interview on December 4, 2002, Mr. Mulroney told Mr. Kaplan, among other things, that any cash payment by a client would have been reflected in the books of his company, Cansult. The evidence discloses that Mr. Mulroney did not record the cash payments he received from Mr. Schreiber in Cansult’s books. In fact, Mr. Mulroney did not use his company as a vehicle to do business with Mr. Schreiber. In his own defence, Mr. Mulroney testified that, when Mr. Kaplan interviewed him, he believed he had recorded the payments in the company books.

I have considerable difficulty accepting the foregoing statement by Mr. Mulroney. Just two years earlier, Mr. Mulroney had made a voluntary tax disclosure to Canada Revenue Agency through his lawyer and law partner, Wilfrid Lefebvre. Surely the issue of whether the cash payments had been recorded by Mr. Mulroney on the books of his company would have arisen in the course of instructing Mr. Lefebvre before finalizing the voluntary tax disclosure. Based on the evidence regarding Mr. Mulroney’s handling of the cash, it is difficult to see how that statement could possibly be true.

Sometime before October 5, 2003, Mr. Kaplan disclosed to Mr. Mulroney that he planned to write an article on Mr. Mulroney’s transactions with Mr. Schreiber. Mr. Mulroney thereupon attempted to convince Mr. Kaplan that the information he had concerning these payments was false. Mr. Kaplan had received the story from Philip Mathias, the first journalist to write an article about the payments. Mr. Mathias’s employer, the *National Post*, apparently refused to publish his article.

According to Mr. Kaplan, on October 24, 2003, leading up to the publication of the article he proposed to write about Mr. Mulroney and Mr. Schreiber, Mr. Mulroney said to Mr. Kaplan that, if he (Mr. Kaplan) wanted his “cooperation and friendship,” then he could not be both “a friend and an opponent.” The evidence I heard convinces me that Mr. Mulroney went to great lengths to try to persuade Mr. Kaplan not to write the article about his (Mr. Mulroney’s) dealings with Mr. Schreiber or the payments he had received from Mr. Schreiber.

In his book *A Secret Trial*, Mr. Kaplan referred to Mr. Mulroney’s “unrelenting campaign,” which he described as “brutal, heavy-handed, and extremely wearing,” to persuade him not to publish the story. Mr. Kaplan believes, quite rightly in my opinion, that Mr. Mulroney had a singular purpose in mind in attempting to block the

publishing of the article – namely, to protect his reputation. When asked about this episode by Mr. Wolson, Mr. Mulroney did not deny what Mr. Kaplan had said. The evidence I accept persuades me that Mr. Mulroney did not want the article about his dealings with Mr. Schreiber or the payments he received from him to be published.

My response to Question 12 of the Terms of Reference, “Was there appropriate disclosure and reporting of the dealings and payments,” is “No.”

### **Ethical Rules and Guidelines**

Question 13 of the Terms of Reference directs me to consider whether ethical rules or guidelines were in place at the time that relate to the business and financial dealings between Mr. Mulroney and Mr. Schreiber and to determine whether they were followed.

The ethical rules or guidelines that I identified as having possible relevance to the Commission’s work were contained in the *Parliament of Canada Act*, Standing Orders Nos. 21 and 23(2), the Conflict of Interest and Post-Employment Code for Public Office Holders (1985 Ethics Code), and the *Guidance for Ministers*. I have concluded that the *Parliament of Canada Act*, the *Guidance for Ministers*, and Standing Orders Nos. 21 and 23(2), do not apply in the circumstances here. In my analysis, the focus is directed at the 1985 Ethics Code.

The 1985 Ethics Code was a policy only, not a law enacted through statutory instrument. It was restricted to public office holders, which included ministers of the Crown (including the prime minister) and senior members of the executive branch. Members of parliament were not covered by the 1985 Ethics Code and there was no equivalent instrument that applied to them.

The 1985 Ethics Code restricted the business dealings of public office holders while in office and in the post-employment period. The object of the Code was “to enhance public confidence in the integrity of public office holders and the public service ... by establishing clear rules of conduct respecting conflict of interest for, and post-employment practices applicable to all public office holders.” To this end, the Code included both permanent and time-limited rules.

Mr. Mulroney was prime minister until and including June 24, 1993, thereafter sitting as a member of parliament until September 8, 1993. Until June 24, 1993, therefore, the 1985 Ethics Code applied to his conduct in full. After that date, the post-employment provisions of the 1985 Ethics Code applied for a two-year period.

I first considered whether the June 23, 1993, meeting at Harrington Lake between Mr. Mulroney and Mr. Schreiber was consistent with the ethical rules and guidelines set out in the legislation and the 1985 Ethics Code. In Chapter 6, I concluded that Mr. Schreiber and Mr. Mulroney did not enter into an agreement on June 23, while Mr. Mulroney was still prime minister. Having considered the applicable rules and guidelines, I concluded that this meeting in and of itself did not contravene any of the ethical rules and guidelines.



Section 29 of the 1985 Ethics Code expressly bars certain public office holders, including ministers, while in office from, for example, engaging in the practice of a profession, actively managing or operating a business or commercial activity, or serving as a paid consultant. The section 29 prohibitions are directed at the pursuit of outside activities *concurrently* with the holding of public office. Section 29 is not contained in the part of the 1985 Ethics Code directed at former public office holders or public office holders anticipating departure from office. Therefore, section 29 is not engaged in the facts before me.

Section 33 of the 1985 Ethics Code precludes receipt by certain public office holders, including ministers, of “benefits that could influence ... public office holders in their judgment and performance of official duties and responsibilities.” Because I have concluded that Mr. Mulroney did not enter into an agreement with Mr. Schreiber until August 27, 1993, section 33 is not engaged by the facts in this case. By August 27, 1993, when the first payment was received by Mr. Mulroney, he was no longer a minister and was no longer subject to the prohibition set out in section 33. There is no evidence that, while he was a public office holder – that is, the prime minister – he received from Mr. Schreiber a benefit that could influence him in his judgment and performance of his official duties. I have therefore concluded that section 33 was not engaged by Mr. Mulroney’s behaviour.

The matters raised above concern specific rules found under the heading of “compliance measures” in the 1985 Ethics Code. A number of other ethical principles are, however, found in section 7. Section 7 of the 1985 Ethics Code, entitled “Principles,” provides that

- (a) public office holders shall perform their official duties and arrange their private affairs in such a manner that public confidence and trust in the integrity, objectivity and impartiality of government are conserved and enhanced;
- (b) public office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law;
- (c) public office holders shall not have private interests, other than those permitted pursuant to this Code, that would be affected particularly or significantly by government actions in which they participate;
- (d) on appointment to office, and thereafter, public office holders shall arrange their private affairs in a manner that will prevent real, potential or apparent conflicts of interest from arising but if such a conflict does arise between the private interests of a public office holder and the official duties and responsibilities of that public office holder, the conflict shall be resolved in favour of the public interest.

In my “appropriateness” analysis in Chapter 9, I found that the degree of access granted by Mr. Mulroney to Mr. Schreiber was not appropriate. I referred to the fact that, although Mr. Schreiber was not a registered lobbyist on behalf of either Thyssen or Bear Head Industries, he nonetheless lobbied Mr. Mulroney on behalf

of both entities. Mr. Mulroney permitted increased access by Mr. Schreiber because Mr. Doucet often requested it. Mr. Mulroney gave Mr. Doucet access because he was a former adviser and long-time friend. Section 7(b) of the 1985 Ethics Code applied to Mr. Mulroney while he held the office of prime minister. I note that section 7(b) contains the same standard applicable to public office holders while in office that I have held to be the standard to be applied to Mr. Mulroney's conduct throughout his business and financial dealings with Mr. Schreiber. This section provides: "[P]ublic office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law." For the same reason that I found that this aspect of Mr. Mulroney's conduct was inappropriate, I found that he contravened section 7(b) of the 1985 Ethics Code.

There is a similar concern under section 7(d) and section 36 of the 1985 Ethics Code. Section 7(d) requires public office holders to arrange their affairs so as to prevent "real, potential or apparent conflicts of interest." Section 36 states that a public office holder shall not accord preferential treatment to friends or to organizations in which their friends have an interest, and shall take care not to be placed under "an obligation to any person or organization that might profit from special consideration on the part of the public office holder." The evidence before me was that, whenever Mr. Schreiber came to Canada and wanted to meet with Mr. Mulroney, Mr. Doucet would arrange to make this meeting happen. Mr. Mulroney confirmed that was the case. Mr. Doucet, who lobbied on behalf of Mr. Schreiber, would have benefited from that access. In my view, Mr. Mulroney contravened these sections of the 1985 Ethics Code through the creation of an apparent conflict of interest due to his friendship with Mr. Doucet.

From June 25, 1993, forward, Mr. Mulroney was no longer a public office holder as defined in the 1985 Ethics Code. However, post-employment restrictions under the 1985 Ethics Code continued to apply to him, in some cases for two years and in other instances indefinitely. At issue for the Commission, therefore, is whether Mr. Mulroney's alleged post-public office conduct was consistent with these post-employment requirements.

The 1985 Ethics Code's post-employment restrictions include both constraints on certain specific activities and more general prohibitions. Section 60(a) bars former public office holders from accepting an "appointment to a board of directors of, or employment with, an entity with which they had significant official dealings" in their last year in office. Section 60(a) does not cover contracts for service, including consulting agreements or retainers. Therefore, I do not believe section 60(a) is engaged by Mr. Mulroney's business and financial dealings with Mr. Schreiber.

Section 59 prohibits former public office holders from becoming involved on behalf of a person or entity in connection with any ongoing proceeding, transaction,

negotiation, or case to which the government is a “party” on which the public office holder “acted for or advised a department” and “which would result in the conferring of a benefit not for general application or of a purely commercial or private nature.” The restriction lasted for a two-year period after Mr. Mulroney left the office of prime minister. The Bear Head Project, after he left the office of prime minister, continued to be put forward by Thyssen and Mr. Schreiber. However, as I have found that Mr. Mulroney was retained to promote Thyssen vehicles internationally, I do not believe it can be said that he became involved with an ongoing proceeding, transaction, negotiation, or case to which the government was a party. Therefore, there was no contravention of this section of the 1985 Ethics Code.

Section 60(b) limits post-employment representations for or on behalf of any person to any department with which the public office holder had significant official dealings during one year immediately before the termination as a public office holder. Section 60(b) would, therefore, prohibit Mr. Mulroney from making representations on behalf of Mr. Schreiber to any department with which he (Mr. Mulroney) had significant official dealings during the one-year period immediately before the day on which he stepped down as prime minister. Again, as I have determined that Mr. Schreiber retained Mr. Mulroney to promote the sale of Thyssen military vehicles to other countries, there was no domestic aspect to the mandate, and he did not make representations on behalf of Mr. Schreiber to any government department. I concluded that there was no contravention of section 60(b).

The situation with section 60(c) of the 1985 Ethics Code is somewhat different. It prohibits former public office holders from giving “counsel, for the commercial purposes of the recipient of the counsel,” concerning the programs or policies of the department with which they were employed or had a “direct and substantial relationship” during the one-year period immediately before the time when they left public office. During the one-year period targeted by section 60(c), Mr. Mulroney, as prime minister, had significant dealings with all his ministers. I believe it can be said, therefore, that he had significant official dealings though his ministers with their government departments. The Bear Head Project was being promoted by Mr. Schreiber during the one-year period before Mr. Mulroney left the office of prime minister. However, it is not clear to me that, in order to carry out his international mandate, Mr. Mulroney would have been giving counsel concerning the programs or policies of the government departments with which he had significant dealings. I have concluded that there was no contravention of section 60(c) by Mr. Mulroney.

Section 57 of the 1985 Ethics Code contains a much more generic limitation on the former public office holder’s activities: specifically, “[p]ublic office holders shall not act, after they leave public office, in such a manner as to take improper advantage of their previous public office.” At issue in section 57 of the 1985 Ethics Code is whether

the former public office holder used his or her status as a former public office holder in a manner that is improper. Impropriety in my view depends on a sufficient connection to the person's former public office. It is true that Mr. Schreiber retained Mr. Mulroney because he was a former prime minister. But there is nothing improper about former prime ministers being retained to perform work after they leave office simply because they were prime minister. A contravention of this section requires former public office holders to act in a manner that takes improper advantage of their previous office. While there were many inappropriate aspects to Mr. Mulroney's business and financial dealings with Mr. Schreiber, I do not believe Mr. Mulroney acted in a manner that took improper advantage of his public office. I have concluded that this section is not engaged by the facts here.

## Correspondence Handling in the Privy Council Office

Questions 15 to 17 of the Commission's Terms of Reference read:

- 15. What steps were taken in processing Mr. Schreiber's correspondence to Prime Minister Harper of March 29, 2007?*
- 16. Why was the correspondence not passed on to Prime Minister Harper?*
- 17. Should the Privy Council Office have adopted any different procedures?*

In the period between June 2006 and September 2007, Mr. Schreiber sent 16 letters addressed to Prime Minister Harper. Questions 15 and 16 of the Terms of Reference direct me to consider the steps that were taken in processing one of these letters, that of March 29, 2007, and why it was not passed on to Prime Minister Harper. In order to understand what happened to this particular letter, I had to consider how correspondence addressed to the prime minister is handled generally and how Mr. Schreiber's correspondence as a whole was handled.

Question 17 directs me to consider whether the Privy Council Office should have adopted any different procedures in dealing with Mr. Schreiber's correspondence to Prime Minister Harper. This policy question is tied to the factual matters raised in Questions 15 and 16. Because the correspondence issues, both factual and policy-based, are separate and distinct from the other issues raised in the factual inquiry and the ethics policy matters, I considered them as a whole in Chapter 10 of the Report.

The Privy Council Office (PCO) is the public service department of the prime minister. The majority of mail addressed to the prime minister flows through the PCO – specifically, the Executive Correspondence Unit (ECU), which acts as the entry point for correspondence to the prime minister. The division within the PCO that is responsible for the prime minister's correspondence, the Corporate

Information Services Division (CISD), has established service standards for carrying out its responsibilities, including the ECU's responsibilities for handling the prime minister's correspondence.

The PCO dedicates 35 employees in the ECU to management of correspondence addressed to the prime minister. Between 2001 and 2008, the ECU received a yearly average of 1.4 million pieces of correspondence directed to the prime minister. Correspondence includes letters, emails, post cards, petitions, greeting requests, and telephone calls addressed to the prime minister. Only a small portion of this correspondence is sent by the ECU to the Prime Minister's Office (PMO).

The PMO employs a small number of individuals in the Prime Minister's Correspondence Unit (PMC) to manage the prime minister's personal and political mail. Collectively, the members of the PMC handled approximately 30,000 items of correspondence in 2006–07, and 37,000 in 2007–08. The volume of correspondence in the PMC is far less than that received by the ECU.

The letters Mr. Schreiber sent to Prime Minister Harper covered a number of subjects. They dealt with Mr. Schreiber's extradition proceedings, a claim by Mr. Schreiber of a "political justice scandal," claims of a vendetta and witch hunt, and further claims of a political justice scandal and the "Airbus Affair." Many letters appended various pieces of correspondence that Mr. Schreiber had sent to various government officials over the years, as well as newspaper articles or court documents.

The letter of March 29, 2007, was the 12th letter received from Mr. Schreiber. By the time it was received, one letter (the letter of November 30, 2006) had been classified as priority and forwarded to the PMC and others on a distribution list, and one letter (the letter of January 16, 2007) had been forwarded to the minister of justice. A further two letters (June 16, 2006, and August 23, 2006) had been forwarded to the PMC. As discussed in Chapter 10, the PMC never sent any direction back to the ECU about how Mr. Schreiber's mail should be treated, nor did it ever communicate with the ECU about Mr. Schreiber's correspondence.

The March 29, 2007, letter was one of the 10 letters that were directed to file without any further action and without a response to Mr. Schreiber. As I discuss below, the analyst in this case did not follow the procedures normally applied before a file is closed with no reply issued, in that he did not check first with one of the ECU's writers or senior editors.

The March 29, 2007, letter is labelled by Mr. Schreiber as "Personal / For His Eyes Only." It starts out by saying, "Today I take the liberty to send you a copy of my letter January 29, 2007 to The Right Hon. Brian Mulroney, P.C., L.L.D. for your personal and private information." The letter then refers to the other letters Mr. Schreiber had sent since June 16, 2006, and alleges that the current government is "using previous Liberal Government tactics" to "[d]elay the Schreiber lawsuit

against the Attorney General of Canada, try to involve him [Schreiber] in criminal activities and put him in a jail or extradite him to Germany. Shut him up.”

The enclosed January 29, 2007, letter to Mr. Mulroney is just over four pages in length. On the first page, Mr. Schreiber refers to himself as a victim of a vendetta by the Department of Justice and the RCMP. “The vendetta caused an extradition case against the victim,” he writes.

On the second page of this letter, Mr. Schreiber refers to the extradition case and asks why the “Conservative Minister of Justice wants the Canadian National Karlheinz Schreiber, the victim, out of the country ...” The letter continues, at the bottom of page 2, “I never received any support from you despite the fact that I provided support at your request since the late 70s.” After referring to the Bear Head Project, the letter to Mr. Mulroney says:

You never told Elmer Mackay [sic] or me that you killed the project and I went on working on it to fulfill your promises to bring jobs to the people in Nova Scotia.

During the summer of 1993 when you were looking for financial help, I was there again. When we met on June 23, 1993 at Harrington Lake, you told me that you believe that Kim Campbell will win the next election. You also told me that you would work in your office in Montreal and that the Bear Head project should be moved to the Province of Quebec, where you could be of great help to me. We agreed to work together and I arranged for some funds for you.

Kim Campbell did not win the election, but we met from time to time.

At the beginning of November 1995 I informed you about the letter of request from the Canadian Department of Justice (the IAG) to the Swiss Department of Justice.

Some days later your wife Mila was extremely concerned about you and told me that you are considering committing suicide. I was shocked and spoke to you for quite a while and you may recall that I told Mila to buy a little lead pipe to cure the disease.

I did not understand what your problem was since the Airbus story was a hoax as I told Bob Fife from the Sun. When I look back and consider what all you have done in the meantime I have the suspicion that there must be something else of great concern to you.

When we met in Zuerich [sic], Switzerland on February 2, 1998 at the Hotel Savoy, I left with the impression that you were in good shape.

On October 17, 1999 you asked for an affidavit or assurance from me which confirms that you never received any kind of compensation from me.

On the fourth page, the letter then refers to a lawsuit started by Mr. Schreiber against the Canadian Broadcasting Corporation and a visit with Mr. Doucet. In relation to the latter, Mr. Schreiber writes, “[I] told him that he should tell you that I would not commit perjury if I would have to testify and that I cannot understand why you don’t simply tell the truth.” The letter speaks again of the extradition proceedings, before closing:

Dear Brian, I would like to ask you what the reason might be in your opinion, besides this I think it is in your and my best interests that you show up and help me now and bring this insanity to an end. If I am forced to leave Canada this will not end the matter.

I note that I have not been directed by my Terms of Reference to express an opinion on whether the March 29, 2007, letter ought to have been forwarded to the PMC. I am simply directed to answer why it was not passed on to Prime Minister Harper.

The March 29, 2007, letter never left the ECU. It is apparent that there was an oversight by the analyst, who did not follow the established procedure for treatment of general mail in that he did not bring the letter to the attention of a writer or senior editor (within the ECU) before directing it to file without a reply. However, I am not able to conclude that this oversight was, in and of itself, the sole reason why the letter did not get forwarded to the PMC.

If the analyst had consulted a writer or senior editor, it is possible that, because of the enclosed January 29, 2007, letter to Mr. Mulroney, a direction could have been given to send the March 29, 2007, letter to the PMC. However, given the nature of the allegations in the other 11 letters that also were not passed on to the PMC, it is equally possible that the March 29, 2007, letter would have been viewed in the same light and a direction to close the file with no response could have been given. Had the March 29, 2007, letter been passed on to the PMC, I have no way of knowing, based on how the four letters that were sent to the PMC were handled, whether the March 29, 2007, letter would have been passed on to Prime Minister Harper. There is no evidence that the PMO or the PMC ever gave any instructions to the ECU concerning Mr. Schreiber's mail or the issues addressed by Mr. Schreiber in his mail. There is no evidence that there was a desire by anyone in the ECU to conceal from the PMO or the PMC any letters from Mr. Schreiber, including the March 29, 2007, letter.

The ability of citizens to communicate with elected members of parliament and government is an important component of the democratic process. Given the volume of mail sent to the prime minister, it is simply not possible or desirable that all of it actually be put before the prime minister. I accept that a system must exist to separate correspondence that should be seen by the prime minister from that which need not (and perhaps should not, for legitimate reasons of public policy) be seen by the prime minister.

On the basis of the evidence before the Commission, I have concluded that the PCO has a system which generally meets these objectives. No system can be perfect, and mistakes may arise even where the system is well designed and robust. I believe, however, that a number of problems with the treatment of Mr. Schreiber's mail highlight potential areas for improvement.

First, Mr. Schreiber sent nine letters before he received an acknowledgement of receipt in response. This seems to me to be an unacceptable lapse. Second, the lack of communication back from the PMC to the ECU left the ECU in the position of not knowing how the mail that had been forwarded to the PMC was being treated. Third, the uneven treatment of Mr. Schreiber's mail highlights a need for improved procedures in the ECU for dealing with general mail.

I believe that, had a number of changes been made to procedures employed by the ECU in this case, some of the pitfalls identified above could have been avoided. Specifically, I believe improvements can be made to procedures for acknowledging receipt of general mail, to procedures for communications between the PMC and the ECU, and to the process followed by analysts when determining how to treat general mail. My recommendations are contained in Chapter 10 of this Report.

I recognize that, even if these modest changes had been made, it is quite possible that the March 29, 2007, correspondence from Mr. Schreiber may not have been sent to the PMC. I express no opinion on whether it ought to have been sent because doing so would be outside my mandate. Rather, my recommendations are aimed at having in place a process through which the assessment in the ECU is carried out in a more principled and consistent manner than was employed in the treatment of Mr. Schreiber's correspondence.

## Trust, Ethics, and Integrity

Question 14 of the Commission's Terms of Reference reads as follows:

- 14. Are there ethical rules or guidelines which currently would have covered these business and financial dealings? Are they sufficient or should there be additional ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office?***

The first sentence of Question 14 is, at its core, a factual one – that is, are there current rules that would have covered the transaction between Mr. Mulroney and Mr. Schreiber if it occurred today? This factual question concerns the current status of law and policy – a matter of public record – and does not inquire into the particular private conduct of individuals. To an extent, this factual dimension of Question 14 helps to illuminate the rationale for the second sentence – that is, whether the current rules grapple properly with the post–public service employment of politicians. For these reasons, both questions posed in Question 14 are dealt with together in Chapter 11 of this Report.

In practice, the factual circumstances at issue in the business and financial dealings between Mr. Mulroney and Mr. Schreiber and the focus on the transition from public to private life meant that the Commission's attention was directed primarily to the



2006 *Conflict of Interest Act* and, to a lesser extent, the 2004 Conflict of Interest Code for Members of the House of Commons. Properly speaking, therefore, the Commission had a mandate to deal with “ethics rules and guidelines” contained within Canada’s “conflict of interest” rules.

I have concluded that, in terms of substance, the *Conflict of Interest Act* and the Conflict of Interest Code for Members of the House of Commons are now among the most rigorous of the jurisdictions scrutinized by this Commission and its experts. Nevertheless, they have several shortcomings in how they govern a politician’s transition from public to private life.

Specifically, I am concerned that the rules contain ambiguities that make it difficult for public office holders, as well as the public, to understand the extent of their legal obligations. There is a question as to whether an important number of the Act’s most significant provisions apply to consultancy retainers or other forms of post-employment paid work short of formal employer / employee relationships. The geographic reach of the obligations set out in the *Conflict of Interest Act* is also in doubt. In my view, however, the single most concerning aspect of the present regime is the absence of any process that allows violations of the post-employment standards to be detected, except by happenstance, or that permits the rules to be meaningfully enforced.

The difficulties that currently exist in the ethics system – especially in the area of enforcement of post-employment rules – could precipitate future crises, undermining public confidence in Canada’s political ethics apparatus. Put bluntly, if the events that prompted this Commission of Inquiry were to occur today, I am not persuaded that the Conflict of Interest and Ethics Commissioner would learn about them, because there is no process or procedure in place that would allow her to detect them.

I believe it important that steps be taken to enhance Canada’s ethical political culture, especially through greater ethics education and training of public office holders.

Dealing with the shortcomings I have identified in Chapter 11 of my Report will not require a wholesale renovation of the federal ethics system. Indeed, some of the concerns could be alleviated quickly by a code of conduct issued by the prime minister insisting on disclosure of post-employment activities and greater participation in ethics training. The ethics commissioner might address other concerns through interpretive bulletins. These steps should be taken as a first priority, and many of these changes should then be confirmed in legislative amendments to the *Conflict of Interest Act*. Other matters – including resolving doubts about the geographic reach of the Act and the sorts of paid work its post-employment regulations govern – require legislative amendment.

I urge parliamentarians to view these recommendations in a positive light. I have no reason to doubt the high calibre and dedication of Canada’s public officials. It is in the

interest of all parliamentarians and the Canadians they serve to make these legislative changes quickly. We all have an interest in sustaining public faith in the *Conflict of Interest Act* and the federal ethics regime generally.

I believe that the recommendations made here will allow government to deal more effectively with ethical considerations in the transition away from a position as a public office holder, while protecting the ability of public office holders to make a successful transition and earn a livelihood.

## Conclusion

The importance of the integrity of government, and, more particularly, the integrity of those who govern, is the theme that resonates throughout this Report.

Canadians live in a democratic society in which the holders of public office attain the privilege of governing by virtue of being elected every four or so years. The electorate reposes its trust and confidence in every person elected to hold public office. In my view, therefore, Canadians are entitled to expect that the holders of public office will be guided in their professional and personal lives by an ethical standard that is higher and more rigorous than the norm.

Those expectations do not expire when the political career of a holder of public office comes to an end. In my view, the higher, more rigorous standard must necessarily endure while such a person makes the transition to the private sector and for a reasonable period of time thereafter. As Adlai E. Stevenson, an American diplomat and politician, observed: “Public confidence in the integrity of the Government is indispensable to faith in democracy; and when we lose faith in the system, we have lost faith in everything we fight and spend for.” I agree with Mr. Stevenson and find his observations as apt today as they were when first uttered. To paraphrase a life lesson that I believe the holders of public office would do well to remember: From those in whom much is entrusted, much is expected.

In the first phase of the Commission’s activities, the Factual Inquiry, I scrutinized Mr. Mulroney’s activities as he made the transition from public office to private life. In considering Mr. Mulroney’s conduct, I applied the standard that was accepted by him when, in September 1985, he tabled the Conflict of Interest and Post-Employment Code for Public Office Holders (1985 Ethics Code) in the House of Commons, one year into his mandate as prime minister. The code specified that the conduct of public office holders must be so scrupulous that it can bear the closest public scrutiny.

From the inception of this Inquiry I have been keenly aware of, and sensitive to, the damage that can be done to the reputation of an individual as a result of findings of fact I may make, based on the evidence, in the course of writing my Report. I have taken great care to avoid inflicting that type of damage on anyone. My mandate, for valid reasons, prohibited me from making any finding as to civil or criminal liability on

the part of anyone. I have been careful not to use language that would even hint at such a finding. In making these concluding remarks, I have reminded myself, once again, of the fact that Mr. Mulroney, who achieved much while prime minister, understandably places a high value on his reputation.

However, findings of fact cannot be the cause of damage to a person's reputation where the person's conduct itself has damaged his or her reputation. Moreover, I have a duty pursuant to the mandate given to me by the Governor in Council to make findings of fact in the course of answering the questions posed in the Terms of Reference. That is a duty from which I do not shirk.

For the reasons given in Chapter 9 of this Report, I found that the business and financial dealings between Mr. Schreiber and Mr. Mulroney were inappropriate. I also found that Mr. Mulroney's failure to disclose those business and financial dealings was inappropriate.

Simply put, Mr. Mulroney, in his business and financial dealings with Mr. Schreiber, failed to live up to the standard of conduct that he had himself adopted in the 1985 Ethics Code.

My mandate also required me to investigate how mail from Mr. Schreiber addressed to Prime Minister Harper was handled. I concluded that an analyst in the Privy Council Office made a human error when he processed Mr. Schreiber's letter of March 29, 2007, to Prime Minister Harper. I concluded there is no evidence of a desire by anyone in the PCO to conceal this letter from Prime Minister Harper.

In my Report, I made four recommendations for change in the PCO's handling of mail addressed to the prime minister. It is my hope that the government will adopt those recommendations, which are intended to enhance both the efficiency and the manner in which mail addressed to the prime minister is handled.

My Terms of Reference directed me to consider the current ethics regime and whether the ethical rules and guidelines now in place are sufficient. I was asked to determine whether there should be additional ethical rules or guidelines concerning the activities of politicians as they make the transition from office or after they leave office. In Chapter 11, Trust, Ethics, and Integrity, I discussed the current ethics regime and I noted that, in terms of substance, the *Conflict of Interest Act* and the Conflict of Interest Code for Members of the House of Commons are now among the most legally rigorous of the jurisdictions scrutinized by this Commission and its experts. These documents have a reasonable breadth and are firmly codified in statutory law. Nonetheless, I identified several shortcomings in how they govern a politician's transition from public to private life. I made a number of recommendations that I believe will allow government to deal more effectively with ethical considerations at this transition point. These changes will ensure the confidence and trust of Canadians in their elected representatives and high-office holders. My recommendations, all of which I hope will be considered and implemented, include suggestions that have as their objective the "fine tuning" of the 2006 *Conflict of Interest Act* and the Conflict of Interest Code for Members of the House of Commons.

Although in this Conclusion I do not intend to conduct a complete review of the recommendations I have made as a result of the Policy Review, I will refer to some of them in particular.

I have recommended broadening the definition of “employment” in the *Conflict of Interest Act* to include any form of outside employment or business relationship involving the provision of services.

I have also recommended broadening the definition of “conflict of interest” to include an apparent conflict of interest.

My recommendations include one which states that post-employment provisions of the *Conflict of Interest Act* should extend to former public office holders, whether the activities in question occur in Canada or elsewhere.

I am satisfied there is a need for more thorough education and training for ministers and members of their staffs. I have recommended that ministers be required to participate in ethics training by the Conflict of Interest and Ethics Commissioner (ethics commissioner) and that the leaders of Canada’s political parties require their party’s members to participate in the same type of training.

As a first priority, I have recommended that the prime minister amend *Accountable Government: A Guide for Ministers and Secretaries of State* to include directives to reporting public office holders, as defined in the *Conflict of Interest Act*. These directives will require the public office holders to report more extensively and to disclose any post–public office employment; to seek advice from the ethics commissioner before commencing post–public office employment; and to disclose publicly the advice received from the ethics commissioner before taking up the employment. The foregoing provisions, if adopted, will endure through the cooling-off periods set out in the *Conflict of Interest Act* and will be triggered for each new employment. I have also recommended that these changes be codified in the *Conflict of Interest Act*, and that the ethics commissioner have the discretion to disclose publicly his or her advice to the public office holder if that person takes up the employment in question.

I have also recommended concurrent amendments to the Act to make it an offence for a former public office holder to fail to meet the new disclosure obligations.

Finally, I wish to draw attention to the fact that no politicians or political parties applied to participate in the Policy Review. I was and am disappointed by their failure to do so, particularly given the importance of the ethics questions I was asked to consider. I hope that the response on the part of Canada’s elected politicians to the recommendations I have made respecting ethics and conflict of interest will be much more positive.

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# Consolidated Findings and Recommendations

## Introduction

All the findings and recommendations as they appear throughout my Report have been consolidated here and in Volume 3. I have organized the consolidated findings and recommendations by chapter. I have shown page references to the chapter locations in square brackets at the end of each finding and recommendation so that the reader may refer to the related evidence, discussion, analysis, and other conclusions.

In my Report, I answered the questions set out in the Terms of Reference in Chapters 5 through 11. I have organized the findings and recommendations in the same order as they were referenced in the chapters in the Report. I note that the recommendations relate exclusively to the policy issues I was asked to address in Questions 14 and 17 of the Terms of Reference, which were addressed in Chapters 10 and 11 of my Report.

# Findings

## CHAPTER 5 – THE RELATIONSHIP

*Question 1 What were the business and financial dealings between Mr. Schreiber and Mr. Mulroney?*

### FINDINGS

I find that Mr. Schreiber was a man with whom Mr. Mulroney had met numerous times on official business, particularly over the latter years of his tenure as prime minister of Canada. I find that nothing inappropriate occurred during the meetings that Mr. Schreiber had with Mr. Mulroney during Mr. Mulroney's tenure as prime minister.

However, in consideration of the evidence as a whole, including the evidence of Paul Tellier and Norman Spector, I find that the degree of access to Mr. Mulroney enjoyed by Mr. Schreiber was, in and of itself, both excessive and inappropriate. To Mr. Mulroney's knowledge, Mr. Schreiber's sole objective in meeting with him as prime minister was to advance the cause of the Bear Head Project. At no time during this period was Mr. Schreiber registered as a lobbyist under Canada's rules. The meetings were all arranged by either Elmer MacKay or Fred Doucet, or both of them, both being good friends of Mr. Mulroney. For a substantial period of time that Mr. Doucet was arranging access with Mr. Mulroney on behalf of Mr. Schreiber, he (Mr. Doucet) was employed by Mr. Schreiber as a lobbyist for Bear Head Industries. I find that both Mr. MacKay and Mr. Doucet took advantage of their friendship with Mr. Mulroney in arranging access to him for Mr. Schreiber. Notwithstanding the fact that both Mr. MacKay and Mr. Doucet were old friends of Mr. Mulroney, I find that Mr. Mulroney could have and should have brought – but did not bring – an end to the inappropriate, excessive access granted to Mr. Schreiber.

I find that the business dealings between Mr. Schreiber and Mr. Mulroney evolved as a direct result of the relationship that was established between Mr. Schreiber and Mr. Mulroney while Mr. Mulroney was the prime minister of Canada. I find further that those business dealings led to the unwritten and undocumented agreement entered into between them on August 27, 1993, within approximately two months of Mr. Mulroney's leaving the office of prime minister of Canada. Pursuant to that agreement, the two men entered into financial dealings involving three payments of substantial amounts of money in cash made by Mr. Schreiber to Mr. Mulroney. [See pages 131–32.]

## CHAPTER 6 – THE AGREEMENT

*Question 2 Was there an agreement reached by Mr. Mulroney while still a sitting prime minister?*

*Question 3 If so, what was that agreement, when and where was it made?*

### FINDINGS

I note that Mr. Schreiber withdrew funds and had cash ready to give to Mr. Mulroney at the August 27, 1993, meeting at the Mirabel Hotel. This fact lends some credence to the claim that the two men did discuss some sort of continuing relationship during their meeting at Harrington Lake. However, having considered all the evidence on the issue of what transpired, or did not transpire, at the meeting at Harrington Lake on June 23, 1993, I find that no agreement was reached between Mr. Schreiber and Mr. Mulroney on that date. In my view, the truth as to what occurred can be found in the evidence Mr. Schreiber gave when he was cross-examined by Mr. Pratte and in the interview Mr. Schreiber gave to Mr. Kaplan on March 31, 2004.

Mr. Schreiber's testimony was that, at Harrington Lake, they had an agreement "to work together in the future." Mr. Mulroney was adamant in his testimony that there was no agreement to work together in the future. Even if I accept Mr. Schreiber's evidence on this point, the vagueness of the proposition and the lack of particularity and details do not support a finding that a formal agreement was reached while Mr. Mulroney was still prime minister.

I find that, although Mr. Schreiber hoped to obtain Mr. Mulroney's support with respect to the Bear Head Project after Mr. Mulroney left office, they neither discussed that issue nor reached any agreement about it on June 23, 1993, at Harrington Lake. I disbelieve Mr. Schreiber's evidence that Mr. Mulroney told him he (Mr. Mulroney) could help with the Bear Head Project once Ms. Campbell became the prime minister. Moreover, it is abundantly clear, on a close examination of Mr. Schreiber's evidence when he was cross-examined by Mr. Pratte, that he and Mr. Mulroney did not reach any agreement that day at Harrington Lake, while Mr. Mulroney was still the sitting prime minister of Canada – and I so find.

As I have concluded, in answer to Question 2 of the Terms of Reference, that no agreement was reached by Mr. Mulroney while still a sitting prime minister, I need not answer Question 3 (If so, what was that agreement, when and where was it made?). [See pages 223–24.]

*Question 4 Was there an agreement reached by Mr. Mulroney while still sitting as a Member of Parliament or during the limitation periods prescribed by the 1985 ethics code?*

*Question 5 If so, what was that agreement, when and where was it made?*

## FINDINGS

Based on all the evidence, it is reasonable to conclude that Mr. Schreiber would have wanted to retain someone of Mr. Mulroney's stature on the international stage to promote the sale, in an international market, of military vehicles produced by Thyssen through Bear Head in Canada.

In answer to Questions 4 and 5 of the Terms of Reference, based on the evidence as a whole, I find that Mr. Mulroney entered into an agreement with Mr. Schreiber while he was still sitting as a member of parliament. I find that the agreement was made on August 27, 1993, at the hotel at Mirabel Airport near Montreal. Further, I find that, pursuant to that agreement, Mr. Schreiber retained the services of Mr. Mulroney to promote the sale in the international market of military vehicles produced by Thyssen. [See page 228.]

*Question 6 What payments were made, when and how and why?*

## FINDINGS

Mr. Schreiber made three payments to Mr. Mulroney. The payments were made in cash that was concealed in envelopes and consisted of \$1,000 bills in Canadian currency. I find that Mr. Mulroney was paid at least \$225,000 in \$1,000 bills. On the basis of the evidence before me, or, perhaps, more appropriately on the basis of the dearth of credible evidence before me, it is impossible for me to draw a conclusion as to the total amount paid by Mr. Schreiber to Mr. Mulroney.

I find that the payments were made on the following dates and at the following places:

- August 27, 1993 – a suite at the hotel at Mirabel Airport near Montreal;
- December 18, 1993 – a room at the Queen Elizabeth Hotel, Montreal, where coffee is served; and
- December 8, 1994 – a suite at the Pierre Hotel in New York City.

The payments were made pursuant to a retainer agreement entered into by Mr. Schreiber and Mr. Mulroney at the hotel at Mirabel Airport on August 27, 1993. The payments were made in cash as part of a scheme on the part of both Mr. Schreiber and Mr. Mulroney to avoid creating a paper trail, thereby concealing the fact that a relationship existed between them which included the payment of money. [See page 230.]



*Question 8 What services, if any, were rendered in return for the payments?*

**FINDINGS**

Although Mr. Mulronev may have met with Messrs. Mitterrand, Yeltsin, Baker, and Weinberger, the evidence falls short of convincing me that he had any discussions with them related to the promotion of a concept involving the purchase by the United Nations of military vehicles produced by Thyssen. I have also said I am unable to conclude that Mr. Mulronev spoke to the Chinese leaders as asserted by him. There is an absence of independent evidence that Mr. Mulronev provided any services pursuant to the international mandate that I have found was the reason for the payment of monies he received from Mr. Schreiber.

Given the above, I am not able to find that any services were ever provided by Mr. Mulronev for the monies paid to him by Mr. Schreiber. [See page 233.]

**CHAPTER 7 – THE SOURCE OF FUNDS AND WHAT HAPPENED TO THE CASH**

*Question 7 What was the source of the funds for the payments?*

**FINDINGS**

I find that the funds paid to Mr. Mulronev by Mr. Schreiber came from the Britan account; that the funds in the Britan account came from the Frankfurt account; and that the source of the funds in the Frankfurt account consisted of a portion of the commissions paid to Mr. Schreiber by Airbus Industrie.

For the reasons articulated in Chapter 7, I find that the source of the funds paid by Mr. Schreiber to Mr. Mulronev was Airbus Industrie. I also find that there is no evidence to demonstrate that Mr. Mulronev had any knowledge as to the source of the funds paid to him by Mr. Schreiber. Based on the evidence adduced before me, it is impossible to conclude otherwise. [See page 256.]

*Question 9 Why were the payments made and accepted in cash?*

**FINDINGS**

On the basis of all the evidence I have heard and read, I find that Mr. Schreiber paid Mr. Mulronev in cash; that Mr. Mulronev accepted and thereafter maintained the payments in cash; and that neither Mr. Schreiber nor Mr. Mulronev documented any of the three transactions in any manner whatsoever until 2000, when Mr. Mulronev made his voluntary tax disclosure.

I find that the reason for the payments and acceptance of the payments in cash on the part of both Mr. Schreiber and Mr. Mulronev was to conceal their

business and financial dealings and the fact that the cash transactions between them had occurred. [See page 258.]

*Question 10 What happened to the cash; in particular, if a significant amount of cash was received in the U.S., what happened to that cash?*

## FINDINGS

I find that Mr. Mulroney spent all of the cash he received, including that received in New York, on himself or family members. I find that the money received in New York and placed in the safety deposit box in New York was spent in the United States. [See page 259.]

## CHAPTER 9 – APPROPRIATENESS

*Question 11 Were these business and financial dealings appropriate considering the position of Mr. Mulroney as a current or former prime minister and Member of Parliament?*

*Question 12 Was there appropriate disclosure and reporting of the dealings and payments?*

## FINDINGS

Question 11 of the Terms of Reference directed me to determine whether the business and financial dealings between Mr. Schreiber and Mr. Mulroney were appropriate considering the position of Mr. Mulroney as a current or former prime minister and member of parliament. In answer to this question, I find that Mr. Mulroney's conduct in his business dealings with Mr. Schreiber was not appropriate; and that Mr. Mulroney's conduct in his financial dealings with Mr. Schreiber was not appropriate.

With respect to Question 12, disclosure and reporting, I find that Mr. Mulroney failed to take any steps to document the dealings and payments when he entered into his agreement with Mr. Schreiber on August 27, 1993, or when he received the two subsequent payments on December 18, 1993, and December 8, 1994. What he could have done was simple. First, he could have arranged for the agreement with Mr. Schreiber to be in writing. Second, he could have issued receipts for the cash he received and entered the fact of the receipt of cash on the books of his company, Cansult – a company incorporated for the very purpose of operating Mr. Mulroney's consulting business. Third, he could have deposited the cash he received from Mr. Schreiber into an account at a bank or other financial institution – an action that would, I suggest, have been in accord with business acumen and with standard business practice.

I find that Mr. Mulroney did not declare a reserve under the *Income Tax Act* regarding the cash he received on any of the seven occasions when he could have

done so. I am not saying he was legally obligated to do so. However, I rely on his decision not to do so to support my finding that there was not appropriate disclosure and reporting of the payments.

I find that Mr. Mulroney acted inappropriately in failing to disclose his dealings with Mr. Schreiber and the payments he received when he gave evidence at his examination before plea in 1996.

I find that Mr. Mulroney failed to heed the advice of Luc Lavoie, his spokesperson, when Mr. Lavoie advised him to go public regarding his relationship with Mr. Schreiber. In doing so, Mr. Mulroney failed to take advantage of an opportunity to disclose appropriately his dealings with Mr. Schreiber and the payments he received.

I find that Mr. Mulroney acted inappropriately in misleading William Kaplan when he (Mr. Kaplan) was preparing to write *Presumed Guilty: Brian Mulroney, the Airbus Affair and the Government of Canada* (1998), a book in which he intended to defend Mr. Mulroney's reputation.

I also find that, when Mr. Kaplan was in the process of writing his series of articles for the *Globe and Mail* in November 2003, Mr. Mulroney acted inappropriately in the manner in which he attempted to persuade Mr. Kaplan not to publish the articles. I find that the foregoing actions of Mr. Mulroney were clearly a calculated attempt on his part to prevent Mr. Kaplan from publicly disclosing Mr. Mulroney's dealings with Mr. Schreiber and the cash payments he had received from him.

In summary, I find that Mr. Mulroney's conduct in failing to disclose and report on his dealings with and payments from Mr. Schreiber was not appropriate. [See pages 363–64.]

*Question 13 Were there ethical rules or guidelines which related to these business and financial dealings? Were they followed?*

## FINDINGS

Section 7(b) of the 1985 Conflict of Interest and Post-Employment Code for Public Office Holders (1985 Ethics Code) provides, “[P]ublic office holders have an obligation to act in a manner that will bear the closest public scrutiny, an obligation that is not fully discharged by simply acting within the law.” I find that Mr. Mulroney contravened section 7(b) of the 1985 Ethics Code.

Section 7(d) of the 1985 Ethics Code requires public office holders to arrange their affairs so as to prevent “real, potential or apparent conflicts of interest.” Section 36 of the 1985 Ethics Code states that a public office holder shall not accord preferential treatment to friends or to organizations in which their friends have an interest, and shall take care not to be placed under “an obligation to any

person or organization that might profit from special consideration on the part of the public office holder.” Mr. Mulroney, by agreeing to meet with Mr. Schreiber, accorded special treatment to a friend – Mr. Doucet – in relation to the Bear Head Project, an official matter that was under consideration by various government departments from 1988 through 1994. Mr. Doucet, who lobbied on behalf of Mr. Schreiber, would have benefited from that access. I believe that an appearance of conflict of interest was created, and that Mr. Mulroney acted contrary to his obligations under section 7(d) and section 36. [See page 376.]

## CHAPTER 10 – CORRESPONDENCE

*Question 15 What steps were taken in processing Mr. Schreiber’s correspondence to Prime Minister Harper of March 29, 2007?*

*Question 16 Why was the correspondence not passed on to Prime Minister Harper?*

### FINDINGS

There was an oversight by the analyst who handled the March 29, 2007, letter from Mr. Schreiber to Prime Minister Harper in that he did not follow the established procedure of bringing the letter to the attention of a writer or senior editor before directing it to file without reply. This oversight precluded the possibility that a writer or senior editor could have directed that the letter be sent to the Prime Minister’s Correspondence Unit (PMC). There is no evidence that the Prime Minister’s Office (PMO) or the PMC ever gave any instructions to the Executive Correspondence Unit (ECU) concerning Mr. Schreiber’s mail or the issues addressed by Mr. Schreiber in his mail. There is no evidence that there was a desire by anyone in the ECU to conceal from the PMO or the PMC any letters from Mr. Schreiber, including the March 29, 2007, letter. [See page 416.]

Mr. Schreiber’s September 26, 2007, letter and its enclosures, which included the March 29, 2007, letter to Prime Minister Harper, were not passed on to Prime Minister Harper because the manager of the Prime Minister’s Correspondence Unit (PMC) decided it should be treated the same way as the three letters written by Mr. Schreiber that had previously been sent to the PMC. In those three cases, the direction from the executive assistant to the deputy chief of staff and from the executive assistant to the chief of staff was to close the file with no response. [See page 420.]

*Question 17 Should the Privy Council Office have adopted any different procedures in this case?*

Question 17 of the Terms of Reference directs me to determine whether the Privy Council Office should have adopted any different procedures in this case. I interpret

my Question 17 mandate as asking whether, in respect to the handling of all of Mr. Schreiber’s correspondence to Prime Minister Harper, the PCO should have adopted any different procedures, and my answer is found in Recommendations 1 to 4, set forth below.

## Recommendations

### CHAPTER 10 – CORRESPONDENCE

In Chapter 10, I reviewed the correspondence handling procedures of the Privy Council Office. I concluded that the Privy Council Office has a system that generally meets the objectives required. However, a number of problems with the handling of Mr. Schreiber’s mail led me to make four recommendations arising out of my findings in answer to Questions 15 and 16.

#### Treatment of General Mail

#### 1 RECOMMENDATION

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The Privy Council Office should revise its procedures as to the handling of correspondence addressed to the prime minister. The revisions should include the following:

- (a) The categories of general mail where no acknowledgement or reply is sent to the writer should be reduced to exclude “religious”; “overtaken by events”; “writer is an inmate in a penitentiary”; and “concerns a legal case.”
- (b) An acknowledgement of receipt should be sent to a first-time writer on a particular subject. Where appropriate, the first-time writer on a particular subject should be advised if his or her letter has been forwarded to a minister or department. Where a person writes again, discretion should be exercised to determine whether a further reply should be sent.
- (c) Letters dealing with legal matters should be treated in a consistent manner. A writer corresponding for the first time about a legal case should receive a standard acknowledgement on the impossibility of intervening in a private legal matter; an acknowledgement of receipt with advice that his or her letter has been forwarded to the minister of justice; or other appropriate response. Where a person writes again about a legal matter, discretion should be exercised to determine whether a further reply should be sent. [See page 430.]

## Mail Forwarded to the Prime Minister's Office

### 2 RECOMMENDATION

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When the Privy Council Office (PCO) classifies general mail as political in nature, and has forwarded the mail to the Prime Minister's Correspondence Unit (PMC) for a decision on whether the Prime Minister's Office (PMO) wishes to handle it, a procedure should be established for the PMO to communicate back to the PCO, advising whether the PMO wishes to handle mail from the writer in future. As part of this procedure, if the PMO indicates that it does not wish to handle mail from the writer, the original mail and WebCIMS\* file should be transferred back to the PCO, to be dealt with appropriately. [See page 433.]

### 3 RECOMMENDATION

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The Executive Correspondence Unit and the Prime Minister's Correspondence Unit should develop procedures to ensure that, when a letter is forwarded to the Prime Minister's Office, the writer receives at least an acknowledgement of receipt if it is the first letter from the writer, or receives another response as appropriate. [See page 433.]

## Procedures When Closing a File Without Response

### 4 RECOMMENDATION

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The Privy Council Office should develop a written procedure to be followed by analysts before a letter is directed to file without reply. The procedure should incorporate the appropriate level of consultation with more senior employees. [See page 434.]

## CHAPTER 11 – TRUST, ETHICS, AND INTEGRITY

In Chapter 11, I discussed the current ethics regime. I noted that, in terms of substance, the *Conflict of Interest Act* and the Conflict of Interest Code for Members of the House of Commons (MP Code) are now among the most legally rigorous of the jurisdictions scrutinized by this Commission and its experts. They have a reasonable breadth and are firmly codified in statutory law. Nonetheless, I identified several shortcomings in how they govern a politician's transition from public to private life. I made a number of recommendations that I believe will allow government to deal more effectively with ethical considerations at this transition point. My recommendations are consolidated below.

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\* WebCIMS is the electronic correspondence-tracking system

*Question 14 Are there ethical rules or guidelines which currently would have covered these business and financial dealings? Are they sufficient or should there be additional ethical rules or guidelines concerning the activities of politicians as they transition from office or after they leave office?*

## **Expanded Definition of “Employment”**

### **5 RECOMMENDATION**

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Section 2 of the *Conflict of Interest Act* should be revised to add the definition, “employment shall mean, for the purposes of sections 10, 24(1), 24(2), 35(1), and 39(3)(b), any form of outside employment or business relationship involving the provision of services by the public office holder, reporting public office holder, or former reporting public office holder, as the case may be, including, but not limited to, services as an officer, director, employee, agent, lawyer, consultant, contractor, partner, or trustee.” [See page 529.]

## **Apparent Conflicts of Interest**

### **6 RECOMMENDATION**

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The definition of “conflict of interest” in the *Conflict of Interest Act* should be revised to include “apparent conflicts of interest,” understood to exist if there is a reasonable perception, which a reasonably well-informed person could properly have, that a public office holder’s ability to exercise an official power or perform an official duty or function will be, or must have been, affected by his or her private interest or that of a relative or friend. [See page 533.]

## **Disclosure by MP Leaving Office**

### **7 RECOMMENDATION**

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The House of Commons should amend the Conflict of Interest Code for Members of the House of Commons to oblige a departing member to file a section 20 disclosure statement current as of the member’s last day in office. The amendment should require the member to file the statement within 60 days of the member’s last day in office. [See page 534.]

## Disclosure of Offers, Etc., of Employment

### 8 RECOMMENDATION

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Section 24 of the *Conflict of Interest Act* should be amended to replace the reference to “firm offer” of employment with a requirement to disclose the identities of entities with whom a public office holder is seeking, negotiating, or has been offered employment, with the term “employment” as defined in Recommendation 5. [See page 535.]

## Obligations Inside and Outside Canada

### 9 RECOMMENDATION

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The *Conflict of Interest Act* should expressly provide that its post-employment provisions extend to actions taken by former public office holders, whether those actions occur in Canada or elsewhere. [See page 536.]

## Issuance of Interpretive Bulletin on Direct and Significant Official Dealings

### 10 RECOMMENDATION

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The Conflict of Interest and Ethics Commissioner should issue an interpretive bulletin providing guidance on the meaning of “direct and significant official dealings” used in section 35 of the *Conflict of Interest Act*. [See page 539.]

## Reciprocal Obligations on Current Public Office Holders

### 11 RECOMMENDATION

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The *Conflict of Interest Act* should be amended to bar a current public office holder from awarding or approving a contract with, or granting a benefit to, a person who, in the course of seeking that contract or benefit, appears to be in violation of his or her post-employment obligations under the Act without first obtaining advice from the Conflict of Interest and Ethics Commissioner that the former public office holder is in compliance with the Act. The Act should specify that the giving of this advice is among the commissioner’s duties and powers. [See page 542.]



## Obligations in Contracts with the Federal Government

### 12 RECOMMENDATION

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All federal contracts should include a contractual provision rendering it a breach of contract to rely (or, in the course of obtaining the contract, to have relied) on the services of a former public office holder acting in contravention of post-employment restrictions. [See page 544.]

### Additional Interpretive Bulletins

### 13 RECOMMENDATION

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In addition to issuing the interpretive bulletin referred to in Recommendation 10 on “direct and significant official dealings,” the Conflict of Interest and Ethics Commissioner should issue interpretive bulletins on other uncertain provisions in the *Conflict of Interest Act* and publish redacted versions of his or her decisions and advice. [See page 547.]

### Education, Training, and Outreach

### 14 RECOMMENDATION

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As part of the expectations outlined in *Accountable Government: A Guide for Ministers and Secretaries of State*, that document should be amended to require ministers to participate themselves in ethics training conducted by the Conflict of Interest and Ethics Commissioner and to ensure that their staff also participates in that training. Party leaders should require their party’s members of parliament to participate in equivalent training under the Conflict of Interest Code for Members of the House of Commons (MP Code). [See page 549.]

### 15 RECOMMENDATION

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The *Conflict of Interest Act* and the Conflict of Interest Code for Members of the House of Commons (MP Code) should be revised to ensure that annual disclosures made by reporting public office holders and post-election and annual update disclosures by MPs are supplemented with an in-person meeting with staff in the office of the Conflict of Interest and Ethics Commissioner. The number of staff in that office should be expanded to accommodate such meetings. [See page 549.]

## Amendments and Consequential Steps by Ethics Commissioner

### 16 RECOMMENDATION

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- (a) As a first priority, the prime minister should amend *Accountable Government: A Guide for Ministers and Secretaries of State* to include the following directives to reporting public office holders, as defined under the *Conflict of Interest Act*:
- Reporting public office holders shall disclose to the Conflict of Interest and Ethics Commissioner (ethics commissioner) the nature of any post-office employment (as defined in Recommendation 5) prior to taking up that employment.
  - Before commencing the employment, reporting and former reporting public office holders must receive advice from the ethics commissioner on the compatibility of the position with their post-employment obligations. In deciding whether and under what circumstances to take up this employment, they are expected to abide by the ethics commissioner's advice.
  - The reporting public office holder must make the ethics commissioner's advice public prior to taking up the employment, and should ask the ethics commissioner to include the advice in the public registry created by the Act.
  - These obligations on current and former reporting public office holders to disclose the employment, obtain advice, disclose the advice, and abide by this advice shall exist throughout the cooling-off periods set out in section 36 of the *Conflict of Interest Act* and shall be triggered for each new employment.
- (b) It is further recommended that the Conflict of Interest and Ethics Commissioner take such steps as are necessary to receive the disclosures and provide the advice described above.
- (c) The above changes should be codified in the *Conflict of Interest Act* as early as practicable. At that time, two additional changes should be made to the Act:
- The Conflict of Interest and Ethics Commissioner should be permitted to disclose publicly the advice given to the current or former reporting public office holder, if that person takes up the employment in question.
  - The Act should specifically permit current or former public office holders to request that the ethics commissioner reconsider prior advice given to take into account new facts or developments that the current or former public office holder believes should be before him or her. [See pages 554–55.]

## **17** RECOMMENDATION

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The amendments of the *Conflict of Interest Act* to implement Recommendation 16 should be accompanied by concurrent amendments to make it an offence for a former public office holder to fail to meet the disclosure obligations described in Recommendation 16. [See page 555.]

## **18** RECOMMENDATION

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Consideration should be given to an appropriate appeal mechanism characterized by procedural fairness and transparency. [See page 556.]