

1 Monday, 26th January 2009

2 (10.30 am)

3 SIR ROBIN AULD: Ladies and gentlemen, we can't start yet
4 because there is something wrong with our recording
5 system and that has to be fixed. (Pause)

6 Perhaps I should say now before it is fixed, I am
7 told that if you turn off your microphones, it is not
8 recorded for the court reporters, so your golden words
9 will be lost if you don't keep your microphones turned
10 on.

11 Good morning, ladies and gentlemen. I think we are
12 now on air. Yes, Mr Smith?

13 MR SMITH: I have two preliminary issues that I am not sure
14 if the Commission wants to hear --

15 SIR ROBIN AULD: On whose behalf?

16 MR SMITH: One is in relation to Mr Don-Hue Gardiner, who
17 I just got instructed by yesterday, and the other is in
18 relation to an application I would like to make in
19 relation to Floyd Seymour. I don't know if
20 the Commission wants to take those issues now?

21 SIR ROBIN AULD: What is the first, in a sentence,
22 application?

23 MR SMITH: The first application is I am trying to get some
24 understanding as to the rationale behind the Commission
25 calling Mr Gardiner and --

1 SIR ROBIN AULD: I said the first.

2 MR SMITH: That is in relation to Mr Gardiner.

3 SIR ROBIN AULD: I thought it was in relation to

4 Mr Chal Misick. I have got my order wrong; it's

5 the Misick application, in a sentence what is that?

6 MR SMITH: I never said Misick. I have two applications,

7 one in relation to Mr Don-Hue Gardiner, who I was just

8 instructed by yesterday, and a second application in

9 relation to Mr Floyd Seymour. The application in

10 relation to Mr Don-Hue Gardiner is that I am trying to

11 ascertain the reason why he has been called. It is my

12 understanding that the terms of reference for

13 the Commission speaks to investigating dishonesty and

14 corruption in relation to an elected Member of

15 Parliament. Mr Don-Hue Gardiner, as far as I know, is

16 an appointed Member of Parliament and is a Member that

17 was appointed just recently in February 2006.

18 SIR ROBIN AULD: I have your point. I don't think you can

19 have listened to my opening statement in relation to the

20 words in the terms of reference, "in relation to".

21 If you go back to my opening statement you will see

22 the significance of that.

23 If you have any more to say on that, you can say it

24 when the time comes for Mr Don-Hue Gardiner to give

25 evidence.

1 MR SMITH: Very well, I will do it at that time. In
2 relation to Mr Seymour, I have been making attempts to
3 get from the Commission his bundle.
4 SIR ROBIN AULD: What bundle?
5 MR SMITH: Mr Seymour's bundle.
6 SIR ROBIN AULD: Which bundle, in relation to what?
7 MR SMITH: In relation to this hearing.
8 SIR ROBIN AULD: In relation to what issue in this hearing
9 are you seeking a bundle of Mr Seymour's?
10 MR SMITH: I think before I answer that question, I think it
11 seems to me that I need to establish a reason why
12 I would need --
13 SIR ROBIN AULD: No, you don't. You tell me in relation to
14 what issue are you seeking a bundle from Mr Seymour in
15 this Inquiry?
16 MR SMITH: My understanding is that he is intending to -- he
17 is listed as a witness in this case.
18 SIR ROBIN AULD: No, he is not.
19 MR SMITH: He is not?
20 SIR ROBIN AULD: He was listed to attend in response to
21 a subpoena, a summons to attend, to give evidence and to
22 produce documents in relation to his interests. He did
23 not sufficiently detail his interests to the Commission
24 until just before Christmas, by which time we had issued
25 the summons. He has since done so. The summons is no

1 longer to be proceeded with.

2 MR SMITH: Sir, if I understand the Commission correctly,

3 there is no intention by the Commission to call --

4 SIR ROBIN AULD: You have just heard what I have said. He

5 is not to give evidence; he no longer needs to because

6 he has now provided -- very late but he has done so --

7 a sufficiency of detail as to his returns as not to

8 require him to be examined on subpoena.

9 MR SMITH: I understand that and the only reason why I am

10 concerned is when I made the request yesterday, that was

11 not told to me.

12 SIR ROBIN AULD: I am telling it to you now. He is not

13 being called to answer the subpoena and he is not being

14 called for any other reason.

15 MR SMITH: I understand that. I would just like

16 an opportunity to complete my record if the Commission

17 would allow me to.

18 SIR ROBIN AULD: What for?

19 MR SMITH: I would like an opportunity to complete my record

20 of what my understanding was before I heard from

21 the Commission this morning. I think it is important

22 because what it leaves me with is a view that a decision

23 was made not to call Mr Seymour after I made an enquiry

24 for his record.

25 SIR ROBIN AULD: Absolutely nothing of the sort. For you to

1 even suggest that is outrageous.

2 MR SMITH: There is a basis for why I am suggesting that.

3 SIR ROBIN AULD: Please sit down. We will deal with this

4 later. He is not being called. It was considered that

5 he no longer needed to be because his returns are

6 adequate; he was considered at one stage as a possible

7 witness for other matters; he is not being called and

8 has never made a witness statement.

9 MR SMITH: I still need an opportunity to put it on

10 the record.

11 SIR ROBIN AULD: Please sit down.

12 MR SMITH: I understand that, but you are saying you are not

13 giving me an opportunity --

14 SIR ROBIN AULD: I will ask you once more or you will be in

15 risk of contempt.

16 MR SMITH: You are not giving me an opportunity to complete

17 my record?

18 SIR ROBIN AULD: Sit down.

19 MR SMITH: I mean, I object to this heavy-handed approach --

20 SIR ROBIN AULD: I will adjourn this hearing.

21 MR SMITH: All I am asking for is an opportunity to complete

22 my record.

23 SIR ROBIN AULD: What your record is is nothing to the

24 point. Now please sit down. You can complete your

25 record later in the day and we can get on with the

1 business of the day. Where are we, Mr Milne?

2 MR MILNE: Sir, we had started the evidence of
3 Mr Chal Misick and, sir, you will recall that on Friday,
4 on a number of occasions, Mr Misick indicated that he
5 was not inclined to answer certain questions because he
6 regarded the matters that were being explored as being
7 issues covered by the area of legal professional
8 privilege.

9 My learned friend is in a position to deal with that
10 argument at this stage. Ms Clark will be dealing with
11 it, although I understand, and she will be able to
12 clarify this, that some of the points appear to now be
13 conceded.

14 SIR ROBIN AULD: Thank you.

15 MS CLARK: Sir, I think it may assist if I hand over to
16 Mr Rigby in this regard who can perhaps outline which of
17 the points are still in issue for the Commission.

18 MR RIGBY: It would possibly be helpful if I say what points
19 are agreed.

20 Two points that are agreed are (1) that the
21 privilege would not ordinarily attach to the identity of
22 the client.

23 SIR ROBIN AULD: Would not ordinarily attach to what?

24 MR RIGBY: To the identity of the client. And the second
25 point, which is agreed, is that if there are issues of

1 confidentiality, then, those issues, we would submit,

2 can be dealt with in camera.

3 SIR ROBIN AULD: Which points are those, please?

4 MR RIGBY: Upon the occurrence of those issues, I would

5 assume that the Commission would wish me to make

6 an application and they deal with matters which we

7 submit fall within Mr Misick's duty of confidentiality

8 to his clients, which spring to the issue of legal

9 professional privilege.

10 SIR ROBIN AULD: Are you now talking about legal

11 professional privilege or are you claiming that all

12 communications and matters passing between them are

13 privileged?

14 MR RIGBY: I am talking about legal professional privilege,

15 and the case law appeared to suggest, the Three Rivers

16 case which my learned friend and I rely on, that all

17 communications which are an advice, whether written or

18 oral, which flow or arise in Mr Misick's professional

19 duties as a lawyer in this jurisdiction, that those

20 communications will be privileged.

21 SIR ROBIN AULD: That is an application you wish to make in

22 camera, is it?

23 MR RIGBY: Only if the questions arise as to where we

24 believe we have to make that application.

25 SIR ROBIN AULD: Well, the definition of legal professional

1 privilege is now quite precise, as you know. Not

2 everything passing between a lawyer and his client is

3 privileged if it is not falling within that definition.

4 MR RIGBY: That is correct.

5 SIR ROBIN AULD: We really need, I suppose, to look at the

6 sort of documents that you have in mind or the sort of

7 information that you have in mind which you claim to be

8 privileged.

9 MR RIGBY: It would depend on the line of enquiry.

10 SIR ROBIN AULD: We are going in and out like rabbits all

11 morning if we go about it that way.

12 MR RIGBY: Hopefully not.

13 SIR ROBIN AULD: One of the main problems, and it is not

14 this problem that you are discussing, is that Mr Misick

15 has waived his privilege, legal professional privilege

16 and all in relation to his affairs.

17 MR RIGBY: That is correct.

18 SIR ROBIN AULD: So there can be no concern as to privilege

19 in his case, can there?

20 MR RIGBY: That is correct. We have not at any point during

21 Friday, nor do we intend to during the course of the

22 day, to raise any objection with respect to the Premier.

23 SIR ROBIN AULD: Well, I wonder how to go about it. Would

24 it be wise perhaps to continue with Mr Chal Misick and

25 if we reach a point when Mr Milne asks for a document

1 which might have some bearing on other of his clients,
2 then you can take the point and we can either deal with
3 it in open or go into camera.

4 MR RIGBY: Based on the conversation I had with Mr Milne
5 this morning, I think we have provisionally agreed that
6 in certain matters he would indicate to me formally
7 the identity of certain clients.

8 SIR ROBIN AULD: So we will take it step by step, shall we?

9 MR RIGBY: Then we have undertaken to provide them to him
10 formally in writing.

11 SIR ROBIN AULD: Is that convenient to you, Mr Milne?

12 MR MILNE: It rather depends how it goes, sir, because in
13 some cases the answer we get may give rise to further
14 questions and if we are to wait on each occasion for
15 later formal disclosure, it may mean that we have a very
16 fragmented process. But we can make a start.

17 SIR ROBIN AULD: Let's see how we go.

18 MR RIGBY: Before Mr Milne starts, I wondered whether, in
19 reviewing the transcripts over the weekend of
20 Mr Misick's evidence on Friday, we wish to make two
21 clarifications in respect of the transcript. The first
22 one being that Mr Milne had asked Mr Misick to produce
23 the bank accounts or the bank statements in respect of
24 Lover Fund Limited. They are at tab 25 of the bundle.
25 Page 345 to 355. I think there was perhaps some

1 confusion as to whether Mr Misick had all of the bank
2 statements. Certainly his evidence indicated on Friday
3 that he received some of the bank statements, not all.
4 And so those statements which are in his possession have
5 been exhibited at tab 25.

6 SIR ROBIN AULD: Thank you.

7 MR RIGBY: There are two points which he also wished to
8 clarify with respect to his evidence as to whether he
9 was a signatory on the account of Lover Fund Limited and
10 at tab 25 as well -- I think it is at tab 18 --
11 page 263, there was a resolution --

12 SIR ROBIN AULD: Maybe mine has not been brought up to date.

13 Say what it is for the record.

14 MR RIGBY: It is a resolution dated 26th October 2007 where
15 Mr Misick removes himself as the signatory to the
16 company's account with immediate effect.

17 That is a Lover Fund Limited account.

18 SIR ROBIN AULD: Thank you very much.

19 (10.45 am)

20 MR RIGBY: The final clarification is with respect to My Way
21 Productions 2 Limited. This is at tab 26 of the bundle.
22 Tab 26 of the bundle at page 356 onwards to 361. At
23 page 361 is a resolution dated 26th October 2007, where
24 Mr Misick removes himself as a signatory to the
25 company's account with immediate effect.

1 That is at page 361, tab 26.

2 SIR ROBIN AULD: Thank you.

3 MR RIGBY: Much obliged.

4 MR THOMAS CHALMERS MISICK (continued)

5 Cross-examination by MR MILNE (continued)

6 MR MILNE: May it please you, sir. Mr Misick, on Friday we

7 touched upon companies called Windsor East Limited and

8 Windsor West Limited. Windsor East, you agreed was

9 owned by yourself in that you had the shares in

10 Windsor East, do you recall that?

11 A. Yes.

12 Q. Is that correct?

13 A. Yes.

14 Q. I think it was referred to as your nominee company?

15 A. Correct.

16 Q. Is that also true of Windsor West Limited?

17 A. Correct.

18 Q. So it is your nominee company. Does Windsor East

19 Limited have a bank account?

20 A. No.

21 Q. Does Windsor West Limited have a bank account?

22 A. No.

23 Q. Do you have a bank account which you use for either of

24 those two companies?

25 A. No.

1 Q. Do you use them for your own business purposes?

2 A. No.

3 Q. So whenever and wherever we see Windsor East or

4 Windsor West cropping up, you are using them on behalf

5 of specific clients?

6 A. Well, where Windsor East crops up in any statement, they

7 use -- Windsor East in particular I use on behalf of

8 clients. Windsor West, where that crops up, that is

9 used in some cases for my own internal purposes within

10 the firm itself.

11 Q. How would we know which was which, whether you were

12 using it for yourself or for a client?

13 A. I would have to tell you.

14 Q. You would not keep a record?

15 A. I would not have a record. The way Windsor West is used

16 within the firm would be to hold funds that needs to be

17 posted and we have not had a chance to post it to the

18 right account. But generally, what it generally does is

19 hold client funds of the firm's funds.

20 Q. So Windsor West, you say, would hold funds that need to

21 be posted?

22 A. From an accounting standpoint, it is an internal

23 mechanism that we set up. For example, if somebody paid

24 in \$1,000 and that \$1,000 is going to be used for

25 a specific purpose and they don't have an account with

1 the firm, \$1,000 would stay in Windsor West and it can

2 be paid out and we have a record of that in our office.

3 SIR ROBIN AULD: You would have a record?

4 A. We would have a record of the payment going out to the

5 client. So what happens is that before the client

6 account is established, Windsor West acts just as

7 a halfway point until the actual file is established for

8 the client. So Windsor West, as I say, doesn't relate

9 to any particular client. It is a mechanism the firm

10 use.

11 SIR ROBIN AULD: But you have an account with which no doubt

12 there are a number of names, a client account and

13 a client would either pay in or seek to draw from that

14 account which would create a debit or credit

15 relationship with you in the Windsor West capacity, is

16 that right?

17 A. That in some cases would be correct.

18 SIR ROBIN AULD: If he ended up owing Windsor West something

19 at the end of the month, you would no doubt bill him and

20 the other way round, he would be in credit.

21 A. That is possible. My recollection is that the funds are

22 not held in Windsor West for any extended period of

23 time. From an internal standpoint it is just

24 a temporary situation.

25 MR RIGBY: If I understand what he is saying, if I could

1 just clarify, that it is an internal accounting
2 mechanism that the firm uses for the sole purpose of
3 recording the payments by clients before they are posted
4 into the firm's client accounts. So it is only used for
5 that internal purpose.

6 SIR ROBIN AULD: The account held in the office but not
7 the bank account.

8 A. Not the bank account.

9 MR RIGBY: The account held in the office, it is not a bank
10 account but is held on that spreadsheet per se.

11 SIR ROBIN AULD: That is what I understood.

12 MR RIGBY: For the purpose of depositing into the client
13 account.

14 MR MILNE: That is the evidence that you would wish to give?

15 A. That is my evidence, yes.

16 Q. Why do you need to use Windsor West for that purpose?

17 Let me give you an example. I walk into your office,
18 I wish you to undertake some legal work for me, perhaps
19 to set up a company or to draft a document. You, quite
20 reasonably, might say: well, Mr Milne, I have not met
21 you before, I would like some money on account; and
22 I pay \$1,000 or 2,000 or \$5,000 to you. What is
23 the problem with you not simply straightaway opening
24 an account within your client ledger, your client
25 records and saying: this will be Mr Milne's account or

1 Milne Limited or whatever you are using and record that
2 money against my name and against my request? Why would
3 Windsor West need to get involved since the company does
4 nothing, has no bank account, has no relevance to
5 the request I have made of you?

6 A. Well, there is not a problem with that. The way my
7 office is set up is simply from an employee personnel
8 standpoint, we have one person that deals with
9 recording, bookkeeping. We are not a huge practice that
10 have a dedicated staff to do this.

11 That would require somebody dedicated to deal with
12 the accounts, deal with it straightaway, and all I am
13 simply saying is Windsor West held it until it was dealt
14 with. It is not a problem as far as I am concerned.

15 That is just the procedure we adopted in our office to
16 deal with the problem that we were facing as a firm.

17 Q. Is this right that any new business might temporarily be
18 categorised as Windsor West until such time as a full
19 dedicated account was set up would be your firm?

20 A. That is possible and that is the way it worked in some
21 cases.

22 Q. Would anybody remain within the ambit of Windsor West on
23 your books for a long period of time?

24 A. That might be the case depending on whether or not we
25 determine within the firm whether the business was

1 an ongoing concern, whereby we need to establish
2 an account within the firm. Some clients want
3 a temporary situation, and in that case our view in the
4 firm is that if it is going to be a one-off situation,
5 there may not be a need to set up an account within
6 the firm.

7 Q. Would Michael Misick, your brother, the Premier, have
8 had his own account within the firm, given that he
9 represented 5 to 10 per cent of the firm's business?

10 A. He has his own account within the firm.

11 Q. There would be no reason why any of the payments through
12 related to him would go under Windsor West within
13 the firm, is there?

14 A. Well, I have not said that there would be no reason why.
15 What I have said is that somebody paid money into
16 the firm and we are not in a position to post those
17 funds directly to the respective clients straightaway.
18 The funds were lodged at Windsor West. That is my
19 evidence.

20 SIR ROBIN AULD: I have been thinking about this. Is it
21 really what is often described as a suspense account?

22 It is an office suspense account, isn't it?

23 A. Correct.

24 SIR ROBIN AULD: Yes, I understand.

25 MR MILNE: But it is a suspense account within the firm. It

1 is not a suspense account, you have told us, as a bank
2 account somewhere else.

3 A. It doesn't have a bank account.

4 (10.54 am)

5 Q. The company Chalmers Management Limited, does that serve
6 very much the same purpose?

7 A. Chalmers Management specifically deals with
8 the corporate arm of the firm's business. What it does
9 is incorporate companies for the firm's client.

10 Q. Another company with a similar name, we touched on on
11 Friday, was Windsor Investment Group. You have told us
12 that the Premier owned 10 per cent of
13 Windsor Investment Group?

14 A. Correct.

15 Q. You told us that you knew who owned the remaining 90
16 per cent. Do you manage Windsor Investment Group in any
17 formal fashion?

18 A. I do.

19 Q. Would you provide us, please, with the names of the
20 other 90 per cent shareholders?

21 A. The 10 per cent is owned by McAllister Hanchell.

22 SIR ROBIN AULD: 90 per cent, did you say?

23 A. 10 per cent is owned by McAllister Hanchell, 10 per cent
24 is owned by Floyd Hall and 70 per cent is owned by
25 myself.

1 SIR ROBIN AULD: How much by yourself?

2 A. 70.

3 SIR ROBIN AULD: Are we 10 per cent missing there somewhere?

4 MR MILNE: That is the Premier, I think. So the 90 per cent

5 is broken down as 10/10/70. 10 per cent

6 McAllister Hanchell, 10 per cent Floyd Hall and 70

7 per cent yourself and therefore -- let's start at the

8 beginning.

9 Can you tell us, please, when

10 Windsor Investment Group came into existence?

11 A. Windsor West --

12 Q. No, sir, specifically the investments group as

13 a company. It is referred to as a group but it is

14 a company, isn't it, Windsor Investment Group Limited?

15 A. It is a company.

16 Q. And when was it created?

17 A. I believe it was created in 2004. Let me see if I have

18 a record of it here.

19 MR RIGBY: We don't have any of the corporate documents of

20 Windsor Investment Group Limited in our bundle.

21 I believe Mr Misick could explain why that is the case.

22 I don't think he serves as the registered office for

23 that company.

24 MR MILNE: Do you serve as the registered office for that

25 company?

1 A. No, sir.

2 Q. You don't?

3 A. No, sir.

4 Q. Who does?

5 A. Misick & Stanbrook.

6 Q. But you are a 70 per cent shareholder --

7 MS MISSICK: Sorry, sir, to have to rise.

8 Windsor Investment Group is actually managed by

9 an affiliate of Misick & Stanbrook called

10 Caribbean Management Services. Just for the record.

11 SIR ROBIN AULD: So Windsor Investment is itself managed

12 by -- what do you say it is called again, please?

13 MS MISSICK: Caribbean Management Services.

14 MR MILNE: When it was first set up, at whose request was it

15 set up?

16 A. Windsor Investment Group was first set up by my request

17 and the other persons I mentioned earlier and we had one

18 other person, as one of the initial shareholders.

19 Q. Can you tell us the name of that person please?

20 A. The person's name was Mr Barden. I can't remember his

21 first name.

22 SIR ROBIN AULD: How do you spell that?

23 A. B-A-R-D-E-N.

24 MR MILNE: Is that Llewellyn Barden?

25 A. I can't remember his first name.

- 1 Q. Is he no longer a shareholder?
- 2 A. No longer a shareholder.
- 3 Q. To whom did he sell his shareholdings?
- 4 A. To me.
- 5 Q. So you acquire your 70 per cent shortly after
- 6 the creation of the company?
- 7 A. Actually that is not the way it went. I was originally
- 8 10 -- the way the company was structured initially was
- 9 10 per cent myself, the Premier, Mr Hall, Mr Hanchell
- 10 and 60 per cent Mr Gardiner. Shortly after that
- 11 I acquired Mr Barden's 60 per cent.
- 12 Q. So from the outset, around 2004, Mr Hanchell,
- 13 Mr Floyd Hall and the Premier each had 10 per cent of
- 14 the company and you had a small percentage but you
- 15 subsequently bought out Mr Barden's percentage, creating
- 16 your majority shareholding of 70 per cent?
- 17 A. Correct.
- 18 Q. Windsor Investment Group, does it own property?
- 19 A. Yes.
- 20 Q. Which property does it own, please?
- 21 A. It owns the property that the Casablanca Casino sits on,
- 22 Casablanca property.
- 23 SIR ROBIN AULD: Owns what?
- 24 A. The property commonly known as Casablanca Casino.
- 25 (11.00 am)

1 Q. The distinction may be important. I suspect Mr Misick
2 is about to make it. I think your evidence is it owns
3 the property that it stands on, is that correct?
4 A. Correct.
5 SIR ROBIN AULD: It owns the land?
6 A. Yes.
7 MR MILNE: Does it own the casino itself?
8 A. It does not own the operation of the casino, no. It
9 owns the land and the building. Not the casino.
10 Q. Does it have in relation to that land and building any
11 liabilities, any mortgage or loans for the purpose of
12 the purchase or is it owned outright?
13 A. The land was owned outright but now the base liability,
14 the liability stems from the improvements to the
15 building.
16 Q. So is this right, the land was bought outright?
17 A. Correct.
18 Q. When it was purchased, was it purchased from the Crown
19 or was it purchased from a private source?
20 A. You mean the casino land?
21 Q. Yes.
22 A. Private source.
23 Q. Was there any building on the land at the time it was
24 bought?
25 A. The existing building was a derelict building.

1 Q. Was that then demolished and replaced with the existing
2 building which is clearly relatively modern?

3 A. It was reconstructed. The entire building was not
4 demolished but a portion of it was demolished and
5 remained.

6 Q. The funding for that work, where did that funding come
7 from initially?

8 A. The funding for the initial reconstruction work came
9 from the casino owners, the casino operators, were now
10 the casino operators.

11 Q. So the casino operators paid for the building to be put
12 up?

13 MR RIGBY: Not put up, I think he said --

14 MR MILNE: Reconstructed.

15 A. The casino operators paid for the renovation of the now
16 casino and for that they had a lease agreement whereby
17 they had nominal rent for a period of 20 years,
18 initially 10 years and then to be extended for 20 years.

19 So what it was really was work by the operators and they
20 got the building -- the leasehold on the building at
21 an very, very nominal price.

22 SIR ROBIN AULD: They got a rent holiday for 20 years?

23 A. Pretty much.

24 MR MILNE: When you say nominal, are we talking --

25 A. \$2,500.

1 Q. Per annum every year?

2 A. I think initially, I am going on memory now, I think
3 they had a rent holiday for the first two years and then
4 after that \$2,500 would kick in monthly.

5 Q. So 2,500 per month?

6 A. Yes. That was the -- the \$2,500 was to run for a period
7 of time and then as the casino became profitable I think
8 by year 5 or 6 there was another rent increase after
9 review to be made.

10 Q. How much did the rent become after that rent increased?

11 A. I would have to look at the -- I don't have the lease
12 with me but if I can remember, I think it would have
13 gone to \$3,500.

14 Q. About 3,500?

15 A. Correct.

16 Q. So not an astronomical rise, but a rise nonetheless.
17 That money paid each month. If I follow you correctly,
18 you are saying that there is however now borrowing
19 secured against that building or against that land?

20 A. Correct.

21 Q. From whom did that borrowing come?

22 A. Borrowing came from clients -- I can't remember the name
23 exactly, but I know they are clients of Miller and
24 Simons.

25 SIR ROBIN AULD: Clients of whom?

1 A. Miller and Simons.

2 SIR ROBIN AULD: I didn't hear that name.

3 MR MILNE: Miller and Simons the attorneys?

4 A. Correct.

5 SIR ROBIN AULD: Were they both the lenders and

6 the operators of the casino? Were the lenders the same

7 people as those who operated it?

8 A. Not to my knowledge.

9 SIR ROBIN AULD: So who are we talking about now,

10 the lenders at the moment?

11 A. Correct.

12 SIR ROBIN AULD: Lenders were clients of Millers -- do you

13 know who they were?

14 A. I would have to get that information to you.

15 I can provide it.

16 SIR ROBIN AULD: You don't just for the record know --

17 A. I don't know the names of the clients, no. Or -- it was

18 an entity, not a person's name.

19 MR MILNE: No doubt a corporate entity of some sort.

20 A. Correct.

21 Q. To whom was the money loaned? Was it to an individual

22 or was it to Windsor Investment Group?

23 A. The money was loaned to the land holders. I think

24 the money was loaned to Hydronox Limited.

25 Q. What connection then does Hydronox Limited, which we

- 1 have heard of, what connection does that have to
- 2 Windsor Investment Group?
- 3 A. Hydronox is a holding company. Windsor Investment is
- 4 a shareholder in Hydronox.
- 5 Q. Is this the case: Hydronox owns the land and
- 6 Windsor Investment Group own or have shares in Hydronox?
- 7 A. Correct.
- 8 Q. Do they have 100 per cent shares in Hydronox?
- 9 A. Not at this moment, no.
- 10 Q. Did they start out with 100 per cent shares?
- 11 A. No they never did.
- 12 Q. Do you manage Hydronox?
- 13 A. I have Hydronox, yes.
- 14 Q. So who are the other shareholders in Hydronox?
- 15 A. The other shareholders in Hydronox?
- 16 Q. Apart from Windsor Investment Group?
- 17 A. The other shareholders in Hydronox are, I can't remember
- 18 that either. It is a company, I know, and it is also
- 19 clients of Miller and Simons --
- 20 SIR ROBIN AULD: It is also what?
- 21 A. Clients of Miller and Simons.
- 22 MR MILNE: What percentage of Hydronox does
- 23 Windsor Investment Group have?
- 24 A. At the moment they now own 50 per cent.
- 25 Q. 50 per cent?

1 A. Correct.

2 Q. So the rent from renting the land to the casino
3 operators goes to Hydronox. Windsor Investment Group is
4 entitled to presumably 50 per cent of that rent, is that
5 fair?

6 A. That is fair. I must say the rent was never paid
7 though.

8 Q. The rent is never paid?

9 A. It is never paid, no.

10 Q. Has anybody ever tried to enforce the rent?

11 A. Well, I did. I called a few times. I was always
12 promised that it would be paid.

13 Q. How long has it now been unpaid?

14 A. Well, the initial rent I spoke to you about was, it was
15 probably in arrears by eight months and that was
16 the \$2,500 that I spoke to you about earlier. Since
17 then, with the company undergoing its own financing of
18 the improvement to the building, the lease has been
19 amended.

20 Q. Sorry, forgive me, I just need to be clear about what
21 you are saying. You say with the company dealing with
22 the improvement of the building, which company?

23 A. Windsor Investment Group -- here is why I told you
24 initially. I told you that Windsor Investment Group
25 rented the property at a nominal rate for improvements,

1 correct?

2 Q. Right.

3 A. Subsequent to that I told you that

4 Windsor Investment Group and its partners negotiated

5 a loan with the client of Miller and Stanbrook. Now,

6 since the loan had been -- become the liability to

7 Windsor Investment Group and its partners, the lease had

8 to be amended to reflect that, because the improvements

9 were no longer being incurred by the operators. So

10 the improvement became a liability to the

11 Windsor Investment Group and its partners. So

12 the leasehold was amended so that the rent was now gone

13 from, I think, \$2,500 -- the agreed rent is now

14 something in the order of \$40,000 a month.

15 SIR ROBIN AULD: So the rent is now \$40,000 to the operators

16 for the running of the casino, is it?

17 A. What happens is the rent is not paid out to

18 Windsor Investment Group. The rent goes to the mortgage

19 holder.

20 SIR ROBIN AULD: Is that the rent that is not paid?

21 A. No, this is the new situation we are talking about.

22 SIR ROBIN AULD: So the current rent is being paid.

23 A. It is being paid to the mortgage holder directly.

24 SIR ROBIN AULD: Rent now being paid and who is it being

25 paid to?

1 A. To the mortgage holder.

2 MR MILNE: These are the lenders who are clients of Miller

3 Simons. So the casino operators, instead of paying

4 rent, directly to Windsor Investment Group or indeed

5 their partners, are simply paying the loan on behalf of

6 Windsor Investment Group, is that correct?

7 A. They are paying what Windsor Investment Group is

8 entitled to directly to the lender.

9 MR RIGBY: Essentially what he is saying is that the loan

10 payment is tantamount to the rent.

11 A. Yes, pretty much.

12 SIR ROBIN AULD: Loan payment is now being met by the rent?

13 A. Correct.

14 MR MILNE: How much was the loan?

15 A. I think \$1.8 million.

16 Q. When it was received, into which account was that paid?

17 A. That was all -- those transactions were handled by

18 Miller and Simons, I cannot help you with that.

19 Q. No, Miller Simons, forgive me, as I understand it, are

20 the client -- attorneys for the people who are lending

21 the money?

22 A. They are also attorneys for the 50 per cent

23 shareholding -- the other 50 per cent of Hydronox.

24 Q. The other 50 per cent holders of Hydronox apart from

25 Windsor Investment Group?

1 A. Correct.

2 Q. Whose name you don't have to hand. Presumably -- I am

3 not suggesting that you are not being truthful -- but

4 presumably you would be able to find that name within

5 the files?

6 A. Which name are you talking about?

7 MR MILNE: There are two names here in fact. The clients of

8 Miller Simons who provided the loan, you will be able to

9 identify from your records on trusts the name of that

10 company?

11 A. I should be able to. The only difficulty I have is that

12 I would have to request that from

13 Caribbean Management Services because we don't have any

14 records in our office.

15 SIR ROBIN AULD: Could we just pause for a minute, please.

16 We have a welter of companies here and holding

17 companies and percentages and so on. Are you at some

18 stage, Mr Milne, going to ask Mr Chalmers Misick who are

19 the controlling spirits behind the operation of the

20 casino? Who is running the place?

21 MR MILNE: I would very much like to know that, sir, but

22 I think in fact that yet another company is about to

23 crop up because we have papers within Mr Chal Misick's

24 file relating to Casablanca Casinos Limited and

25 a company -- this is at tab 5 within the bundle.

1 SIR ROBIN AULD: I am sure we have to follow the corporate
2 trail a little further, but is there any way of at least
3 giving us some information in anticipation, Mr Misick?
4 Who runs the casino, who controls it, which individual
5 or individuals?

6 A. As far as I am aware, the casino operation is run by
7 a company called Casablanca Casinos, and the persons
8 behind it is a guy called Andy Stevens and Washington
9 Misick.

10 SIR ROBIN AULD: So Andy Stevens and Washington Misick run
11 the Casablanca Casino?

12 A. They are the directors of Casablanca Casinos. I am not
13 sure who runs the casino itself.

14 SIR ROBIN AULD: Well, they control it?

15 MR RIGBY: Just to be helpful, that is at tab 5, page 115.

16 SIR ROBIN AULD: Thank you. It is all there, is it,

17 Mr Rigby?

18 MR RIGBY: Yes.

19 SIR ROBIN AULD: Thank you very much.

20 MR MILNE: As we can see from those documents. It would
21 appear that the directors now, the secretary of the
22 company appears to be Mr Andy Stevens. The directors,
23 I think, are Washington Misick and Andy Stevens.

24 Correct me if I am wrong, are the shareholders now
25 the same two gentlemen? I am looking here at page 121.

1 This is a register of members, that is register of
2 shareholders, but one must always exercise caution
3 because of course it is a document that is dated 2006
4 and matters may have moved on since then. It appears
5 that Chalmers Management Limited, that is your firm,
6 coupled with Windsor East Limited initially established
7 the company, Casablanca Casinos Limited, is that right?

8 A. Correct.

9 Q. As is the way with such things, Windsor East Limited was
10 briefly a director in and out one day.

11 Similarly Chalmers Management and Windsor East were
12 each directors or at the space of a day before signing
13 over the directorship to Washington Misick and
14 Andy Stevens in August 2006?

15 A. Correct.

16 Q. Similarly, the sole share, the one share initially
17 issued in the company held by Windsor East, again within
18 the space of a day no more, and then shares issued --
19 two shares, one for Washington Misick, one for
20 Andy Stevens?

21 A. That is correct.

22 (11.15 am)

23 Q. Does Chalmers Management continue to play a role within
24 Casablanca Casinos?

25 A. No role at all.

1 Q. Not at all?

2 A. Not at all.

3 Q. What about Windsor East Limited, does it play any role?

4 A. No role. The only role Chalmers Management played would

5 be to file -- at the corporate office, we file any

6 returns.

7 Q. You would file the returns on their behalf?

8 A. I would file -- we will draft up the papers and have

9 them filed on their behalf.

10 Q. I am assuming -- Washington Misick is your brother,

11 isn't he?

12 A. He is.

13 Q. Former Chief Minister within the Turks & Caicos and

14 a well known gentleman.

15 To the best of your knowledge and belief, are they

16 still the two shareholders?

17 A. To the best of my knowledge and belief, they are still

18 the two shareholders.

19 Q. When I say are they the two, there are no other

20 shareholders at this stage?

21 A. Not that I am aware of and I have not been given any

22 instructions to the contrary.

23 Q. No, but the gentleman is your brother and he may have

24 discussed it with you. I am not talking about formal

25 instructions.

1 A. I have never had any discussions with Washington
2 regarding --

3 Q. You don't know if he has brought anybody else in or if
4 he is holding shares on behalf of another or indeed
5 Mr Stevens?

6 A. No, I don't know.

7 Q. Is Mr Stevens in fact the manager? He actually runs
8 the place?

9 A. I am not sure who runs it. I don't frequent the casino.

10 Q. Are Casablanca Casinos Limited therefore the people who
11 rent from Hydronox and pay their rent by way of mortgage
12 repayments?

13 A. Correct.

14 Q. That is the same thing. This is nobody else, there is
15 no other party involved here that we should know about?

16 A. I don't know of anybody else.

17 Q. So that is the full picture?

18 SIR ROBIN AULD: That is just since August 2006.

19 A. That is since August 2006, yes.

20 SIR ROBIN AULD: So it was before then that you were asking
21 for payment of rent which didn't materialise.

22 A. Correct. And during that time, it is when they were
23 building ongoing -- the complete renovation that we
24 spoke of earlier.

25 Q. Was the whole of the 1.8 million utilised for

1 the purposes of renovation?

2 A. As far as I can recall, the whole of it was utilised for
3 that. The way I remember it happening was that
4 the Casablanca Casinos presented their evaluation of
5 what was done to the building for the improvements that
6 amounted to \$1.8 million. That was communicated to
7 the lender and the lender paid the money directly to
8 them, to whomever the money was due. I can't speak more
9 to that because I was not intimately involved in the
10 transaction.

11 Q. But the money that was loaned came from a client of
12 Miller Simons. It was paid out for the purposes of
13 renovation. Repayments of that loan, is that -- is
14 the liability for repayment of the loan ultimately held
15 50 per cent between Windsor Investment Group and 50
16 per cent by the other shareholders in Hydronox?

17 A. That should be the case, because they are equal partners
18 within the holding company.

19 Q. So a simple measure is rent comes in but rent goes
20 straight to the mortgage holders on the property?

21 A. Correct.

22 Q. Therefore it is not generating income, if I follow you
23 correctly at this stage, because such rent as it would
24 generate simply goes out in loan repayments?

25 A. Right, it is not generating an income.

1 Q. The Premier in his evidence said that \$300,000 should
2 have been paid into his account, on one occasion came
3 from Windsor Investment Group.

4 You indicated from the statement that you provided
5 that you think he was in error in that regard. Would he
6 at any stage have had any lump sum from
7 Windsor Investment Group?

8 A. I am not aware that he has had any lump sum from
9 Windsor Investment Group.

10 Q. Other than the Casablanca Casinos through its
11 intermediary of Hydronox, does Windsor Investment Group
12 hold any other property?

13 A. Windsor Investment Group do not hold any other property.

14 Q. Does it run any other form of business, does it trade in
15 any other fashion?

16 A. Not to my knowledge.

17 Q. So it purely exists to hold a part share in the land on
18 which the casino stands?

19 A. That is correct.

20 SIR ROBIN AULD: Land and building.

21 MR MILNE: Land and building. Does Windsor Investment Group
22 have its own bank account?

23 A. No.

24 Q. If funds came in for Windsor Investment Group, how would
25 they be handled?

1 A. If funds came in they would be handled -- they have
2 an account -- an escrow account within the firm's
3 accounting system and that fund would go straight into
4 Windsor Investment Group.

5 Q. So an escrow account within your firm, within
6 Chalmers & Co?

7 A. Correct.

8 Q. Turning if we could, please, to your bank accounts. We
9 had discussion on Friday concerning the issue of --

10 A. Which page are we on?

11 Q. I will bring you to a page in a minute. This is in fact
12 dealing with last week's questions. We discussed
13 the issue of client account. You said you had a client
14 account and it may be that we were talking at cross
15 purposes at one point.

16 A firm of attorneys operates a client account as
17 essentially a discipline within the firm, as a means of
18 holding client money, is that correct?

19 A. Correct.

20 Q. Although you spoke of one client account, that being
21 the Chalmers & Co client account, that money may be in
22 one or more than one bank accounts, and I think you said
23 there were three accounts that were used for that?

24 A. Correct.

25 Q. Certainly in the UK, tell me if it is the same rule that

1 is operated in Turks & Caicos Islands, a solicitor's
2 client account within a bank is very strictly
3 controlled. It is something that must not be mixed up,
4 there mustn't be a mixing between a solicitor's firm's
5 own funds and the client funds. They have to be
6 strictly separated. Is that the rule here as well?

7 A. I believe so.

8 Q. Therefore, let me take as an example, no doubt there is
9 in one bank or more than one bank an account or accounts
10 which are your office accounts from which you will pay
11 no doubt salaries, expenses from the office, heating,
12 lighting, cleaning, whatever, and that will be very
13 specifically the Chalmers & Co account. Separately
14 the client account, which is client money which you are
15 holding on trust for them, yes?

16 A. Yes.

17 Q. First of all, can you tell me how many accounts did you
18 operate as a firm of attorneys for your own purposes?

19 A. Operating accounts, I have two operating accounts.

20 Q. Two?

21 A. Yes.

22 Q. Are they with the First Caribbean Bank?

23 A. I have one at First Caribbean Bank and one at TCI Bank.

24 Q. No account for your own purposes in Belize Bank?

25 A. No account for the firm's purposes at Belize Bank, other

1 than the client account.

2 Q. So there is two accounts for the firm's own purposes.

3 For the client account, here I am going back on what we

4 said last week, as I follow you, there are three

5 accounts used. One at First Caribbean International,

6 one at Belize Bank and a further one at TCI Bank?

7 A. Correct.

8 Q. In each case the funds within those accounts, strictly

9 for client's purposes, moved on the authority or at the

10 request of your clients?

11 A. Correct.

12 Q. Funds clearly paid in for the purposes of business

13 transactions which they are directing you to undertake;

14 would there be occasions when a client might pay money

15 on account, let's say I walked in, I asked you to do

16 some work and I paid money on account, maybe \$1,000,

17 \$5,000, that might go into the client account and as you

18 then generated notes, fee notes, as you did the work,

19 you might send me a note saying I have done \$500 worth

20 of work and I would authorise you to transfer \$500 from

21 the client account into your professional account,

22 into Chalmers & Co account?

23 A. That is correct.

24 Q. I suspect I simplify, but just so we understand

25 the distinction that is drawn?

1 A. Yes.

2 Q. You can't dip into the client account; it has to be

3 strictly on authorisation on the --

4 A. On instructions.

5 Q. Can you tell us why, is there a particular reason why

6 you operate three separate bank accounts, is there some

7 advantage to that?

8 A. Yes. Convenience, ease of banking.

9 MR RIGBY: The three accounts you are talking about are

10 the three client accounts?

11 MR MILNE: Three client accounts.

12 MR RIGBY: The three accounts which is the one client

13 account.

14 MR MILNE: One client account, three client bank accounts.

15 You find it more convenient to have a bank account in

16 each of three large banks on the island?

17 A. Correct, yes. Because the way the banking system

18 operates here is that you will find that one or

19 the other bank will provide a better service in

20 a particular area than the others. For convenience I do

21 it and I am sure a lot of the other law firms on the

22 island do the same thing.

23 Q. Very likely. You may have as many accounts as you wish

24 as long as they are strictly client accounts, is that

25 right? So when you have received funds in the past on

1 behalf of clients, you may indicate in advance, if you
2 are going to transfer, if you are going to wire money to
3 my bank account, I can offer you one of three accounts
4 to put it into and provide presumably the name of that
5 account would be -- presumably it would be Chalmers & Co
6 client account, and the bank number, IBAN details, that
7 sort of material?

8 A. (Inaudible).

9 Q. The numbers of those accounts we see from a number of
10 the documents that you have provided and I will take you
11 to one of those documents if I might, the FCIB client
12 account number and this is in the big bundle that you
13 provided. It appears readily on a number of occasions.
14 I am looking at page 9 which happens to be one I came to
15 first, but it is on many, many pages?

16 SIR ROBIN AULD: Where is that in the bundle?

17 MR MILNE: Page 9 behind tab 1, sir, in Mr Misick's own
18 bundle.

19 Q. It is a formal bank -- what we have in front of us at
20 present is a formal bank document, isn't it? It is
21 a pro forma standard document, issued by
22 First Caribbean International Bank. It says on the
23 left-hand side, it is a requisition for payment
24 transfer. It is essentially a formal order to move
25 money and the account number given on the right-hand

1 side, I only give you four digits, it ends 1841.

2 That is your client account within FCIB, if

3 I can abbreviate?

4 A. Correct.

5 Q. Indeed, if one were to flick over the following handful

6 of pages, it is clear that there are a series of those

7 documents, each of them being the FCIB, same number,

8 movements of money. In each case in fact we can see

9 that it is by order of Chalmers & Co, they render it or

10 Chalmers & Co, it gives the address. There are

11 beneficiaries named. Detailed banking orders. In each

12 case also we can see that there are stamps. The banker

13 has stamped this with its date stamp so we know when

14 they dealt it.

15 Looking at page 9, in fact the value date, they

16 received it on 21st March. Presumably that is when it

17 reached their desk. They appeared to have processed it

18 the following day, 22nd March towards the top: transfer

19 of money at your request, in each of those cases out of

20 the Chalmers & Co bank account.

21 Turning on a few pages. I am going to take

22 a different example. This in fact is page 18 I am

23 looking at now. Page 18, it is a slightly simpler form

24 but it is clearly a pro forma again. It is a standard

25 version because we see several of them through

1 the volume. This one is headed "Wire Transfer
2 Instructions", ordering customer at the top.
3 Chalmers & Co and it is addressed to the manager,
4 the Belize Bank Turks & Caicos Limited.
5 Can I just ask, it is in less formal layout. Is
6 this a pro forma that is designed in your office or is
7 it the bank's own?
8 A. This is the bank's.
9 Q. The banks issue these, they are filled in?
10 A. Yes.
11 Q. Presumably either faxed or physically hand them back to
12 the bank so they can act on it straightaway?
13 A. They are mostly handed in.
14 Q. Handed in, right. Again it gives date. It is
15 a request -- formal request to remit at my/our own risk
16 by wire transfer. It gives the sum, it gives
17 the destination bank, the destination, beneficiary,
18 customer, we will come back to it, in this case
19 American Express, and it gives an account number for
20 the beneficiary and indeed it even gives a box if you
21 choose to fill it in, for "reasons for payment".
22 "debit my/our account". Then it says "Chalmers & Co
23 client account". There is no number put in here,
24 although there is a signature at the bottom.
25 Can we take it that because there is only one

1 Chalmers & Co account, Belize Bank is sufficiently
2 familiar with your business to know straightaway which
3 account they should go to?
4 A. The reason why there is no number is there is no
5 requirement on the form for a number.
6 (11.30 am)
7 Q. You could put a number in, but it says in fact "debit
8 my/our account", account name and number on that form.
9 A. There is only one Chalmers & Co account at Belize Bank,
10 as far as I am aware.
11 Q. That is the point I was getting at, sir. I do not think
12 it is anything suspicious. It is clearly a banking
13 arrangement. It is nice to think your bank manager
14 remembers you. I suspect mine never does. But in this
15 case you are clearly sufficiently familiar with your
16 bank manager that when they see Chalmers & Co, they
17 think there is only one Chalmers & Co, there is only one
18 account, we can go straight to it.
19 A. You live in a country with 55 million people. I live in
20 a country with 30,000 so --
21 Q. You are probably better known here than many of us would
22 be in London.
23 Again, nothing suspicious about this but they would
24 know precisely what you are talking about because there
25 is only one account, isn't this there?

1 A. There is only one account.

2 Q. If there were two you would have to say it is either

3 this account or that account but by putting Chalmers &

4 Co. They can go straight to it?

5 A. Correct.

6 Q. We don't see in here any wire transfer instructions for

7 TCIB, for the Turks & Caicos Island Bank. Is it

8 an account that you use very much?

9 A. Turks & Caicos Bank, I use it sometimes for its

10 purposes. In this case I find Belize Bank to be more

11 efficient with wires.

12 Q. Perhaps you can give us just a rough estimate. In terms

13 of volume of funds, which is the busiest of the three

14 accounts? Which is the one that you use most

15 frequently, you would say?

16 A. First Caribbean.

17 Q. Belize Bank perhaps the second busiest?

18 A. I would say yes.

19 Q. And Turks & Caicos Bank the third?

20 A. Thirdly.

21 Q. With the Belize Bank, are you able to remember now

22 the actual bank account number of that account?

23 A. No.

24 Q. Let me see if I can assist because it may be that what

25 I have been looking at here is the same thing. If we

1 turn to page 7 of tab 1. I beg your pardon. Page 52 is
2 what we are looking for here. Page 52 falls within that
3 same section within tab 1. Do you have that?

4 A. Yes.

5 Q. Now, that is a -- it appears to be a paying-in slip of
6 some sort or a debit slip, I should say. Debits in US
7 dollars. And it appears to be a different type of
8 direction. It is clearly again a pre-printed format
9 used for transfer of money and you have disclosed this
10 to the Commission. It is slightly cut off at the top
11 but it appears to read debits in US dollars only. It
12 gives particulars and there are two transfers which are
13 stipulated in there. This document dated on the bottom
14 right-hand side, 14th September 2007, the Belize Bank,
15 TCI branch.

16 Right in the middle, it is slightly obscured by
17 a date stamp from the bank, but there is an account
18 number, isn't there?

19 A. Yes.

20 Q. Again, I won't read it all out, but it ends -- it
21 appears to be 75 are the last two digits?

22 A. Yes.

23 Q. Is that, now that you have seen it, your bank account
24 for the Belize Bank?

25 A. That is very likely it, yes.

1 Q. Do you operate or are you responsible for any other bank
2 account within the Belize Bank at all?
3 A. In relation to Michael Misick and Lisa-Raye?
4 Q. In relation to any other parties?
5 A. Come on --
6 MR RIGBY: Any other parties? It is kind of broad. Are you
7 talking only about the Premier and --
8 MR MILNE: It is a yes/no answer, I would suggest, sir. Do
9 you operate bank accounts for anybody else --
10 MR RIGBY: With respect, perhaps you should break
11 the question down so the witness could answer whether he
12 has any -- what is the question you asked?
13 MR MILNE: I am grateful for the advice, sir, but
14 the question stands.
15 SIR ROBIN AULD: I thought he asked: did Mr Chalmers Misick
16 have responsibility for any other accounts other than
17 those of Mr Michael Misick and Lisa-Raye Misick.
18 MR RIGBY: I thought he said including Michael Misick,
19 Lisa-Raye Misick and others.
20 SIR ROBIN AULD: That is what I understood. Put your
21 question again so that Mr Rigby understands it.
22 MR RIGBY: In relation to any other parties.
23 SIR ROBIN AULD: Yes.
24 MR MILNE: Do you operate or hold responsibility for any
25 other corporate bank accounts, for any party --

1 A. Other than Michael or Lisa-Raye?

2 MR MILNE: No, with the Belize Bank?

3 A. I do.

4 Q. You told us that Windsor West Limited doesn't have

5 a bank account. Could you just take a look at page 47

6 within this bundle. That's a cheque drawn in fact on

7 the First Caribbean International Bank. So it is coming

8 out of -- we can see from the account number -- your

9 First Caribbean International Bank client account. Do

10 you see that?

11 A. Correct.

12 Q. It is made out to Chalmers & Co client account and it

13 says on the bottom left:

14 "Fund transfer to the Belize Bank".

15 A. Correct.

16 Q. What is the significance of the letters that follow on

17 from that though, which appear to be WW0179?

18 A. That is an internal escrow.

19 SIR ROBIN AULD: Internal escrow account?

20 A. Yes.

21 MR MILNE: So WW0179 is of significance within the firm?

22 A. It is, yes.

23 SIR ROBIN AULD: That is what I call a suspense account,

24 the same thing.

25 A. Correct, yes.

1 MR MILNE: That presumably then is Windsor West? WW?

2 A. Are you guessing?

3 Q. Well, can you assist me?

4 A. I could -- I certainly could. But I am sure this is

5 covered by privilege.

6 SIR ROBIN AULD: I can't hear you, I am afraid.

7 A. I certainly could but I am sure this is covered by

8 privilege.

9 SIR ROBIN AULD: Let's see if Mr Rigby claims it.

10 MR RIGBY: I think the evidence so far is that he has

11 a suspense account and his evidence on this question is

12 that 0179 is in relation to the suspense account.

13 SIR ROBIN AULD: Well he has been asked to identify what WW

14 stands for.

15 A. Windsor West.

16 MR RIGBY: Windsor West. It is all the same thing.

17 Windsor West, I thought we had established very early

18 on --

19 SIR ROBIN AULD: Let's see how it goes.

20 MR MILNE: Well, we have been given a series of documents,

21 and given the enthusiasm for not disclosing anything in

22 relation to other clients, we must assume that there is

23 some significance to the issues that are being covered

24 in that cheque, that transfer between accounts. It must

25 in some way relate to the Premier. Are you now telling

1 me that it does not relate in any way at all to the
2 Premier or to his wife or to anything else to do with
3 this hearing?

4 A. Well, on the face of this, I can't say conclusively
5 whether this is related to the Premier unless you have
6 a specific question relating to these amounts.

7 Q. I want to know why we have been given it if it is not
8 relevant?

9 MR RIGBY: I wonder if I can assist. If you look at the
10 account Quick report, which is a spreadsheet, on
11 the left-hand side there is a reference. If you look on
12 page 2 you will see the number 47. It takes you and it
13 explains what that cheque is for. So it says transfer.
14 Do you see it?

15 SIR ROBIN AULD: Says what for the record, Mr Rigby?

16 MR RIGBY: Transfer, Pineapple Air, PNP campaign travel.

17 SIR ROBIN AULD: Say that again?

18 MR RIGBY: Transfer, Pineapple Air, PNP campaign travel.

19 MR MILNE: So why is it on the schedule? It is an obvious
20 question. Presumably that is money that is
21 the Premier's money that has some bearing on
22 Pineapple Air and the PNP campaign?

23 A. Yes. It is money that the firm had on trust account by
24 way of campaign donation and on instructions from
25 the Premier, the amount that we see here on the schedule

1 is paid out to Pineapple Air.

2 SIR ROBIN AULD: Donations which on the instruction of the

3 Premier was paid out to -- whatever they are.

4 A. Pineapple Air.

5 MR MILNE: We would be assisted by a little more detail,

6 sir. What we have is a cheque transferring money

7 between two client accounts within the firm. There is

8 an internal escrow account which you seem unhappy about

9 disclosing, although it would appear that what we are

10 being told is that this is relevant to the Premier. So

11 when it says Pineapple Air, is this money coming in from

12 Pineapple Air?

13 A. It is money paid to Pineapple Air.

14 Q. It is money going out to Pineapple Air?

15 MR RIGBY: It is a debit --

16 SIR ROBIN AULD: I have written in my note "which on the

17 instruction of the Premier was paid to Pineapple Air".

18 That was the evidence, was it not, Mr Rigby?

19 MR RIGBY: That is correct.

20 A. That was my evidence.

21 MR MILNE: So when it says debit, that is a debit from which

22 account?

23 A. Michael Misick account.

24 MR MILNE: So these are only debits in the client account as

25 a whole; they don't reflect the individual bank

1 accounts?

2 A. This debit came from First Caribbean, as you can see.

3 Q. But it is not going from First Caribbean to

4 Pineapple Air; it is going from First Caribbean to the

5 Belize Bank account. Why is that?

6 A. So we can wire transfer the funds to Pineapple Air.

7 Q. Why couldn't you simply wire transfer the funds from

8 First Caribbean?

9 A. I just explained that Belize Bank were more efficient.

10 In terms of wire transfer, I find them to be more

11 efficient. We use them for our wire transfers

12 primarily.

13 Q. So if you need to wire transfer money you transfer it

14 across from First Caribbean into the Belize Bank

15 account?

16 A. That is not what I am saying.

17 Q. Right. What are you saying?

18 A. I am saying I don't transfer, if there are insufficient

19 funds in Belize Bank, then obviously I would have to

20 transfer funds to Belize Bank and I would cover

21 the wire, but if there are funds already existing in

22 Belize Bank, there would be no need for the transfer.

23 SIR ROBIN AULD: Are we leaving Pineapple Air now for a bit,

24 Mr Milne?

25 MR MILNE: Yes, there will be a number of other things but

1 not Pineapple Air.

2 SIR ROBIN AULD: We will have a break for 5/10 minutes.

3 (11.42 am)

4 (A short break)

5 (11.50 am)

6 SIR ROBIN AULD: Yes, Mr Milne.

7 MR MILNE: May it please you, sir. Mr Misick, I was asking

8 you earlier on about monies that went through the client

9 account and you agreed that Windsor West would be used

10 as a suspense account for certain funds. But that

11 the Premier was well established, obviously a highly

12 distinctive client and no doubt a high-profile client of

13 your firm. He would have his own account which would --

14 maybe it would have his initials, I know not, but it

15 would have some sort of designated number or letters,

16 yes?

17 A. Yes.

18 Q. Which would be entered against any of the payments made

19 on his behalf or in his name. Will you look at some of

20 the payments that were made clearly on behalf of the

21 Premier. I will take as a first example, page 13,

22 within section 1 of your bundle.

23 Do you have that?

24 A. Yes.

25 Q. That is a payment that was made in July of 2006.

1 \$100,000 paid towards the American Express, I think in
2 fact it is a Centurion card. Centurion card, it is put
3 down as here, but it is being sent to Prague and we have
4 a beneficiary account number which is familiar to us for
5 the J&T Banka, yes? Would you agree that is right?
6 A. What?
7 Q. That it is a payment, wire transfer instruction to make
8 payment of \$100,000 to J&T Banka in Prague?
9 A. Correct.
10 Q. And the references clearly reflect the American Express
11 card held by the Premier which he has told us about.
12 This is a payment presumably on his behalf?
13 A. Yes.
14 Q. Somebody has written at the top of that form the words
15 "Windsor West". It appears to be Windsor West, is that
16 right?
17 A. I see that on the top of the form.
18 Q. Did you write that?
19 A. That is not my writing.
20 Q. Do you know why anybody else would write it?
21 A. I don't have any idea why.
22 Q. No idea why that would be written against that
23 particular entry?
24 A. Well, I can guess.
25 Q. We are not asking for a guess. I would like to know

1 what connection Windsor West have with payments out of

2 money on behalf of the Premier in 2006?

3 A. Like I explained earlier, Windsor West is a suspense

4 account, and funds very likely would have put in

5 Windsor West before it goes on to the respective

6 clients.

7 SIR ROBIN AULD: Who would have put it?

8 A. It would be the person collecting the funds at the time.

9 A person at my firm.

10 SIR ROBIN AULD: A member of your firm receiving the...?

11 A. The funds. Receiving the funds.

12 SIR ROBIN AULD: Thank you.

13 MR MILNE: So that is July 2006. Yes? 10th July 2006 at

14 page 13.

15 A. Yes.

16 Q. Let's move forward a little to the early part of the

17 following year, page 20 within the bundle. In fact,

18 forgive me, we will come back a couple of pages.

19 Page 17 within the bundle. This one, a payment out from

20 your First Caribbean International Bank. The client

21 account. This payment in fact is \$20,000. The payee is

22 Hallmark Trust who are a company who run credit cards?

23 A. Which page are you on?

24 Q. I am looking at page 17.

25 It was a notation, no doubt for the purposes of

1 keeping a record. It says on the bottom of that cheque,
2 payment Horizon card. We know the Premier had a Horizon
3 Mastercard issued under the branding name of Horizon,
4 WW.

5 Windsor West?

6 A. Very likely.

7 Q. Very likely. Why would that be the case then, again, in
8 November money is still being allocated to Windsor West
9 within the client account?

10 A. The person responsible for posting these cheques, what
11 he normally do is he post -- because Windsor West is
12 a suspense account, if he is unsure who the client is
13 that the payment is being made for, he would put
14 Windsor West on them and what happens is we would
15 normally often meet to sort out where these respective
16 funds should go. I am the one who directs the account.
17 So he is not up to speed on where all these payments
18 should go --

19 SIR ROBIN AULD: You are saying that is a mistake, are you?

20 A. I am not saying it is a mistake. I am saying because we
21 are a small firm, I direct where funds go from
22 the account. If I give him an instruction and I am not
23 available to tell him precisely which account that is
24 should go against, and because we use Windsor West as
25 our suspense account, he would not -- often apply it

1 towards Windsor West and then later on we would transfer
2 to the correct account.

3 SIR ROBIN AULD: So it is a suspense, suspense account, is
4 it?

5 A. Correct.

6 MR MILNE: Is this right, that you are transferring
7 the debit -- money is coming out of your client account.

8 You need to be sure that you are debiting the right
9 people.

10 A. Correct.

11 Q. You receive the instructions to make the debit. Yes?

12 A. Correct.

13 Q. You order that the debit be carried out?

14 A. Yes.

15 Q. But you don't seem to record against whose name it
16 should be debited.

17 A. In some cases not immediately. If the officer posting
18 the account knows precisely whose account to be debited,
19 he will do that. If he doesn't, he will just debit
20 Windsor West and sort it out at a later point.

21 SIR ROBIN AULD: How do you find out later?

22 A. Because for example we can print out -- for example he
23 can print out a report from the Windsor West suspense
24 account and we can go through it line-by-line and we can
25 then move it around.

1 MR MILNE: Isn't that making work for yourself? If you know

2 when you receive the request for a debit, this is to

3 come out of the Premier's account to go and pay

4 the Premier's credit cards, it is a simple transaction,

5 surely you could record that at the time?

6 A. Well, that might be so. I might be making work for

7 myself, but you have to understand that we are a small

8 firm, I do quite a bit of litigation; often when these

9 payments are made I am in court and people are not going

10 to wait for their cheques because I am not available.

11 Q. I thought you said last week that you didn't really do

12 litigation? Do you do litigation?

13 A. I didn't say I didn't do litigation.

14 SIR ROBIN AULD: I think he said he did 10 per cent.

15 A. I didn't say I didn't do litigation; I said I do

16 commercial and civil work. You didn't ask me whether it

17 involved litigation.

18 Q. I did --

19 SIR ROBIN AULD: Was it 10 per cent?

20 MR RIGBY: I think he asked a question whether he had been

21 engaged by the Premier in respect of any litigation

22 matters. But certainly paragraph 2 of his statement

23 makes it very clear that his primary areas of practice

24 are commercial transactions and civil litigation.

25 (12.00 pm)

1 MR MILNE: Talk me through this, please, Mr Misick, because
2 it is important that we understand and I don't want to
3 take a bad point or have anybody misunderstand the way
4 that you work.

5 Yours is a small office. You work within
6 the office. How many other people work there?

7 A. Myself, actually in 2006 it was only me and two other
8 persons.

9 SIR ROBIN AULD: When was it only you?

10 A. In 2006 it would have been myself and two other persons.

11 MR MILNE: Yourself and two others?

12 A. Yes.

13 Q. How big are your offices, one room, two rooms?

14 A. My office at that time would have been, I think, about
15 four rooms.

16 Q. Four rooms?

17 A. Yes.

18 Q. For the three of you?

19 A. Correct.

20 Q. Presumably you have a conference room if clients come in
21 or something like that. The other people who work for
22 you, are they attorneys, are they simply clerks dealing
23 with the paperwork, secretaries?

24 A. Secretaries and account clerks.

25 Q. So as regards 2006, you are the sole attorney within

1 the firm?

2 A. I believe at the earlier part of 2006, I stand

3 corrected, I believe I was joined by somebody else in

4 2006.

5 Q. Did that other person remain with you as an attorney?

6 A. That other person stayed for a period of time.

7 Q. You are being a little obscure. Can you tell us

8 the name of that person, please?

9 A. Sabrina Hannah.

10 Q. Joined you in 2006?

11 A. I didn't say she joined me. I said she might have.

12 Q. She might have joined you in 2006?

13 A. Because I don't have the information in front of me, so

14 I don't want you to mislead.

15 Q. How long do you think she was with you, two months, a

16 year, two years?

17 MR RIGBY: Is this line of enquiry really relevant as to how

18 many employees he had, how long they stayed? We seem to

19 be going on a roving enquiry into other matters which

20 fall outside the jurisdiction of this Inquiry.

21 SIR ROBIN AULD: Relevance, Mr Milne?

22 MR MILNE: The relevance, sir, is simply this: I am going to

23 go through a number of these entries and we need to be

24 clear as to the state of communications and the methods

25 adopted within the office. I am afraid in the absence

1 of any explanatory material as regards this, the only
2 way I can get this is by asking Mr Misick line by line,
3 question by question. What I wish to establish, so
4 there can be no misunderstanding, is this: the pattern
5 of behaviour in relation to monies coming in and monies
6 going out. That is what I have to work my way to but I
7 am afraid I am reluctant to simply leap to that without
8 having established how the office operates.

9 MR RIGBY: As far as I am aware, he has already indicated
10 that. He has said he has a suspense account.

11 SIR ROBIN AULD: Mr Rigby, your client on occasions has said
12 I don't know, somebody else may have dealt with it. To
13 what extent he can rely on that response depends on how
14 many people were working there and who might have been
15 doing this work with him. If he was a sole
16 practitioner, working on his own, it wouldn't be
17 available; if there are a whole lot of people there then
18 the scope for forgetting and mistake is obviously
19 greater.

20 MR RIGBY: The evidence though, Sir Robin, is that in cases
21 where Mr Misick was not present, and a payment had to be
22 made out of the client account, it will be posted to
23 the suspense account until the tabulation could be done
24 at a later date. So that is the basic formula which
25 the firm engage in in making payments on behalf of

1 clients. He has been saying that all morning.

2 SIR ROBIN AULD: He has not been saying it all morning. He

3 said it in the last few minutes. This line of

4 questioning, I am going to allow. It is clearly

5 relevant to the state of Mr Chalmers Misick's own memory

6 of what these transactions amount to. We will see how

7 it goes. If it goes on too long then you can try again.

8 MR RIGBY: Much obliged.

9 MR MILNE: Sir, in 2004 you had about four people. Is that

10 still the case now or have you grown in size as a firm?

11 A. I never said I had four persons.

12 Q. How many people did you have in 2006?

13 A. I said I had about -- I think I said I had three persons

14 when I started out in early 2006.

15 Q. How many do you have now?

16 A. Now I have five.

17 Q. Five people?

18 A. Yes.

19 SIR ROBIN AULD: In addition to yourself?

20 A. Including myself.

21 MR MILNE: Clerks or attorneys?

22 A. One attorney, one clerk, one secretary.

23 Q. Who deals with the money going in and out, which person?

24 A. I take responsibility for the money going in and out.

25 Q. You authorise it?

1 A. Yes.

2 Q. Who does the mechanics --

3 A. The clerk.

4 Q. Which clerk?

5 A. Say again?

6 Q. Which clerk?

7 A. The person posting the accounts.

8 Q. Right. We are dealing with 2006. How many clerks could

9 there have been posting the accounts?

10 A. One clerk.

11 Q. One clerk. And that clerk clearly you trusted to deal

12 with these matters on your behalf; you gave

13 the instructions; that clerk wrote out the cheques,

14 wrote out these forms, I suspect corresponded with

15 the bank, yes?

16 A. No, I corresponded with the bank.

17 Q. You corresponded with the bank?

18 A. Yes.

19 Q. Who wrote out the forms?

20 A. Which forms, all the forms?

21 MR RIGBY: Which forms are you talking about? There are

22 many forms in the bundle with the greatest of respect,

23 which forms?

24 MR MILNE: Did you write out the banking documents that were

25 sent through to the bank or did somebody write them out

1 on your behalf?

2 A. Which banking documents? Are you talking about the wire

3 transfers.

4 Q. The ones we have been looking at this morning.

5 A. You should say that and then I can answer the question

6 sensibly.

7 SIR ROBIN AULD: Now, now, Mr Misick, you are fencing. You

8 really are. You know he is asking about the accounts

9 with which we have been concerned.

10 A. Sir Robin, he said banking documents. That is broad.

11 He said who prepared the wire transfer. In most cases

12 I wrote out the wire transfers.

13 SIR ROBIN AULD: That is all we need.

14 MR MILNE: Let's look at page 21. Is that your handwriting?

15 A. That is correct, yes.

16 Q. That is your handwriting?

17 A. Yes.

18 Q. You wrote it out?

19 A. Yes.

20 Q. You wrote "WW" at the top?

21 A. That would appear to be my handwriting, yes.

22 Q. Why did you do that?

23 A. It could be a number of reasons.

24 Q. There could be a number of reasons but I am asking you

25 for what the reason would be?

1 A. The reason would be that I was going to leave this form
2 for the accounting officer to post and have it sent to
3 the bank.

4 Q. Why did you put "WW"? What possible significance could
5 it have for the bank?

6 A. This has nothing to do with the bank. It is just for
7 him to post the cheque to Windsor West as a carrying
8 account and then at some time in the future we would
9 transfer it to the respective persons.

10 SIR ROBIN AULD: Can you identify for the record what we are
11 looking at, Mr Milne?

12 MR MILNE: It is a wire transfer instruction for \$55,000,
13 Bank of America, beneficiary Youlanda Scott, who we have
14 heard of in the course of the Inquiry because she is
15 the stylist, or was a stylist to the then wife of the
16 Premier. Who would have received the instructions to
17 make this transfer?

18 A. I would have.

19 Q. You wrote out the form?

20 A. Correct.

21 Q. You knew that this was money apparently held on behalf
22 of the Premier which he wanted you to send to
23 Youlanda Scott at the Bank of America?

24 A. Correct.

25 Q. Why would it go under Windsor West?

1 A. It was subsequently credited, if you look at the
2 schedule you will see that these funds were subsequently
3 credited to the Premier's account.

4 Q. Why would you have put Windsor West initially?

5 A. It is just a matter of me not having the time to deal
6 with the (inaudible) purchase to the bank account.

7 Q. Over the page, page 22. 3rd October 2007.

8 A. Same situation.

9 Q. You put Windsor West, although it is paying to the
10 American Express bank, J&T Banka Prague. You wrote it
11 out, you knew perfectly well this was to your brother's
12 account, to the Premier's account. Why does all of this
13 come back to Windsor West?

14 A. Same explanation.

15 Q. Over the page again --

16 SIR ROBIN AULD: Can you give us an indication of the
17 amounts in each occasion?

18 MR MILNE: Certainly, sir, on that occasion \$331,000.

19 A third of a million dollars nearly. And that was just
20 going through the suspense account?

21 A. Well, if you look at the schedule, you can see that it
22 was ultimately credited to the Premier's account. It is
23 unfair to say it is just going through the suspense
24 account.

25 Q. But this schedule didn't exist at the time, did it?

1 A. This schedule was created for the benefit of the
2 Commission because we are not in a position, because of
3 my legal privilege, to expose my client's account.

4 MR RIGBY: I wonder if I could be helpful just in respect of
5 the pages my learned friend showed the witness. If one
6 looks at pages 21, 22 and 23, it is clear on the face of
7 those pages that there is no reference made to
8 the actual client of the firm on whose instructions --

9 SIR ROBIN AULD: That is Mr Milne's point and he is now
10 finding out who the client was.

11 MR RIGBY: And that is why the Windsor West name would be
12 placed on the top.

13 SIR ROBIN AULD: Leave that to your witness to give
14 the evidence.

15 MR MILNE: You see, this is what I don't understand,
16 Mr Misick, and maybe there is something obvious here
17 which you can tell us, which will assist us. You are
18 the attorney in charge of this small firm, definitely
19 small firm. Your brother the Premier is a major client
20 of the small firm. Obviously high-profile.

21 You are moving on his request hundreds of thousands
22 of dollars. You personally sit down and write out
23 the wire transfer instruction. But despite the fact
24 that you know perfectly well who gave the direction,
25 against whom the debit will go within your internal

1 accounts, time and time and time again we have
2 "Windsor West" or indeed "WW" written against it, which
3 is pointless because you are sending it on the face of
4 it potentially into the suspense account. All you need
5 to do is write against Michael Misick's account, "MM",
6 "Premier", anything of that nature. Who would you be
7 writing "WW" on there for if not for some other reason?

8 A. Who would I be writing "WW" on there for?

9 Q. Yes.

10 A. I would write "WW" on there because the funds were
11 posted against my suspense account.

12 SIR ROBIN AULD: Mr Milne, you just put as part of that
13 question that this appears time and time and time again.

14 MR MILNE: Yes, sir.

15 SIR ROBIN AULD: Can you substantiate that? We have looked
16 at two or three, but how typical are they of the entries
17 you have in front of you?

18 MR MILNE: If its assists, sir, I can run through these.

19 SIR ROBIN AULD: I don't invite you to do that. It may be
20 that Mr Rigby could agree it if there are lots of them
21 there.

22 MR MILNE: Sir, they can be found at pages 20 through to
23 26 -- 20 through to 25 inclusive, each of those are WW,
24 those including payments to the American Express card,
25 to the HSBC card for the Premier and in one case

1 a transfer on behalf of K McCoy.

2 They then appear at pages 27 and 28, which again are
3 credit card payments for the Premier, one of them for
4 half a million dollars. They then appear at pages 30,
5 31, 32, 33, 34, 35, each of them payments on behalf of
6 the Premier. Horizon card and the transfers to the HSBC
7 joint account. I would submit obviously for
8 the Premier.

9 Then they appear at pages 37, 38, 39, 40, 41 and 42.
10 Each of which is a payment -- most of which are payments
11 to the HSBC joint account, or the American Express card
12 for another \$100,000 or transfers to
13 the First Caribbean International Bank.

14 SIR ROBIN AULD: All with WW on them?

15 MR MILNE: All with WW and there is a further one, page 49,
16 5th April, to the Belize Bank account. \$200,000. Again
17 WW.

18 Given the evidence as I follow it now, that
19 Mr Misick personally receives the instructions,
20 personally writes out the forms, personally knows full
21 well against which account these will be debited,
22 I simply seek an explanation in each of those couple of
23 dozen cases as to why he would allocate it against
24 Windsor West; what is the true significance of
25 Windsor West?

1 (12.15 pm)

2 A. If you would take the schedule, you would see that in
3 each case, for each of those items that you mentioned,
4 those funds were later posted to Michael Misick's
5 account within the firm. I don't see in any of that
6 where any of this, these are the items to which we
7 refer, that they were omitted from Michael Misick's
8 account, they are allocated to Michael Misick's account
9 and that is my explanation.

10 Q. I am going to move on to a separate topic. You have
11 told us, sir, that there were a number of loans made to
12 the Premier. In the statement that you gave to the
13 Commission, you told us that on 29th July --

14 SIR ROBIN AULD: Where are you reading from?

15 Q. I am relying upon your statement at page 7, (v). Do you
16 have that?

17 A. Yes.

18 Q. Page 7, (v). You told us and this is the first that the
19 Commission learnt of this, that on 29th July 2005,
20 the firm, that is Chalmers & Co, received a loan sum of
21 \$250,000 on behalf of the Premier, that loan coming from
22 Inazio and Caetan Caltigirone; that being presumably
23 a transfer of money into your account and you say
24 the same was a loan advanced to him. Do you recall
25 that?

1 A. Yes.

2 Q. When that money arrived, into which bank account was it
3 paid when you received it?

4 A. First Caribbean.

5 Q. Were you given any explanation as to the purpose of that
6 loan?

7 A. No.

8 Q. Were you given any advance warning by the Premier that
9 you would be receiving that loan?

10 A. I might have. I can't say conclusively.

11 Q. Did you transfer that money on to the Premier in person,
12 direct?

13 A. No, I believe the funds were paid out in expenses, on
14 behalf of the Premier.

15 SIR ROBIN AULD: Just identify the amount of the loan,
16 Mr Milne.

17 MR MILNE: \$250,000, sir.

18 SIR ROBIN AULD: That money was paid out in expenses, do you
19 say?

20 A. Yes.

21 SIR ROBIN AULD: On behalf of -- to the minister or on
22 behalf of the minister?

23 A. That was paid out on behalf of the minister.

24 MR MILNE: It was paid out to third parties but not to him
25 direct, not transferred into his bank account or bank

1 accounts, yes?

2 A. It was paid on his behalf.

3 Q. On his behalf?

4 A. Yes.

5 Q. Did you keep a record of the parties to whom it was

6 paid?

7 A. Yes, if you can look at the schedule, page 1. You see

8 the 250 coming in on 29/7/2005.

9 SIR ROBIN AULD: Which date?

10 A. 29/7/2005. You see against that 250,000, you see

11 a number of payments made on behalf of the Premier.

12 SIR ROBIN AULD: Schedule item 1.

13 A. Page 1 of the schedule.

14 MR MILNE: That is the money coming in, yes?

15 A. Yes.

16 Q. 29th July 2005. Presumably upon receipt, you would have

17 notified the Premier that you had received that money on

18 his behalf?

19 A. I would have.

20 Q. And asked for his instructions as to how he wished it to

21 be dispersed, if at all?

22 A. I would not ask.

23 Q. You would not ask?

24 A. No.

25 Q. He would just tell you?

1 A. If he had any.

2 Q. Payments out of that money, does it simply go into

3 the pool that you hold on his behalf?

4 A. I don't understand the question.

5 Q. Would you simply be holding a balance of money on his

6 behalf?

7 A. I would, yes.

8 Q. The balance that we see on the right-hand column then of

9 this schedule, is that the running balance at any given

10 time purely on behalf of the Premier?

11 A. Yes.

12 Q. So prior to this, prior to that payment in on

13 29th July 2005, had you been holding any funds at all on

14 behalf of the Premier?

15 A. I might have but that is when my accounting really

16 started.

17 Q. Because what this says is that with the payment in of

18 \$250,000, you then held 250,000, suggesting that

19 the prior balance was nil?

20 A. This is when the firm's accounting started. I might not

21 have had any funds before that, but I can't say

22 exclusively because we have no records in our office.

23 SIR ROBIN AULD: Start of this type of account?

24 A. Yes.

25 MR MILNE: Let's be clear. This is the first time you

1 started using, what, Quick report?

2 A. This is the first time we started using this accounting

3 system. This is the first record --

4 SIR ROBIN AULD: This is a computer program.

5 A. Yes. This is the first records of funds coming in on

6 the Premier's behalf.

7 MR MILNE: This is a computer ledger essentially, payments

8 in, payments out, yes?

9 A. Yes.

10 Q. So that at any given time you should be able to switch

11 on your computer and find immediately what do I hold for

12 the Premier as indeed you could for any other client?

13 A. Right.

14 Q. Prior to the adoption of this system, how long had your

15 firm been running as of 29th July 2005? How long had

16 the firm been running then?

17 A. I would say maybe a couple of months.

18 Q. Just a couple of months?

19 A. Yes.

20 Q. Did you have a written ledger before that?

21 A. No, we didn't have a written ledger.

22 Q. How did you keep records of your client account then?

23 A. We kept records -- in most cases the only client I had

24 at the time was -- would have been a client in relation

25 to condo development projects and those records were

1 kept on the client's file.

2 SIR ROBIN AULD: That is another client, is it?

3 A. Not related to the Premier at all.

4 SIR ROBIN AULD: That is what I said, another client?

5 A. Yes.

6 SIR ROBIN AULD: You are saying that before July 2005 you

7 only had one client?

8 A. No, I am saying before July 2005 the clients I had

9 weren't many.

10 SIR ROBIN AULD: Weren't many?

11 A. Were not many, no, because we had just started out.

12 MR MILNE: Obviously one starts small and builds up and

13 presumably in the first few weeks you would have had

14 a handful of files open, no more than that, and hoping

15 to build to a few dozen and so on and so forth. But you

16 kept no client ledger, no client account ledger at that

17 stage, simply a record kept against each individual

18 file?

19 A. We kept a record and then we had our accounts

20 outsourced, we had somebody outside of the office do our

21 accounts.

22 Q. They would have provided you with books?

23 A. Yes, they would have.

24 Q. I take it that the Bar Association here requires, as it

25 would in most countries, that books are carefully kept

1 and are available for checking by the professional
2 disciplinary organisation?

3 A. I am not sure what the position is here.

4 Q. But you were under a professional obligation to keep
5 records?

6 A. And I did that.

7 Q. Would you also be under a professional obligation to
8 keep a record of the work done so that you would know
9 how many files had been opened at any given stage?

10 A. Yes.

11 Q. Would you therefore be able to say whether or not as at
12 29th July 2005 you had any prior instructions for any
13 prior funds from the Premier?

14 A. I would say no on the face of this document because
15 these documents reflect the opening of the client
16 account.

17 Q. On the basis of this, you are confident that the Premier
18 had not instructed you before you were invited to hold
19 these funds for him?

20 A. I would say pretty comfortably.

21 Q. Pretty confidently, was that? I am sorry, sir, I am
22 just trying to -- I didn't catch quite the word. You
23 were pretty confident?

24 A. Comfortable.

25 Q. That there were no earlier files?

1 A. Yes.

2 SIR ROBIN AULD: What I have written is: previously I had
3 clients before this date and kept a record of client
4 accounts but kept none for the Premier?

5 A. Well, the Premier would not have been my client prior to
6 that.

7 SIR ROBIN AULD: That is what I understand.

8 A. Correct, yes.

9 MR MILNE: So, essentially, from that point where
10 the quarter of a million came in on 29th July --

11 A. Let me make one point of clarification because I might
12 be wrong.

13 SIR ROBIN AULD: You might be wrong about that?

14 A. Because I did do some work for the Premier when I was at
15 the firm of Misick & Stanbrook. That is in relation to
16 Windsor Investment Group. So this was prior to the 2005
17 when we -- when I started on my own.

18 SIR ROBIN AULD: The uncertainty if it is important is
19 easily dispelled because you were bound to keep client
20 account separately before July 2005, if you had any
21 clients, and no doubt you have copies of that account.

22 A. Yes.

23 MR MILNE: Let's assume this is complete. You received
24 \$250,000, you then make a number of payments presumably
25 at the request of the Premier?

1 A. Well, sometimes at the request of the Premier and
2 sometimes the earlier ones -- the earlier ones would
3 have been at the request of the Premier and the later
4 ones would have been at the request of both the Premier
5 and his wife.

6 Q. She may well have had a role in it but who was
7 signatory, who was instructing you in relation to this?
8 Did you receive instructions from both the Premier and
9 his wife?

10 A. Correct.

11 Q. So from your point of view, there was no distinction.
12 Either of them could direct you to transfer money from
13 this account, this client account?

14 A. Yes.

15 Q. The funds come in from various different sources and
16 the funds go out. Can you explain, please, what is
17 meant by "split", the column that is headed "Split", and
18 under which for the first and several entries, it is
19 simply "Chalmers client bank account". What is meant by
20 that?

21 A. Where are you referring to?

22 Q. I am looking at your spreadsheet, your account Quick
23 report.

24 A. Item number?

25 Q. It is the very beginning, sir, what we were looking at

1 at the top. At the very top there is a series of column
2 headings and there is a column which is headed "Split",
3 about four from the right. What is the significance?
4 What do we understand from that?
5 A. I don't know what that means at all.
6 Q. Well, it has either been entered as "Chalmers client
7 bank account", or further down, there are debits which
8 are marked 1010.2, Belize Bank client, and then a bank
9 account number. The bank account number there is the
10 same one that we saw earlier on, written onto the debit
11 slip, isn't it?
12 A. Okay.
13 Q. Ending 75?
14 A. I can make an educated guess and say split means split
15 between all of my client accounts.
16 SIR ROBIN AULD: You split it between the three client bank
17 accounts.
18 A. I would assume that is the meaning of that split.
19 SIR ROBIN AULD: That would be when times were hard,
20 I suppose, would it? To keep a sort of --
21 A. Yes.
22 SIR ROBIN AULD: -- minimum credit in each or as near as
23 possible.
24 A. Yes.
25 MR MILNE: But the \$250,000, which you received, would have

- 1 gone into one of your bank accounts?
- 2 A. First Caribbean.
- 3 Q. First Caribbean.
- 4 A. Correct.
- 5 Q. Barring the need for immediate transfers long distance,
- 6 it is clear that it remains in that, because if we look
- 7 to the left of that, there is a column where it simply
- 8 says "name" and after the first entry, which is Inazio
- 9 Caetan, then the next four entries are simply
- 10 First Caribbean International Bank?
- 11 A. Correct.
- 12 Q. So the money has gone into that. The money is being
- 13 dispersed from that and it is clear that there is
- 14 a transfer to cover what appears to be school fees.
- 15 There is a transfer which simply says "L McCoy",
- 16 a further transfer that says "Horizon credit card" and
- 17 the next one says "L McCoy's mum".
- 18 A. Correct.
- 19 Q. So these are payments out, no doubt directed by
- 20 the Premier and recorded. How would you receive your
- 21 instructions to move money?
- 22 A. I receive instructions in most cases verbally.
- 23 Q. How would you record it?
- 24 A. It is recorded by the transactions or the actions that
- 25 I take, that the firm takes in relation to those

1 instructions.

2 Q. We see wire transfer instructions to banks,

3 First Caribbean or Belize Bank. Is there no other

4 record kept?

5 A. No.

6 (12.30 pm)

7 Q. Were you ever concerned that you might move money and

8 subsequently your client come back, be it the Premier or

9 indeed anybody else, and say: hang on a second, I didn't

10 tell you to do that. Didn't you want a written record

11 to say: I have your authorisation to move the money, to

12 pay this bill --

13 A. I would not worry about that simply because the bank

14 requisition or the bank wire fund instructions clearly

15 indicates whose account the money went to and obviously

16 that would record the client's instructions. The client

17 can't then come back and say: I didn't tell you to send

18 it to this person's accounts or that person's account

19 because obviously the record is clear and the bank stamp

20 in the case that it is done.

21 Q. It is clear where the money went. What I am getting at

22 is a different point. You need authorisation to move

23 money particularly when we are talking about very large

24 sums of money, a third of a million, half a million

25 dollars at a time. Did you not keep a written record

1 other than the transfer forms themselves of
2 authorisation?
3 A. That is my answer. I didn't keep a written record.
4 Q. There is no diary?
5 A. No.
6 Q. No note that: received call from Michael, please move
7 \$1 million.
8 A. Nothing of that sort.
9 Q. So these monies go into the client account. They are
10 held and then they are dispersed from the client
11 account, yes?
12 A. Yes.
13 Q. You also went on, we dealt with the loan from
14 Inazio/Caetan Caltigirone and it would appear that not
15 long after that, November, and we have this, I think, at
16 the sixth entry on that schedule, the Premier received
17 another loan.
18 A. Correct.
19 Q. From his brother, your brother, Philip Misick.
20 A. Correct.
21 Q. In fact, it was a loan split into two parts. \$250,000
22 received in November. Let's be precise if we can. It
23 would appear to be 15th November that it is recorded
24 against the ledger, yes?
25 A. Yes.

1 Q. A few months later, 3rd February, another \$250,000.
2 Yes?
3 A. Yes.
4 Q. Again, did that simply remain in the account and you
5 used it for matters directed by the Premier?
6 A. Correct.
7 Q. He would have been aware that he had received that
8 \$250,000 and a further 250,000?
9 A. Yes.
10 Q. So within the first seven or eight months of operating
11 this client account, he had had three-quarters of
12 a million dollars in loans paid into the account?
13 A. Yes.
14 Q. Again, with the Philip Misick payments in, going into
15 the First Caribbean Bank?
16 A. It would probably be First Caribbean Bank, yes.
17 Q. Again, did you ever find out what the purpose of that
18 loan was?
19 A. No.
20 Q. Did you ever ask?
21 A. No.
22 Q. Both of the parties are your brothers; you were not
23 party to any discussion about why Phillip should be
24 providing half a million dollars to the Premier?
25 A. That is not unusual in our family to lend money to each

1 other.

2 Q. It is not unusual to loan money?

3 A. Yes.

4 Q. Is it unusual to loan large amounts of money and then

5 not discuss why it is being loaned?

6 A. Large is relative.

7 Q. We are starting to learn that, sir. You don't regard

8 this as large?

9 A. Well, do you?

10 Q. It is not what I consider it, sir.

11 SIR ROBIN AULD: Don't ask him. He might give you an answer

12 you don't like.

13 A. Yes. 250 is not an insignificant amount but in

14 the whole scope of things, I don't think it is a huge

15 amount.

16 MR MILNE: Let's see if we can put it in context. As

17 Premier we know that the Premier receives a salary,

18 an annual salary of \$150,000 with expenses that comes up

19 to about \$288,000. That is now public knowledge. So in

20 the space of about six/seven months, he has received

21 loans which are close to three times his annual salary,

22 without any obvious explanation being offered as to why

23 he would need to borrow that amount of money.

24 A. I can't answer the question why. I am sure that is

25 something you could pose to him.

1 Q. Well, if he told us about it, we would have asked him,
2 but he didn't tell us about it. You, if I follow
3 correctly, are not being asked at this stage to use this
4 money for any business investment. You were not being
5 asked to purchase a property, make a down-payment on
6 a property, make a down-payment on a business. You are
7 simply spending it as and when he requests on matters
8 such as paying off credit cards, making payments to his
9 wife or his wife's mother. Yes?

10 A. That is correct.

11 Q. On the face of it, it is spending money.

12 A. I don't know what it is.

13 Q. Funds also come in from other sources. He receives
14 a little over \$1 million and the proceeds of sale, you
15 record, have -- proceeds of sale of property to
16 a company called Solana Limited. We may come back to
17 that. But you were involved in that investment, were
18 you not?

19 A. Say again?

20 Q. You were involved in the sale, you were involved in
21 Solana Limited and the business dealings that went on
22 there?

23 A. Yes.

24 Q. We will probably come back to that later. So \$1 million
25 comes in from that, yes?

1 A. Yes.

2 Q. There is a debit of \$1.173 million, where all it says is
3 Belize Bank, Solana's payment. What do we understand by
4 that? Where was that payment going out to?

5 A. That payment is going out to -- as I understand it,
6 the Premier had an overdraft or an existing loan on
7 Belize Bank and that payment, I was under an obligation
8 to pay the proceeds of the sale of his shares in Solana
9 to the bank.

10 Q. Because the payment in of 12th December says "proceeds
11 of sale, Solana". There is then what is clarified as
12 an adjustment, which is a further \$100,000 in. But then
13 the payment you say is paying off an overdraft is marked
14 as Solana's payment? Would you agree it is not
15 desperately clear from that? This, you say there was
16 a payment out to the Premier's Belize Bank account
17 simply to cover an overdraft.

18 A. That is my instructions, to transfer 1.20 over to
19 Belize Bank. I had given the bank an undertaking that
20 upon closing, I will transfer proceeds of the sale to
21 them and that is what I did.

22 Q. So he has had a lot of money come through, and indeed he
23 receives on 20th February 2006 a further \$161,618.92.

24 Yes?

25 A. Yes.

1 Q. That is from Floyd Hall?

2 A. Correct.

3 Q. If my recollection serves me correctly, that was a gift.

4 A. I don't know what it was.

5 Q. We will check back. I don't want to misrepresent any

6 sum. But did you at any stage query why

7 the Deputy Premier was transferring such a precise

8 figure, 161,618.92, into the Premier's bank account?

9 A. I didn't inquire.

10 Q. You didn't inquire?

11 A. No, I didn't.

12 Q. Further debits, including a debit to American Express,

13 Youlanda Scott. Then it says customer debt on the next

14 line. Customer deposit?

15 A. Yes.

16 Q. That tells us almost nothing, the customer being who,

17 the Premier?

18 A. Yes.

19 Q. So the Premier came and paid --

20 SIR ROBIN AULD: Which item is this please?

21 MR MILNE: It is line -- the line is not numbered, I am

22 afraid, sir.

23 SIR ROBIN AULD: Under which item?

24 MR MILNE: It is the deposit. If one looks in the left-hand

25 column, it is number 7, which is Youlanda Scott. It is

1 the line after that, 23rd February 2006. Simply

2 customer deposit.

3 So he just came and paid \$25,000 into the client

4 account?

5 A. No, no, customer deposit is an extract from the bank's

6 information. So it means that somebody from my office,

7 maybe the accounting officer, deposit \$25,000 into

8 Chalmers & Co client account.

9 Q. But it was posted against the Premier's client account

10 records.

11 A. As I understand it, you are saying that the Premier

12 walked into the First Caribbean Bank and deposit \$25,000

13 into my client account.

14 Q. Somebody did. It says customer deposit and I take it

15 from that it would suggest that your client is the

16 Premier. You are saying it could be somebody else?

17 A. No, I am explaining to you that I am the bank's

18 customer. When the bank says customer deposit, the bank

19 is referring to me and not the Premier.

20 Q. What is that money for then?

21 A. The money, if you go down to the subsequent entries, you

22 will see where the money and how the money was spent.

23 Q. I can see how it is spent, but why is it put in, who

24 puts it in?

25 A. The firm put it in.

1 Q. Why did the firm put it in?
2 A. Because the client asked us to put it in.
3 Q. Where did it come from?
4 A. I didn't ask him.
5 Q. So it came from the client?
6 A. Correct.
7 Q. Right. I think that was the question -- that was
8 the answer we were seeking from the question. You were
9 given --
10 SIR ROBIN AULD: To be fair to Mr Chalmers Misick, I did
11 have that answer a little while ago and I had already
12 put "MM" next to "customer deposit". I think he did say
13 that.
14 MR MILNE: I apologise --
15 SIR ROBIN AULD: Easy to miss sometimes.
16 MR MILNE: -- if I missed that. So the customer -- let's
17 avoid the expression, I think that is safer. The client
18 in this case is the Premier. The Premier provides you
19 with \$25,000 and you pay it into the client account.
20 A. Correct.
21 Q. But beyond that, no record as to the reason why he would
22 not make that particular payment?
23 A. I didn't inquire, no.
24 Q. One could look at this and to some extent think
25 essentially you are operating a bank account for him.

1 Would you not agree?

2 A. No, I disagree completely.

3 Q. Because over the period that we are looking at, and
4 the page that we have here -- this is the first page of
5 the schedule. There are many payments in and many
6 payments out. We are only covering a period of a little
7 over a year from the start of business in July 2005.

8 This takes us through in effect 13/14 months to October
9 of 2006. There are quite a number of payments in and
10 payments out. You are making payments to his wife,
11 payments to his wife's mother. Payments to his credit
12 card bill. You appear to be doing his banking for him
13 on the face of it. You disagree with that
14 characterisation?

15 A. I disagree completely.

16 Q. Did you ever say to him: pay your own credit card, you
17 have got money in your bank accounts; did you never
18 suggest that?

19 A. No.

20 Q. What were you charging him as an attorney for doing this
21 sort of work? How was it calculated?

22 A. How is that relevant to --

23 SIR ROBIN AULD: It is a question I was going to ask at the
24 end of the subject. Please would you answer it.

25 A. How was I charging him?

1 SIR ROBIN AULD: Were you charging him?

2 A. I was, yes.

3 SIR ROBIN AULD: Where is it recorded?

4 A. It would be recorded in my client account.

5 SIR ROBIN AULD: It was recorded in your client account.

6 MR MILNE: Is it recorded in this client account?

7 A. It is not reflected here.

8 Q. Because there don't appear to be any debits that I can

9 see where it is clearly fees charged.

10 SIR ROBIN AULD: I don't see how it could have been because

11 you have told Mr Milne a little earlier that this is

12 a running total in the far right-hand column, and if

13 this was a true account of the client account, one would

14 expect to see the occasional debit affecting that

15 running account.

16 A. Yes. If you bear with me, you will appreciate that we

17 had to redact our client account to extract this

18 information.

19 SIR ROBIN AULD: You had to what?

20 A. Well, we had to extract this information from our forms

21 account and then go to the records and make sure

22 everything was proper.

23 SIR ROBIN AULD: So the running account in the far

24 right-hand column does not reflect what was in

25 the original client account?

1 A. It does, except that the legal fees are not here and for
2 some reason --

3 SIR ROBIN AULD: It cannot reflect the running client
4 account if some debits are not there that should be
5 there.

6 A. I take your point.

7 MR MILNE: So where would we find the fees charged to
8 the Premier?

9 A. I can provide it.

10 Q. From which account would they have been debited?

11 A. The Premier's account. The Premier's account with the
12 firm.

13 SIR ROBIN AULD: It is which? Where do you say -- somebody
14 coughed and I didn't hear you.

15 A. The Premier's account.

16 MR MILNE: One aspect of a client account, the attorney's
17 client account which is, I would suggest, central is
18 that the client does not operate an overdraft with his
19 attorneys, does he?

20 A. Correct.

21 Q. You have a client account into which you place monies
22 from perhaps dozens, maybe even hundreds of clients.
23 Obviously money is money. It just swirls around. It is
24 one big pot of money.
25 Within that pot it is essential, under your duties

1 as an attorney, you can say on any given day at any
2 given time, precisely how that is divided up between
3 your clients. So you can't debit from client 1, you
4 can't dip into client 1's money to pay client 2?

5 A. I am aware of that.

6 (12.45 pm)

7 Q. Therefore you must know, your accounting system must
8 show you exactly to the penny how much money your client
9 has?

10 A. Yes.

11 Q. For the simple reason that if you -- say he has \$14,000.
12 He asks you to pay out 15,000. You pay out 15,000. You
13 have inadvertently at that stage paid \$1,000 of somebody
14 else's money.

15 I don't wish to labour the point, but I don't
16 understand, if this is the computerised ledger for
17 the firm, how it can be created without showing
18 the debits for the work done.

19 A. That is a computerised ledger form and I undertake to
20 provide the additional information.

21 SIR ROBIN AULD: That does not answer Mr Milne's question,
22 does it?

23 A. Right.

24 SIR ROBIN AULD: I think we all understood this to be
25 a reproduction of your client account. In fact that is

1 what I have written here. The computer office record of

2 payments in and out of Michael Misick's client account.

3 A. Right, yes.

4 MR MILNE: How do you calculate what he owes you? What is

5 the approach that is taken?

6 A. The way the firm -- in this case the firm has escrow

7 accounts for each client, but that doesn't mean that

8 every transaction that this client has goes to the same

9 account. For example, if Michael Misick has -- is doing

10 a transaction with John Brown, it would have a separate

11 account that says Michael Misick John Brown.

12 Michael Misick is buying a piece of land from somebody

13 else, there would obviously have to be separate accounts

14 because the funds have to be accounted for differently.

15 SIR ROBIN AULD: We are talking about your client account.

16 Otherwise you would be using somebody else's money to

17 pay for the services you provide for the Premier

18 possibly. What was the basis of your charging

19 Mr Misick? Was it a percentage charge on the value of

20 the money moved or what?

21 A. On the loan transactions or generally?

22 SIR ROBIN AULD: Whenever you did anything for him, what was

23 the basis of your charging, by the hour or by

24 a percentage of value or what?

25 A. For the land transaction, it would be a percentage of

1 value. For office work, we would charge him a set fee.

2 SIR ROBIN AULD: That includes moving money, does it?

3 Office work?

4 A. If we were to go and do a wire transfer, we would bill

5 him as administrative work.

6 SIR ROBIN AULD: You are not being clear, I am afraid.

7 Percentage of value of land, where land transactions,

8 where office work, which I take to include movement of

9 money --

10 A. That would be based on a hourly basis.

11 SIR ROBIN AULD: Hourly charges, and that is what we will

12 find in the records you are going to produce to us of

13 the debits to his account for work done by your firm?

14 A. Correct.

15 SIR ROBIN AULD: Forgive me, Mr Milne, while it is in my

16 mind. What was your percentage charge to Mr Misick for

17 transactions that you did for him in relation to land?

18 A. 1 per cent. It ranges between 0.8 and 1 per cent.

19 Q. 1 per cent of the value of the transaction?

20 A. Between 0.8 and 1 per cent.

21 SIR ROBIN AULD: I didn't hear.

22 A. It varied between 0.8 and 1 per cent.

23 SIR ROBIN AULD: What about your hourly charge?

24 A. 350 an hour.

25 SIR ROBIN AULD: Any other charges?

1 A. Charges would be administrative charge, like
2 incorporating companies, filing annual returns, general
3 administrative.
4 SIR ROBIN AULD: How was that calculated?
5 A. Those are based on a one-off fee because these are
6 annual --
7 SIR ROBIN AULD: Separately negotiated fees?
8 A. Yes.
9 SIR ROBIN AULD: They too will appear identified as such,
10 will they, in the figures you are going to produce for
11 us?
12 A. Correct, correct.
13 MR MILNE: Is there a separate ledger account for Lisa-Raye
14 McCoy Misick?
15 A. No.
16 Q. There is not?
17 A. No.
18 Q. So any bills that were incurred --
19 A. Let me start back. There is one for Lover Fund that
20 she -- but that is in relation to Lover Fund account and
21 Lover Fund has its own bank account.
22 Q. It has its own bank account. It has a separate ledger
23 account, does it?
24 A. Lover Fund has a separate ledger account as well.
25 Q. Was Lisa-Raye then billed separately for the work done

1 in relation to Lover Fund Limited?

2 A. Was she billed?

3 Q. Yes.

4 A. She had not been billed yet but she will be billed.

5 Q. She had not been billed yet?

6 A. Right.

7 Q. But she will be billed?

8 A. Correct.

9 Q. For what period is she going to be billed?

10 A. For all the work that the firm has done for her.

11 SIR ROBIN AULD: Do you have a record of that, do you?

12 A. I would have a record, I don't have it in my head but

13 I can certainly provide that.

14 Q. So there are no outstanding fees at present because she

15 has not had a bill?

16 A. Well, she has not been presented with a bill.

17 I enquired of her attorney whether or not I should send

18 them a bill and they said they cannot answer that

19 question so where was I to send a bill?

20 Q. The work you have done for her is simply establishing

21 Lover Fund, yes?

22 A. Lover Fund, Picture Perfect Production,

23 My Way Productions, arranging a contract with

24 the casino.

25 Q. So it goes beyond Lover Fund. It is My Way Productions

1 as well?

2 A. Yes.

3 Q. And indeed Picture Perfect Productions. Another company

4 you set up for her?

5 A. Yes.

6 SIR ROBIN AULD: Did you say her work for the casino?

7 A. Yes, her work for the casino.

8 SIR ROBIN AULD: She had a contract, did she?

9 A. There is a contract, I just can't put my hand on it.

10 I know there is one.

11 SIR ROBIN AULD: You drafted the contract?

12 A. Correct.

13 MR MILNE: We will come back to a number of these matters in

14 due course. What we are seeking to deal with, and

15 I hope we will complete before the lunch break, is

16 simply this, loans.

17 As your ledger for the Premier appears to indicate,

18 the Premier had three-quarters of a million dollars paid

19 to him in loans from the Caltigirones and your mutual

20 brother Philip. Plus he sold some land, which resulted

21 in him being paid \$1.1 million. That's all in

22 the latter part of 2005. Yes?

23 A. Yes.

24 Q. So if we look at this schedule, by the latter part of

25 2005, indeed the early part of 2006, when the second

1 tranche of money from his brother went in, that being
2 February -- 3rd February, he had a running total with
3 your firm of \$593,000. So quite a substantial sum in
4 the client account. Is that right?

5 A. Yes.

6 Q. A further 161,000 comes in from Floyd Hall which we have
7 already touched upon. That is only a matter of a few
8 weeks later. So by then he is up to \$700,000. There
9 are various payments out. Something on behalf of his
10 wife, American Express, Youlanda Scott. So the total
11 dips a little bit, \$25,000 comes in and then some
12 further payments out are made, including payments to his
13 wife, Youlanda Scott, his American Express card. It
14 carries on like that. You tell us, however, that you
15 then loaned your brother a series of sums of money,
16 totalling \$455,000. Is that right?

17 A. That is correct.

18 Q. 125,000 was the first tranche. Is that right?

19 A. Yes.

20 Q. A further 200,000 after that. Yes?

21 A. Yes.

22 Q. Then additional sums, \$50,000 and \$80,000, yes?

23 A. Were paid out.

24 Q. Bringing the whole total to \$455,000. Did you ever ask
25 your brother: why do you need to borrow nearly half

1 a million dollars from me.

2 A. I have.

3 Q. What was the explanation that you got?

4 A. He had bills to pay.

5 Q. You had seen him borrow three-quarters of a million

6 already because he had bills to pay. Had you seen him

7 pay back any of that money to the Caltigirones?

8 A. Not at that time.

9 Q. Had you paid any of it back on his behalf?

10 A. No.

11 Q. Had you seen him pay back any of the money he had

12 borrowed from Philip?

13 A. No.

14 Q. Or been asked to pay for it on his behalf?

15 A. I don't know if he was asked to pay any. I have not

16 been asked to pay any on his behalf.

17 Q. We have his record that he borrowed that money from you

18 and indeed we are told he was borrowing from other

19 people at the time as well. This is back -- the early

20 part of 2006. For clarity, the loan that was made to

21 him, the initial loan of \$125,000, was on 6th July 2006,

22 wasn't it? That is the first money that you loaned to

23 him. Correct?

24 A. Yes.

25 Q. If we look at page 12 of your bundle, that is divider 1,

1 page 12. That is 6th July 2006, isn't it?

2 A. Yes.

3 Q. That is the transfer of \$125,000 to Michael Misick and

4 Lisa-Raye McCoy, and indeed it is paid into their

5 HSBC Bank account. We know in fact that that is

6 an account held at Beverly Hills, California?

7 A. Yes.

8 Q. You tell us it is the loan that you made, is that

9 correct?

10 A. That is the loan.

11 Q. That is not?

12 A. Just a minute, just to check.

13 Yes, that will be the loan, yes.

14 Q. So could you tell me this, please, sir: why is it coming

15 out of your client account.

16 A. Because what we do in the firm is we, on a monthly

17 basis, would transfer fees from our client account to

18 our operating account.

19 Q. Why do you do that?

20 A. Because that is the system we set up in the office.

21 Q. So you dip into the client account or you settle bills

22 from the client account? Which are you telling us?

23 A. I transfer my fees on a monthly basis as fees. It is

24 not client's money, it is my money.

25 Q. Well, that would be reasonable, you would transfer

1 the fees out of the client account into your working
2 account and you would have fee notes reflecting
3 the money that was being debited, correct?

4 A. Correct.

5 Q. Where are those fee notes for this sum?

6 A. I can undertake to provide those fee notes.

7 Q. Yes, please. We would ask that you do that. Can I ask

8 the same question again: if you are going to transfer
9 into your business account, into your working account,
10 why did you not do that. Why did you take money
11 straight out of the client account and pass it to
12 the Premier?

13 A. Because, like I said before, we are a small firm. We
14 were not using client funds. The funds were our funds
15 and I didn't -- I didn't see any difficulty in
16 transferring the money which was my money to the
17 Premier.

18 Q. You have agreed the client account is not your money.

19 The client account is client money. It may in due
20 course become your money but as it is in the client
21 account, it is the client's money?

22 A. If the client give me instruction to move the fees,
23 the fees becomes my money. Whether it is in the client
24 account or in the operating account, it is a different
25 matter, but if I have already gotten instruction to move

1 the money, it is my money. That is the way I see it and
2 that is the way I treated it.

3 Q. How much do you take each month?
4 A. I don't know.

5 Q. How much do you bill each month?
6 A. I don't know.

7 Q. You must have some idea, it is a small firm. You would
8 be keeping an eye on how much money your firm is
9 earning, otherwise you might go bankrupt?

10 A. That might happen but I can't tell you off the top of my
11 head because whatever I say here, you are going to hold
12 that it is correct and I can't -- I don't want to
13 speculate on what my intake is.

14 Q. You won't speculate on that?
15 A. I would not speculate, no.

16 Q. So we will come back to this after the lunch break.
17 That may be appropriate.

18 SIR ROBIN AULD: I would just like to ask one question
19 before we leave it. When you loaned your brother
20 the Premier money, did you charge him interest?

21 A. I didn't charge him interest, no.

22 SIR ROBIN AULD: Did you charge him a fee?
23 A. For arranging the loan?

24 SIR ROBIN AULD: Anything.
25 A. No.

1 SIR ROBIN AULD: Did you charge anything for lending him
2 money?
3 A. I didn't, no.
4 SIR ROBIN AULD: Thank you. 2.10.
5 (1.00 pm)
6 (The short adjournment)
7 (2.10 pm)
8 SIR ROBIN AULD: Good afternoon, everybody. Mr Milne.
9 MR MILNE: May it please you, sir. Mr Misick --
10 SIR ROBIN AULD: They are not here so I can't say it. Just
11 continue, Mr Milne, and when all counsel come in I will
12 maybe interrupt you.
13 MR MILNE: Certainly, sir.
14 Mr Misick, before lunch we were dealing with
15 the loan that you have told us about of \$125,000 that
16 was made from you to your brother the Premier on
17 6th July 2006.
18 You accept that that money came directly out of your
19 client account?
20 A. No, I don't. That is a point of clarification I would
21 like the Commissioner to make note of, in the records at
22 page 101.
23 Q. 101 of what?
24 A. Of the transcript.
25 SIR ROBIN AULD: Which transcript?

1 A. The current transcript. I had a chance to take a look
2 at it.

3 SIR ROBIN AULD: 101 of today's transcript.

4 A. The impression is that the funds that I transferred from
5 Michael Misick were my client funds. I would like to
6 clarify that that was not the case.

7 MR MILNE: Right. Do you agree that they came out of your
8 client account?

9 A. They came from funds deposited into my client account by
10 myself. If you look at 76, August, you will see
11 Michael Misick loan from Chalmers & Co, you see 325,000
12 deposited from Michael Misick's account.

13 SIR ROBIN AULD: What are you looking at now, please?

14 A. I am looking at page 1 of the schedule.

15 SIR ROBIN AULD: Item?

16 A. Item 07062006.

17 SIR ROBIN AULD: Thank you very much.

18 MR MILNE: Well --

19 A. I would like the record to reflect --

20 Q. Page 1 of the schedule. Let's clarify this because I am
21 sure it is important. Page 1 of the schedule. You say
22 that you had paid money both your own client account?

23 A. I have paid money into this escrow account as a loan to
24 Michael Misick.

25 SIR ROBIN AULD: Paid into my account as a loan to him?

1 A. Yes.

2 MR MILNE: Where do we see that?

3 A. You see a general journal entry, 0706 Michael Misick,
4 loan from Chalmers & Co and you see an amount of
5 \$325,000.

6 Q. Sir, forgive me, you are rattling along. You say entry,
7 are we looking at the first page of the schedule?

8 A. Yes.

9 SIR ROBIN AULD: Try the first column for a start. Which
10 item number are we looking under?

11 A. If we look between --

12 MR RIGBY: Between 12 and 13.

13 SIR ROBIN AULD: Thank you.

14 MR MILNE: Between 12 and 13 there is an entrance there that
15 says Michael Misick, loan from Chalmers & Co, \$325,000.
16 This being on 6th July, yes?

17 A. Correct.

18 Q. You are saying that that is a payment -- that is
19 the loan that you make to your brother?

20 A. Correct.

21 Q. And this is being paid into which account?

22 A. This is being paid into my client account.

23 Q. It is being paid into your client account?

24 A. Correct.

25 Q. Which one? Which bank account?

1 A. I can't say off the top of my head but it has been paid

2 into -- I will have to check and see which one.

3 Q. You in fact tell us and you have told us in your

4 statement that you made two loans in the space of a few

5 days. \$125,000 and \$200,000?

6 A. That is not my evidence.

7 Q. You are sure about that?

8 A. I am sure about that.

9 Q. Let's look at the statements so we can be clear about

10 this.

11 As I recall, this is dealt with at page 7, (iv):

12 "During the period of 2004 to 2008 I lent

13 the Premier a total of \$455,000, the amount advanced in

14 two tranches, namely 325,000 disbursed in two payments

15 of 125,000 on 6th July and 200,000 on 13th July 2006."

16 You then go on to describe the second tranche --

17 that is in November -- being 130 split between 50,000 on

18 the 29th and 80,000 on the 30th. Let's leave those

19 aside for the moment.

20 The 325,000, your evidence to us, assuming you stand

21 by this statement, is you paid him 125,000 and then you

22 paid him 200,000. Yes?

23 A. That is my evidence.

24 (2.15 pm)

25 Q. You have told us that the two together are represented

1 by the payment in of 325,000 on 6 July?

2 A. That is correct.

3 Q. Which would mean that the statement that you gave the
4 Tribunal indicating it was 125, then 200, rather than
5 325 at one go is incorrect. According to the ledger you
6 gave him the whole 325 at one shot on 6th July?

7 A. That is what my statement said.

8 Q. Who made the statement?

9 A. This is my statement. That is what my statement said.

10 I paid 325 at once.

11 SIR ROBIN AULD: You are talking about your witness
12 statement, are you?

13 A. Yes.

14 SIR ROBIN AULD: Page?

15 A. Page 7, (iv).

16 MR MILNE: Is what we read here true? Is it true?

17 A. Yes, my statement is correct.

18 Q. So in fact you made two payments totalling 325 but
19 separated by a week on the 6th and then on the 13th?

20 A. Correct.

21 Q. This ledger says you made 325,000 on 6th July. So that
22 is in error. It may not be a big error but there is
23 an error there, isn't there?

24 A. How is that?

25 Q. Because you didn't give him 325,000 on the 6th, which is

1 what this says. You gave him two tranches, one on the
2 6th and one on the 13th. It may be the same total but
3 this is not accurate.

4 A. I gave him, that is correct -- 325 was given on the 6th,
5 which represents the advances of 125 and 200.

6 Q. You have just told us the statement is true, sir. Which
7 is it?

8 A. But the statement says that.

9 Q. The statement says you gave him 125 one week and 200
10 the next check?

11 A. Yes, that is correct, which totals to 325.

12 Q. Yes, I know it does. It comes to 325 but you gave him
13 it in two tranches, two portions of money. What we see
14 on your schedule, on your account Quick report is
15 the account it goes into. It goes into his client
16 account. We don't have a dispute with that. We are in
17 agreement. The issue I raised with you was where it
18 came from and you accepted before lunch, tell me if this
19 is not your evidence now, you accepted before lunch you
20 took it out of your client account.

21 A. That is not my evidence now.

22 Q. Where did it come out of then?

23 A. It was paid into Michael Misick's account from other
24 accounts I have.

25 Q. Which other accounts?

1 A. I have to check and see.

2 Q. So what is the document that we have been looking at on

3 6th July, where 125,000 came out of your client account?

4 What is that payment for?

5 A. Which page is that?

6 Q. That is the document we were looking at before lunch.

7 A. All right. I got it.

8 Q. What is that, is that another 125?

9 A. No, this is the same 125.

10 Q. That comes out of your client account, sir?

11 A. It does come out of my client account, but what I am

12 saying is it is not client funds.

13 Q. You are saying it is not client funds, but it was in

14 your client account?

15 A. No, I am saying I paid 325 in to reflect that Mike owes

16 me 325 in his escrow account, and I took the money out

17 and paid the expenses for him.

18 So that money is not client's money, it is my money.

19 Because the 325 was paid in and then used subsequently.

20 Q. So where on the schedule in that case is the 125?

21 A. The 125 is at 762006, just above the general entry.

22 Q. That is 125,100 in that case?

23 A. Yes, that is the bank fees above.

24 Q. So you are saying that is the money out?

25 A. Correct.

1 Q. But the money in, you have paid in from another source?

2 A. Correct.

3 Q. So you have gone to the trouble of gathering together

4 \$325,000 of your own money and rather than pay it to him

5 direct, you put it into the client account and then draw

6 it out of the client account?

7 A. That is for my own record-keeping.

8 Q. Why would you do it, though?

9 A. So I can keep a record of what was paid. Because I can

10 easily print it out and say: Mike, you owe me 325, here

11 it is today. I don't see the sense in setting up

12 separate files just to deal with the loan when I already

13 have an escrow account that deals with all

14 the transactions.

15 Q. Why were you loaning him that money?

16 A. He said he had bills he had to pay.

17 Q. At the point when that money is loaned, he has \$263,000

18 in the client account.

19 A. That is correct.

20 Q. So why did he need more money?

21 A. I didn't ask him.

22 Q. You didn't ask?

23 A. No.

24 Q. If Michael says, I want money, you just provide it, is

25 that it?

1 A. If I have it, I do.

2 SIR ROBIN AULD: Just don't leave this topic without

3 remembering that you have said that you will identify

4 from what source those funds came.

5 A. Which came?

6 SIR ROBIN AULD: The ones we are just talking about.

7 A. The 325.

8 SIR ROBIN AULD: Yes.

9 A. Yes.

10 MR MILNE: We are going to go further than that because you

11 lent him 455,000. So where did you get \$455,000 that

12 you were able to loan interest free?

13 A. I work as an attorney and I have other businesses in

14 the country that generates funds.

15 SIR ROBIN AULD: Other businesses, did you say?

16 A. That is correct.

17 SIR ROBIN AULD: You mean on -- your own businesses.

18 A. My own businesses, nothing to do with being a lawyer.

19 SIR ROBIN AULD: So that came from your own funds?

20 A. Yes.

21 MR MILNE: Have you been repaid any of that money?

22 A. No.

23 Q. Have you charged any interest on that money?

24 A. No.

25 Q. So you have had an outstanding loan for two and a half

1 years now, starting at \$325,000, creeping up a further
2 130,000, and you have loaned all that money and you have
3 not had a penny's interest and you have not had any
4 repayments?
5 A. That is correct.
6 Q. Have you asked for repayments?
7 A. I have.
8 Q. And what was the response?
9 A. I will pay you when I have the money.
10 Q. So he would repay you when he got the money?
11 A. Yes.
12 Q. You lend him 125,000, then 200,000 in the space of
13 a week. The following November, 29th November 2006, you
14 loan him another \$50,000.
15 A. Correct.
16 Q. The following day, 30th November, you loan him another
17 \$80,000?
18 A. That is correct.
19 Q. So you have put yourself out, quite considerably. You
20 have provided this money. Michael Misick clearly owes
21 you a considerable amount?
22 A. \$455,000, to be exact.
23 Q. You are well aware, because it has gone through your
24 account, that he owes your other brother 500,000 and he
25 has had a quarter of a million off his business

1 colleagues, the Caltigirones. Hasn't he? So Michael is
2 borrowing and borrowing and borrowing. Yes?
3 A. Yes.
4 Q. You know that Michael is spending this money on paying
5 off his American Express card because you are doing it
6 for him on occasions. You are using the money to make
7 enormous payments, I would suggest, on
8 the American Express card?
9 A. Correct.
10 Q. So Michael, having borrowed, is not economising, he is
11 not being careful; he is spending as if tomorrow will
12 never come. Is that not a fair characterisation of it?
13 A. That is yours, not mine.
14 Q. Not yours?
15 A. No.
16 Q. You felt Michael was entitled to spend hundreds of
17 thousands of dollars --
18 SIR ROBIN AULD: I think --
19 MR FITZGERALD: Sir, this witness cannot be expected to
20 denounce his own brother for financial improvidence.
21 SIR ROBIN AULD: I don't think you need trouble. It is
22 clearly very good material for a speech but not now.
23 MR MILNE: I apologise, sir, if I carried that too far.
24 SIR ROBIN AULD: Perhaps I could just add this: you knew
25 that while he was doing this that the loans weren't

1 repaid?

2 A. Well, I knew my loan wasn't repaid. I don't know about
3 the other people because I can't speak to that.

4 MR MILNE: I am going to take you forward then, sir, if
5 I could, please, to the following page.

6 Because on 14th May 2007 --

7 SIR ROBIN AULD: This is page 2?

8 MR MILNE: Page 2 of the schedule. 14th May 2007 at the
9 bottom end of that schedule. It should be relatively
10 easy to spot because on that day it is the last credit
11 in on that sheet.

12 A. Yes.

13 Q. He receives a loan of \$6 million. We have heard from
14 the Premier that the loan was initially designed,
15 initially intended to fund the purchase and/or
16 construction of a property in Los Angeles.

17 Yes?

18 A. Yes.

19 Q. We have heard from the Premier and indeed we have seen
20 documentation to support the contention that
21 a down-payment was made of some \$200,000, legal
22 documents drawn up. At some point, for whatever reason,
23 it matters not, somebody's mind was changed and
24 the project in Los Angeles was abandoned.

25 We further know, you may be aware of this, I don't

1 know, that in that process \$200,000 deposit had been
2 placed on account with, no doubt, attorneys or real
3 estate agents in California and that money was lost.

4 I am not concerned about that. 200,000, however,
5 leaves \$5.8 million. The Premier accepted when he was
6 questioned about this that rather than return the money
7 to the original bank, J&T Banka, he drew down on the
8 loan, put it into the account, putting it through your
9 accounts, and used it for a variety of disbursements.

10 We see from your schedule the receipt of \$6 million,
11 which arrives as a credit on that day. 14th May 2007.

12 Yes?

13 A. Correct.

14 Q. The very same day, the Premier makes a loan to
15 McAllister Hanchell of \$1 million. Yes?

16 A. Correct.

17 Q. The very same -- I beg your pardon, not the very same
18 day. The following payment out, 1st June, he makes
19 a transfer of \$1 million to My Way Productions 2
20 Limited. Yes?

21 A. Correct.

22 Q. According to your records, on 1st June he also transfers
23 to TD, which I take to be term deposit, another
24 \$1 million?

25 A. Yes.

- 1 Q. There is still \$3 million not accounted for.
- 2 As matters stood on that day, he owed you 455, he
- 3 owed Philip 500, he owed the Caltigirones \$250,000.
- 4 Did he make any effort to repay your loans since he
- 5 now had \$3 million to spare?
- 6 A. No, he didn't.
- 7 Q. Did you ask him to?
- 8 A. I believe I have.
- 9 Q. Why not?
- 10 SIR ROBIN AULD: He said he believed he had.
- 11 MR MILNE: You believed you had.
- 12 SIR ROBIN AULD: Yes.
- 13 MR MILNE: Forgive me, I thought the answer was I never
- 14 have.
- 15 SIR ROBIN AULD: You say you never had.
- 16 A. I said I believe I had.
- 17 SIR ROBIN AULD: Yes, I thought you said that.
- 18 MR MILNE: So you believe you had. When do you believe you
- 19 have done that?
- 20 A. When the funds came in.
- 21 Q. What did he say?
- 22 A. Don't worry about it, I will pay you.
- 23 Q. Did he pay you?
- 24 A. No.
- 25 Q. Did you chase him?

1 A. I asked him.

2 Q. Mr Misick, you have put yourself out to the tune of
3 close on half a million dollars, in respect of which you
4 are not receiving any interest. Your brother has
5 received a magnificent, munificent amount of money with
6 which he could easily have made repayment, indeed
7 covered many of his bills. Surely you would have been
8 on the phone to him every day saying: Michael, you are
9 now cash rich, where is my money.

10 A. I have asked him. It was not paid.

11 Q. And you just accepted that?

12 A. Well, I accepted that for the moment that he still owes
13 me 455,000 and I am sure he will pay it.

14 Q. So you are doing work for him. You are clearly
15 involved -- the ledger continues. The ledger goes on.
16 After the receipt of those monies in 2007, we have
17 another sheet of transactions?

18 SIR ROBIN AULD: Before we move to that sheet, if you are
19 moving away from this, now that Mr Smith and
20 Mr Melbourne Wilson are here, I should say for
21 the convenience of your clients that it is quite clear
22 we are not going to finish with the evidence of this
23 witness today. So unfortunately Mr Don-Hue Gardiner
24 will have to be adjourned if he is available until not
25 before 10.30 tomorrow and Mr Jeffrey Hall, who is listed

1 in any event, not before midday. I am sorry that this
2 has happened but you can see why.

3 MR WILSON: I appreciate it.

4 SIR ROBIN AULD: Yes, Mr Milne.

5 (2.30 pm)

6 MR MILNE: You continued to act for him. You continued to
7 move funds in and out of the client account. You
8 continued to represent him, we are told, in business
9 matters. Was he paying any of your bills?

10 A. No. Well, that is not right. He paid some of them.

11 Q. Where do we see that? Is that not on this sheet?

12 A. No, it is not on this sheet. I gave
13 the Commissioner an undertaking to provide that to him.

14 SIR ROBIN AULD: Have you made arrangements over
15 the adjournment for these documents to be provided.

16 A. I have attempted to but the accounting officer will not
17 work to lunch so I will have to do that this afternoon.

18 SIR ROBIN AULD: Thank you. He paid some of my bills, yes?

19 MR MILNE: Because going over the page, even on
20 17th October, the money, the \$1 million he put into
21 the term deposit, you took out again in October. It is
22 a short-term loan to the bank effectively with a view to
23 making interest.

24 So he got the \$1 million back from that on
25 17th October between items 23 and 24 on the left-hand

1 side.

2 Did you ask him again then?

3 A. I might have.

4 Q. You see, Mr Misick, there is a quandary that we have
5 been attempting to get to the bottom of throughout
6 the Premier's evidence and I will submit through yours:
7 that hundreds of thousands and ultimately millions and
8 millions of dollars go into the Premier's account, or
9 the Premier's accounts, his bank accounts, his client
10 account with you, for which he never seems to make any
11 repayment. If I follow your evidence correctly, you
12 know of no repayments to you or to Philip or
13 the Caltigirones or to the J&T Banka or to any of
14 the other bodies from whom he has borrowed money. Is
15 that correct?

16 A. I know of no repayments to me, I can't say for
17 the others.

18 Q. No repayments to those other bodies have gone through
19 you, have they?

20 A. Have not.

21 Q. Let's turn to the question of political donors. You
22 have told us that this schedule also includes monies
23 that came in from other sources to the Premier. I am
24 looking at the second page here.

25 Transfer --

1 SIR ROBIN AULD: This is witness statement page 2.

2 MR MILNE: No, this is the schedule, sir.

3 We have a series of redactions, a series of blank

4 boxes which have been blanked out. 8th December 2006,

5 a political contribution \$50,000. The memo simply says

6 political contribution. Is that in fact money from your

7 firm?

8 A. No.

9 Q. You know the identity of the person who made that

10 contribution?

11 A. I do.

12 Q. Are you going to give us the name of that person?

13 A. I promised to keep it confidential.

14 MR RIGBY: I was under the impression that we had agreed

15 this morning that in respect of the political donors, we

16 would either provide those names in camera or I could

17 provide you with a list -- provide the Commission with

18 a list of those names.

19 SIR ROBIN AULD: I don't think we have made any decision

20 about that. I canvassed it as a one way forward if it

21 proved to be necessary. Are you saying that this is

22 a case where this information is not the subject of

23 legal professional privilege but should nevertheless be

24 given, if given at all, in camera?

25 MR RIGBY: That is correct.

1 SIR ROBIN AULD: Does that relate to all of the redacted --

2 MR RIGBY: That relates to all of the political donations.

3 SIR ROBIN AULD: What do you say about that, Mr Milne?

4 MR MILNE: I am quite content, at least from the outset, if

5 these names were written down and handed on a piece of

6 paper to yourself. But I am interested to know whether,

7 as we stand here now, Mr Misick is able to assist us.

8 I was going to go on to some of them where the name,

9 I go down to the next box down, it says "client

10 general", under "name". The memo is blanked out rather

11 than the name.

12 Perhaps I can approach it another way, sir --

13 SIR ROBIN AULD: Mr Rigby, are you saying all of these

14 redactions reflect political contributions?

15 MR RIGBY: That is correct.

16 SIR ROBIN AULD: Why do you say they should be in camera?

17 MR RIGBY: Because my instructions is that in all of these

18 cases, or the majority of them, the donors would have

19 given the money to Mr Misick on the express

20 understanding that he would not disclose the identity of

21 the donor.

22 SIR ROBIN AULD: I am sure he has been honourable to that

23 undertaking, but he now faces a Commission of Inquiry

24 which has power to require him to answer unless there is

25 good reason.

1 MR RIGBY: We are prepared to answer. We can either provide
2 a list of the names or we can be prepared to answer in
3 camera. Just to safeguard his obligation to the donors
4 who in many respects are his clients.

5 SIR ROBIN AULD: That may or may not be material but it is
6 not legally professionally covered. Mr Milne, what do
7 you say?

8 MR MILNE: It would certainly be my submission that if they
9 are his clients, this would not be covered by legal
10 professional privilege and if they are not his clients,
11 he owes maybe a friendly duty of concern for them but no
12 more than that. Professional duty --

13 SIR ROBIN AULD: Mr Milne, you said the names have been
14 shown to me in a slip of paper?

15 MR MILNE: They have not so far, sir. We haven't seen these
16 names.

17 SIR ROBIN AULD: I thought you mentioned a slip of paper.

18 MR MILNE: I was going to suggest that would be a first step
19 if they are written down.

20 MR RIGBY: I would have no difficulty providing it.

21 SIR ROBIN AULD: Why don't we do it that way. I don't want
22 to clear the room unnecessarily, but if it proves to be
23 necessary I will do so.

24 So we need names for five entries on page 2 of
25 the schedule in Mr Chalmers Misick's file.

1 MR MILNE: I don't know if Mr Misick can do that now without
2 reference to any documentation.

3 MS MISSICK: I think he is. (Pause)

4 SIR ROBIN AULD: You are still compiling the list, are you?

5 A. I am just stuck with one.

6 SIR ROBIN AULD: How can you check that?

7 A. I will have to check the files at the office.

8 SIR ROBIN AULD: Do you want to show it to Mr Rigby first.

9 (Handed)

10 The purpose of that was just to enable you to check
11 whether you wanted to make any submissions before I look
12 at it. Better show it to Mr Milne and then to me.

13 (Pause)

14 You said there was one you could not call to mind.

15 A. Yes, the very last one that is blacked out. I filled
16 out the first seven.

17 SIR ROBIN AULD: You filled out five names here. There are
18 five names we are looking for, aren't there?

19 A. There is five?

20 MR MILNE: I think six names in total, sir.

21 SIR ROBIN AULD: Are there?

22 A. Yes. There are two at the top.

23 SIR ROBIN AULD: Now, Mr Milne, having seen that list, is
24 there anything more you want to say on the matter of
25 public disclosure of these -- or in camera?

1 MR MILNE: Might I just consider that for a few minutes,
2 sir. I am just going to ask for a point of
3 clarification without necessarily reading out any name.
4 The fifth that you have written, names, firm of
5 attorneys, no surprise in that, it doesn't matter which,
6 and there is another word after that. Is the word that
7 comes after that the name of a company?

8 A. I believe so, yes.

9 SIR ROBIN AULD: Just let me look at these figures. 50, 30,
10 one is for nearly half a million, another is for nearly
11 300,000, another is for 50,000 and another is for
12 100,000. These are very big sums.

13 MR MILNE: So we can be clear about this, the notation that
14 you adopt here, these are American notations, month, day
15 year?

16 The first one you have listed is 12/8/2006, by which
17 we mean 8th December?

18 A. Yes.

19 Q. We have the first two, 1 and 2 are the figures 50 and
20 80. The third one which appears to be 1/9, that is
21 9th January --

22 A. 50 and 30.

23 Q. The third one, 9th January, 2007, that is for the sum
24 that is close on half a million dollars? Yes?

25 A. Yes.

1 Q. The fourth one, 17th January, that is just short of
2 \$300,000. The fifth one is the sum of \$50,000. So
3 the one that is missing is the sixth, which is where
4 there is a redaction across two columns for \$100,000
5 on 1st May 2007, yes?

6 A. Yes.

7 Q. What I will ask you to do, it doesn't have to be done
8 now but before we leave today, with that final one that
9 I asked you about, with the names of a firm and then
10 a company name, just clarify the spelling because it is
11 a little difficult, forgive me, to read the handwriting?

12 A. Not a problem.

13 Q. I will leave that for a moment.

14 SIR ROBIN AULD: It should be clearly understood that this
15 is not intended to be a precedent if you are content to
16 leave it there for the moment, Mr Milne.

17 MR MILNE: There is one aspect that concerns me, sir --

18 SIR ROBIN AULD: We may have to return to this particular
19 problem from time to time and these are very large
20 figures.

21 MR MILNE: Yes.

22 SIR ROBIN AULD: Which by their very nature and size attract
23 at least a question mark.

24 (2.45 pm)

25 MR MILNE: The names that we have here, leaving aside that

1 final one, three of them appear to be the names of
2 individuals, and one is the name of a company, is that
3 correct? The third one, half a million, is the name of
4 a company?

5 A. Yes.

6 Q. But the other three, numbers 1, 2 and 4, are they -- am
7 I to understand that those are the names of individual
8 people?

9 A. 1 and 2 are individuals. The others are all companies.

10 Q. So number 4 --

11 A. Is a company, yes.

12 Q. It is simply -- it reads as the name of a person but it
13 should say "limited" at the end or something like that?

14 A. Yes.

15 SIR ROBIN AULD: Mr Milne, if you are content to leave it
16 there, then of course that is how this particular
17 exchange will go, but I should indicate, speaking for
18 myself, I can see no real reason why the Commission
19 should not exercise its power to require the disclosure
20 of these names publicly. We are here to look at
21 possibilities, possibilities of corruption or other
22 serious dishonesty.

23 MR MILNE: There is -- I make clear straightaway, sir,
24 the one that concerns me the most is by far the largest,
25 which is a company name and it is the sum of half

1 a million dollars.

2 I may come back to that a little later on. I am
3 going to leave that for consideration for the moment.

4 SIR ROBIN AULD: Leave it for the moment and we will come
5 back to it.

6 MR MILNE: The total that we have there, political
7 contributions, was \$30,000 over the 1 million mark. So
8 he received \$1 million in political contributions.

9 A. I didn't total it up but that's what you are saying,
10 I accept that.

11 Q. So \$1 million in political contributions. Why would
12 that be paid to you, sir?

13 A. In most cases there are clients who wanted -- who paid
14 the funds to me with the understanding that I would
15 notify the Premier that these were political
16 contributions to assist with the election campaign.

17 SIR ROBIN AULD: What is clients? Your clients?

18 A. In most cases, yes.

19 SIR ROBIN AULD: Which ones weren't clients? You can do it
20 numerically if you like.

21 A. I think the last one -- the first two were clients.

22 The second and the third were clients as well and
23 I think it would be the last one that wasn't a client.

24 SIR ROBIN AULD: All save the last redacted entry were your
25 clients, is that right?

1 A. Yes, were my clients.

2 MR RIGBY: Did he say the last one was not?

3 SIR ROBIN AULD: All save the last one, I think he said,

4 Mr Rigby. Correct me if I am wrong.

5 A. Not the last redacted one, the last one that I gave you

6 on that sheet.

7 SIR ROBIN AULD: What about it?

8 A. It is not my client.

9 SIR ROBIN AULD: That is what I thought you said and that is

10 what I thought I just said.

11 MR MILNE: Forgive me, number 5, where I indicated that we

12 have the name of the firm of attorneys and the name of

13 a company, so presumably you received money from those

14 attorneys on behalf of that company.

15 A. Correct.

16 Q. So they had attorneys. 5 can't be your client unless

17 you both act for this client?

18 A. I said 5 were not my client.

19 Q. 5 is not your client, 6 is or might be?

20 A. No, 6 is or might be depending on who it is revealed.

21 SIR ROBIN AULD: At the moment now, my note says save 6 and

22 probably not 5?

23 A. 5 is definitely not.

24 MR MILNE: 1 to 4 definitely are. Yes?

25 A. 1 to 4 are.

1 Q. Each of those are is your clients?

2 A. Yes.

3 Q. 1, 2, 3 and 4 are all your clients. In each case, they

4 decided to donate money totalling all six together

5 a total over 1 million. Your brother, the Premier, is

6 the leader of a political party. Why was the money not

7 simply being donated to the political party? Why was it

8 coming through your offices?

9 A. I cannot answer that. I don't know the mindset behind

10 the donors. All I know is that they paid the money to

11 my account and wanted me to keep the identity safe in

12 notifying the Premier that they had given a political

13 contribution. They wanted their identity confidential.

14 Q. So you get money; the only condition that is placed upon

15 it is tell no one except the Premier? Yes?

16 A. That is the condition, yes. It is political

17 contributions to be used in the upcoming general

18 election and notify the Premier that the funds were paid

19 in.

20 Q. How did you know it was a political contribution?

21 A. That is what they told me.

22 Q. Did they write it in a letter?

23 A. They told me.

24 Q. They told you --

25 A. That is what they told me.

1 Q. They told you face to face?

2 A. Be it face by face or by telephone. Either/or.

3 Q. If they tell you it is a political contribution, that is

4 all you need to know?

5 A. That is all I need to know.

6 Q. Can you see the risk, sir, that when you receive

7 substantial sums of money from individuals or companies

8 with a condition of confidentiality and you are

9 receiving it on behalf of a politician just before

10 the election, that it might, might, just might be seen

11 as a bribe?

12 A. I don't see that.

13 Q. You don't understand that?

14 A. I don't see that.

15 Q. You can't even conceive of that as a possibility?

16 A. I don't see that as being a possibility because that is

17 not the way it is done. That is not the way it is done

18 here.

19 SIR ROBIN AULD: How do you bribe here?

20 A. I don't know, I have never been involved in one. But

21 I mean he is saying it is conceivable. It probably is

22 conceivable but that is not my mindset when I accepted

23 the funds and I don't think it was the mindset of people

24 who were giving me the money. They clearly said:

25 utilise the funds for the upcoming general elections, it

1 is a heated campaign, it is a month before the election,
2 they wanted to donate to the party and that is what they
3 did. Now if he wants to say it is a bribe then it is
4 for him to determine that; it is not for me to comment
5 on.

6 Q. Let's look at what happens after these monies are
7 received. Let's take, for example, the \$499,963, which
8 was received on 9th January 2007.

9 There are debits made to the account after that.

10 There are debits made 10th January, \$33,000, loan
11 repayments. That appears to be repaying somebody for
12 a loan. Do you know who that was, that was being
13 repaid?

14 A. No.

15 Q. It was not you being repaid?

16 A. Yes, on 5th January(?) it was my repayment, yes,
17 correct.

18 Q. So you have had repayment?

19 A. I have had repayment, correct but not in relation to
20 the 455 to which you refer. If you look at 11/29, you
21 will see the \$33,000 that was provided and then this was
22 repayment.

23 SIR ROBIN AULD: This was another loan that you had provided
24 and he was repaying, was it?

25 A. Yes.

1 MR MILNE: This is a further loan, 33,000, which you then

2 had repaid to you?

3 A. Yes.

4 Q. Did you ask why you are repaying me this little loan and

5 not repaying the big ones?

6 A. I did not, because I was happy to get some money back.

7 Q. He repays you your loan. After that repayments out,

8 \$25,000 which went to Wayne Garland for campaign 07,

9 candidate contributions. That appears to be a political

10 payment. 47,000 goes out apparently to Pineapple Air

11 for campaign travel and a further 32,000 goes out for

12 campaign T-shirts.

13 So far so good. \$70,000, maybe \$80,000 has gone out

14 in what appear to be -- in fact \$100,000 if one includes

15 the previous one. \$100,000 of the 499 have gone out in

16 what are probably campaign matters, yes?

17 A. If you look at the 1/11 you will see 51,000 being paid

18 out in campaign-related matters. If you go further

19 down --

20 Q. Take it a stage at a time. I am going down these. You

21 have payments out to Wayne Garland, Pineapple Air,

22 T-shirts Haven, each of those one could conceivably see

23 as payments. AL Services, that is McAllister Hanchell's

24 company, is it not?

25 A. Correct.

1 Q. \$51,000?

2 A. Yes.

3 Q. It says PNP. So we must assume that that was regarded
4 as a political pay-out?

5 A. Yes.

6 Q. By that stage he is getting another \$300,000 in. Yes?

7 Which is a further political contribution?

8 A. Yes.

9 Q. So in the space of a matter of weeks, well, a matter of
10 days, actually, he has had \$800,000 in political
11 contributions and in all fairness spent about \$150,000
12 of that. After that the money is spent on his Amex
13 card. There is a candidate contribution of 2,500 to
14 Greg Lightbourne. He gets another 50,000 in and then
15 pays out 300,000 to My Way Productions 2 Limited.

16 Yes?

17 A. Correct.

18 Q. 98,000 appears to be -- it just says payment of invoice.

19 No reference to what that was going to. Then further
20 on, 200,000 goes out to Environmental Arts. Do we know
21 what that is for?

22 A. I can find out.

23 Q. Right.

24 SIR ROBIN AULD: All of these, the identity of the use to
25 which the money was put, of course is in your own office

1 client account. Presumably all these descriptions of
2 the payee can be reconciled against one or other of the
3 various bank accounts, can they?

4 A. Yes.

5 SIR ROBIN AULD: If we check them against the bank accounts,
6 we would see that something went to campaign for
7 T-shirts or whatever it is.

8 A. You don't have to go that far. It is in this bundle.

9 It is in the bundle.

10 SIR ROBIN AULD: We can see it there?

11 A. It is in the bundle, yes.

12 MR MILNE: Apart from those various payments, which probably
13 total about \$150,000, maybe \$160,000, from there on
14 the payments out don't appear to have anything at all to
15 do with politics. There are payments which go out to
16 various places. You get loans going out, loans to
17 McAllister Hanchell; payments out to My Way Productions
18 2 Limited; repayment of a investment to a gentleman in
19 regard to the North Caicos property; payments to
20 Youlanda Scott, transfers to the Belize Bank.

21 Over the page a lot of it appears to be either
22 American Express payments or Hallmark Trust for his
23 credit cards or transfers to a joint account or indeed
24 payments to a lady called Katy McCoy, who I assume is
25 a relative of Lisa-Raye McCoy.

1 MR RIGBY: Sorry, there are political payments on that third
2 page.

3 MR MILNE: I am going to invite your client to direct me to
4 them. Which ones are the political payments? I would
5 rather that your client answered.

6 MR RIGBY: Sorry, sir.

7 MR MILNE: Can I assist, there is one at the very bottom,
8 \$25,000 goes to the PNP -- comes in from the PNP.

9 SIR ROBIN AULD: Which page are you on?

10 MR MILNE: I am on the third page.

11 SIR ROBIN AULD: Bottom entry?

12 MR MILNE: Bottom but one. The PNP paid 25,000 to your
13 client rather than the other way round. Which are
14 the other political payments that we see here?

15 A. 12/14/2007.

16 Q. That says, "Loftan Morley, Political Assistance". What
17 was that for?

18 A. I didn't ask Mr Morley what it was for.

19 Q. It has "political" in the title.

20 A. Right, well, that is my answer. I didn't ask him what
21 it was for.

22 Q. Let's look at this in a slightly different way. You
23 made credit card repayments on behalf of the Premier.
24 You paid between February 2006 and August of 2008
25 a series of sums, 11 payments in total, towards his

1 American Express card. I can take you to the pages if
2 you wish but no doubt you would agree that you made
3 a considerable number?

4 A. I do.

5 Q. In total you repaid on his American Express card, indeed
6 covering a large part of this period, \$1,777,000 and
7 some small change.

8 During the period from November 2006, to October --
9 November 2006 through to March 2008, you made a series
10 of payments towards his Horizon card.

11 Those in total were probably around 80,000. In fact
12 a little more than 80,000. Between September 2005 and
13 2008 you paid out in transfers to his joint account in
14 Beverly Hills a further \$455,000, the same amount,
15 although not necessarily the same payments that you had
16 loaned to him.

17 So would you agree that whilst there are some
18 political payments clearly being made or payments with
19 political connections clearly being made, it would
20 appear that much of the money that was going through,
21 including that nominally referred to as political
22 donations, was being used to settle personal debts?

23 A. I don't know if I can agree to that because I don't know
24 whether the Premier had advanced his own personal funds
25 on behalf of his political endeavours. I can't say

1 categorically that that was the case.

2 Q. Did you ever render on the PNP any form of account of
3 the money that was coming in or indeed going out so that
4 they could put it into their account?

5 A. Never. Never requested and I never gave it to him.

6 Q. Other than the Premier himself, did you ever pass on any
7 information to anybody about the money that was coming
8 in or going out of his account?

9 (3.00 pm)

10 A. No, I did not.

11 Q. In a sense we come back to the question that the
12 Commission has already posed. If somebody was trying to
13 bribe the Premier, what would they have to do that would
14 be different from what is being done here?

15 A. I don't know.

16 Q. To make it a bribe?

17 A. I have no idea. I have never been involved in anything
18 like that.

19 Q. Let's leave that and move to a slightly different
20 subject. You have told us that you established several
21 companies on behalf of the Premier's wife, Lisa-Raye
22 McCoy, Lisa-Raye Misick?

23 A. That is correct.

24 Q. We know that they included the Lover Fund or
25 Lover Fund Limited, My Way Productions 2 Limited,

1 jointly with her husband. Which other companies did you
2 establish beforehand?
3 A. Picture Perfect Productions.
4 SIR ROBIN AULD: Say that name again.
5 A. Picture Perfect Productions.
6 MR RIGBY: It is at tab 24 of the bundle.
7 SIR ROBIN AULD: Thank you.
8 MR MILNE: Anything else?
9 A. No, not that I can recall.
10 Q. Can you tell us, then, about TCI Cinemas Limited? What
11 is your connection with that?
12 A. I am the corporate officer for TCI Cinemas.
13 Q. What is meant by the corporate officer?
14 A. We formed the company TCI Cinemas.
15 SIR ROBIN AULD: You formed the company?
16 A. Yes.
17 MR MILNE: On whose behalf did you form it?
18 A. The company was incorporated on behalf of
19 Michael Misick, Derek Handfield and one other gentleman
20 whose name I can't recall at this moment.
21 MR RIGBY: It is at tab 21 of the bundle.
22 SIR ROBIN AULD: Tab 41?
23 MR RIGBY: 21.
24 MR MILNE: So TCI Cinemas Limited, formed on behalf of the
25 Premier, the company established June 2006.

1 It would appear that My Way Productions 2 Limited
2 owns 50 ordinary shares, the other 50 ordinary shares
3 owned by a company called Genie Breed Investments
4 Limited.

5 That is a company based at your offices?

6 A. Genie Breed is not at my office. It might be now, but
7 it wasn't initially incorporated by me.

8 Q. I am sorry, sir, you are dropping your voice?

9 A. I said Genie Breed was not incorporated by my firm but
10 it might be at my office now. I am not quite sure.

11 Q. It says so on the list of shareholders, the register of
12 members, at least as of August 29th 2007, that
13 the address is care of Chalmers & Co at 2
14 Tropicana Plaza?

15 A. Okay, I stand by what it says.

16 Q. It is clear that Genie Breed Investments -- the company
17 was set up, we have seen, with Chalmers Management as
18 a director; Windsor East as a director; a gentleman
19 called Christopher Mortimor; is that the other man you
20 were thinking of?

21 A. Yes.

22 Q. A gentleman called Derek Handfield and Conrad(?) Higgs,
23 all the directors, shareholders initially though from
24 the -- pretty much from the outset in October 2006, My
25 Way Productions 2 Limited and Genie Breed Investments

1 Limited. Can you tell us, please, who is behind
2 Genie Breed Investments?
3 A. Derek Handfield and the other gentleman you just
4 mentioned.
5 Q. Christopher Mortimor?
6 A. Correct, yes.
7 Q. So they have 50 per cent and My Way Productions 2
8 Limited has 50 per cent?
9 A. Correct.
10 Q. What does the company do?
11 A. TCI Cinemas?
12 Q. Yes.
13 A. They run a cinema complex.
14 Q. They run cinemas?
15 A. They run the cinema --
16 Q. The cinema complex?
17 A. Yes.
18 SIR ROBIN AULD: Is this a particular cinema complex?
19 A. There is only one here.
20 MR MILNE: I think the cinema was at least briefly named
21 after the Premier's wife but is no longer, is that
22 correct?
23 A. Not to my knowledge, it was never named after her.
24 I don't know.
25 Q. But in any event, My Way Productions 2 Limited helps to

1 run that. Do they own property?
2 A. My Way Productions 2 Limited?
3 Q. No, does this company, TCI Cinemas Limited, own the
4 property?
5 A. Not to my knowledge.
6 Q. Does it hold any property in the sense of holding
7 shares?
8 A. Not to my knowledge.
9 Q. When you say it runs the cinema complex, does it have
10 employees?
11 A. They are the operators for the cinema complex.
12 Q. So they employ the staff? Presumably
13 the projectionists, the ushers and whatever in
14 the cinema?
15 A. I would assume so.
16 Q. You provided us with the documentation and clearly both
17 of the companies, in fact 100 per cent of the
18 shareholding in the companies is directed through your
19 office. Are you aware of any bank account for this
20 company?
21 A. TCI Cinemas?
22 Q. Yes?
23 A. I am not aware.
24 Q. Do you have any involvement in the running of it in any
25 way at all?

- 1 A. Not at all.
- 2 Q. Do you receive or pass on any funds from it at all?
- 3 A. Not at all.
- 4 Q. Did you help to set up any bank account for it?
- 5 A. I don't -- I might have -- my office might have but
- 6 I have not been personally involved.
- 7 Q. You say your office might have done?
- 8 A. Yes.
- 9 Q. Somebody in your office may have set up a bank account?
- 10 A. Yes.
- 11 Q. To the best of your knowledge, is somebody in your
- 12 office a signatory on that bank account?
- 13 A. No.
- 14 Q. As far as you are aware, since the time of its creation,
- 15 since the time of incorporation, it has had the contract
- 16 to run the cinema?
- 17 A. That is as far as my knowledge leads me.
- 18 Q. Are you able to tell us who owns the cinema?
- 19 A. The cinema is owned by Michael Misick.
- 20 Q. Is there another name for the cinema complex?
- 21 A. Windsor Place.
- 22 Q. So he owns the building. Presumably he owns the land it
- 23 stands on?
- 24 A. Presumably.
- 25 Q. Did you have any part in the purchase or management of

1 that?

2 A. No, sir.

3 Q. We have heard references to Cinema Plaza. Is that

4 the same thing?

5 A. I would imagine.

6 Q. So he owns the cinema, the cinema is run by a company

7 that the My Way Productions 2 Limited has a 50 per cent

8 share in?

9 A. Yes.

10 Q. You have no further dealings with it?

11 A. No further dealings.

12 Q. Could you tell me this: do you own a property at

13 Regent Plaza.

14 A. Me?

15 Q. Yes.

16 A. Do I own property at Regent Plaza?

17 Q. Yes.

18 A. Regent Plaza?

19 Q. Yes.

20 A. Where is Regent Plaza?

21 Q. It is a name I was given, sir.

22 A. I have no idea where Regent Plaza is.

23 Q. Do you own any property that TCI Invest have rental

24 from?

25 A. I do.

1 Q. Which is that?

2 A. It is Regent Village.

3 Q. Regent Village. Forgive me. I have been given

4 the wrong name.

5 SIR ROBIN AULD: I own property in Regent Village.

6 Q. Do you own that in your own name or through a corporate

7 entity?

8 A. I don't -- it is owned through a corporate entity.

9 Q. Could you tell us the name of that company, please.

10 A. Mike has no dealings in that company.

11 SIR ROBIN AULD: I can't follow your words. You are

12 speaking very quickly and very quietly.

13 A. I said the Premier has no dealing with that company. It

14 is my company.

15 MR MILNE: That may well be the case but you are, first and

16 foremost, brothers and secondly, you are his attorney in

17 many aspects. We just need to untangle this to some

18 extent because we have not been given a great deal of

19 information, sir.

20 A. You have certainly been given some. You know about

21 Regent Village.

22 In any event then, the units that I own is in

23 the name of -- I think the name is TCM Associates.

24 Q. TC --

25 A. M Associates.

1 Q. TCM Associates?

2 A. Yes.

3 Q. Is that a limited company?

4 A. Correct.

5 SIR ROBIN AULD: Are you the --

6 MR MILNE: Those being your initials, of course.

7 SIR ROBIN AULD: No other significant shareholders in that

8 company apart from you?

9 A. I am the sole shareholder.

10 Q. When you rented that property to TC Invest, can you

11 simply tell us this, with whom did you have negotiations

12 to rent that property out?

13 A. I spoke with the Chief Executive Officer.

14 Q. Who was that at the time?

15 A. Conrad Higgs.

16 Q. When was it that that rental took place that you rented

17 it to him?

18 A. I can't say for sure, but it would have been -- I can

19 provide the information. I don't want to guess and give

20 you wrong information.

21 Q. I am simply looking for a year in fact. A couple of

22 years ago, three, four?

23 A. 2007 probably.

24 Q. Whilst we are dealing with names, just harking back to

25 something that we dealt with much earlier on this

1 morning in fact, we were talking about casino complex
2 and you told us at that time that
3 Windsor Investment Group had 50 per cent et cetera,
4 Hydrinox own it. Windsor Investment Group in fact have
5 a partner, joint owners, who I think are represented by
6 Miller Simons, is that right?

7 A. Yes.

8 Q. And that a client of Miller Simons also loaned the money
9 for the development?

10 A. Yes.

11 Q. You have on occasions worked for a gentleman
12 called Mario Hoffman or worked with him, is that
13 correct?

14 A. Worked for him or worked with him.

15 Q. And he is on occasions a client of Miller Simons?

16 A. Which question is it, worked for him or worked with him?

17 Which question are you asking me?

18 SIR ROBIN AULD: Try the first one.

19 A. Okay, I have never worked for him.

20 MR MILNE: You have only worked with him.

21 A. I have never worked with him.

22 Q. We will come back to that in a few minutes. You are
23 a partner, I think, or have been a partner, I think,
24 with him in a business venture?

25 A. That is correct.

1 Q. Is Mario Hoffman or one of his companies the other party

2 to the Hydronox owning of the Casablanca casino?

3 A. I have no idea.

4 Q. Is he, to the best of your knowledge, belief, the person

5 who loaned the money for the development of the casino?

6 A. I can't say conclusively, so I would not speculate.

7 SIR ROBIN AULD: What do you mean, conclusively?

8 A. I don't know precisely who loaned the money. I can't

9 say if Mario Hoffman loaned the money; I can't say he

10 didn't, I just don't know who did. The funds were

11 loaned in the name of a company. I don't know who was

12 behind the company.

13 MR MILNE: Before we diverted a moment ago, we were dealing

14 with the companies owned by Lisa-Raye McCoy. You have

15 told us about Picture Perfect Productions, TCI Cinemas

16 is a different organisation. She has no part in that.

17 Any other companies in the name of Lisa-Raye Misick?

18 A. Not that I can recall at this moment.

19 Q. Any other companies that you are aware of where she has

20 a joint partnership or a joint directorship with her

21 husband, where they work together?

22 A. No, I don't.

23 Q. I am going to move on to a different topic. There are

24 two topics. They will take me the rest of the

25 afternoon.

1 SIR ROBIN AULD: You think this would be a good moment for

2 a break?

3 MR MILNE: It might be, sir.

4 SIR ROBIN AULD: I bet you think so too, Mr --

5 A. I think so.

6 SIR ROBIN AULD: Five/ten minutes. No more than ten

7 minutes, though.

8 (3.15 pm)

9 (A short break)

10 (3.25 pm)

11 SIR ROBIN AULD: Yes, Mr Milne.

12 MR MILNE: May it please you sir. Before we move on to one

13 other subject, whilst we have the spreadsheet,

14 the schedule in front of us, Mr Misick, I just want to

15 ask about one item on this which we looked at briefly

16 and then moved on from. That item is the early part of

17 2006. We see that it is a donation by Floyd Hall. It

18 appears to be on 20th February 2006. It is between

19 numbers 4 and 5 in the left-hand column.

20 The Deputy Premier told us that he had given the Premier

21 a wedding present and he described it as being \$150,000.

22 He told us that he paid that donation to you on

23 behalf of the Premier. The actual wedding present, if

24 this is the same payment, is \$161,618.92.

25 MR SMITH: I just want to clarify, sir. I think Mr Milne is

1 somewhat mischaracterising my client's evidence. He
2 never placed a specific total. He says that it was
3 somewhere in the region of \$150,000. As far as it being
4 a gift, Mr Milne asked him if it was a gift and he
5 indicated that it was about the time of his wedding, so
6 if you want to categorise it as a gift, you can
7 categorise it as a gift, but the exact figure he never
8 gave, and the categorisation, I say, is one that came
9 from Mr Milne.

10 SIR ROBIN AULD: Thank you Mr Smith. Is that right,
11 Mr Milne.

12 (3.30 pm)

13 MR MILNE: I understood him to mean wedding gift, sir,
14 because it was shortly before the Premier's wedding --

15 SIR ROBIN AULD: I think that is the burden of Mr Smith's --
16 he is saying that he didn't spell it out but it could
17 have been because it was about that time.

18 MR MILNE: It may well be that -- the caveat that it was
19 about \$150,000. Are there any other payments from
20 Floyd Hall, either on this schedule or elsewhere, that
21 we don't know about?

22 A. From Floyd Hall to Michael --

23 Q. Michael Misick, yes?

24 A. No.

25 SIR ROBIN AULD: So this is the only candidate, is it?

1 MR MILNE: That is the only candidate. In fairness to
2 the Deputy Premier, it is in the order of, it is not far
3 off 150,000 but it is curiously detailed, a curiously
4 precise sum. When that was paid through yourself, what
5 did you understand that it was?

6 A. I did not ask him what it was and he didn't give
7 an explanation.

8 Q. So the Deputy Premier came to you and simply said:

9 I want to pay you \$161,618 for Michael?

10 A. Correct.

11 Q. Presumably you would have wished to have put something

12 on to your ledger. What you have put in the event is

13 Paradigm Corporate Management Limited which we know is

14 a company owned and run by the Deputy Premier and

15 the notation "from Floyd Hall"?

16 A. Correct.

17 Q. No queries, no questions as to whether it was a loan,

18 a payment for something specific?

19 A. I did not ask anything and he didn't offer any

20 information.

21 Q. Well, so absent any other explanation, we must conclude

22 that is a gift.

23 Let's turn, if we could, please, to the issue of

24 Joe Grant's Cay.

25 Do you act on behalf of a gentleman called

1 Mr Cem Kinay in his business affairs?

2 A. No, sir.

3 Q. Have you ever acted on behalf of Mr Cem Kinay?

4 A. Yes, sir.

5 Q. So you have in the past?

6 A. Yes.

7 Q. I established the company, Joe Grant's Cay.

8 I established a group of companies called -- I think

9 the names are Star Platinum Island, I believe.

10 SIR ROBIN AULD: A group of companies called what?

11 A. Star Platinum. It is a whole group of companies called

12 Star Platinum.

13 SIR ROBIN AULD: How do you spell that please?

14 MR MILNE: Star as in star in the sky and platinum as in

15 precious metal.

16 SIR ROBIN AULD: Thank you.

17 MR MILNE: Sorry, you wish to --

18 A. No, I am fine.

19 Q. The Commission has seen from documents which have been

20 provided by government sources that at one stage there

21 was a proposal that a gentleman called Arturo Malave

22 develop Joe Grant's Cay. Have you ever acted for

23 Arturo Malave?

24 A. Yes.

25 Q. When was that?

1 A. That was in -- I would imagine -- I incorporated
2 a company called Caicos Platinum. On instructions from
3 Arturo, I opened a company called
4 Caicos Platinum Company, I believe.

5 Q. You set up Caicos Platinum?

6 A. Right.

7 Q. Caicos Platinum I think was a company where the shares
8 were all held within your nominee companies, is that
9 right?

10 A. I don't know. I would have to take a look at it and
11 see.

12 Q. We are looking here at page 143 within tab 7 of your
13 bundle?

14 A. Yes. Yes, that is correct.

15 Q. That company set up on 30th October 2006 and we have at
16 page 143 the certificate of incorporation,
17 Caicos Platinum Limited. There are then what are known
18 as the Memorandum and Articles of Association for that
19 company, the first Director being
20 Chalmers Management Limited, which is normal for
21 a company establishing, executed for and on behalf of
22 Windsor East Limited.

23 Essentially, it would appear from that, there was
24 then a meeting on 30th October. Windsor East Limited
25 was appointed as the company secretary and the Director

1 at that stage, Chalmers Management?

2 A. Yes.

3 Q. So Chalmers Management is the Director, Windsor East is

4 the secretary?

5 A. Yes.

6 Q. This was set up at the direct request of Mr Malave?

7 A. It was.

8 Q. One share Windsor East Limited. We don't see

9 Mr Malave's name on any of these documents. What was

10 the aim with Caicos Platinum Company Limited?

11 A. Well, I believe Mr Malave was in negotiations with the

12 government to acquire certain parcels of land in

13 Joe Grant's Cay. I didn't handle that aspect of

14 Mr Malave's business. That was handled by the firm of

15 Miller and Simons. My only role was to incorporate

16 a company in the event the negotiation became fruitful

17 and --

18 Q. Forgive me, sir, you are dropping your voice. I can't

19 hear you. I know that it is difficult for those who are

20 keeping a record to hear you and make a full record.

21 What I did hear, I understand you are saying that

22 you formed the company but negotiations with

23 the government were handled by Miller Simons?

24 A. Correct.

25 Q. You remain or Chalmers Management Limited remains

1 the Director of Caicos Platinum Company Limited. Is

2 that right?

3 A. Yes.

4 Q. Arturo Malave may or may not be behind it. Do you hold

5 this company on trust for him?

6 A. I hold the company for -- I don't hold this company for

7 Arturo Malave any more.

8 Q. When did that change?

9 A. That changed when it was discovered that Arturo couldn't

10 pay the fees that the government required to access

11 the properties on Joe Grant's Cay that he was interested

12 in.

13 SIR ROBIN AULD: He could not pay what?

14 A. I think -- I can't speak to -- it might be confidential

15 information. I can't speak to the terms of the

16 negotiation but my understanding is that he was given

17 an offer by the government and he had a set time to pay

18 some money. And he didn't -- he could not meet

19 the deadline and so the offer lapsed. The offer lapsed,

20 Caicos Platinum remained in my office as a shelf company

21 and I utilised it for some of my other clients who

22 thought that name made sense.

23 MR MILNE: Right. Back in September of 2006, I accept you

24 were not party to this, I am simply trying to put this

25 in context. It may help if you look at the red volumes

1 beside you to your left-hand side. You will see
2 volume 7. Do you have that?
3 A. Yes.
4 Q. There are three sections and it is the middle section.
5 There should be a divider. Do you have that?
6 A. Yes.
7 Q. Divider, the first document you will see behind
8 the divider. It is headed "Confidential" and it is
9 executive committee paper prepared by TC Invest.
10 Forgive me if I summarise because these documents are
11 not yours and therefore I am not going to question you
12 in detail. It is simply to put this in context.
13 In September 2006, Miller Simons O'Sullivan by
14 a letter, you will see that on page 3, had written to
15 the Premier on 1st September saying that they acted for
16 Mr Malave. At the time he is described as being of the
17 East Caicos Company Limited, which they said was
18 a company currently being formed at the
19 Companies Registry. Essentially the letter is
20 a proposal whereby Mr Malave, through his company,
21 should undertake a development of Joe Grant's Cay.
22 Clearly, Miller Simons O'Sullivan anticipate
23 East Caicos Company Limited was going to be formed. We
24 can't see whether it was or not. It probably doesn't
25 matter. But my understanding from you is that in fact

1 a short time after that, indeed October of 2006, you
2 formed this company, Caicos Platinum, on his behalf.

3 A. Yes.

4 Q. Although Miller Simons do continue to correspond on his
5 behalf, it is Caicos Platinum which is to be the name
6 that is going to be used.

7 A. That is my understanding. I don't know what ultimately
8 happened.

9 Q. There comes a point when -- let's put it this way.

10 There are problems in relation to Mr Malave. And
11 the documents that we have suggest that there was
12 problems because Mr Malave did not meet some of the
13 standards that the government might have hoped for.

14 Your understanding you say is that he simply
15 couldn't raise the money. That was the problem?

16 A. I understand that was one of the problems. If you look
17 at the same red bundle at page 19, you would see where
18 Mr Malave's attorney --

19 Q. They are dealing with due diligence.

20 A. You see where, on page 20, in the letter, where
21 TC Invest wrote them outlining what was required to be
22 paid. I believe. I don't know why he didn't
23 successfully negotiate the deal, but my understanding
24 was that he had until some time around the end of
25 November to provide the government with X amount of

1 dollars. That date came and went and he was given
2 an extended period of time. That date came and went and
3 I just formed the opinion that he is unable to make good
4 on the offer.

5 Q. But in any event --

6 SIR ROBIN AULD: Just pause there a minute, please. I am
7 looking at this letter of 6th November 2006 at page 20,
8 at the third paragraph of it. I don't think I have seen
9 this before. The offer put forward seems to have been
10 set out in the third paragraph of the letter:

11 "Cabinet accepts your client's offer..."

12 That is to Miller Simons O'Sullivan:

13 "... to pay government ..."

14 Can that really be right? 500 million?

15 A. Half a million dollars.

16 SIR ROBIN AULD: "... to be used 'as government sees fit' on
17 completion of the development agreement, with a view to
18 finalising the development agreement as soon as
19 possible."

20 MR MILNE: Sir, there is clear confusion. It may be that it
21 is simply a set of typographical errors. If we turn
22 back within that section to page 1, this is the original
23 TC Invest document outlining the proposal. Paragraph 4,
24 which is at the bottom of that page, says:

25 "The suggestions outlined in the attached letter

1 does not appear go be unreasonable and not only would
2 \$5 million be immediately available to TCIG 'to be
3 utilised as government sees fit', furthermore TCIG will
4 receive an ongoing stream of revenues."

5 SIR ROBIN AULD: So it is 5 million, not half a million.

6 A. Yes, that's correct.

7 SIR ROBIN AULD: But I have not seen that formula before.

8 I have seen various formulae but -- are you familiar
9 with that, Mr Chalmers?

10 A. Yes, sir. If you look at -- those are correspondence --

11 I will see if I can find it -- coming from Mr Malave's
12 lawyer advising the government that he now has the funds
13 in the account and he would like to proceed, but
14 I believe this is after the offer has lapsed.

15 SIR ROBIN AULD: But the developer is offering
16 the government ♦5 million which it makes it its business
17 to say to be utilised by government as government sees
18 fit in addition to the ordinary development
19 requirements. It is astonishing. Yes, I am sorry, it
20 is almost by way of -- I just hadn't seen that formula
21 before.

22 (3.45 pm)

23 MR MILNE: There came a point, Mr Misick, where you in fact,
24 I think, briefly were invited to attend a Cabinet
25 meeting, is that right?

1 A. I was invited to attend a Cabinet meeting? I don't
2 recall that at all.

3 Q. You notified the Cabinet, no doubt on instructions, that
4 I think the phrase that was used was the name of the
5 developer had changed from Caicos Platinum or indeed
6 East Caicos Limited to a different name altogether. Do
7 you remember that?

8 A. No. I remember sending -- making a request after
9 the offer was not taken up by Mr Malave for whatever
10 reason.

11 Q. Could I take you, please, to page 42. This may assist.
12 It may be that you were not there in person but it ...
13 Certainly as recently as March 2007, Miller Simons
14 O'Sullivan were still writing, indicating that
15 the developer had funds in excess of \$5 million in
16 an account at the HSBC Hong Kong, but at page 42, on
17 31st May, the matter came before the Cabinet.
18 The minute records that the Acting Premier raised this
19 matter and circulated correspondence. In
20 the correspondence it was noted that a previous Cabinet
21 meeting had approved a development agreement for
22 Mr Arturo Malave and it cites the minute number:
23 "Chalmers & Co, attorney for the developers, has
24 requested that the principals of the company be changed
25 in the name of Oceanic Development Limited and

1 Star Lions Limited and has sought the Cabinet's approval
2 for same. The Cabinet advised that it granted approval
3 for the amendment to the development agreement to
4 reflect the name change from Mr Arturo Malave to that of
5 Oceanic Development Limited and Star Lions Limited."

6 Was it actually Star Lions or Star Island?

7 A. Star Lions is the other half of Caicos -- of
8 Star Platinum Islands.

9 Q. So there is a company called Star Lions and there is
10 a company called Oceanic Development?

11 A. Correct.

12 Q. At this stage, were you acting for Oceanic Development
13 Limited?

14 A. At this stage Mr Malave had already been dropped out of
15 the picture. He was no longer the developer and I was
16 acting for Oceanic Development.

17 Q. Oceanic Development Limited have come in and you have
18 been asked by somebody to set up also a series of
19 companies, again using the word "platinum". Any
20 particular reason why that was being used?

21 A. I don't give my input on what name my clients want to
22 use but the suggestion was they want to use
23 Star Platinum Island and since they already had
24 Star Platinum Island they figured that they would
25 continue using the Star Platinum name.

1 Q. Nothing turns on the name at all, does it, because off
2 the shelf companies can be called pretty well anything
3 as long as each one is different?

4 A. I have seen them called Gin and Tonic.

5 Q. No doubt. You set up a series of companies which were
6 designed to be interlinked one with another in the sense
7 that they would be associated companies and for ease of
8 reference, they had similar names. So Star Platinum
9 would feature in the name, yes?

10 A. Yes.

11 Q. We have looked at Caicos Platinum which is section 8 but
12 we move to section -- I beg your pardon, section 7, but
13 we move to section 9. These are some of the companies.
14 We will take them fairly quickly I hope. At tab 9, in
15 your bundle, that is Mr Misick's personal bundle,
16 Star Platinum Transportation Limited. Behind tab 10,
17 Star Platinum Utilities Limited. Tab 11,
18 Star Platinum Island Limited. Tab 12,
19 Star Platinum Hotels Limited?

20 A. Correct.

21 Q. There was also a Star Platinum Development Limited at
22 tab 13 and Star Platinum Golf Limited at tab 14.

23 A. Yes.

24 Q. I think that is all of them within that Star Platinum
25 group. The central one, I would suggest, is

1 Star Platinum Island Limited because the others are

2 subsidiaries of that, are they not?

3 A. Yes.

4 Q. So let's look at tab 11, Star Platinum Island Limited.

5 That is page 179 in your bundle. That company in

6 fact not established until October of 2007. So some

7 months after this has been discussed. I beg your

8 pardon, 20th September 2007. And a company corporate

9 meeting held on 1st October, first director of the

10 company, Chalmers Management Limited. Of course one has

11 the curious phenomenon of a company meeting being held

12 at which there is only one person present. So that

13 person is having a meeting with himself.

14 But that appears to be in compliance with the law.

15 You had a meeting at which you were the Chairman of the

16 meeting but it would seem that nobody else was present.

17 But this is for the formal process of the first meeting

18 of the Board of Directors. Chalmers Management, of

19 course, was at the outset the only director. Yes?

20 A. Yes.

21 Q. We see that that is recorded and over the page, I am

22 looking now at page 183 within your bundle, it is

23 resolved that Windsor East Limited, again your nominee

24 company will become the company secretary and that the

25 registered office will be at your company. So you are

1 clearly providing corporate services to this.

2 We then go over the page to page 184. It was
3 resolved to approve the following: a share transfer from
4 Windsor East Limited. Hitherto I think it held the only
5 share. That would be transferred to Oceanic Development
6 Limited. There was then a share allotment. That is new
7 shares effectively being created and distributed to
8 create the shape of the company. Paragraph 10,
9 Oceanic Development Limited would have 199 ordinary
10 shares. Maya Holdings International Limited to have 60
11 ordinary shares.

12 Then a company called The Star Lion Limited to have
13 340 ordinary shares. Yes?

14 A. Yes.

15 Q. I asked earlier about Star Lions, but is in fact this
16 the same company? The Star Lion --

17 A. The same company.

18 Q. So it is The Star Lion Limited rather than Star Lions
19 Limited. Over the page, additional director,
20 Windsor East Limited to remain as Director. Somebody
21 called Jermaine Malcolm to be Director and another
22 nominee company, Southaven Limited to be secretary, is
23 that correct?

24 A. Yes.

25 Q. Turn to page 186. The outcome is simply this. Shares

1 are divided 200 to Oceanic Development; 60 to
2 Maya Holdings; 340 to The Star Lion Limited. Yes?
3 A. Yes.
4 Q. That is the position as of 1st October 2007. That is
5 the division that has taken place?
6 A. Yes.
7 Q. Indeed, this document is dated May of last year. With
8 those companies, let's take them in reverse order.
9 The Star Lion Limited. Did you create that company?
10 A. No, sir.
11 Q. Did you have any part in the directorship of that
12 company?
13 A. No, sir.
14 Q. Who do you understand is the moving spirit,
15 the directing mind behind that company?
16 A. Star Lions --
17 MR RIGBY: I am not sure --
18 A. I don't know who that is. This company was created by
19 Caicos -- Caribbean Management Services so they would
20 probably be able to help you with that.
21 Q. What about Maya Holdings Limited --
22 A. Also Caribbean Management Services.
23 SIR ROBIN AULD: So the answer is you say you don't know who
24 is the moving spirit behind both of those --
25 A. I can speculate but I don't know for sure.

1 MR MILNE: Do you need to speculate?

2 MR RIGBY: No, why would he speculate?

3 A. No.

4 SIR ROBIN AULD: Then who was it?

5 MR MILNE: Who was behind Maya?

6 A. I don't know for sure.

7 Q. Are you sure about that, sir?

8 A. I am.

9 Q. Let me take you to the red bundle, volume 7, the same

10 section we were looking at a few minutes ago, page 59.

11 Your firm had been written to by the Attorney General's

12 office when this deal was being negotiated and you were

13 asked specifically to name the beneficial owners,

14 the beneficial interests behind these companies. At

15 page 59 you replied, and you named the people.

16 A. Those are all wrong.

17 Q. Those are all wrong, are they?

18 A. Yes, correct.

19 Q. When you wrote to TC Invest, Mr Conrad Higgs, on

20 3rd June 2008, you said under paragraph 2:

21 "Project principals, Mr Cem Kinay, Maya Limited."

22 I accept it is different from

23 Maya Holdings International Limited but Maya Limited was

24 the name you gave at the time, 50 per cent?

25 A. Right, that is all wrong. I am saying it is wrong now.

1 SIR ROBIN AULD: That is wrong too, is it?

2 A. Yes, because the structure of the company was not

3 formulated -- properly formulated until much later on.

4 Q. This is in June 2008?

5 A. That was wrong because Maya Limited, as I understand it,

6 is not Cem Kinay and Star Lions is not -- it may be

7 Cem Kinay but I am not sure. That is why I didn't want

8 to say it was him. I don't know whether (inaudible) had

9 other partners or whom.

10 Q. You seemed pretty sure when you wrote the letter?

11 A. The records in my office seemed to indicate that these

12 were the people, but when I double-checked, I find out

13 that there was another client of mine who was also

14 interested in Joe Grant's Cay and this was before --

15 this client was before Arturo and before Maya. This

16 client was an earlier client and the reason why Oceanic

17 was formed was to assist this other client in pursuing

18 the development of the Joe Grant's Cay.

19 Q. I am sorry, sir, I don't follow that answer at all.

20 You had been negotiating on behalf -- you clearly

21 represented yourself and held yourself out as being

22 a representative of the developers or the potential

23 developers at Joe Grant's Cay. For clarification, if we

24 look at the minute, pages 57 to 58, we don't have

25 the letter from Mr Higgs but this is a memorandum sent

1 by the Attorney General's office, specifically
2 the Deputy Attorney General, to Mr Higgs on 14th May.
3 So a matter of about two or three weeks -- two weeks
4 before your responding letter.

5 The Attorney General's office, (1) on her list:

6 "Please provide me a list of all the principals
7 behind this development."

8 Clearly Mr Higgs passed on that request to you. How
9 could you possibly have got all of this wrong?

10 A. Well, I was trying to explain to you that

11 Oceanic Development was initially involved with
12 Joe Grant's Cay, and when the letter was prepared,
13 the file for Oceanic Development was pulled, and
14 the names that appeared were names that had been floated
15 around in relation to that developer.

16 Subsequent to this letter going out to Mr Higgs and
17 the Attorney General, the proper person had been
18 identified to the Attorney General and to TC Invest.

19 Q. Where would we find that proper identification?

20 A. I can provide it. I can provide it. It was not
21 provided in this bundle because my view is that that was
22 the subject of legal professional privilege.

23 Q. What name is it?

24 A. Don Gardiner.

25 Q. Well, when did you realise that you had signed --

1 because you did personally sign this letter. How on
2 earth could you have signed and sent out a letter to
3 TC Invest, saying the project principals are Cem Kinay,
4 through Maya Limited, and three men, Alwood Gardiner,
5 Clifton Black and Albright Gardiner, through
6 Oceanic Development Limited. 50 per cent owners. You
7 go on to say:

8 "Due diligence form is being presented to Dr Kinay
9 for his completion. The hotel land has not yet been
10 acquired."

11 Oceanic Development is named as one of the partners
12 in Star Platinum Island Limited, formed in 2007,
13 subsequent to your appearance before or your letter to
14 the Cabinet.

15 So you have gone to the trouble of forming
16 a company?

17 A. That's not --

18 Q. Having the meetings, entering the register that
19 Oceanic Development Limited is a partner in that
20 development. Are you saying now that
21 Oceanic Development Limited is not a partner in
22 the development?

23 A. That is not what I am saying. Oceanic was formed long
24 before Star Platinum Island group of companies were
25 formed. What I am saying is this, and if you can follow

1 me carefully, you will understand what I am trying to
2 tell you. It is simply this: Oceanic Development was
3 a company incorporated on instructions from another
4 investor who had interests in Joe Grant's Cay.

5 Q. That was Don Gardiner, you say?

6 A. That was not Don Gardiner. That other investor
7 subsequently decided they didn't want to proceed with
8 the deal and so Oceanic remained a shelf company.

9 Q. I am going to pause you there. When was that company --
10 who was the person who asked you to form that company?

11 (4.00 pm)

12 SIR ROBIN AULD: Don't look to your counsel. Mr Rigby
13 knows, if you think there is a problem there, Mr Rigby,
14 you say.

15 MR RIGBY: We will be raising on this point the issue of
16 privacy under the constitution of the Turks & Caicos,
17 article 8, with respect to disclosure of the identity of
18 the person who was involved initially in
19 Oceanic Development Limited. We would further submit
20 that that person's identity is not relevant --

21 SIR ROBIN AULD: You have seen the savings in section 8,
22 haven't you?

23 MR RIGBY: I do.

24 SIR ROBIN AULD: You are familiar with them?

25 MR RIGBY: I do. It is not relevant to the issues of the

1 Inquiry.

2 SIR ROBIN AULD: We don't know if it is relevant until we

3 know who it is.

4 MR RIGBY: That person, clearly based on the evidence, is

5 not engaged in any --

6 SIR ROBIN AULD: We don't know because we don't know who he

7 is. My Inquiry is into possible corruption or other

8 serious dishonesty.

9 MR RIGBY: We would be prepared to provide that name in

10 camera if necessary.

11 SIR ROBIN AULD: Mr Milne, have you any submissions to make?

12 MR RIGBY: Or write it on the list perhaps if that will

13 suit.

14 SIR ROBIN AULD: Just a minute, please.

15 MR MILNE: We would need to see who it was, sir. I would

16 submit that at the very least, if concerned about

17 privacy, then initially the Commission should be shown

18 it written down and we can make a decision at that stage

19 whether or not we should pursue further the --

20 SIR ROBIN AULD: You are reserving your position on the

21 other examples of this we had this afternoon.

22 MR MILNE: I do reserve my position in relation to all the

23 names that we have written down, sir, because we may

24 need to come back to them.

25 SIR ROBIN AULD: Please provide me with the name. Just

1 while Mr Milne is looking, you are saying that
2 the person's possible membership of this company would
3 expose him to possible criminal proceedings, are you?
4 MR RIGBY: I would not go that far.
5 SIR ROBIN AULD: How far would you go?
6 MR RIGBY: I would simply say that under the constitution,
7 the person is entitled to privacy in respect of their
8 property rights, and that appeared to me at least to be
9 clear had in respect of article 8 of the constitution.
10 Article 12.
11 SIR ROBIN AULD: This name means nothing to me.
12 MR MILNE: It does appear as a donor on the other list, sir.
13 SIR ROBIN AULD: Yes, it is the second time this person's
14 name has cropped up. And the other list to which we are
15 referring is the list of substantial political
16 donations. Is that right?
17 MR MILNE: Yes, that is correct.
18 SIR ROBIN AULD: Let me look back at that. So you are
19 relying on section 8 of the constitution, Mr Rigby?
20 MR RIGBY: That is correct. And 12.
21 SIR ROBIN AULD: For the moment, unless you want to say
22 anything more, Mr Milne, I shall reserve my decision on
23 this. I have other arguments of like sort on, I think,
24 Wednesday morning.
25 MR MILNE: Sir, yes. I will for the moment refer to

1 the person whose name has been written down as simply X.

2 For want of a better abbreviation. We may come back to

3 the identity of X at a later stage.

4 SIR ROBIN AULD: The issue here is whether he should be

5 revealed as a shareholder in a particular company? That

6 is the matter of privacy which is being relied on, is

7 it?

8 MR RIGBY: That is correct.

9 SIR ROBIN AULD: Shareholding of a company. Is that

10 Oceanic Development or what?

11 MR MILNE: It would appear so, sir, if I followed

12 Mr Misick's evidence correctly. Mr Misick, our

13 understanding, and it is important to try to put these

14 matters in some sort of historical context, in early

15 September 2006, it happened that Mr Malave through

16 Miller Simons O'Sullivan approached the government with

17 a view to developing Joe Grant's Cay.

18 We have a letter of 1st September. Apparently

19 within six weeks this gentleman who you have just

20 written down, who I will refer to as X, approached you

21 to form a company with a view to developing Joe Grant's

22 Cay and that company was called Oceanic Development

23 Limited. Is that correct?

24 A. That is correct.

25 Q. You form that company. Indeed, we have the Memorandum

1 and Articles of Association of that company in
2 the bundle. You also form Caicos Platinum, curiously
3 I think on the same day. Is there any connection
4 between this man X and Mr Malave?
5 A. Not that I am aware of.
6 Q. But you are forming two companies on the same day for
7 two people, both of whom hope to develop one cay.
8 That's merely coincidence, is it?
9 A. I don't know if there is anything illegal about that.
10 Q. But you knew that Caicos Platinum Limited was designed
11 to be the vehicle through which Mr Malave would develop
12 it, and Oceanic Development is the vehicle through which
13 this other man would seek to develop it. Of all
14 the attorneys they could have gone to, they both came to
15 you, to set up a company. Can you see that one might
16 regard that as a coincidence?
17 A. That is a matter for them.
18 Q. You don't think it is --
19 A. I don't think it is a coincidence. Both -- this person
20 is an ongoing client of mine, so I don't --
21 Q. Right. Would you have said to either of them: you might
22 want to know that you have competition in this field?
23 A. I did say that.
24 Q. You did say that?
25 A. Yes.

1 Q. So you told each of them somebody else is also

2 interested?

3 A. Correct.

4 Q. You did?

5 A. I said to them, whoever could put the monies together

6 the fastest, would probably be the one who would wind up

7 with the property.

8 SIR ROBIN AULD: Mr Rigby, standing was too great an effort.

9 MR RIGBY: I assume it is already on the record. I was

10 going to make the point of privilege, because clearly he

11 is now going into confidential information, advice with

12 respect that he provided to his two clients.

13 SIR ROBIN AULD: All right.

14 MR MILNE: Having created Oceanic Development Limited, you

15 say that X, this man who set it up, as it were, gave up

16 the chase. Gave up the efforts at some point.

17 A. Yes.

18 Q. Can you say roughly when that was?

19 A. I would imagine he gave up, it would probably be around

20 the -- probably around the end of -- maybe in -- end of

21 November, mid-December.

22 MR MILNE: So within a matter of four to six weeks, he

23 decided: this is not worthwhile, I no longer wish to be

24 considered as a potential developer.

25 A. Without going into the exchange between me and him, that

1 is not as simple as that but that was the outcome.

2 Q. You see, you were not seeking to promote the development

3 by Mr Malave because Miller Simons were doing that. He

4 had used them for that aspect of his work. Did you at

5 any stage write to the government on behalf of this

6 other man, X, seeking to promote his development?

7 A. I did not.

8 Q. Did you have any correspondence with anybody about it?

9 A. No, I just corresponded with him.

10 Q. Presumably he asked your advice. You gave him such

11 advice as you could on the matter and whatever

12 the outcome, he dropped out?

13 A. Yes.

14 Q. But you still had Oceanic Development Limited?

15 A. Yes.

16 Q. Which you had formed in the name of Windsor East but had

17 never been transferred into X's name?

18 A. That is correct.

19 Q. It was simply yours?

20 A. That is correct.

21 Q. Because you then drew up a declaration of trust in

22 relation to Oceanic Development Limited, didn't you?

23 A. Yes.

24 Q. We have that at page 17 in the red bundle.

25 SIR ROBIN AULD: Let me just check the date of this.

1 MR MILNE: It is undated, sir.

2 SIR ROBIN AULD: Yes, it is blank.

3 MR MILNE: It was provided to us by government sources.

4 I think in fact this one was from TC Invest. It had
5 a file which we sought access to. This was a document
6 you provided to government and it says, it is
7 a declaration of trust:

8 "We the undersigned, being the registered holder of
9 100 ordinary shares in Oceanic Development Limited, do
10 hereby record and confirm as hereunder. We acknowledge
11 the share [by which one must assume he means
12 the ordinary shares] is not our property but is
13 the property of the beneficial owners of Alwood
14 Gardiner, Albright Gardiner and Clifton Black or their
15 [associates] or the successors [I beg your pardon]
16 estate, heirs and assigns. We hold the share as
17 the nominee of and in trust for the owners and the
18 owners shall be entitled without ... consent at any time
19 to have the share transferred out of our name into their
20 own names or that of their nominees."

21 He goes on to deal with dividends, bonuses,
22 distributions, et cetera.

23 So whilst it was not dated, it was signed by
24 yourself, Chalmers Management, by its Director T
25 Chal Misick and this was forwarded to Mr Higgs.

1 SIR ROBIN AULD: These are the names of our old friends,
2 the three nephews of Mr Misick, aren't they?
3 MR MILNE: They are.
4 SIR ROBIN AULD: Whose names were put in, I think
5 the Premier said and Mr Chalmers Misick said, by way of
6 mistake.
7 MR MILNE: So we are now told, sir. Now that document, we
8 have no date because it was not dated. How soon after X
9 dropped out did those three men become the beneficial
10 owners of Oceanic Development Limited?
11 A. Those two men were part of the X's negotiation.
12 SIR ROBIN AULD: Were what?
13 A. Those three men were involved with X and his
14 negotiations.
15 Q. They were involved with X in his negotiations?
16 A. Right.
17 Q. Because the company appears to have been held entirely
18 for their benefit by you?
19 A. I am clarifying that now. Until Mr X has something
20 tangible to put in a company name, it wouldn't make
21 sense for him to say how he want his shares held.
22 Q. Were you holding it all for their benefit? He is not
23 named. The gentleman that you have written down, X, is
24 not one of those three. He is somebody totally
25 different. Indeed a year and a half later when asked

1 specifically to write in and describe the beneficial
2 owners, you give the names of those three men. Mr X
3 doesn't feature anywhere in it. Cem Kinay does and
4 the three nephews.

5 A. Mr X was out of the picture and Cem Kinay was in the
6 picture and the three nephews were out of the picture.
7 That is my explanation for that.

8 Q. Why should we disregard altogether this deed of trust?
9 Surely you would not draw up something like that,
10 carefully typed, carefully phrased, officially presented
11 and just do it because you have nothing to do that
12 afternoon. This is not something you would dash off
13 just for the sake of it. Why would you prepare that if
14 it was not a proper and accurate legal document?

15 A. Usually what happens with Chalmers Management is, if we
16 are going to hold properties in trust, the forms are put
17 on the file, they are drafted out and put on the file
18 and when, in the event that we need to have them
19 executed, we have it done. It is not something that we
20 have to draft, these are standard forms.

21 SIR ROBIN AULD: Who told you to put the three nephews of
22 Mr Michael Misick on?

23 A. That came between -- a meeting between Mr X and
24 the three nephews.

25 SIR ROBIN AULD: Mr Who?

1 A. Mr X. You have to understand that --

2 SIR ROBIN AULD: Mr X told you to put the three nephews of

3 Michael Misick on it, did he?

4 A. They were negotiating at the time. It was Mr X and

5 the three nephews. They were having the negotiation.

6 SIR ROBIN AULD: But where did they come from originally and

7 how did they come on the picture?

8 A. I don't know.

9 SIR ROBIN AULD: Three nephews of Mr Michael Misick and you

10 don't know how they got there?

11 A. Well, they came to my office for assistance and they

12 said: we are interested in doing this development, can

13 you help us with it? I didn't ask them how they

14 happened to be Mr X's --

15 SIR ROBIN AULD: Mr Rigby, I am the offender this time am I?

16 MR RIGBY: Yes.

17 SIR ROBIN AULD: What am I doing wrong?

18 MR RIGBY: You are, with the greatest respect, going into

19 the conversations between Mr Misick and his clients.

20 SIR ROBIN AULD: Which Mr Misick?

21 MR RIGBY: Mr Chal Misick, who is giving evidence, with

22 respect to this proposed development.

23 SIR ROBIN AULD: But they have come to him with a view to

24 undertaking a transaction.

25 MR RIGBY: That is correct.

1 SIR ROBIN AULD: I am not talking about the advice that he
2 gave them. I am trying to find out how they got there.

3 MR RIGBY: I think he said he doesn't know. They came
4 looking for advice.

5 SIR ROBIN AULD: They just walked through the door one day?

6 MR RIGBY: They are his nephews.

7 A. Yes. All right.

8 MR MILNE: Your own counsel makes the point, sir, not only
9 are they the Premier's nephews, they are your nephews as
10 well. Correct?

11 A. What is your point to that?

12 Q. I am just asking you to confirm that. They are not
13 related to the Premier through marriage on Lisa-Raye
14 McCoy's side, they are your nephews as well?

15 A. That is correct.

16 Q. So your three nephews come to you, Mr X comes to you and
17 you are asked to represent them as regards the potential
18 development?

19 A. Correct.

20 Q. You have formed Oceanic Development Limited and you
21 create a deed of trust to say that it is going to be
22 held in the names of three of them. Not the three of
23 them plus X, but just the three of them.

24 SIR ROBIN AULD: I think Mr Rigby is going to get up again,
25 aren't you?

1 MR RIGBY: Almost.

2 (4.15 pm)

3 MR MILNE: So why would you do that if you were not holding
4 the company for their benefit?

5 MR RIGBY: I am not sure I even follow --

6 A. I am not sure I follow.

7 MR RIGBY: I am not sure I follow that question.

8 MR MILNE: Why would you create that document if it was not
9 accurate and true?

10 A. That document was created on the premise that
11 the negotiation between Mr X, the three nephews and the
12 government would bring some success and they would
13 probably end up with the development to Joe Grant Cay.
14 That didn't happen. The document remained on file and
15 in error we sent that information to TC Invest and AG
16 Chambers. That is my explanation and I have no further
17 explanation for it.

18 Q. So two years, a year and a half later, in the middle of
19 what is clearly a serious negotiation for a major
20 development, Joe Grant's Cay, somebody just pulls
21 the file, gets the wrong names because there is some old
22 documents in there and you sign a letter naming your
23 three nephews as shareholders in Oceanic Development --

24 A. That is my evidence.

25 Q. That is a complete and utter bit of false information.

1 A. That is a matter for you.

2 Q. That is totally wrong.

3 A. It was corrected.

4 Q. When was it corrected? How soon after was it corrected?

5 A. I believe it was corrected -- I don't know, I would have

6 to look at the ... I don't have the information in

7 front of me. I can't say.

8 MR RIGBY: Sorry, I believe that document is before

9 the Commission, if I am not mistaken.

10 SIR ROBIN AULD: We can see roughly, if it occurred, when it

11 was. The letter from Miss Rhondalee

12 Braithwaite-Knowles, which is on page 57, was dated

13 14th May 2008; where she asked for a list of all

14 the principals behind the development. She particularly

15 needed to know the names of the person and entities

16 represented by Mr Chal Misick.

17 Then we have the reply of 3rd June at page 59. So

18 we are into July, August, September, October last year

19 sometime, aren't we? Shall we leave it? If it is

20 there, you will find it Mr Rigby and draw our attention

21 to it?

22 MR RIGBY: I believe the Premier during his evidence --

23 SIR ROBIN AULD: The Premier's evidence was that the names

24 were indeed a mistake. I have made a note on

25 the document to that effect.

1 MR RIGBY: But I think the proper declaration of trust is
2 actually in that bundle.

3 SIR ROBIN AULD: Somewhere there. Perhaps if you can help
4 find it overnight.

5 MR RIGBY: I will see if I can locate it.

6 MR MILNE: Sir, I needn't trouble my learned friend. We
7 have, from a separate source, now been provided with
8 a further declaration of trust in very similar terms.
9 That declaration of trust is almost identical.

10 SIR ROBIN AULD: Dated?

11 MR MILNE: However it substitutes in place of the three
12 nephews the name Don Gardiner. Where would this
13 document have been placed once it was signed?

14 A. It would have been placed in the corporate bundle
15 I would imagine.

16 Q. In the government bundle?

17 A. Corporate bundle.

18 Q. So it would have been in your file?

19 A. It would have, yes.

20 Q. This one purports to be dated 16th November 2006.

21 MR RIGBY: I am sorry, you have the document?

22 MR MILNE: Yes. We will insert it in the bundle overnight
23 behind the original version.

24 SIR ROBIN AULD: Who is Don Gardiner? There are so many
25 Gardiners in this Territory. Is it Mr Smith's client?

1 Do you know Mr Smith?

2 MR SMITH: My understanding is it is not my client.

3 SIR ROBIN AULD: There are lots of Don Gardiners, are there?

4 There are lots of Gardiners I know.

5 MR SMITH: My client is Don-Hue Gardiner.

6 MR MILNE: This Don Gardiner, if our understanding is

7 correct, you may be able to assist me, Mr Misick, is

8 a real estate salesman working with

9 Prestigious Properties, is that right?

10 A. That is not a fair characterisation of Don Gardiner. He

11 more than a real estate salesman. He is actually a

12 businessman with various businesses on the island.

13 Q. Does he work for Prestigious Properties?

14 A. I believe he is a real estate sales person at

15 Prestigious as well.

16 Q. I am sorry if I missed out his extensive connections

17 elsewhere but --

18 A. You seem to --

19 Q. -- but he is a real estate agent with

20 Prestigious Properties. So we are talking of the same

21 man?

22 A. We are talking of the same man.

23 Q. There is only one Don Gardiner working at that company.

24 What I am at an loss to understand, and I am inviting

25 your explanation, if there be anything further, is why,

1 when your corporate bundle is withdrawn from the shelf,
2 if indeed this declaration of trust were on it, as one
3 might expect, you got the wrong one out, drafted
4 a letter, giving the wrong information, signed
5 the letter giving the wrong information and sent it off?
6 A. You forget one thing, I corrected the information.
7 Q. You have told us that.
8 A. So why are you ignoring it?
9 Q. We have not seen any letter, no doubt you will be able
10 to provide that overnight, where you wrote back to
11 Conrad Higgs at TC Invest and no doubt said:
12 "Dear Mr Higgs, I apologise, you have been
13 misinformed, this is the true situation."
14 MR RIGBY: Sorry, if I could just intervene for a quick
15 second, so I understand where you are headed with this.
16 Are you suggesting that Mr Don Gardiner -- sorry through
17 the Chairman, through Mr Milne -- that Mr Don Gardiner
18 is not the beneficial owner of Oceanic Development? Is
19 that your suggestion?
20 MR MILNE: I am querying, sir, whether this document
21 actually existed in June 2008.
22 MR RIGBY: Sorry, which document?
23 MR MILNE: The declaration of trust which purports to be
24 signed in November 2006.
25 MR RIGBY: I wonder if I could see the declaration of trust.

1 SIR ROBIN AULD: Yes, by all means (handed).

2 MR MILNE: These documents, declarations of trust, I suggest

3 to you, sir, sit on your file, they are not normally

4 shown to anybody else, they are not registered on

5 the Land Registry or the Company Registry or anywhere of

6 that nature and therefore there can be as many as you

7 choose to draft, as many as you choose to sign,

8 depending on who you wish to allocate a nominee company

9 it. Do you follow what I am saying?

10 A. Are you accusing me of something?

11 Q. I am suggesting that it is perfectly easy to draft one

12 of these and draft many of them. Is it your evidence

13 that that document existed on the date it says that it

14 existed?

15 A. That is my evidence.

16 Q. So you are saying on oath that this was drafted in

17 November 2006?

18 A. That is my evidence.

19 Q. But having drafted that, having put it on your file, you

20 managed to leave on the file the earlier one in the name

21 of the three nephews, you didn't take that out and

22 destroy it?

23 A. That is correct.

24 Q. Sir, that is as far as I can take that point.

25 SIR ROBIN AULD: You will be with us tomorrow, won't you,

1 I imagine?

2 MR MILNE: There is a lot more on this --

3 SIR ROBIN AULD: A long and tangled story, this.

4 MR RIGBY: I wonder for the purpose of the record if I could

5 just say that the declaration of trust in respect of

6 Don Gardiner is clearly dated --

7 SIR ROBIN AULD: Yes, I think that is.

8 MR RIGBY: -- and the declaration of trust in respect of the

9 others are not dated.

10 SIR ROBIN AULD: That is clear from what we have heard. Of

11 course the man who could help us on all this probably

12 would be Mr X, wouldn't he? We will have to come back

13 to it tomorrow and see how we go. Mr Fitzgerald.

14 Discussion

15 MR FITZGERALD: Sir, it may not be an appropriate moment now

16 but could I flag up that there has been the issue raised

17 about Mr Floyd Seymour not giving evidence.

18 SIR ROBIN AULD: Yes.

19 MR FITZGERALD: Of course we appreciate entirely that the

20 Commission is master of its own procedure. The only

21 concern would be that, if he is not giving evidence, we

22 may not see his statement and you recall the evidence

23 about the cross-party culture of non-disclosure, which

24 we would have wished to have put some questions to him

25 about.

1 I am just wondering whether, if there is material
2 that assists on that issue, we could see what he says in
3 relation to that.

4 SIR ROBIN AULD: I thought I made it clear -- perhaps in
5 the heated exchange this morning with Mr Smith it was
6 not as clear as it might have been -- there is no
7 witness statement from Mr Floyd Seymour. He was
8 required and listed for attendance solely because at the
9 time, which was just before Christmas, he had failed to
10 provide adequate details of his interests. He did
11 provide them after that or we received them after that.

12 We have looked at them and we have decided in
13 the time that we have been here that it is not so
14 significantly in default that he needs to be examined on
15 that matter. There is no witness statement from him or
16 on any other matter.

17 MR FITZGERALD: Sir, there may be inferences that can be
18 drawn from the contrast between what was in the original
19 register, the contemporaneous register if I can call it
20 that, and what has been disclosed subsequently that
21 would support our case that there was a cross-party
22 culture of not making full declarations and that is what
23 we would be concerned to --

24 SIR ROBIN AULD: To draw that contrast, if there is
25 a contrast?

1 MR FITZGERALD: Yes, exactly. We don't know, but if he had
2 given evidence, it may be that what would have emerged,
3 as has been put by the witnesses, things that weren't
4 disclosed in the initial register have been subsequently
5 disclosed and that would lead to the question: why is it
6 that you as a politician didn't. It may elicit
7 the answer: because we don't. And that would of course
8 have supported our client's and other witnesses'
9 evidence that there is a cross-party culture of not
10 making full disclosure in the Register of Interests. It
11 is really that if there is material now in
12 the possession of the Commission that would support that
13 inference, then without of course wishing to question in
14 any way your decision as to who should give evidence, it
15 is material on which we would wish to address
16 the Commission that it supports our submissions.

17 (4.30 pm)

18 SIR ROBIN AULD: Yes.

19 MR FITZGERALD: That is really --

20 SIR ROBIN AULD: I understand the point now. The Commission
21 has sought returns from all ministers, past ministers
22 and in respect of all past members of the legislature
23 going back, I think, I can't remember the exact period
24 of time now, but up to eight to ten years. And we have
25 looked at those and taken a view as to whom properly in

1 the light of all the material before us we should seek

2 to examine on the deficiencies raised.

3 This could be a broader exercise but we took

4 the view that whilst many of the declarations were not

5 as good as they might have been, they didn't require

6 examination for one reason or another.

7 So that your comparison, and I have to tell you

8 this, could theoretically be a much broader one.

9 MR FITZGERALD: Yes, I see.

10 SIR ROBIN AULD: I suspect that the Commission will not have

11 much difficulty, we might call it cross-party culture

12 but we might not have much difficulty in saying that

13 things were pretty sloppy here all round.

14 MR FITZGERALD: You appreciate, sir, that there were gales

15 of laughter every time we mentioned a cross-party

16 culture. If there is in fact a cross-party culture,

17 I think we ought to have an opportunity of meeting those

18 gales of laughter, as it were.

19 SIR ROBIN AULD: I don't know how far it would take you. It

20 remains me of being at school when I used to say to the

21 teacher: I was not the only one, sir; and I would get my

22 ear twisted. We will consider it overnight and check

23 Mr Floyd Seymour's return again and see if there is

24 a need to make it available on that account.

25 MR FITZGERALD: I am obliged.

1 SIR ROBIN AULD: I am grateful to you for explaining it.

2 MR SMITH: Sir Robin, I am just rising because I want to

3 clarify the record because you indicated today that my

4 conclusion that the reason why Mr Seymour was not

5 called, I think the word you used was it was

6 "outrageous". At that time I attempted to get from

7 the Commission an opportunity to clarify and indicate

8 the basis of why I said that and you basically deprived

9 me of that. I am asking again -- you told me to sit

10 down and I notice the quizzical look.

11 SIR ROBIN AULD: Sorry, you are asking again for what.

12 MR SMITH: The reason that I formed that conclusion, it was

13 not something I pulled it out of the air --

14 SIR ROBIN AULD: You didn't express it in that way. You

15 were about to suggest there was some improper reason for

16 my not calling Mr Floyd Seymour.

17 MR SMITH: I was not given a chance to express it.

18 SIR ROBIN AULD: You got well on the way.

19 MR SMITH: I am hoping I will be given a chance now because

20 what happened is I contacted the Commission yesterday

21 via e-mail for Mr Floyd Seymour's bundle, and at no time

22 yesterday when I contacted them they indicated to me

23 that they are not calling Mr Floyd Seymour. As a matter

24 of fact there are e-mails going back and forth in which

25 they indicated, questioning me the reason why I wanted,

1 would I be willing to give up my bundles, and
2 I indicated to them that my bundle was turned over,
3 bundle 2 of Mr Floyd Hall's bundle was turned over by my
4 consent and at no point in time was it relayed to me
5 yesterday that Mr Floyd Seymour was not going to be
6 called.

7 More importantly this morning, just minutes before
8 you came in, I and Mr Fitzgerald approached Mr Milne and
9 Ms Sarah Clark for the same bundle, and at that
10 particular time what they indicated to me was not that
11 he is not going to be called, was that it is
12 a possibility that he will not be called. That is what
13 you told me. Mr Fitzgerald was there with me.

14 SIR ROBIN AULD: Are you saying this was said to you this
15 morning?

16 MR SMITH: Yes.

17 SIR ROBIN AULD: I am very surprised to hear it. But are
18 you also suggesting that I am lying?

19 MR SMITH: I am not saying you are lying. I am just giving
20 you the history -- you can come to whatever conclusion
21 you want to come to. I am giving you the history of
22 what transpired.

23 SIR ROBIN AULD: Where are we going?

24 MR SMITH: I am just stating my record, because
25 the response, what you said, the basis for my conclusion

1 was outrageous, and I think that was not something to be
2 said to a counsel of 25 years who has never had anybody
3 say that to me before.

4 SIR ROBIN AULD: The record will speak for itself, I think.

5 MR SMITH: I hope you can address my other application in
6 relation to Mr Gardiner, since you indicated that he is
7 supposed to be testifying tomorrow.

8 SIR ROBIN AULD: Yes.

9 MR SMITH: My concern in relation to Mr Gardiner is that,
10 and when I raised it this morning you asked me to look
11 at your opening statement and maybe you could guide me
12 because there is nothing in your opening statement that,
13 I think, diffused the argument that I intend to make.
14 Mr Gardiner is not an elected member of Parliament. He
15 is an appointed member of the House, who was appointed
16 in 2007.

17 The questions and the schedule that was given to him
18 and the issues that I think they intend to question him
19 on pre-dates his entry into the public life. They are
20 asking him about property that he acquired in 2003,
21 2004, 2005, the source of those -- of income that he
22 used to purchase those properties; and a lot of other
23 dealings that not only touch on his privilege as
24 an attorney in relation to the companies that he worked
25 for, but it seems to me in all intents and purposes

1 a glorified fishing expedition.

2 We do have some documents to turn over. They asked
3 for bank statements, and they haven't laid a foundation
4 or a basis as to the reason why they want these bank
5 statements, why they want documents that speak to his
6 private life when in fact at the material time he was
7 not a Member of Parliament, he was not an elected Member
8 of Parliament. I am trying to get this now. I am not
9 saying we have no objection in turning over these
10 documents. What we are saying is even at this point, he
11 does have a constitutional right to privacy and at this
12 time we should say the Commission should give us a basis
13 as to why they were asking for these documents,
14 otherwise all we have is a glorified fishing expedition.

15 SIR ROBIN AULD: There are two bases for seeking

16 a disclosure of interest. One is under
17 the Registration of Interests Ordinance.

18 MR SMITH: We are not opposing that.

19 SIR ROBIN AULD: Please let me finish. The other is under
20 the Commission of Inquiry Ordinance. The clear basis
21 for requiring any information of this sort from
22 an elected Member of the House, appointed Member or
23 anybody else, is whether they have possibly been guilty
24 of corruption or other serious dishonesty in relation to
25 an elected Member of the House.

1 MR SMITH: That I understand.

2 SIR ROBIN AULD: Now -- just wait, will you, please?

3 We required Mr Don-Hue Gardiner to provide
4 an account of his interests along with everybody else.
5 I think the first request was in mid-August. He ignored
6 our requests and finally produced something
7 on 26th November, if I remember rightly, which was
8 plainly inadequate.

9 We wrote to him saying it was inadequate
10 and identifying the considerable questions we had about
11 what he had disclosed. He did not respond to that. We
12 have heard nothing since from him. We require him to
13 give evidence to us simply because he has failed to give
14 an account of his interests adequately to
15 the Commission.

16 MR SMITH: I could understand the Commission asking for his
17 declaration of interest as required under
18 the legislative Registration of Interests Ordinance. My
19 concern is why is there information being requested
20 about his bank accounts, his own private bank accounts
21 and credit cards that pre-dates any time he entered into
22 public life.

23 SIR ROBIN AULD: You are not listening to me, are you? We
24 said in relation to. He could be a bank manager and we
25 could require this information. He could be a company

1 director. He could have no political affiliation
2 whatsoever. And a man who in his position ignored
3 the Commission, failed to provide adequate declarations
4 of his interest, even didn't respond at the end of last
5 year when we pointed out its manifest deficiencies is
6 here for that reason. He may have something to hide
7 which is relevant to our terms of enquiry.

8 MR SMITH: Am I taking the Commissioner to say that
9 the Commission's right to subpoena and to summons
10 an individual is paramount to his constitutional right
11 under section 8?

12 SIR ROBIN AULD: If you want to take the constitutional
13 point, you can take it on Wednesday morning.

14 MR SMITH: Very well.

15 SIR ROBIN AULD: At the moment, if you want to know why he
16 is here, you should read the summons, schedule 1 to it
17 and schedule 2 to it and all the reasons are there.

18 MR RIGBY: Sorry, in terms of one minor housekeeping matter,
19 it is not controversial. I wonder if Mr Milne could
20 indicate how much longer he intends to be with
21 Mr Misick?

22 SIR ROBIN AULD: Mr Milne? How long do you think, Mr Milne?

23 MR MILNE: Easily an hour.

24 SIR ROBIN AULD: A good hour?

25 MR MILNE: A good hour.

1 SIR ROBIN AULD: While we are at it, who will have questions
2 apart from you? I am sure Mr Rigby; how long will you
3 require, do you think?
4 MR RIGBY: I would think I would be 30 minutes to an hour.
5 SIR ROBIN AULD: Anybody else have questions for Mr Misick?
6 MR FITZGERALD: I may have a few questions clarifying one or
7 two issues.
8 MR SMITH: I might have one or two questions.
9 SIR ROBIN AULD: So we are talking about a couple of hours
10 or so in the morning. That is why I said not before
11 12.00 for Mr Jeffrey Hall, Mr Melbourne Wilson.
12 MR WILSON: Yes, I understand.
13 SIR ROBIN AULD: 10.30 in the morning.
14 (4.40 pm)
15 (The court adjourned until 10.30 am
16 on Tuesday, 27th January 2009)
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1	INDEX	
2		PAGE
3	MR THOMAS CHALMERS MISICK	11
	(continued)	
4	Cross-examination by MR MILNE (continued)	11
5	Discussion	187
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

