

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Wednesday, 28th January 2009

(10.36 am)

SIR ROBIN AULD: Now, Mr Saunders, this hearing was scheduled to start at 10.30. It is now nearly 10.45. Are you ready to start and why are you late?

MR SAUNDERS: Sir, my apologies. I had some difficulties with a vehicle, in securing a vehicle.

SIR ROBIN AULD: Well, we have lost a quarter of an hour's time nearly. We are on a very tight schedule.

MR SAUNDERS: Sir, if you could give me two minutes, I would appreciate it.

SIR ROBIN AULD: You want more minutes?

MR SAUNDERS: Two minutes.

SIR ROBIN AULD: Perhaps while you are doing that, I can deal with some housekeeping. Mr Fitzgerald, your very interesting point on section 105 of the Evidence Ordinance. Just to say that I did not envisage that that would be an issue today nor until Ms Lisa-Raye McCoy Misick is here in order to make any contributions through her attorney if she wishes on the issue. It is a quite discrete issue from the matters that we have listed for this morning.

MR FITZGERALD: We will hold fire on that, then, sir.

SIR ROBIN AULD: Secondly, I gather there is a more up to date version of the Evidence Commission Ordinance than

1 that. I don't know whether it makes any difference.

2 MR FITZGERALD: It doesn't. What it does is to amend
3 the exceptions in criminal proceedings but in any event,
4 even if one gave a broad interpretation to the words
5 "proceedings" there, it only alters the position if you
6 actually are divorced, which they are not.

7 SIR ROBIN AULD: I don't see any reason why it should not be
8 taken in public immediately before Lisa-Raye Misick's
9 evidence when that has now had to be reprogrammed again,
10 but we are hoping --

11 MR FITZGERALD: Is it not going to be Friday now?

12 SIR ROBIN AULD: It depends on how we get on today. At the
13 moment we hope she will be called on Friday, shortly
14 after the beginning of the hearing.

15 MR FITZGERALD: Sir, we have the amendment.

16 SIR ROBIN AULD: Don't worry about it now. Hand it to the
17 secretary in due course. The other matter, Mr Smith, is
18 to do with you. You indicated yesterday or the day
19 before when I asked if you proposed to make any skeleton
20 submissions on the various issues of disclosure, you
21 said no, and I understood that. But you have provided
22 this morning a skeleton on a wholly different area,
23 which goes to the entitlement of the Commission to bring
24 Mr Don-Hue Gardiner before it at all.

25 I have not had a chance other than to glance through

1 this just now. Mr Milne hasn't seen it yet. We won't
2 have time at any rate this morning to deal with it. We
3 have quite a lot to do on the disclosure matters, with
4 which I take it from the absence of any skeleton
5 argument from you, you are not concerned?

6 MR SMITH: Yes.

7 SIR ROBIN AULD: So we shall take this argument immediately
8 before the evidence of Mr Don-Hue Gardiner, when that is
9 to be called.

10 MR SMITH: Very well.

11 SIR ROBIN AULD: Now, Mr Saunders.

12 Submissions by MR SAUNDERS

13 MR SAUNDERS: Sir, there are one or two documents here that
14 I would like to rely on.

15 SIR ROBIN AULD: What are they?

16 MR SAUNDERS: They are the constitution which I think you
17 have a copy of; there is a case in relation to waiver of
18 constitutional rights.

19 SIR ROBIN AULD: We have the constitution, but have you
20 notified Mr Milne and the other counsel that you intend
21 to rely on certain authorities?

22 MR SAUNDERS: No, sir.

23 SIR ROBIN AULD: Have you provided copy authorities for
24 them?

25 MR SAUNDERS: Yes, I have copies --

1 SIR ROBIN AULD: For whom?

2 MR SAUNDERS: For Mr Milne and yourself.

3 SIR ROBIN AULD: Does anybody else get one?

4 MR SAUNDERS: If they want I have additional copies of the
5 authorities.

6 SIR ROBIN AULD: Let's see how we go. Let Mr Milne -- he is
7 the most important person for the moment -- have a copy
8 of what you have there.

9 MR MILNE: In fact Ms Clark will be dealing with the
10 argument, sir.

11 SIR ROBIN AULD: Ms Clark will have to read hard. It is
12 customary, I hope it is customary in this jurisdiction
13 to notify counsel in proceedings such as this and
14 ordinary conventional proceedings in advance of
15 authorities you propose to cite and to provide copies in
16 good time for everybody. Otherwise we are reading them
17 cold.

18 MR SAUNDERS: Yes, sir.

19 SIR ROBIN AULD: Well, now, perhaps you would make your
20 submissions. Each party will have a quarter of an hour,
21 no more, to make their submissions. I have had
22 the advantage of reading the skeleton arguments from
23 those who have submitted them and I am familiar with
24 them.

25 MR SAUNDERS: Sir, thank you for the opportunity to discuss

1 this. Our client's submissions are in relation to
2 the Commission -- the first bit of the submissions are
3 in relation to the Commission of Inquiry Ordinance under
4 section 4. It is submitted that there is no power in
5 that section to require the provision of documents from
6 someone where the subject of the documents does not
7 belong to that individual, on the basis that that would
8 be unlawful.

9 For instance, if Minister Hall was requested to
10 provide documents that were in my custody and were
11 ordered to provide those documents, the only way in
12 which he could do so would be to unlawfully take those
13 documents off me. The provisions in the ordinance, it
14 is submitted, isn't wide enough to require an individual
15 before the court to produce documents, just openly
16 documents that he has no lawful authority to do.

17 There is a section in -- there is a provision in
18 section 4 that goes on to say that the Commission has
19 a power to provide documents -- to require
20 the production of documents that are in the possession
21 of the witness.

22 Again, it is submitted that that section also does
23 not allow the Commission to require the production of
24 documents that the witness is not entitled to produce,
25 that are not the documents of the witness.

1 For instance, documents that the witness has that
2 were provided to the witness in confidence and are
3 wholly unrelated to the matter in question, the witness
4 would not have an authority to provide.

5 Sir, we move on from there, and it is our client's
6 submissions that even if there was authority under
7 the Commission of Inquiry Ordinance to require
8 the production of documents belonging to someone else,
9 or the production of documents in the witness's custody,
10 that that authority is unconstitutional and void under
11 section 8 of the constitution.

12 SIR ROBIN AULD: To whom do you say the documents, the three
13 categories of documents to which your application
14 relates, belong?

15 MR SAUNDERS: All three categories of documents belong to
16 the PNP. Some of the documents have not been ratified
17 and as such they do not fall within a certain category.
18 But nonetheless they are the property of the PNP. So,
19 for instance, the compilation in relation to the
20 accounts, it is the property of the PNP but they do not
21 represent the financial records until they have been
22 accepted and ratified. So all fall within
23 the protections under section 8 of the constitution.

24 Sir, in relation to constitutions generally, I think
25 the starting point needs to be in terms of

1 interpretation, constitutions are peculiar creatures of
2 interpretation; unlike other pieces of legislation, they
3 should be interpreted widely, generously and any
4 exceptions in relation to rights under a constitution
5 should be on the contrary interpreted narrowly.

6 So constitutions in interpreting them, sir, you
7 should look to give them as wide a reading as possible
8 in order to accommodate the rights that are asserted
9 under the constitution.

10 Sir, if I could point your attention to one of the
11 cases that I produced. It is
12 the Attorney General of the Gambia v Jobe.

13 It is in relation to --

14 SIR ROBIN AULD: You had better cite it to me. What point
15 does it go to?

16 MR SAUNDERS: It goes to the way in which constitutions
17 should be interpreted.

18 (10.45 am)

19 SIR ROBIN AULD: Wide interpretation of constitution. Just
20 give me the reference. I will read it later.

21 MR SAUNDERS: It is Attorney General of the Gambia v Jobe.

22 It is 1 Appeal Cases, page 689.

23 SIR ROBIN AULD: Whose appeal cases are these?

24 MR SAUNDERS: It is the Law Reports.

25 SIR ROBIN AULD: Whose Law Reports?

1 MR SAUNDERS: The Incorporated Council of Law Reporting of

2 England and Wales.

3 SIR ROBIN AULD: Which year, please?

4 MR SAUNDERS: It is 1984.

5 SIR ROBIN AULD: What is the proposition for which you cite

6 it?

7 MR SAUNDERS: The proposition is that in interpreting

8 constitutions, they should be given a wide and liberal

9 reading, as wide a reading as possible that can be

10 fitted into the context of the words.

11 Sir, if I could just read two paragraphs in relation

12 to that case, it says:

13 "Section 10(1) of the Act" --

14 SIR ROBIN AULD: What are the numbered paragraphs? No

15 numbers?

16 MR SAUNDERS: No numbers, sir. Page 700. Sir, would it

17 assist if I produced an extra bundle?

18 SIR ROBIN AULD: Just read it to me.

19 MR SAUNDERS: It says Section 10(1) of the Act, it is

20 referring to a criminal act.

21 "If it were to be read in isolation, it might be

22 construed as conferring upon the Inspector General of

23 Police an executive discretion to decide what payments

24 out of a frozen bank account should be permitted. If

25 upon its true construction this were its effect, it

1 would, in their Lordships' view, involve a contravention
2 of section 18 of the constitution.

3 "A constitution, and in particular that part of it
4 which protects and entrenches fundamental rights and
5 freedoms to which all persons in the state are to be
6 entitled, is to be given a generous and purposive
7 construction."

8 Sir, it goes on to talk about property. It is
9 a case involving bank accounts. In that particular
10 case, it said that property under an equivalent section,
11 similar to section 8, should be construed widely enough
12 to include choses in action in bank accounts.

13 Sir, it is submitted that that is the approach that
14 should be taken in relation to section 18 and
15 submissions that would be made under section 12.

16 SIR ROBIN AULD: Thank you.

17 MR SAUNDERS: Sir, section 8 of the Turks & Caicos
18 constitution is in similar terms to section 8 of the
19 European Convention on Human Rights, and it is submitted
20 that the jurisprudence under that Convention should be
21 applicable here. That provision, section 8, provides
22 for privacy to protection of an individual's property.
23 Property which includes their documents, their bank
24 statements, their correspondence.

25 There is, sir, it is submitted one relevant

1 exception to that right of privacy --

2 SIR ROBIN AULD: Whose right are you talking about here?

3 MR SAUNDERS: The PNP's right.

4 SIR ROBIN AULD: The PNP is not a person, is it, for

5 the purpose of these provisions?

6 MR SAUNDERS: It is a collective, it is a group of

7 individuals.

8 SIR ROBIN AULD: Does it come within the protection of

9 section 8 or section 12?

10 MR SAUNDERS: Sir, it is submitted that groups and

11 organisations also have constitutional rights under

12 the constitution, fundamental rights, particularly --

13 SIR ROBIN AULD: Mr Fitzgerald probably knows the answer,

14 but is an unincorporated group or society collectively

15 entitled to a right to privacy under section 8 and its

16 associated extensions, or to freedom of expression under

17 section 12?

18 MR SAUNDERS: Yes, sir.

19 SIR ROBIN AULD: There must be plenty of jurisprudence on

20 this.

21 MR SAUNDERS: Sir, it is submitted that it is.

22 SIR ROBIN AULD: What is the authority for that proposition?

23 MR SAUNDERS: Sir, I don't have authority for that.

24 SIR ROBIN AULD: Mr Fitzgerald, you are bound to be able to

25 help or Mr Misick --

1 MR FITZGERALD: I think Mr Misick may be able --

2 SIR ROBIN AULD: Mr Misick has already put his finger on it,
3 I think, in his skeleton argument.

4 MR FITZGERALD: He has, yes. Certainly on the freedom of
5 expression thing, there is no doubt that, for example,
6 a newspaper, which is not an individual, can have
7 a right. There is an Antigua case.

8 SIR ROBIN AULD: What about section 8?

9 MR FITZGERALD: I am not too sure about whether a group of
10 individuals has a right to privacy. I think it may be
11 section 12 that --

12 SIR ROBIN AULD: The whole context of it is an individual,
13 isn't it?

14 MR FITZGERALD: Yes, I accept that.

15 SIR ROBIN AULD: So you say, do you, in the absence of any
16 authority that you can cite, that the collective
17 membership of the PNP is the person entitled to
18 the section 8 protection?

19 MR SAUNDERS: Sir, yes, I say that if an individual is
20 entitled to the rights under the constitution,
21 a collective of individuals, a group of individuals
22 gathering together for a particular purpose should be
23 and is entitled to their --

24 SIR ROBIN AULD: I shall need to be satisfied of that. And
25 you have not got more than five minutes to go,

1 Mr Saunders.

2 MR SAUNDERS: Sir, I will then move on to section 12.

3 SIR ROBIN AULD: Yes.

4 MR SAUNDERS: Section 12 deals with the right to freedom of

5 expression. Again, it is submitted, sir, that the right

6 to freedom of expression should be interpreted widely

7 and generously and purposively, which includes the right

8 to protection for correspondence, the right to

9 protection and privacy for one's documents.

10 SIR ROBIN AULD: You are talking about privacy or freedom of

11 expression now?

12 MR SAUNDERS: Sir, it is submitted that freedom of

13 expression is wide enough to include the rights under

14 section 12, which includes the freedom of expression, is

15 wide enough and encompasses freedom for privacy of one's

16 documents and correspondence. For instance,

17 a journalist's right to freedom of expression includes

18 a right to privacy in relation to his sources and in

19 relation to the individual providing him information.

20 A right to freedom of expression, for instance,

21 particularly political parties are included in there;

22 the right to freedom of expression and to hold political

23 views goes to the arguments that were made last week in

24 relation to the right to collect funds, and to

25 the privacy of the sources of those funds.

1 SIR ROBIN AULD: So it is the freedom of expression of the
2 PNP you are talking about now, are you?

3 MR SAUNDERS: Yes, sir.

4 SIR ROBIN AULD: How is that being inhibited by disclosure
5 of the fact that people give it donations?

6 MR SAUNDERS: It is -- the sources of its donations are
7 being publicly aired, which will cripple its ability to
8 function in the future.

9 SIR ROBIN AULD: You mean unless it is paid lots of money,
10 it can't express its views in that form publicly, is
11 that the argument?

12 MR SAUNDERS: Yes, sir.

13 Sir, in relation to section 12, there aren't similar
14 restrictions to section 12 that there are in section 8,
15 to the extent that, sir, you accept that freedom of
16 expression is wide enough to encompass the documents.
17 That in order for a political party to be able to freely
18 express its views and its political opinions, that it is
19 wide enough to encompass its documents, there is no
20 similar exception to freedom of expression and
21 limitation as there are under section 8.

22 SIR ROBIN AULD: What restrictions are you saying are not
23 applicable?

24 MR SAUNDERS: The restrictions under section 8 dealing with
25 investigations and information that is required for

1 the detection of criminal offences.

2 SIR ROBIN AULD: I think you had better look again, hadn't

3 you?

4 MR SAUNDERS: Yes, sir.

5 SIR ROBIN AULD: Section 12.2(a)(ii).

6 MR SAUNDERS: Sorry, my copy of the document has a number

7 of ...

8 SIR ROBIN AULD: The interests of public order, public

9 morality are qualifications shared with those in

10 section 8.2(a)(i).

11 MR SAUNDERS: Sir, it is submitted that that is different in

12 nature from the restriction in section 8 in that this

13 is -- that that is not relevant -- those exceptions are

14 not relevant in the instant case.

15 SIR ROBIN AULD: Because they are not contemplating criminal

16 proceedings?

17 MR SAUNDERS: No, not because they are not contemplating

18 criminal proceedings. The interest of defence, there is

19 no issues in relation --

20 SIR ROBIN AULD: You need not go through all of those.

21 The only candidates there are public order and public

22 morality. More likely public morality.

23 MR SAUNDERS: Public order, sir, it is submitted that there

24 are no public order issues in relation to the --

25 SIR ROBIN AULD: Public morality?

1 MR SAUNDERS: Sir, it is submitted in relation to public
2 morality that in narrowing someone's constitutional
3 rights, there are a number of tests that need to be
4 applied. The two relevant tests here are -- when
5 interpreting the constitution, the general provision
6 should be interpreted very widely and purposively and
7 interpreting the restrictions, those should be narrowly
8 interpreted.

9 There are a number of tests that should be brought
10 into account. One is proportionality and the other one
11 is fairness.

12 SIR ROBIN AULD: You may take it that I have those in mind.

13 MR SAUNDERS: The other one is in relation to also the right
14 not to be discriminated against. So in undertaking that
15 test in terms of public morality and public order, sir,
16 it is submitted that you should also take into mind
17 the constitutional right not to be discriminated
18 against. It is submitted that in relation to this
19 particular case, that the requirement to produce the PNP
20 accounts infringes section 15 rights not to be
21 discriminated against. I will explain.

22 In undertaking this Commission, the obligations and
23 terms of reference for the Commission is
24 the investigation of serious dishonesty:
25 "... the investigation of possible corruption or

1 other serious dishonesty in recent, past and present

2 elected members of the legislature."

3 It is submitted, sir, that in undertaking this

4 Inquiry, that the Commission has decided to amend its

5 terms of reference. Instead of looking at possible

6 corruption and serious dishonesty in recent years of the

7 legislature, it has decided to concentrate and to focus

8 on serious dishonesty and corruption in relation to this

9 particular administration.

10 SIR ROBIN AULD: You are alleging political bias on the part

11 of the Commission, are you?

12 MR SAUNDERS: Sir, I am not alleging political bias. What I

13 am saying is that in dealing with the limited time that

14 the Commission has had, and understandably in dealing

15 with that, it has had to narrow its focus and amend and

16 shift the terms of reference.

17 SIR ROBIN AULD: So this is discrimination against

18 the present administration, is that the point?

19 MR SAUNDERS: What I am saying, sir, is that there is no

20 power within the Commission of Inquiry Ordinance to

21 amend and to narrow the focus of your terms of

22 reference; and (2) to the extent that you have done

23 that, for instance, that it is contrary to the rights

24 under section 15 of the constitution to -- not to

25 discriminate. If I could go -- section 15 of the

1 constitution --

2 SIR ROBIN AULD: I have got the reference. This argument

3 does not appear in your skeleton but I have got

4 the reference and I have got the point and I think your

5 time is up.

6 MR SAUNDERS: Sir, I think -- it does appear in my --

7 SIR ROBIN AULD: It does? I only received this skeleton

8 just before I sat down here this morning, but I can't

9 see it. Is it here somewhere?

10 MR SAUNDERS: Sir, it is dealt with in one of the points.

11 MS CLARK: Sir, if I can assist, I think Mr Saunders is

12 referring to the skeleton argument that we passed you up

13 some moments ago which is in the front of his black

14 folder of authority.

15 SIR ROBIN AULD: I have not seen that. The idea of

16 a skeleton argument is to enable the court or tribunal

17 to read it beforehand, not as you speak. But I would be

18 happy to look at whatever you have brought this morning

19 and if you pass that up, I shall do so whenever I can.

20 (11.00 am)

21 SIR ROBIN AULD: Thank you. Who is next, Mr Fitzgerald?

22 MR FITZGERALD: No, sir, as I indicated, I have no

23 submissions to make on this issue. Unless required

24 by the Commission, I am simply taking no position.

25 SIR ROBIN AULD: Thank you. Mr Ariel Misick?

1 Submissions by MR MISICK

2 MR MISICK: Yes, sir, you have seen my skeleton. I have
3 really nothing further to add to it. The point I make
4 is simply is that in my submission the section 8.1,
5 which is the only one I have alluded to, is not engaged
6 and there is a broader point which I am not seeking to
7 argue but I merely put it out there as to -- and it is
8 this, that in reviewing the accounts you should look at
9 it from the limited purpose of ascertaining whether or
10 not the PNP accounts are -- were used for -- as
11 a depository is the way I put it for any corrupt
12 payments.

13 SIR ROBIN AULD: We should keep our eye on the ball.

14 MR MISICK: Yes. And bearing in mind the context in which
15 the appointment was made. That is my only submission,
16 unless I can help you further.

17 SIR ROBIN AULD: You have included with your submission
18 the authority of *Bethel v Douglas & Others* which I have
19 looked at.

20 MR MISICK: Yes, and which supports the position that --
21 the power of a Commission of Inquiry to require
22 the production of documents does not involve a breach of
23 section 8. It is a view which the Commission reasonably
24 comes to that such documents are needed for the purpose
25 of the Inquiry.

1 SIR ROBIN AULD: Thank you very much, Mr Misick.

2 MR MISICK: Thank you, sir.

3 SIR ROBIN AULD: This is Mr Saunders' bundle, is it?

4 (Pause)

5 I see in your bundle that I have just been handed

6 that there is a reference in paragraph 8(ii) to the

7 non-discrimination point.

8 MR SAUNDERS: Yes, sir.

9 SIR ROBIN AULD: I shall take it into account when I come to

10 give a decision. Thank you.

11 Nobody now but the Attorney. We have had

12 the advantage of an excellent skeleton argument or

13 submission on behalf of the Attorney General by

14 the Attorney General. That is right, isn't it?

15 MS BROOKES: Yes.

16 SIR ROBIN AULD: Is there anything that you would wish to

17 add to that?

18 MS BROOKES: No, sir.

19 SIR ROBIN AULD: I am very grateful to the Attorney for

20 taking the trouble he has. Ms Clark?

21 Reply submissions by MS CLARK

22 MS CLARK: Sir, in essence all of my arguments are contained

23 within my skeleton that I have submitted and

24 cross-served on the other parties.

25 SIR ROBIN AULD: I should at least record before you do

1 because you are probably going to deal with it,
2 Mr Rigby, on behalf of Mr Chalmers Misick, has also made
3 a written submission on this issue ranging more widely
4 than the particular documents in the redactions in
5 page 2 of the schedule to his bundle that concerned us
6 yesterday.

7 In his skeleton argument he deals with the broad
8 point of confidentiality. He deals with
9 the constitutional point and he deals with a third point
10 of some generality. I had not understood Ms Clark, and
11 it may be I will be corrected if I am wrong, that when
12 we finished yesterday with Mr Chalmers Misick, there
13 were any outstanding matters as to disclosure in his
14 case, save for the six redacted entries on page 2 of the
15 client account ledger.

16 MS CLARK: Sir, as you are aware, I was not in the Inquiry
17 yesterday, so if you will forgive me for a moment.

18 SIR ROBIN AULD: If anybody else feels the need to correct
19 me on my recollection, don't hesitate.

20 MR MILNE: Sir, my recollection is that we asked Mr Misick
21 for disclosure of a variety of items. The one that
22 immediately leaps to mind is that we said we would like
23 to see a list of the companies in which Windsor East or
24 Chalmers Management was either a director or the company
25 secretary; similarly, sir, for I think Mr Misick

1 himself. And under some protest he agreed to disclose
2 that but did appear to seek to raise an argument of
3 confidentiality which somewhat eluded me at the time.
4 I am told bank accounts were also requested. It is
5 probably in fact the ledger account in relation to
6 Lisa-Raye McCoy.

7 SIR ROBIN AULD: Out of an abundance of caution, I shall
8 deal with the submissions that he made in his skeleton
9 argument, which is dated the 27th -- yesterday -- of
10 January in their full width. Yes, I am sorry to
11 interrupt you, Ms Clark.

12 MS CLARK: No, sir. Sir, in response to Mr Saunders'
13 argument as I was saying before, in essence all of my
14 arguments are contained within the skeleton that has
15 been submitted already. But perhaps for the sake of the
16 record I could expand very briefly on them. I am not
17 sure whether there is anything in particular that you
18 would like me to address on you?

19 SIR ROBIN AULD: No. If you wish to highlight any matter or
20 explain it where you think it needs explanation, please
21 do.

22 MS CLARK: Sir, the submission is this, on behalf of the
23 Commission, that it is both constitutionally proper and
24 within the Commission's powers under the Commission of
25 Inquiry Ordinance to retain all of the material that is

1 already within the possession of the Commission. I make
2 the point now that Mr Saunders' argument is very much
3 retrospective, because all of that material is already
4 within the possession of the Commission, certainly in my
5 submission, with the consent of those people who handed
6 it over. Sir, I don't know whether you would like me to
7 for the sake of the record expand upon the three
8 categories of material which is in the Commission's --

9 SIR ROBIN AULD: I think it is useful just to identify what
10 we are talking about quite quickly.

11 MS CLARK: I have divided it into three categories. If
12 I call the first one category one. They are
13 spreadsheets produced by the Honourable Floyd Hall as
14 party Treasurer in respect of credits made to the PNP
15 which are donations, coupled with corresponding
16 statements for the PNP accounts at the
17 First Caribbean International Bank. Also an A4 book
18 with copy cheques written on that
19 First Caribbean International Bank account and what is
20 called a Treasurer's statement, which you may remember,
21 sir, deals only with those -- with that FCIB account,
22 which was created by Mr Hall, covering only
23 the transactions in FCIB as I have just said.

24 Category 2 are bank statements dealing with
25 the Belize Bank account, which you may remember is

1 the bank account not declared in the Treasurer's
2 statement, about which the Commission originally was not
3 aware.

4 Category 3, balance sheets put together by
5 Ms Terry Clare in respect of Progress House, which --
6 there was some dispute over whether Progress House was
7 in fact the PNP headquarters or constituency offices for
8 members of the House.

9 But in any event, those, I suppose, could be called
10 petty cash accounts, spreadsheets in respect of invoices
11 submitted and cheques paid out. So there are three
12 categories of material which we are now in possession
13 of.

14 I have laid out in my skeleton argument the means by
15 which we came into possession of all of that material,
16 and certainly we would submit that was by the consent of
17 those people who had it in their possession.

18 My learned friend Mr Saunders, on behalf of the PNP,
19 makes the point that that material was not effectively
20 handed over with consent; that that material does not
21 belong to Floyd Hall, to take one example, for him to
22 hand over. They are not his documents, I think is
23 the point that Mr Saunders makes.

24 SIR ROBIN AULD: He made the general proposition new this
25 morning to me that section 4 does not apply to documents

1 which do not belong to the person the subject of the
2 request.

3 MS CLARK: Sir, yes. In response to that, I would draw your
4 attention to section 4(i) of the Commissions of Inquiry
5 Ordinance. If I read from it. Section 4(i)(f):

6 "A commission may, for the purposes of complying
7 with the directions under section 3 and for conducting
8 the Inquiry generally, examine on oath, affirmation or
9 otherwise, any person attending before the Commission,
10 and require such a person to answer all questions put by
11 or with the consent of the Commission and [sir, this is
12 the important part] produce any article or document in
13 his possession or under his control."

14 Sir, the essence of the submission on behalf of the
15 Commission is that all of the material that was handed
16 over by the Honourable Floyd Hall was plainly under his
17 control in his capacity as Treasurer for
18 the Progressive National Party.

19 One struggles to think of anybody under whose
20 control it could more properly be.

21 SIR ROBIN AULD: What about the other documents which were
22 found at the PNP headquarters?

23 MS CLARK: I would submit that category 2, the Belize Bank
24 accounts, fall within the same category under
25 the control of Mr Floyd Hall and the PNP documents were

1 handed over to the Commission by, as I understand it,
2 and I have no doubt I will be corrected if I am wrong,
3 or certainly sought by Ms Akierra Missick who, as
4 I understand it, is also an officer of the PNP and
5 plainly those documents had the capability of being
6 under her control for the purposes of the ordinance.
7 Very little in fact turns on those documents in any
8 event in category 3. I think if I understand his
9 arguments correctly, Mr Saunders raises strong
10 objections to categories 1 and 2 of the material in
11 the possession of the Commission.

12 Mr Saunders goes on, if I can move on from
13 the powers under the Commission of Inquiry Ordinance.
14 Perhaps before I do I can make this point.
15 The Commission has powers to order that material to be
16 produced under section 5.1, insofar as section 5.1
17 relates to the penalties, should those people fail
18 without reasonable excuse to produce those documents.

19 The submission I would make in respect of that is
20 short and it is simply that those powers were never
21 threatened or exercised.

22 The documents were handed over purely consensually
23 but the Commission does plainly have power to have
24 secured those documents by another means had it been
25 required to do so. That was never the position.

1 SIR ROBIN AULD: To be fair to Mr Floyd Hall and no doubt
2 Ms Akierra Missick and those who were responsible for
3 the PNP records, they could have been in no doubt that
4 if matters weren't disclosed by consent, that I would at
5 least be considering my powers to require their
6 production.

7 MS CLARK: Perhaps that is right and I put the matter too
8 highly. I have in fact in my skeleton argument put
9 the relevant passages of the transcripts where those
10 dialogues took place for the sake of completeness.

11 But in fact that never happened and the point I make
12 is, even if those documents had not been handed over by
13 consent, there were very easy ways in which we could
14 have enforced those requests and that indeed was never
15 done. My submission is, even if that had been done, it
16 would have fallen well within the bounds of what is
17 reasonable under the constitution of this Territory.

18 Sir, I don't think I need to go into any detail in
19 respect of the constitution unless you wish me to. You
20 have --

21 SIR ROBIN AULD: Deal with Mr Saunders' argument on
22 discrimination, which is a new one to me at any rate.

23 (11.15 am)

24 MS CLARK: Sir, yes. It is a new one to me as well and
25 I was very much considering his argument as he went

1 along. I can respond to it in this way, to assume that
2 anything that is asked for by the Commission, its
3 opposite number must also be requested is in my
4 submission a wholly impractical thing to ask. We
5 requested at the outset of this Inquiry returns and
6 declarations from all of those past and present elected
7 members for that very reason because those are the terms
8 of reference of the Inquiry.

9 Those persons who have been summoned to appear
10 before this Inquiry to give evidence or to produce
11 documents are those persons whose declarations or whose
12 returns were considered by the Commission to fall short
13 or to be inadequate, so far as the analysis that the
14 Commission has done.

15 As it happens, the vast majority of people who were
16 under a summons fell within the category of
17 Progressive National Party members. That is simply by
18 virtue of the inadequacy of their returns and nothing
19 else.

20 So I don't really need to go any further so far as
21 discrimination is concerned because I think what my
22 learned friend is suggesting is that in effect if we are
23 going to request the accounts of the PNP, we should do
24 the same for the PDM.

25 Sir, this Inquiry is by its very nature

1 an inquisitorial process. One question or one document
2 leads to another document, which leads to the necessity
3 to look at another document. If we were forced to look
4 at every document belonging to every person who had ever
5 been in a past or present elected member, in my
6 respectful submission we would be here until 2011.

7 The point is this: in my submission, those documents
8 that we became aware of in the possession and under
9 the control of Mr Floyd Hall were the PNP records. As
10 Mr Misick very clearly points out in his argument,
11 the reason why we should be looking at these documents,
12 and I think as you put it, sir, we must keep our eye on
13 the ball, can only be if we believe there is
14 a likelihood or a possibility that those documents will
15 disclose evidence or throw up the possibility of
16 corruption or other serious dishonesty. We are not
17 doing a wide-ranging investigation into the proper
18 conduct of the PNP accounts. We are here for a very
19 specific purpose.

20 The PNP records as we have seen them reveal
21 a wholesale failure to disclose to the Registrar and
22 a wholesale failure to disclose to the Commission.

23 They are evidence of precisely the kind of
24 wrongdoing that we are here to inquire into. So in my
25 respectful submission, sir, the issue of discrimination

1 under the constitution simply doesn't arise.

2 I don't know whether I can assist you any further on
3 that point, sir.

4 SIR ROBIN AULD: No, I think you have put it very well,
5 thank you.

6 MS CLARK: In respect of the other constitution rights, sir,
7 you have drawn attention to the very same exceptions
8 under each of the heads that I would have drawn your
9 attention to, so I don't propose to repeat what has
10 already gone before.

11 Sir, it may be worth mentioning that of course in
12 very many other democratic nations across the globe,
13 party accounts are published documents, they are on the
14 record, and people can look at them as and when they
15 require.

16 That is plainly because a political party is
17 an unincorporated body, it is accountable to its members
18 who are members of the public, and as such, any
19 mispending of party funds amounts at the very least to
20 a breach of trust, and that of itself falls within
21 the terms of reference of the Commission.

22 SIR ROBIN AULD: Now, I must be as strict with you as
23 I think I was with everybody else about timing.

24 MS CLARK: Sir, yes.

25 SIR ROBIN AULD: It is all in your very helpful skeleton

1 argument, and those are the points that you wish to air?

2 MS CLARK: Thank you.

3 SIR ROBIN AULD: Mr Saunders, you would like to reply?

4 MR SAUNDERS: Yes, sir, I will make it very brief. In

5 relation to the point of consent, I am not going to

6 discuss at any length whether there was consent or not,

7 but merely to point to Miller v Dickson. It is at

8 tab 2.

9 It is authority for the proposition that one's

10 constitutional rights can't be waived, and at any rate,

11 if consent was given, it was withdrawn, and at that

12 point it should be respected, one's constitutional

13 rights should be respected.

14 It relates to the -- the point relates to waiver of

15 rights.

16 In relation to the discrimination point,

17 the statements that are made in terms of the nature of

18 the Inquiry is clear. The statements are this:

19 the Inquiry isn't so much concerned with corruption per

20 se but the corruption of this particular administration

21 and concern about the current health of the Territory

22 and the future health of the Territory.

23 That is an understandable, reasonable and laudable

24 aim, given the shortness of the time and the demands of

25 the job, and that is accepted.

1 But in doing that, in undertaking that exercise,
2 the Commission has to be discriminatory about what it
3 looks into, what it investigates, what it asks questions
4 in relation to.

5 The fact that the current administration is on
6 the stand and answering questions is clear evidence that
7 that has been the case. It is self-evident. To suggest
8 that there was nothing on the record after asking
9 questions and information that required an enquiry of
10 the past administration is patently false.

11 SIR ROBIN AULD: I thought I explained that in my opening
12 statement. Clearly in the type of Inquiry that I was
13 instructed to undertake, which was initially, as you
14 will remember for some four months, to expect
15 the Commission to range over a period of some ten years,
16 more than one administration, is quite a task in itself.
17 It was for that reason that I sought assistance from
18 a large range of people, all the PNP ministers and
19 members, past and present, and most of the PDM past
20 ministers and members and present members as to any
21 matter on which they could assist in the Inquiry.

22 The outcome of that was near silence from the PNP
23 ministers and members to whom I wrote. The outcome of
24 that was a loud outcry from people who belonged to
25 the PDM party and others besides. I have to proceed on

1 the evidence which is put before me and that I have
2 done, and of course as you rightly say, I have had to
3 have regard to the present need and the future urgency
4 of that need, and that is a decision I have made.

5 MR SAUNDERS: Sir, it is suggested that within
6 the information that you have acquired and that you have
7 secured, you have independently secured, it is clear on
8 that alone, of the issues that you are raising, with
9 this particular administration.

10 For instance, the Register of Interests.

11 SIR ROBIN AULD: Yes.

12 MR SAUNDERS: The Register of Interests relates to documents
13 that have been wholly disregarded by everyone --

14 SIR ROBIN AULD: What relevance is that?

15 MR SAUNDERS: What relevance is that --

16 SIR ROBIN AULD: If everybody has not been doing it, there
17 is something seriously wrong here.

18 MR SAUNDERS: It is certainly accepted that there is
19 certainly something wrong here. But it is something
20 that is certainly wrong here in relation to both the PNP
21 and the PDM, and in relation to this Inquiry, it is
22 the ministers of the PNP that are being publicly spanked
23 in relation to their failure to declare interest on
24 the Register of Interests. It is submitted that that
25 particular focus in this particular public forum is

1 discriminatory.

2 SIR ROBIN AULD: This is only part of the Inquiry's work.

3 It is in fact a relatively small part, as I made plain
4 in my opening statement. You will have to wait and see
5 how I deal with it in the report. I am here because
6 I am dealing with matters where records are more likely
7 to be available in recent years than they were before,
8 and where I am in receipt of a very great deal of
9 information which points towards the conduct of the
10 present administration, and despite having asked for it,
11 very little information which points towards the conduct
12 of the previous administration. Now if you call that
13 discriminatory, then you will have to take into account
14 how we have reached that pass.

15 MR SAUNDERS: Sir, it is not a criticism in relation to
16 the substance, and it is certainly understood the
17 necessity of the decision that you have made.

18 The submission is that in undertaking practical
19 considerations for reasons of efficiency, that you have
20 had to narrow the terms of reference in a way in which
21 it has been discriminatory under the constitution.

22 For instance, and I appreciate that there will be
23 a report that flows from that and the report will deal
24 with things on a more wholesome and balanced and fair
25 basis. The problem with that is that the Inquiry comes

1 before the report.

2 SIR ROBIN AULD: No, part of the Inquiry like the rest of
3 the Inquiry comes before the report. This Inquiry, oral
4 hearing is not the Inquiry. It is part of it.

5 MR SAUNDERS: My apologies. The public hearings in relation
6 to the Inquiry comes before the report and it is
7 the public hearings that are dealt with and that are
8 consumed with great interest by the public. And that
9 will be absorbed and will leave an impression on the
10 public. The report will probably be read by a very
11 narrow section of the populace, and those who do come in
12 contact with it, will come in contact with it in
13 relation to summaries of the report that have been spun
14 by the individuals making the summaries.

15 Sir, it is submitted that in dealing with the public
16 hearings that there is an obligation to be fair,
17 balanced and non-discriminatory, particularly in
18 relation to matters like the Register of Interests.
19 The public record reflects the view that the Register of
20 Interests is a -- the failure on the Register of
21 Interests is a peculiar failing of the PNP and that is
22 not the case. It is a peculiar failing of the
23 Turks & Caicos government from the beginning, from
24 section 72 --

25 SIR ROBIN AULD: That is the interpretation you put on it --

1 I am sorry, the interpretation you put on the picture
2 given is the failure to make full and adequate returns
3 of interests is a failing peculiar to the PNP. I have
4 never said so, I have never suggested so; indeed I have
5 suggested to the contrary in the odd exchange that has
6 taken place.

7 It is not peculiar to the PNP. It would certainly
8 be never a feature of my report that it is peculiar to
9 the PNP.

10 The problem is that it is in here and now and
11 the last two or three years on which I have a great deal
12 of information. The other administration is years ago
13 on which, despite having asked for it, I have not got
14 a great deal of hard information.

15 That lay in the hands of the PNP ministers and
16 members to whom I wrote in mid-September specifically
17 asking for assistance with that problem in mind. As
18 I have said, the request was greeted with silence.

19 MR SAUNDERS: Sir, my understanding is that the Commission's
20 focus, it is not just the information, the Commission's
21 focus and intent has been to focus on -- again that is
22 in the transcripts.

23 Our concern is that the present administration,
24 the current health of the Territory and the future
25 health of the Territory, that is in the record in

1 relation to the open remarks. In relation to, for
2 instance, enquiries of the Land Registry, my
3 understanding is that there have been individuals at
4 Land Registry for weeks on end requesting information.
5 Some of this information doesn't need to be given to
6 the Commission. It is a matter of public record in
7 relation to dealings with Crown land.

8 Dealings with Crown land, the ability to sell Crown
9 land and to appreciate that one can sell Crown land at
10 a discount and to re-sell it a week later for
11 substantially more is not something that has just been
12 realised in the last six or seven years.

13 SIR ROBIN AULD: You don't need to tell me that. I have
14 been through the Cabinet meeting records and all sorts
15 of documents. I have not wasted my time during the last
16 five or six months. I have got a picture of what the
17 scene was like and what it is like.

18 MR SAUNDERS: Sir, it is suggested that the information that
19 is needed in relation to -- whether it is provided or
20 not willingly by individuals is a matter of public
21 record on the face of the record --

22 SIR ROBIN AULD: I think you have made your point now as
23 best you can, and we are straying a bit.

24 MR SAUNDERS: Thank you, sir.

25 SIR ROBIN AULD: There is nothing else you want to say in

1 reply to Ms Clark's submissions?

2 MR SAUNDERS: I think I have dealt with, it sir.

3 SIR ROBIN AULD: Thank you.

4 Submissions by MR SMITH

5 MR SMITH: I wonder if the Commission could hear me on the

6 issue of consent. I think Ms Clark has argued that

7 there was in fact consent by Mr Hall in relation to

8 releasing those documents.

9 (11.30 am)

10 SIR ROBIN AULD: Just a moment. Yes.

11 MR SMITH: I would like to direct the Commission to

12 the transcripts that deals with the colloquy when

13 the documents were actually turned over.

14 SIR ROBIN AULD: Which documents are they?

15 MR SMITH: At the point in time when Mr Floyd Hall indicated

16 to the Commission --

17 SIR ROBIN AULD: Which documents are you referring to?

18 MR SMITH: Documents that were given to Mr Laurance O'Dea.

19 SIR ROBIN AULD: Today?

20 MR SMITH: Mr Laurance O'Dea.

21 SIR ROBIN AULD: Which documents when?

22 MR SMITH: Basically category 1 and 2 of the documents

23 that --

24 SIR ROBIN AULD: Do we have the folder here with all these

25 documents?

1 MS CLARK: Sir, you may find, I am not sure if you have it
2 here, in front of you there is a bundle. I think it
3 contains my appendices.

4 SIR ROBIN AULD: The transcripts?

5 MS CLARK: Certainly relevant portions. I am not sure which
6 part Mr Smith is going to refer to.

7 MR SMITH: It is my submission that at a point in time when
8 my client indicated that he has possession of the
9 documents, it was already a done deal that
10 the Commission had ordered the documents to be turned
11 over. In support of that, I would like to draw
12 the Commission's attention to page 120 of the
13 transcripts, of January 19th. Line 21.

14 MR FITZGERALD: Which day is it?

15 MR SMITH: January 19th.

16 SIR ROBIN AULD: Just read it. Which day?

17 MS MISSICK: Day 5, sir.

18 MR SMITH: Page 120.

19 SIR ROBIN AULD: Just read it.

20 MR SMITH: Line 19, Mr Saunders says:
21 "Sir, I would not have the authority to undertake
22 that."
23 Sir Robin said:
24 "I will tell you what I am going to propose and do
25 if you have no authority. I am not going to adjourn

1 your application. I want those papers, those accounts
2 here this afternoon. If they are not, as a result of my
3 request, brought this afternoon, I shall issue a summons
4 this afternoon requiring their production to the
5 Commission before sundown today, which would be
6 personally served on, I imagine, Ms Akierra Missick who
7 is the Secretary General?"

8 Then the Commission goes on again to say at line 16
9 of page 121, at the point in time when Mr Saunders
10 indicated that he would need to get authority from and
11 instructions from those instructing him, he indicated at
12 line 16:

13 "I am not asking you to give that undertaking unless
14 you are authorised by your clients to do so. You can't
15 give it on your own account clearly. But they should
16 understand that if they don't give you authority to do
17 so, I shall issue a summons immediately for their
18 production. What happens thereafter should not, if I
19 deal with the matter properly, affect the concerns that
20 you have put so eloquently to me."

21 It was at that particular time I indicated on behalf
22 of my client that he has the documents.

23 SIR ROBIN AULD: That he has what?

24 MR SMITH: The documents in his possession.

25 SIR ROBIN AULD: That he had the documents?

1 MR SMITH: Yes.

2 SIR ROBIN AULD: But you didn't object to their production?

3 MR SMITH: He nonetheless did object.

4 SIR ROBIN AULD: No, you didn't object to their production

5 on his behalf.

6 MR SMITH: He did.

7 SIR ROBIN AULD: You are saying you objected to

8 the production of the documents?

9 MR SMITH: I am saying my client, at that point in time when

10 the Commission turned to him and indicated that whether

11 or not he has the documents, I think his first words

12 that he shared the concerns of --

13 SIR ROBIN AULD: But the outcome of the exchange was that he

14 agreed to produce them.

15 MR SMITH: I understand that.

16 SIR ROBIN AULD: And produce them that afternoon.

17 I referred to the clear indication that I gave, and

18 I make no bones about it, that if he had not given his

19 consent, then I would have had to consider taking

20 proceedings to require them under the provisions of the

21 ordinance. There is no doubt about that.

22 MR SMITH: My submission at the particular time when he

23 "agreed" to give them, there was already a direction

24 from the Commission requiring the documents to be

25 produced. It was the direction that I think would have

1 had to be abided by, and I think he was not in
2 a position to say: well, I am not going to turn them
3 over. I think the only thing that was left for
4 the Commission to do, and it threatened it, was to issue
5 a summons. But the language of the transcript speaks
6 clearly and eloquently to the fact that it was
7 a specific direction from the Commission to have them
8 turned over.

9 MS CLARK: Sir, would you permit me to respond to that very
10 briefly?

11 SIR ROBIN AULD: I think you should.

12 MS CLARK: There is another section which is appendix 1 of
13 the bundle that I have given you.

14 The reason it is not printed out with proper page
15 numbers is because when one prints it, it double spaces
16 it. The page numbers are on there, though not at the
17 bottom of the page. Perhaps I can read it out:

18 "Question: Does the PNP prepare accounts?"

19 "Answer: Yes.

20 "Question: And are those accounts publicly
21 available?"

22 "Answer: No.

23 "Question: So is there any form of audit carried
24 out on them?"

25 "Answer: No.

1 "Question: As far as payments out to candidates are
2 concerned, would you keep a record of the payments out?

3 "Answer: That is correct.

4 "Question: So you would have a payment record for,
5 let's say, the Premier of every penny that the PNP had
6 paid out to him?

7 "Answer: Yes.

8 "Question: Would you be able to provide that record
9 to the Commission?

10 "Answer: Yes."

11 And it goes on. Forgive me for a moment.

12 "Question: Could you please do so?

13 "Answer: Okay.

14 "Sir Robin Auld: This is an annual record, is it?

15 "Mr Smith: We can assist the Commission. We have it
16 here. It is just a matter of making copies.

17 "Mr Milne: Thank you very much."

18 I don't think I need to go on. Perhaps for
19 the benefit of those other parties, I can assist with
20 the page numbers. That is pages 18 and 19 of the
21 transcript of 19th January.

22 MR SMITH: I agree that that did transpire, but it doesn't
23 negate my point because that discussion was done at
24 a point in time prior to the party making the decision
25 not to -- make a decision to oppose the release of these

1 documents.

2 SIR ROBIN AULD: You support Mr Saunders' submission that

3 there was no real consent here because there was in

4 the background the threat of the Commission exercising

5 its powers if consent was not given; that is your point,

6 isn't it?

7 MR SMITH: Yes.

8 SIR ROBIN AULD: Thank you. I think we had better stop

9 there for five or ten minutes. I will consider whether

10 I can give a ruling over the short adjournment, that is

11 to say now, before lunch.

12 (11.38 am)

13 (A short break)

14 (11.48 am)

15 SIR ROBIN AULD: Just before we resume, Mr Saunders, I have

16 now had a chance to look at the skeleton argument that

17 you submitted this morning, which bears the same date as

18 the one I originally had, which I also received but

19 a little earlier this morning.

20 The second one is in substitution for the first, is

21 it?

22 MR SAUNDERS: Yes, sir.

23 SIR ROBIN AULD: Thank you.

24 Just before we resume, the programme which is

25 constantly changing for obvious reasons, the present

1 state of play is that as soon as I have completed my
2 short ruling or decision rather on the submissions just
3 made to me, Mr Jeffrey Hall, the Honourable Jeffrey Hall
4 will be required to attend for examination. On Thursday
5 the Honourable Lillian Boyce will follow as soon as
6 Mr Jeffrey Hall finishes, if he goes over until
7 tomorrow, to be followed by Don-Hue Gardiner and
8 the Honourable Floyd Hall, who was due to be recalled
9 will be listed not before 2.00 pm tomorrow. Thank you.

10 Decision by the Commission

11 SIR ROBIN AULD: There are before the Commission a number of
12 applications. They are variously designed to withhold
13 from the Commission material potentially of value to it
14 in its task under the first term of reference to
15 investigate the possibility of corruption or other
16 serious dishonesty in relation to past and present
17 elected members of the Territory's legislature.

18 The main application of the day has been that of
19 Mr Norman Saunders on behalf of
20 the Progressive National Party, the PNP.

21 He seeks the return by the Commission to the PNP of
22 three sets of its accounting documents, provided as
23 the transcript record shows voluntarily and at the
24 request of the Commission and without any objection at
25 the time from those providing it or their legal

1 representative.

2 The first set of accounting documents is material
3 produced by the Honourable Floyd Hall, Treasurer of the
4 PNP, from his home, and bank statements of its account
5 with the First Caribbean International Bank.

6 The second set consists of statements of an account,
7 I believe a loan account, with the Belize Bank
8 maintained by the Honourable Floyd Hall, purportedly on
9 the party's behalf at the Belize Bank in the Territory.

10 The third set consists of documents held in the PNP
11 headquarters at Progress House in Grand Turk.

12 MS MISSICK: Sorry, sir, Providenciales.

13 SIR ROBIN AULD: I got it wrong, thank you. In
14 Providenciales, including statements of its account with
15 the First Caribbean International Bank.

16 Mr Saunders couples with his application for
17 the return of those documents an application that
18 the Commission should not have regard in preparing its
19 report to any information that it may have gleaned from
20 them already.

21 Mr Saunders' application, in respect of which I have
22 received this morning a short skeleton argument, is
23 supported by Mr Rigby on behalf of Mr Chal Misick
24 insofar as it relates to disclosure sought by
25 the Commission from Mr Chal Misick under the same sort

1 of headings as those set out by Mr Saunders in his
2 skeleton argument.

3 Namely (1), duty of confidentiality; (2),
4 constitutional protection; (3), a point that Mr Saunders
5 did not, I think, need to dwell on to the same extent,
6 legal professional privilege.

7 Mr Saunders' first ground of application is that
8 section 4 of the Commissions of Inquiry Ordinance is not
9 wide enough to require production of documents held by
10 the subject of the request, but which he is not entitled
11 to produce, in particular, because they belong to
12 someone else. In this context, Mr Saunders' submission
13 is that, in the case of Mr Floyd Hall, and in the case
14 of whoever was responsible at the party's headquarters,
15 the statements, principally statements of account and
16 supporting documents, were not a final record for
17 the purposes of the party and would not be so until
18 ratified.

19 On that account in part, there may have been other
20 reasons why he put it this way, those of confidentiality
21 of persons who provide donations, his submission was
22 that Mr Floyd Hall and the party officers, or officer or
23 officers concerned, were not entitled to hand over
24 the statements as they did and that ousted
25 the jurisdiction of the Commission to require them under

1 section 4 of the Commissions of Inquiry Ordinance.

2 I think I should deal with that straightaway before
3 going on to the other grounds on which Mr Saunders
4 relied.

5 It is quite plain from a cursory and then a measured
6 reading of the provisions of the Commissions of Inquiry
7 Ordinance, in particular section 4 in context and as
8 a whole, that the Commission has power to require
9 the production of documents under various subparagraphs
10 of section 4(i), whether or not the subject of the
11 request is the owner, whether or not he or she has
12 the consent of other parties who may have an interest in
13 them to produce them, and whether or not they are in
14 a final enough state to constitute an eventual official
15 record of the dealings of the individual or the body
16 concerned whose property they are.

17 (12.00 pm)

18 I need only refer, as Ms Sarah Clark did, in her
19 written and oral submissions, to section 4(i)(d) and
20 4(i)(f) of the ordinance. Section 4(i)(d) empowers
21 the Commission to:

22 "Summon any person in the form set out in the
23 schedule to attend, to give evidence, or to produce any
24 article or document".

25 Section 4(i)(f) is to like effect, only a little

1 more specific. It empowers the Commission to:
2 "Examine on oath, affirmation or otherwise any
3 person attending before the Commission and require such
4 person to answer all questions put by or with
5 the consent of the Commission and produce any article or
6 document in his possession or under his control."

7 There are further provisions in the ordinance which
8 make plain that the Commission has power to require
9 production of and to inspect, subject to various
10 conditions, documents in the possession of person A,
11 belonging to person B, regardless of whether person B
12 consents to their disclosure.

13 There is no possible basis for Mr Saunders'
14 restriction in his submission of the effect of
15 section 4, so as to confine it only to documents in
16 the ownership of the person requested to produce them;
17 or by reference to any duty claimed or otherwise that
18 that person may have to others in connection with
19 the documents.

20 I turn now to Mr Saunders' second ground of
21 application. It arises out of the provisions in
22 sections 1, 8 and 12 in part 1 of the Territory's
23 constitution, all relating to the fundamental rights and
24 freedoms of the individual.

25 In particular, section 8 provides protection for

1 private family life and for privacy of home and other
2 property.

3 Section 12 provides for protection of freedom of
4 expression.

5 Mr Saunders puts his argument under both headings
6 and frames them by reference to the fundamental
7 requirements in section 1 of the constitution. When
8 putting against that submission the provisions of
9 section 4, subsection 1(d) and section 4,
10 subsection 1(f) of the Commissions of Inquiry Ordinance,
11 Mr Saunders' argument is that whatever their municipal,
12 their domestic interpretation, they are overborne by
13 the fundamental requirements in sections 8 and 12 of the
14 constitution.

15 As I have indicated, sections 4(i)(i) in those two
16 subparagraphs respectively give power to the Commission
17 to summon persons to give evidence and/or to produce
18 documents, and to require them to answer questions.

19 These powers are backed up with a power in section 5 to
20 seize documents and in section 10 to have recourse to
21 contempt powers if necessary.

22 Mr Saunders' submission is that the context of those
23 provisions, giving rise to co-operation and seeming
24 consent, make plain that the PNP, acting through,
25 presumably, Mr Floyd Hall, its staff at its

1 headquarters, and it must be said in part through
2 the helpful co-operation of Ms Akierra Missick in her
3 role as General Secretary to the party, made plain that
4 the PNP in truth knew that it had no other option and
5 therefore consented in the way the transcript reveals.

6 On behalf of Mr Don-Hue Gardiner, Mr Smith has today
7 referred to the clear indication that if the statements
8 were not voluntarily produced, the Commission would
9 consider expressing its power under the ordinance to
10 enforce production of them.

11 And there's no doubt about that. That too is
12 evident from the transcript.

13 But the fact is that the documents were voluntarily
14 produced through the agencies I have mentioned and in
15 the way that I have mentioned, voluntarily without
16 the Commission having to have recourse to its reserve
17 powers.

18 Mr Saunders' next ground, all part of the same
19 theme, was that in the further alternative, if he
20 doesn't succeed thus far, the PNP have changed their
21 mind and they want their documents back.

22 He submits that the party is entitled to change its
23 mind in that way and then withdraw any earlier consent.
24 So he seeks by that route to establish in any event
25 an interference with whatever rights there may be

1 engaged under section 8 and/or section 12 of the
2 constitution.

3 Those submissions have been countered by Mr Milne on
4 behalf of the Commission in a skeleton argument written
5 and to which Ms Sarah Clark, his junior, has spoken
6 today, copies of which have been provided to everybody.

7 Mr Saunders and Mr Smith's submissions on this point
8 have also been met with a skeleton argument provided on
9 behalf of the Attorney General, which I have also read
10 and which I hope other counsel have had copies and it
11 has also been met in part as to the reliance of
12 Mr Saunders on a suggestion of discrimination.

13 Mr Ariel Misick, on behalf of the Honourable
14 McAllister Hanchell, does not support the constitutional
15 submission made by Mr Saunders and takes no positive
16 point on his alternative submission as to privacy,
17 general duty of confidentiality, so as to override
18 the provisions of section 4 of the Commissions of
19 Inquiry Ordinance.

20 With that very brief summary of the matters before
21 me and the principal arguments on them, I turn now to
22 the second of my conclusions, the first having been in
23 relation to Mr Saunders' first submission as to
24 limitations in section 4, the conclusion on
25 the constitutional arguments.

1 First, the human rights in sections 1, 8 and 12 of
2 the constitution order are not in my view in
3 the circumstances engaged at all.

4 That is because, as a starting point, the PNP is not
5 a "person" to whom the qualified rights in sections 8
6 and 12 is given.

7 Nor is it a proxy for a person or persons who have
8 made donations to the party, nor of members or
9 non-members to whom the proceeds of donations have been
10 passed.

11 As Mr Ariel Misick QC in his skeleton argument on
12 behalf of the Honourable McAllister Hanchell has put it,
13 section 8 is not engaged at all, since that provision is
14 concerned only with the rights of an individual, and
15 there is no individual behind Mr Saunders' application
16 here today.

17 There was, in any event, no interference with any
18 right or rights that might have been provided by either
19 of the constitutional provisions. As I have said and as
20 the transcripts show, the material was provided with
21 the full co-operation and consent of Mr Floyd Hall in
22 his capacity as Treasurer of the PNP. They were also
23 provided with the active co-operation of
24 Ms Akierra Missick as Secretary General of the party,
25 albeit appearing before the Commission as one of the

1 attorneys of the Premier; both with, as it seemed to the
2 Commission, ostensible authority to act as they did.

3 In short, as Mr Milne and Ms Sarah Clark have put it
4 and the Attorney General has submitted, the provision of
5 the document to the Commission was voluntary and did not
6 require the Commission to use its coercive powers under
7 section 4(i)(d) or (f) or section 4(ii) of the
8 Commissions of Inquiry Ordinance.

9 There is, however, still the change of mind point on
10 which Mr Saunders ultimately relied and expanded in
11 the second version of his skeleton argument, submitted
12 today.

13 It is still there as a possibility, one that the
14 Attorney General in his skeleton argument considered
15 deserved attention.

16 (12.15 pm)

17 I agree. But, in the circumstances of the powers
18 under section 4 of the Commissions of Inquiry Ordinance,
19 under which the Commission is proceeding, whether or not
20 that argument would run, it still must yield to the next
21 matter of fact and law, which require to be considered.

22 Even if either of the section 8 or 12 points had
23 been engaged and interfered with, the interference
24 would, in my view, have been justified by the saving
25 provisions, particularly in section 8(ii) of the

1 constitution and also strongly arguably under
2 the similar provisions but not identical in
3 section 12(ii) of the constitution.

4 That conclusion is, as I have mentioned, supported
5 by and reflects the reasoning of Mr Ariel Misick, and
6 that of the Attorney General, and of counsel to
7 the Commission in their respective submissions to
8 the Commission.

9 The conduct complained of was done under
10 the authority of the powers given under the Commissions
11 of Inquiry Ordinance to the Commission, in particular in
12 section 4(i) as to the obtaining receipt and manner of
13 dealing with evidence.

14 Such powers were clearly in the contemplation of
15 those advising the Crown in the drafting of the order
16 and the new constitution in 2006 to which the order gave
17 effect.

18 It will be noted that section 5, section 1 of the
19 constitution order expressly saves existing legislation,
20 requiring, where possible, its interpretation to reflect
21 the new climate of the constitution and where it does
22 not, for the Governor, I think, to make regulations
23 effectively to harmonise the two.

24 That contemplation by the draftsman of the 2006
25 constitution, drawn from a much wider context, is to be

1 found in the qualifying or saving provisions,
2 particularly in section 8(ii):
3 "For any provision in the Territory's laws
4 'reasonably required in the interests of', other
5 considerations, 'public morality, for the purpose of
6 protecting the rights and freedoms of other persons', or
7 for the prevention or detection of offences against
8 the criminal law or the customs of the law".

9 Similar but not quite so explicit qualification,
10 particularly in relation to criminal proceedings, is to
11 be found in the structure of section 12, in
12 section 12(ii), paragraph (a).

13 Those provisions, in my view, clearly apply to the
14 conduct of a Commission of Inquiry, in particular to its
15 powers in investigating the possibility of crime with
16 a view to further prevention of it by other persons,
17 every bit as much as they do to the proceedings of
18 a criminal court. Here corruption of or by ministers of
19 the government is in the air and the Commission is
20 charged in the urgent public interest with enquiring
21 into the bases for it.

22 In the banking context, the court in
23 *Douglas v Pindling*, a decision, I imagine, of the
24 West Indian Court of Appeal, but which is reported in
25 1996, 48, WIR1 --

1 MR MISICK: It is a Privy Council decision.

2 SIR ROBIN AULD: It is a Privy Council decision, is it?

3 Thank you.

4 Put the Commission's decision well in paragraphs 2
5 and 3 of its holdings, which I quote:

6 "2. That if the public interest appeared on good
7 grounds to require the disclosure of a customer's
8 banking records, the customer's right to non-disclosure
9 without consent must yield to the public interest.

10 "3. That if there were material before a committee
11 of Inquiry which induced its members to believe bona
12 fide that a banker's records might cast light on matters
13 falling within the Commission's terms of reference, it
14 was the duty of the Commission to issue a summons
15 seeking access to the banker's books. It was not
16 necessary that the Commission should believe that
17 the records would in fact have such a result. If
18 the Commission's decision to issue a summons should be
19 challenged on appeal, the court would approach
20 the matter upon the traditional judicial review basis
21 applying the Wednesbury principles."

22 I think it would also be helpful, whilst looking
23 those observations, to read the following paragraph,
24 from paragraph 20 of the Attorney General's submission.
25 This is what he says:

1 "Because the matters to be enquired into are not
2 fully known at the time of the appointment,
3 the Commission [this Commission] must of necessity
4 follow the leads and information that emerge as
5 the Inquiry progresses. A progressive dynamic
6 investigation is an essential part of an Inquiry. It
7 would not make sense for the operation of an Inquiry to
8 be circumscribed by persons simply refusing to provide
9 valuable information. It must be free to follow
10 the information that emerges as it proceeds and to use
11 any of its powers to obtain information material to its
12 terms of reference in the public interest."

13 Well, here there is wide public concern about and
14 interest in identifying potential blatant and egregious
15 corruption of persons in public office or by them,
16 which, if ultimately established, should be stopped.

17 It should be stopped and those involved in such
18 corruption or other serious dishonesty should be brought
19 to justice and required to restore their ill-gotten
20 gains to the public.

21 Such public interest, if shown to be vindicated,
22 clearly outweighs any claims to individual rights of
23 possible participation in that corruption.

24 The appointment of the Commission and the way in which
25 it is going about its task is in my firm view

1 a necessary and proportionate protection of that public
2 interest.

3 In short, for all those reasons, I am of the view
4 that the human rights arguments are so misconceived as
5 to be almost risible in the context of my terms of
6 reference, and having regard to the mass of evidence now
7 before the Inquiry, in particular that which has emerged
8 in these oral hearings in the last fortnight or so.

9 The ordinary man in the street not conditioned to
10 the niceties of forensic life would be astonished to
11 learn that if there is such potential dishonesty going
12 on affecting the public interest, that those possibly
13 responsible for it should be protected in the way in
14 which it is suggested by some of the submissions that
15 I have heard this morning.

16 In so expressing myself, I do not consider that I am
17 offending the provisions of section 18(iii) of the
18 constitution, to which Mr Edward Fitzgerald referred.
19 That is my view, whether the Commission's proceedings
20 are "proceedings in court" to which the provision
21 refers.

22 It provides that if in any "court" proceedings in
23 the Territory "any question arises as to
24 the contravention of any of the part 1 human rights, the
25 'court' must refer the question to the Supreme Court,

1 unless in its opinion the raising of the question is
2 merely frivolous."

3 I am not sure I have quoted that completely. I am
4 looking for the words "or vexatious".

5 There are three things to say about that. First, as
6 a matter of interpretation, I don't believe that
7 the draftsman of the constitution, which in its
8 generality came into being long after and without
9 amendment of the Commissions of Inquiry Ordinance,
10 should be construed so as effectively to wipe out
11 the jurisdiction and delay the progress of it, of
12 a Commission of Inquiry every time someone raises in
13 the course of its proceedings a question of
14 contravention or suggested contravention of human
15 rights, whether the issue arises as a matter of fact or
16 of law.

17 (12.30 pm)

18 Secondly, as a matter of fact here, my view strongly
19 held is that there were no facts capable of amounting to
20 an interference of any human right claimed since, as
21 I have said, there is no person and there are no persons
22 party to the proceedings seeking to protect his or her
23 personal rights, or facts that support any claim that
24 what has happened was done without the consent of those
25 now seeking to rely on the human rights issues.

1 Thirdly, in any event, I am of the strong view,
2 already expressed, albeit in other words, that the
3 arguments in support of the application are in the terms
4 of section 18(iii) of the constitution, both frivolous
5 and vexatious.

6 There is, however, a further basis put forward by
7 Mr Saunders for his application for return of the PNP
8 accounting statements, and one that has been taken up by
9 counsel on behalf of others, in particular Mr Rigby, on
10 behalf of Mr Chalmers Misick in relation to other parts
11 of the evidence.

12 Mr Saunders has submitted that while there is no
13 formal legal privilege claimable by those who donate
14 money to political parties, the PNP is a party that owes
15 a duty of general confidentiality to such donors. Not
16 to recognise it, he suggests, will deter potential
17 future donors to political parties from supporting in
18 that way the party of their choice.

19 Implied in that suggestion is a cry for the need to
20 protect entirely honourable donors who, one would
21 expect, should have little to fear from the publicity by
22 nailing their flag to a political mast, as well as
23 dishonourable donors who have a real need for
24 confidentiality because they have corruption or other
25 serious dishonesty in mind.

1 I need take little time over this argument. With
2 the orders of the court in Douglas v Pindling ringing in
3 my ears, I say, as Ms Sarah Clark has done, at page 20
4 of her amended skeleton argument, and I quote:

5 "To allow this material to be beyond scrutiny would
6 allow for flagrant misuse of party funds and potential
7 dishonesty and corruption of precisely the type
8 contemplated under the terms of reference."

9 Perhaps I should add, a potential that has been well
10 and truly illustrated in the oral evidence given to
11 the Commission over the last two weeks, if not before,
12 in the evidence of the Premier, the Deputy Premier,
13 the Minister for Natural Resources and the Premier's
14 brother, Mr Chal Misick. That is a dangerous potential
15 of which the public interest demands rigorous and open
16 investigation.

17 The same reasoning must therefore apply to all other
18 submissions made for the protection of
19 the confidentiality of donors in respect of payments,
20 the subject of scrutiny by the Commission, in particular
21 to date by Mr Milne in his examination of witnesses.

22 I include in that the general submissions of
23 Mr Rigby re the duties of confidentiality, legal
24 professional privilege and constitutional issues set out
25 in his skeleton argument, dated 27th January 2009 and

1 received this morning and which I have read.

2 It follows that the limited disclosure to
3 the Commission in the in camera proceedings yesterday in
4 the course of Mr Chalmers Misick's evidence in relation
5 to redactions on his reconstructed client account for
6 the Premier at page 2 of his bundle, must now be lifted.

7 Subject to any submissions from counsel, that can be
8 done by Mr Chalmers Misick's counsel or Mr Milne, with
9 his consent, reading out for the record the redacted
10 passages, so as to identify in each case the donor
11 and/or the purpose to which the donation was applied by
12 Mr Chalmers Misick in his account.

13 The in camera proceedings of Mr Chalmers Misick,
14 evidence yesterday, should now become a part of the
15 public transcript of that day's hearings. There should
16 be similar publication of any other matter that pending
17 this decision and raising the same point, I directed
18 should be temporarily not disclosed for the reasons
19 reflected in the submissions supporting the application
20 today.

21 At the moment sitting here I can't remember whether
22 there were such other pieces of evidence which require
23 that attention but no doubt Ms Clark or Mr Milne or
24 somebody else will direct my attention to them.

25 MR MILNE: Sir, to the best of my recollection there is no

1 in camera transcript other than the sections to which
2 you have already made reference.

3 We deliberately paused on occasions and have
4 deferred some questioning in anticipation of this
5 argument taking place this morning. It is because of
6 the ruling that has now been given that we would seek to
7 recall the Honourable Floyd Hall and the Honourable
8 McAllister Hanchell to deal with those matters. There
9 are questions essentially that have not yet been asked
10 because of the potential argument.

11 SIR ROBIN AULD: Yes. Although I have dealt in the way
12 I have with section 18(iii) of the constitution,
13 the pedantry in me has inclined to call what I have just
14 done today a decision and not a ruling.

15 MR MILNE: I beg your pardon, sir.

16 Can I just clarify whether you would wish
17 the argument that has gone on today to be on the public
18 record or not?

19 SIR ROBIN AULD: It seems to me that it should be. Are
20 there any submissions to the contrary?

21 Very well, this part of today's proceedings will be
22 part of the public transcript. Now it is 12.45. I am
23 not sure we can get much done for 1 o'clock with
24 the Honourable Jeffrey Hall.

25 Shall we take advantage of it and have an an hour

1 and a quarter for lunch today?

2 Submissions by MR FITZGERALD

3 MR FITZGERALD: Sir, there is just one matter, I am happy to

4 deal with it in open court if you prefer. That is to

5 say, I did make the suggestion about the disclosure of

6 the recent declaration of interest prepared for this

7 Commission by Floyd Seymour and you said you would

8 kindly consider that matter.

9 The other issue was a broader submission which

10 I think I can just make the submission but -- which is

11 a wider one that -- the gist should be made available of

12 certain matters and they are in turn information that

13 supports the claim that there is a cross-party culture

14 of inadequate disclosure of the declaration of

15 interests. That is evidence that would assist our

16 submission. I know you have already given an indication

17 that it does exist and it may be that I can just refer

18 to what you said in open court about that.

19 But secondly any other adverse allegations that have

20 not been disclosed to the Premier which may be taken

21 into account, and that is in the light of the fact that

22 you have indicated that you have had a great deal of

23 information submitted to you.

24 We of course don't know what that information is,

25 although we would anticipate that my learned friend

1 Mr Milne will have put the gist of anything significant
2 to the Premier when he gave evidence but just in case
3 that isn't so, we would respectfully invite you to
4 indicate to us any other allegation that has not been
5 put to the Premier, which we may have to deal with that
6 arises --

7 SIR ROBIN AULD: Yes.

8 MR FITZGERALD: Do you see what I mean? You have indicated
9 there is a great body of material that has been shown to
10 you which we obviously haven't seen. Many of the
11 allegations my learned friend has put rather indirectly,
12 saying: it has been suggested to us that something about
13 a jet or -- but some of the allegations obviously may
14 not have been put, and if they are to weigh with you in
15 your deliberations or possibly feature in any of your
16 conclusions, we would respectfully invite disclosure of
17 them so we can deal with them at least in writing.

18 SIR ROBIN AULD: Let me deal with the last which I think is
19 the third of the points you have made.

20 This is a, as you can see, a rather syncopated
21 exercise, this Commission of Inquiry. When
22 the Commission comes to preparing its report or reports,
23 before making any significant adverse comment about
24 anybody in its provisional draft, something akin to
25 a Salmon letter will be sent to each person indicating

1 that the Commission is of the provisional view that, and
2 set out, only in the briefest terms, the nature of the
3 adverse comment or allegation, so that the subject of it
4 will have an opportunity to deal with it by way of
5 written submissions.

6 Does that adequately deal with your third point?

7 MR FITZGERALD: Yes, it does.

8 SIR ROBIN AULD: Going back to the first point, your mention
9 of this a few days ago gave me food for thought:
10 the need, as you saw it, for some comparison with what
11 has been going on before and under different
12 administrations.

13 MR FITZGERALD: Or even -- yes, our position at present.

14 SIR ROBIN AULD: I don't see why you should not have
15 the same benefit and trouble that the Commission had,
16 and I have arranged or am arranging -- it may have been
17 done by now -- for copies of such of the registers that
18 we have been able to obtain, originals, and returns that
19 we have been able to obtain from the Registrar will be
20 made, copies kept by us and the originals returned
21 either to the Registrar, if we can find him or to
22 whatever appropriate public office there may be to hold
23 them.

24 You can spend a happy time going through those and
25 see how adequate or inadequate you think they are.

1 I should tell you, and I think I can say this: we spent
2 weeks trying to find whether there was regarded here to
3 be any effective Registration of Interests provision at
4 all; whether there existed a Registrar; if so where he
5 was; who he was; how to contact him; and with some
6 either disinterest or obstruction from various members
7 of the public sector, we eventually tracked him down by
8 a phone call and we found, we have not got a complete
9 set but we found what purported to be the original
10 registers and many original returns, I think in a sort
11 of pile in the gentleman's living room floor.

12 They were all put in a sack and we retrieved them
13 and there they are.

14 (12.45 pm)

15 MR FITZGERALD: We are going to get the sack, are we?

16 SIR ROBIN AULD: I hope you will get them in better order
17 than we got them. They should, I hope, give you
18 an opportunity to look at the quality of returns made by
19 all those who had an obligation to do so over the years,
20 and I think we have gone back by about ten years in
21 this. Now, your second --

22 MR FITZGERALD: Part B of that was about Floyd Seymour.

23 SIR ROBIN AULD: Your second question, I don't consider it
24 necessary to make available to you the agonies that we
25 have had to put a number of people through to try to get

1 them to the table on disclosure, and that includes
2 Mr Floyd Seymour, Mr Galmo Williams and various others.

3 You will have, I hope, as a result of the
4 arrangements I have just mentioned, access to Mr Floyd
5 Seymour's returns, such as there were over the years,
6 including his most recent one.

7 MR FITZGERALD: That is to say the one he has prepared for
8 this Commission?

9 SIR ROBIN AULD: No. You will have access to all his
10 original returns. I don't consider it a valuable
11 exercise for us to start exchanging material that
12 various people have prepared for the purpose of the
13 Commission in order to compare how well or how badly
14 each one has done it. Otherwise there will be no end to
15 this.

16 MR FITZGERALD: Sir, we have obviously heard what you have
17 said at an earlier stage yesterday about the fact that
18 there had been inadequate disclosure cross-party, and it
19 may be we can make reference to that in our submissions.

20 SIR ROBIN AULD: The point is there is no secret about it.
21 His disclosure was inadequate, right up until, I have
22 forgotten the date, 23rd, 24th December and we issued
23 a summons on that account. Unbeknown to us, I think he
24 posted it or sent it within a day or two before that, by
25 the time we left to come here, it followed us here. We

1 have now had an opportunity to look at it as we did with
2 some more recent disclosure on behalf of the
3 Honourable Galmo Williams, and decided that there was no
4 shortfall of any significance which would justify
5 continuing the summonses to attend against either of
6 them. And there is no reason why you should not refer
7 to that if you wish.

8 MR FITZGERALD: I am obliged. Sir, the only other matter,
9 whilst we are, as it were, looking at procedure, is at
10 the conclusion of the evidence of the witnesses that
11 have been summonsed, we understood from your opening
12 that there would be an opportunity to make speeches
13 on -- (1) to recall our clients if it was necessary, and
14 it may be that we can deal with that essentially by
15 written statements in the case of the Premier, but
16 secondly to make a closing speech.

17 Will there be provision to make a closing speech in
18 public --

19 SIR ROBIN AULD: I very much hope so. That is why I am
20 cracking on here, and I didn't stop to polish my parses
21 in preparing my decision today. The programme as we see
22 it at the moment will take us up to the weekend of
23 Sunday 8th February. That is next week.

24 MR FITZGERALD: If it were necessary, could we go into
25 the following Monday?

1 SIR ROBIN AULD: Well, if it is necessary, we will obviously
2 have to consider that. But we have got, if everything
3 goes well and we can speed up a bit, I think at least
4 three days of next week, which could be reserved for
5 speeches, Mr Milne?

6 MR MILNE: The schedule as it presently stands leaves those
7 three free for speeches. I should say straightaway, and
8 I think I have expressed this view to my learned
9 friends, that we have a tight schedule between now and
10 then and I think there is a real risk that we might dip
11 into the Wednesday for some evidence, but that said,
12 there would still remain two to two and a half days for
13 closing speeches.

14 SIR ROBIN AULD: If we can't do it with justice in the time,
15 we shall have to consider running over to a further
16 week.

17 MR FITZGERALD: Can I ask one further thing about it? One
18 possibility would be that the speeches have some sort of
19 time limit but --

20 SIR ROBIN AULD: I was going to impose that -- once I can
21 see what number of days we have got and how many want to
22 speak, I shall then start a rationing process, and if
23 anybody really would rather do it in writing, that would
24 be greeted with acclamation.

25 MR FITZGERALD: Would there be a possibility of

1 supplementing any oral submissions by written
2 submissions that would be received shortly after?
3 SIR ROBIN AULD: Yes.
4 MR FITZGERALD: That is to say within seven days?
5 SIR ROBIN AULD: Absolutely.
6 MR FITZGERALD: Thank you very much.
7 SIR ROBIN AULD: Is there anything that I said that I should
8 not have said, Mr Milne?
9 MR MILNE: I don't think so, sir. I think we are probably
10 all fairly clear where we stand for the moment. It is
11 anticipated that the Honourable Jeffrey Hall will take
12 the rest of the afternoon and lest anybody has any
13 misconceptions, there will be no other witness called
14 today. We have now, I think, a new schedule which will
15 be published or distributed hopefully fairly soon so
16 that my learned friends will see exactly what the
17 timetable is from here on.
18 SIR ROBIN AULD: We will accommodate everybody as much as we
19 can in this. I have a note, uncharacteristically which
20 I can't entirely read, from the assistant secretary to
21 the Commission. I wonder if she could just come here
22 and tell me what it says. (Pause)
23 One of the possibilities that I was considering
24 about the original registers and returns was that they
25 might become available at the Governor's office here in

1 Providenciales, but I gather that is not a possibility,
2 but I am sure a room can be found somewhere convenient
3 for the parties, with a table and a few chairs in it and
4 a light. 2 o'clock.

5 (12.55 pm)

6 (The short adjournment)

7 (2.00 pm)

8 SIR ROBIN AULD: Before we commence this afternoon with
9 the examination of the Honourable Jeffrey Hall, I should
10 say in public that the submissions and the ruling that
11 took place in camera this morning will now be made
12 public. The transcript will be opened as a result of
13 the ruling that I gave.

14 It also follows that the period in camera yesterday,
15 when Mr Chal Misick gave evidence, will also be opened
16 and the closed transcript, which is at present recording
17 the hearing in camera, so that both those camera periods
18 will become part of the public transcript and available.

19 Mr Milne, I think you may have something also to
20 indicate as a result of that, have you not? If it is
21 convenient now or later?

22 MR MILNE: Indeed, sir. The transcript yesterday which will
23 become part of the public record of the proceedings of
24 the Inquiry will include that it was put to
25 Mr Chal Misick specifically that one of the donors that

1 was included within his ledger of contributions received
2 within his firm on behalf of the Premier, one of those
3 donors was Turks Limited, a company owned and run, as we
4 understand it, by Mr Cem Kinay.

5 It was put in terms to Mr Misick that the donation
6 from Turks Limited was half a million dollars, given on
7 9th January 2007, shortly before the election but at
8 a time when we said there had been copious activity in
9 relation to Joe Grant's Cay in which Mr Cem Kinay was
10 involved.

11 The other donors who are listed, and the list handed
12 up by Mr Misick were as follows: a man called
13 Paolo Sepe. It is handwritten. We had asked for
14 a typed version which I am sure will be with us shortly.

15 SIR ROBIN AULD: Just identify the redacted section of the
16 transaction if you can.

17 MR MILNE: That was the first donation which was listed,
18 3rd December 2006. For the record it is appropriate
19 I indicate the amounts in question, these being
20 the references on the second page of the schedule
21 provided by Mr Misick. I will read from the schedule,
22 and I beg your pardon, 8th December, not 3rd December,
23 2006: a political contribution of \$50,000 from
24 Paolo Sepe. 8th December, also a political contribution
25 of \$30,000 from Mr Russell Garland, it looks like.

1 The contribution from Turks Limited came on
2 9th January 2007, the precise figure being \$499,963.
3 The fourth redacted entry, which was a payment of
4 \$299,995, just short of 300,000, was received
5 17th January. The name we have been given appears to be
6 Valentine Grimes Limited.

7 The final one, which is dated 1st May 2007,
8 a contribution of \$100,000 -- I beg your pardon,
9 20th February 2007. This one for \$50,000 because there
10 is a sixth number identified.

11 It appears to be Chambers Limited but we will have
12 that clarified. It is very unclear, I am afraid, in
13 the handwriting document.

14 The final one, we await the identity, that is
15 the contribution on 1st May 2007, which was for \$100,000
16 where it remains redacted and the name has not been
17 provided hitherto.

18 SIR ROBIN AULD: Thank you.

19 MR MILNE: Sir, with your leave, I will put aside now

20 Mr Misick's documents and the Honourable Jeffrey Hall
21 can be sworn.

22 HONOURABLE MINISTER JEFFREY CHRISTOVAL HALL (sworn)

23 Cross-examination by MR MILNE

24 MR MILNE: Minister, I am going to be asking you a number of
25 questions and as with other witnesses before the

1 Tribunal, a starting point for much of what I am going
2 to ask will be the Register of Interests under
3 the Register of Interests ordinance.

4 You, I think, have been an elected member since
5 1999, is that correct?

6 A. That is correct.

7 Q. Approaching ten years as an elected official within
8 the Turks & Caicos Islands and indeed within
9 the submissions that were made on your behalf to
10 the Commission, we have seen, I think on one page,
11 a Register of Interest declaration, here it is pages 3
12 to 6, which dates back to 1999.

13 We are also provided with a register entry for 2003,
14 which is at pages 7 to 10 of your bundle. I need not
15 take you to it just at the minute and further on there
16 is an additional register entry which I think relates to
17 2006 or 2007.

18 In any event, the Register of Interest pre-dates
19 your time in government and obviously covers the entire
20 period that you have been a member of the
21 Legislative Council, subsequently the House of Assembly
22 and the entire period that you have been a minister.

23 Can I just be clear about this, have you ever taken
24 the time to sit and read the ordinance that controls
25 the Register of Interests?

1 A. No.

2 Q. Are you familiar with it?

3 A. I know one exists but I am not entirely familiar with
4 it.

5 Q. You are aware then that it is the law of the TCI that
6 all declaration be made?

7 A. I am.

8 Q. Am I right in thinking that every year you would,
9 together with your colleagues in Cabinet and indeed your
10 colleagues in the House of Assembly, be presented with
11 a form to complete which should be returned to
12 the Registrar, and he would then complete the register
13 which would be available?

14 A. Yes.

15 Q. We have for completeness added to the bundle, and you
16 should have in front of you a bundle of papers which is
17 a black bundle, I think, a black file. It is just
18 the one reflecting your submissions, and if you go to
19 the very end of that bundle, you will find that there is
20 a tag or a flag in the papers and I want to start with
21 that flag.

22 A. At the very end?

23 Q. Towards the very end?

24 A. The last page?

25 Q. Not the last page, but there is a flag. There should

1 be a tab.

2 SIR ROBIN AULD: If you are going to be doing a lot of back
3 and forwarding through the bundle it might help, Mr
4 Hall, if you do as I have done and take out this little
5 clip. Otherwise you will be turning this enormous
6 bundle over and over all the time.

7 A. You mean take out everything?

8 SIR ROBIN AULD: No, just take out the back bundle if you
9 are going to be a long time doing this, Mr Milne.

10 MR MILNE: I am hoping to take this relatively shortly.

11 A. That will be page 12, 500?

12 MR MILNE: It starts at 500, yes, which is the flag. I am
13 going to invite you to go through it with me. I will
14 take this as shortly as I reasonably might. In each
15 case what you have, if you look at page 500 as
16 an example, this one is in fact handwritten. We only
17 have the handwritten original. There is the register
18 prepared by the Registrar and there is a page, in fact
19 two pages like this for each member. We have the two
20 pages here for your entry and immediately behind that at
21 502 to 503 there is the actual form that you filled in.

22 A. Yes.

23 Q. Now, there is good reason in this case in fact that we
24 must refer to the original form. The reason is simply
25 this, that there are in one or two cases examples of

1 where you have made a declaration and the Registrar,
2 I am sure through inadvertence, has omitted to include
3 that?

4 A. Really? Okay.

5 Q. Obviously it is no fault of yours and we are not casting
6 aspersions on the Registrar, he no doubt had a lot of
7 paperwork and it appears to be a slip, no more than
8 that.

9 A. Okay.

10 Q. But if in doubt we can see what you have declared, do
11 you follow me?

12 A. I follow.

13 Q. Because with each of these forms and we will see them as
14 we go through, I needn't take you through each in turn
15 now, you have signed them and it would appear that is
16 normal practice not only to sign but to date and indeed
17 to seek a witness to witness a signature?

18 A. Yes.

19 Q. So you would have appreciated, no doubt, the seriousness
20 of the exercise in getting your signature witnessed?

21 A. Yes.

22 Q. I am going to take this, as I say, fairly shortly. In
23 2003 there are a series of questions, and here I am
24 looking at page 502 onwards, of what you have filled in.
25 There are a series of questions that are asked of every

1 elected official. You are asked to list any
2 directorships, any employment, your profession, any
3 financial sponsorship, visits within the professional
4 sphere paid for by others outside the government, any
5 land or property that you own, any shares that you hold
6 over a certain level, and any liabilities.

7 The declarations as we have them are as follows:
8 that in 2003 every box is left blank, save for the land
9 where you declared two parcels of land and two
10 liabilities.

11 Those parcels of land, we will come back to this
12 shortly, one in Chalk Sound, one described as being in
13 Long Bay; the liabilities being to
14 First Caribbean International Bank and to Scotiabank.

15 Every other box left blank. Over the page, 2004, we
16 have the register but from page 509 onwards, we have
17 your forms.

18 A. 509?

19 MR MILNE: 509 to 510, this is the form for 2004. In this
20 case, rather than leaving them blank, you have actually
21 written in for 2004, "nothing to declare". It has
22 actually been written in, in relation to employment,
23 directorships, profession, financial sponsorships,
24 visits abroad and shares.

25 Again you declared two parcels of land, you declared

1 two liabilities, again,
2 First Caribbean International Bank and Scotiabank.
3 I am going to pause there for a minute. So we have
4 two years running, on one occasion boxes left blank
5 which the Registrar has interpreted as being nothing to
6 declare. The second year you have actually written in
7 "nothing to declare". So, we would divine from that
8 that in 2003 and indeed again in 2004, leaving aside
9 the obvious fact that you were employed by
10 the government and no doubt the Registrar would know
11 that, that you had no directorships, no financial
12 sponsorship, made no visits abroad and held no shares.

13 Was that true?

14 A. In 2003?

15 Q. 2003 and in 2004.

16 (2.15 pm)

17 A. I cannot say whether or not it is true unless you jog my
18 memory. What I can say is that although I would have
19 left it open, but as a pay estimate like -- it is
20 probably the director of interests wrote in none to
21 declare. I didn't write it in.

22 Q. You didn't write it?

23 A. I did not.

24 Q. But you did sign it?

25 A. Well, it would have -- I would have signed it before

1 I handed it to him, so he may have written nothing to
2 declare and it is probably because I left it blank.

3 Q. You see, the form, I would suggest, that begins at 509
4 and runs through to 513, has what would appear to be one
5 hand completing it. The handwriting, and I am not
6 seeking to play expert here, but it would appear to be
7 the same person who has written it. Are you saying
8 there may have been more than one person who wrote this?

9 A. What I am saying to you is that it is certainly not my
10 handwriting.

11 Q. Is it your signature?

12 A. Yes, certainly it is my signature.

13 Q. In any event, you have signed a form and allowed it to
14 go to the Registrar where nothing has been declared for
15 any of those items I have mentioned.

16 A. I agree.

17 Q. Let's move on. As I say, we will come back to certain
18 elements later on. We just need to see the pattern that
19 is emerging here.

20 2005, this form, the form you filled in is at
21 page 516.

22 A. Yes.

23 Q. On this occasion you have declared two directorships.
24 One for urban development, the other for Alliance
25 Realty.

1 A. Yes.

2 Q. Employment, profession, financial sponsorship, visits,
3 somebody has written in "none" in each case.

4 A. Yes.

5 Q. As far as land is concerned, that box is left blank, and
6 for shares, you have said Urban Development Limited.

7 A. Yes.

8 Q. As far as liabilities are concerned, there are now three
9 debts, those being Bank of Nova Scotia,

10 First Caribbean Limited and a new liability for

11 Temple Mortgage fund. Again, that is signed at

12 page 520. So the significant change here appears to be

13 that you have become a director of two companies, you

14 are a shareholder in one of those companies, but you no

15 longer declared the land that was owned in the previous

16 years.

17 A. That is correct.

18 Q. 2006, very similar. This begins at page 523. Still

19 a director of Urban Development and Alliance Realty.

20 You declare your employment as being in the government.

21 You write nothing to declare for profession, for

22 financial sponsorship and you leave blank the visits,

23 the land and you say that you own shares in

24 Urban Development still.

25 The final one of these, 2007, which begins at

1 page 530 in your form. Directorships, blank.
2 Profession, blank. Financial sponsorships, blank.
3 Visits, blank. The two parcels of land that you owned
4 years ago and haven't declared for two years, they come
5 back in. Shares blank. And still three liabilities.

6 Would you agree that what we have there is
7 a pattern; it may be an irregular pattern of things
8 being declared one year, not the next, then coming back
9 in again.

10 A. Yes, according to the form I have to agree.

11 Q. Let's leave that for a minute and turn to the front of
12 the bundle. Anybody who had looked at your form for
13 2007, which was the last year that you were required to
14 complete it, before the beginning of the Commission of
15 Inquiry, whilst they might be confused, would have
16 concluded from that form alone that you had no
17 directorships, that you had no financial sponsorship or
18 visits, and that you owned but two parcels of land with
19 three debts.

20 Is that right?

21 A. Yes.

22 Q. Your declaration to the Commission was that you own four
23 parcels of land for rental purposes, 11 parcels of land
24 in total, although even here there is confusion because
25 there appears to be some overlap between the land and

1 properties and the rental income that is related to
2 them. That you have three bank accounts and that you
3 are a shareholder still in Alliance Realty. It would
4 appear that you have owned land for a number of years,
5 which has never, ever been declared to the Registrar of
6 Interests. Why is that?

7 A. It is certainly an error in completing the form,
8 carelessness, and should have taken more seriously, and
9 I regret that I did not make a full declaration.

10 Q. Well, with respect, you say it is an error but it is
11 an annual error, is it not?

12 A. It is, yes. I guess it goes on to be carelessness. And
13 I regret that.

14 Q. Every year that we have looked at your actual
15 declaration is at odds with what you have told
16 the Commission. Every year is not in a minor regard but
17 in a very significant regard wrong.

18 A. I agree. And, you know, I certainly regret that
19 I didn't take the time that is required to completely
20 fill out the form. I regret that.

21 Q. You tell us also in the documents that have been
22 presented, and I am looking again at page 1, we simply
23 have the entry, "gifts", \$10,000 -- I am assuming it is
24 dollars because it simply says "10,000 campaign
25 contribution".

1 A. Yes, where are we, sir?

2 Q. This is page 1 of the bundle. The very beginning.

3 These are documents initially submitted on your behalf.

4 A. Yes.

5 Q. In fact there is a covering index, a letter from your

6 attorneys, then a covering index and then we begin with

7 numbering at the bottom?

8 A. Yes.

9 Q. The third item down, "gifts, 10,000, campaign

10 contribution".

11 A. Yes.

12 Q. Can you please tell us from whom that came?

13 A. Yes, that was, if I recall correctly, in December 2006,

14 and that came from a gentleman by the name of Dave Wex.

15 SIR ROBIN AULD: Did you say Dave?

16 A. I believe his name is David. I know him as Dave.

17 MR MILNE: That is W-E-X?

18 A. Correct.

19 Q. Who is a Canadian businessman, is he not?

20 A. Correct.

21 Q. That declaration, that gift of course not mentioned in

22 any of your returns again to the Registrar of Interests?

23 A. You are correct.

24 Q. Whilst we are dealing with the Registrar of Interests,

25 nothing in the register at all about payments received

1 from the PNP, is there?

2 A. No. There isn't.

3 Q. We have inserted, I hope it is at the very back page, if

4 you need this --

5 A. Yes I have it.

6 Q. Page 543 is an extract, which looks rather like that, it

7 is from the documents disclosed to the Tribunal this

8 week by the Honourable Floyd Hall. It is what's called

9 a Quickzoom report, all one word. It is an extract from

10 the ledger kept for the PNP records indicating that

11 items described internally as "candidate stipend" total

12 \$153,500 for yourself, those being paid over the years

13 2005 through to 2008.

14 A. 2004 to 2008.

15 Q. There is one item at the bottom which I believe is

16 1st December 2004.

17 A. Yes.

18 Q. And that has -- obviously it is dated 2004 but is marked

19 "suspense adjustment".

20 A. Okay.

21 Q. It clearly regards it as paid to you and that is why

22 I had left that out of my description. But you are

23 correct, that is in there.

24 A. Fair enough.

25 Q. The bulk of them are 2005, \$15,000; 2006, 16,000; 2007,

1 \$85,000; 2008, a further \$35,000. So a lot of money,
2 would you not agree? You seem cautious about agreeing
3 that.

4 A. Yes.

5 Q. Your annual salary as a member of the House of Assembly
6 is \$199,000, is that right?

7 A. Thereabouts.

8 Q. It is just short of 200,000 is the figure declared,
9 which we understand to be broadly right. So this is
10 nearly three-quarters of the year's salary, albeit
11 spread over four years.

12 A. Okay.

13 Q. But not declared firstly to the Registrar and until we
14 learnt about this from Floyd Hall, not declared in any
15 of the papers that you put to the Tribunal, to this
16 Inquiry. Why is that?

17 A. Again, an error and carelessness. I should have
18 declared it.

19 (2.30 pm)

20 Q. You see, it is a lot of money, I would submit, and that
21 is the ledger purely for one of the two PNP accounts.
22 You have been a minister now for several years. Were
23 you party to the discussions about the PNP accounts
24 prior to the last major meeting in 2006, when
25 the Treasurer's report was presented? Have you ever

1 been part of discussions regarding the accounts of

2 the party that you are a member of?

3 A. I may have been on occasions, yes.

4 Q. Were you aware that the party kept a separate

5 Belize Bank account to which the Premier was a signatory

6 together with the Deputy Premier?

7 A. I learned of it, yes.

8 SIR ROBIN AULD: Sorry, I didn't hear your answer.

9 A. I learned of it.

10 SIR ROBIN AULD: You learned of the Belize Bank account of

11 the party. When did you learn of it?

12 A. It depends on which account you are talking about

13 because I am actually one of the liabilities on a loan

14 account.

15 SIR ROBIN AULD: That is the loan account of the

16 Belize Bank?

17 A. Yes.

18 SIR ROBIN AULD: So when did you learn about that firstly?

19 A. I don't remember the date.

20 SIR ROBIN AULD: Roughly.

21 A. I believe it is in -- certainly in 2007, and it was

22 after the general elections. The date, the month,

23 I don't remember.

24 SIR ROBIN AULD: That is fine. You mentioned another

25 account, I think.

1 A. No, I did not. I didn't mention another account.

2 SIR ROBIN AULD: I must have misheard you.

3 A. Yes.

4 MR MILNE: We know that one of the two accounts operated,

5 and so one looks at it, I suppose one of the three

6 accounts operated by the PNP was

7 a First Caribbean International Bank account from which

8 these payments were taken, because that is the ledger

9 that we have against that account.

10 A. Okay, all of them?

11 Q. All of them.

12 The PNP had a current account with the Belize Bank

13 coupled with a loan account, and the loan account

14 essentially is now a loan used to pay off the overdraft

15 on the current account within the Belize Bank.

16 A. Right.

17 Q. Did you receive money from the PNP Belize Bank account

18 at any stage?

19 A. I don't recall that I do. I can't remember if I did.

20 Q. So you receive that money and you have obviously put

21 that money, one must assume, into personal accounts when

22 it was paid to you?

23 A. Yes, I put them in personal accounts. I don't think all

24 of them were cheques. I think some of them may have

25 been cash. So I put them in personal account. I cashed

1 some.

2 Q. To make clear, the list that we have would not indicate

3 if these were drawn in cheque, cash, wire transfer,

4 anything of that nature.

5 A. Yes, the majority of those were cheques.

6 Q. One of them in fact is a payment to somebody called

7 Stephanie Forbes. Could you tell us who that would be?

8 A. I have no idea.

9 Q. It seems to have been credited or debited, I should say,

10 to your account to the tune of \$5,000. One must assume

11 that would only happen if it were somebody that you had

12 authorised to have money from your account within

13 the PNP.

14 A. From my account within the PNP?

15 Q. This is essentially rather like an internal account. It

16 has been described in various ways. I think it has not

17 been described as salary but it is clearly monies for

18 your benefit, for your purposes. If you directed

19 the Deputy Premier, Treasurer of the party or indeed one

20 of his colleagues to pay a bill on your behalf, then it

21 would be debited against your name and that has been

22 debited against your name.

23 A. Okay so what you are saying is I may have directed

24 the Deputy Premier to pay Stephanie Forbes \$5,000?

25 Q. Well, it has three dots before it, three full stops.

1 Stephanie Forbes may be part of a name, and the computer
2 has not printed the whole name. It may be a person, it
3 may be a company, it may be some other corporate or
4 non-corporate body, we know not. I am simply asking if
5 you know who it would be?

6 A. I know Stephanie Forbes.

7 Q. You do know Stephanie Forbes?

8 A. Yes.

9 Q. Who is Stephanie Forbes?

10 A. I hope that is the Stephanie Forbes. She works at the
11 Premier office.

12 Q. Do you know what she does at the Premier's office?

13 A. Secretary.

14 Q. Is there any particular reason why you would be giving
15 \$5,000 to the Premier's secretary?

16 A. She probably need to borrow \$5,000 and I loan it to her.

17 Q. The only reason I ask, sir, is that it is only

18 25th September last year. It is a matter of six months

19 ago, no more than that?

20 A. 25th September last year.

21 Q. 25th September 2008, it appears to be?

22 A. It is a long time for me, I have a short memory.

23 Q. Right.

24 A. But I can't -- I really cannot honestly answer that,

25 I am not sure about that one.

1 SIR ROBIN AULD: You mentioned a little earlier some of

2 these payments to you were in cash, is that right?

3 A. They may be, yes. I am sure that the majority of them

4 were in cheques, but the possibility --

5 SIR ROBIN AULD: It is called a candidate stipend on this

6 report.

7 A. They would come to me in cash and sometimes in cheques

8 mostly, but on the odd occasion, I would get cash.

9 MR MILNE: You see, the Commission had written to your --

10 I think they wrote to you and they received a response

11 from your attorneys, Wilson Associates. There has been

12 a certain amount of correspondence, to-ing and fro-ing

13 because letters have gone both ways, but the first

14 letter was the one that we see just before page 1. It

15 is dated 19th September 2008. So essentially, given

16 that we received these papers with it, you clearly were

17 engaged with your attorneys, putting together

18 a declaration, putting together material for the Inquiry

19 on or before that date in September, 19th September.

20 So you knew of the Commission, you knew of its work,

21 you knew of its requests which had been, I think, spelt

22 out fairly fully. You were still receiving payments

23 from the PNP, the most recent ones 12th June,

24 15th September, so only four days before this letter;

25 the payment to Stephanie Forbes on 25th September; and

1 another \$10,000 on 14th October 2008.

2 These were not matters of history, not matters that
3 would involve reaching back into the past. You were
4 receiving monies in the days prior to sending these
5 declarations and indeed in the days subsequent to it.

6 Why is it that when you knew that you were being
7 asked about your income, about your payment from
8 different sources, that you didn't see fit to declare
9 the PNP stipends?

10 A. I did not. I now realise that I should have.

11 Q. We know that you did not. We are asking why.

12 A. I can't give a reason why. I didn't, it didn't occur to
13 me that I should have.

14 Q. I am going to turn briefly to the question of the
15 declarations of property that you have made as well,
16 both to the Registrar and indeed to the Commission.

17 The early declarations that you made said that you
18 had, as I already indicated, two parcels of land. One
19 of those, the number is 60400/242 which is in
20 Chalk Sound?

21 A. We are still on page 1?

22 Q. I think the easiest way to deal with this -- I am afraid
23 I have to take you to the back of the bundle to remind
24 you what was said, go back to the tag at the back. If
25 you turn to page 501.

- 1 A. Yes.
- 2 Q. The declaration that was made several times over in fact
- 3 was 60400/242, described as Chalk Sound.
- 4 A. Yes.
- 5 Q. The second one is 60609/114?
- 6 A. Yes.
- 7 Q. Which is described as Long Bay. It is probably a minor
- 8 point but we are slightly curious about this. The 60400
- 9 division is in Chalk Sound but in fact 60609 is also in
- 10 Chalk Sound. Long Bay is quite a long way, isn't it,
- 11 from Chalk Sound?
- 12 A. It is.
- 13 Q. So is that number correct?
- 14 A. No it is an error.
- 15 Q. Because that appears to be the same error that has been
- 16 made several years running, 60609/114.
- 17 A. Okay.
- 18 Q. Where is your second property? Is it Long Bay? Is it
- 19 the number that is wrong or the area?
- 20 A. Yes, the number is wrong. And it is in Long Bay.
- 21 Q. Forgive me, I am learning, but it has taken me a little
- 22 while with Providenciales. I have seen Long Bay Hills
- 23 described as an area. Is that --
- 24 A. That is where it is, Long Bay Hills.
- 25 Q. That is over towards the east end of the island, not

1 quite as far as Leeward but in that direction?

2 A. East, southeast.

3 Q. East and southeast?

4 A. Yes actually, the correct parcel number is 60809/115.

5 Q. So it should be 60809?

6 A. Yes.

7 SIR ROBIN AULD: /115.

8 A. Yes.

9 SIR ROBIN AULD: Had there been a history of mutation or

10 subdivision or something or other that might have led to

11 that? Or is it just a straight error of notation?

12 A. It is a straight error. At one time I thought I had 114

13 but actually it was 115. The numbers preceding that --

14 they were not correct. The correct one is 60809/115.

15 MR MILNE: Again, I don't wish to cavil but we queried that

16 with your attorneys in November. I am looking at

17 page 60 within the bundle.

18 You had in fact -- the explanation that we were

19 given there, because it was queried, it is the first.

20 Our request is typed out at the top and the answer was,

21 it should have been 606069/115.

22 A. That is a typo there.

23 Q. That can't be right either?

24 A. No.

25 Q. Because divisions don't run to six digits, do they?

1 They run to five?

2 A. The correct number was 60809/115. You can verify that

3 with Lands and Survey. That is the correct number.

4 Q. Let's go back to the beginning, page 1, which is your

5 declaration to the Inquiry.

6 One might have concluded that the only properties

7 you owned at that time would be those two, because those

8 were the only two that were ever declared. You have

9 told us now that you have 60715/196 and you had owned

10 that since 1989.

11 A. Yes.

12 Q. Indeed, it was earning you a fairly handsome rental

13 income of \$78,000 a year?

14 A. Yes.

15 Q. No mention of that on anything, was there?

16 A. Yes, and again it is regrettable that I didn't do it,

17 but for some reason I was of the opinion that what

18 should have been declared is properties that you got

19 from the government. This was a private piece of

20 property that I bought.

21 SIR ROBIN AULD: Can you give me the rental figure again.

22 A. Since 1989, albeit there is no excuse for not declaring

23 it. I regret that.

24 MR MILNE: The rental income, sir, that was declared at

25 page 1 is \$6,500 per calendar month, making 78,000 per

1 annum.

2 You were also making \$10,800 a year from property
3 60900/29, which you declare at page 1.

4 A. Yes.

5 Q. And your wife, following sadly the death of her mother,
6 had inherited in the 1990s a series of properties which
7 would also have fallen within the ambit of the Registrar
8 of Interests and we have there five parcels, all of them
9 beginning 5, those being obviously not Providenciales?

10 A. Yes, North Caicos.

11 Q. Again, none of those declared, it would seem, right
12 the way through.

13 A. Yes.

14 SIR ROBIN AULD: The total income of 426,000-odd a year? Is
15 that right?

16 MR MILNE: The total from page 1, sir, is about \$170,000
17 from property rentals. 78,000, 84,000 which make 162
18 and -- more like 180 in fact. 12,000 for property
19 51208/2 and 10,800 from 60900.

20 Coupled with your salary and that of your wife,
21 which is roughly 243,000 between you each year, your
22 annual income was in the order of 426,000 from rental
23 properties and from salaries earned.

24 A. Yes.

25 Q. That is the figure that you have given the Inquiry?

1 A. Yes.

2 (2.45 pm)

3 Q. You say that you didn't declare them because you thought

4 it was only government property that had to be declared.

5 Would you regard that as including options, conditional

6 purchase leases?

7 A. No. I also failed to declare some government property

8 according to the declaration that I had a lease on or

9 an option on.

10 Q. We see one example of that at page 43.

11 A. Yes.

12 Q. In this case, to be fair, it is your wife being granted

13 in 2006 what is termed a residential CPL, a residential

14 conditional purchase lease, in relation to property at

15 Chalk Sound, 60400/289?

16 A. Yes. At one point that was declared though.

17 Q. I agree, that was declared at one point. At least it

18 was to the Inquiry.

19 A. On the declaration of interests also.

20 Q. As far as 60000/151 is concerned, you were granted

21 the freehold on that?

22 A. Yes.

23 Q. That doesn't seem to have been declared either?

24 A. No.

25 Q. Ironically, in your declarations, as far as 60809/115 is

1 concerned, you went to the trouble of declaring
2 the mortgage you used to buy it, and then didn't declare
3 that you owned it. So you must have applied your mind
4 to the fact that I have a mortgage and I need to declare
5 the Temple Mortgage company mortgage, but not mention
6 either the fact that you owned the property or indeed
7 the rental income that you were making from it.

8 A. No I agree, you can very well -- it is reasonable to
9 assume that, you know, but I should have declared it.

10 Q. Minister, we don't undertake this exercise simply to
11 seek to embarrass people in public. The point that is
12 forefront in the mind of the Commission is that this is
13 a legal duty, which is coupled very closely with
14 the need for accountability, visibility, so that it is
15 possible to determine what the interests of individuals
16 are.

17 I would submit you must have understood that, that
18 this was not simply a paper filling exercise to keep
19 bureaucrats busy in the afternoon; this was designed to
20 ensure that there was a proper record. Would you agree
21 that you understood that?

22 A. I agree that's the reason for it.

23 Q. We have heard suggestions, in one case I think
24 the expression "group think" was used and in another
25 that it was a cross-party culture of neglect. Were you

1 influenced by anything else in not filling in
2 the correct details in your forms.
3 A. Sorry? Can you repeat that.
4 Q. Were you influenced by anybody else in failing to
5 complete these details?
6 A. Absolutely not.
7 Q. Did you ask anybody else what they put in their forms?
8 A. No.
9 Q. Or look at other people's forms for guidance as to what
10 should be put in?
11 A. I did look at the declaration of interests when it
12 appeared, yes. I did look at it.
13 Q. Did you ever have conversations with the Registrar? We
14 understand -- the most recent one I know is Mr Been but
15 I do not think he was the Registrar throughout. He had
16 predecessors. Was it Mr Been throughout your time?
17 A. Yes, still is.
18 Q. It is still?
19 A. I believe, yes.
20 Q. Did you ever ask him: Mr Been, what are you looking for,
21 what information do you need from me?
22 A. I believe I did. I am not sure Mr Been knows but, you
23 know, I would rely on his guidance. If he had told me
24 that you needed to do this or that, then certainly
25 I would have.

1 SIR ROBIN AULD: When did you last see Mr Been?

2 A. Sir, I really don't know. On occasions he would just

3 pop into the -- in the House of Assembly when we were on

4 break and drop a form to us and ask us to fill it out.

5 SIR ROBIN AULD: Just passing through the House?

6 A. Yes.

7 MR MILNE: Minister, I am going to turn now, if I might, to

8 the question of your income. We have already touched

9 upon your salary which obviously you were entitled to,

10 salary and allowances -- I am not going to seek to draw

11 a distinction -- you receive from your post as minister

12 and your position as a member of the House of Assembly.

13 You have declared to us that apart from that money

14 and the money that your wife receives by way of salary,

15 that you also have income from, I think, four rental

16 properties. Is that still the case?

17 A. Yes.

18 Q. If it assists, we can go back to page 1, the beginning

19 of the bundle.

20 A. Yes, it is.

21 Q. You paused and thought about that for a minute.

22 A. Well, you said four and I was just wanted to reconfirm

23 in my mind that it is the case. It is.

24 Q. Those are contained at page 1 of your bundle?

25 A. It is.

1 Q. I have read the numbers and I am not going to go through

2 them again.

3 A. Yes.

4 Q. The collective rent is somewhere in the order of about

5 \$180,000 without being precise to the penny. Those, as

6 we have said, appear to be your sources of income.

7 The rentals that are received from those properties, are

8 they paid regularly?

9 A. Yes.

10 Q. Monthly?

11 A. Monthly.

12 Q. Presumably paid into your bank account?

13 A. My bank account? Well, no, not often.

14 Q. You have a Scotiabank account?

15 A. Yes.

16 Q. And I think you have a TCIB, that is Turks & Caicos

17 Islands bank account, is that right?

18 A. Yes -- sorry?

19 Q. You have a Turks and Caicos bank account?

20 A. Yes, I believe I am joint with my wife on that one.

21 I believe. I am not even sure about that.

22 Q. Better that I not tell you. Which bank accounts do you

23 have and use? Your Scotiabank we know of.

24 A. That is it, Scotiabank.

25 Q. That is your personal bank account?

1 A. That is.

2 Q. Have you held any other bank accounts in, say, the last
3 six years apart from your Scotiabank account and a joint
4 account with your wife?

5 A. No.

6 Q. There have been no other accounts?

7 A. No.

8 Q. Have you ever had an account with
9 the First Caribbean International Bank, FCIB?

10 A. Must have been years ago but no. I don't have one.
11 Last six years, no.

12 Q. Not in the last six years. We know that your wife has
13 an account with that bank.

14 A. She does.

15 Q. And I am not seeking to delve through your wife's
16 accounts but --

17 A. Thank you.

18 Q. -- you also have a credit card from
19 the First Caribbean International Bank, and in fairness,
20 a credit card from Scotiabank?

21 A. Yes, I do.

22 Q. I think you have a Horizon credit card, is that right?

23 A. Yes.

24 Q. Lest there be any allegations of unfairness, I make it
25 clear that there is no indication that you have

1 an American Express Centurion. I hope you can confirm
2 that that is the case?
3 A. That is a black card?
4 Q. Any sort of American Express, it is the black card, yes.
5 A. No, I don't.
6 Q. Other than the credit cards that I have mentioned, do
7 you have any other credit cards?
8 A. That is it. No, sir.
9 Q. That is what has been declared to the Tribunal.
10 In terms of the rental that comes in, we see that
11 set out. If it is not going into your account, that is
12 your Scotiabank account, which account would it be going
13 into?
14 A. It doesn't necessarily have to go into any account.
15 When you collect the rents, you pay bills but some do go
16 into my Scotiabank account on occasion, and one of the
17 properties, my wife manages it totally. That is the one
18 in Long Bay. I believe that proceeds from that goes to
19 her account. I don't know how she handles it.
20 Q. You say monies -- no doubt the money is used to pay off
21 bills and one would expect as much?
22 A. Yes.
23 Q. But the -- how do you receive the rental? Is it not
24 paid by standing order, wire transfer?
25 A. No.

1 Q. It's all cheques?

2 A. No. Some people -- people live in your apartment, they
3 pay you at the beginning of every month or at the end of
4 every month, they pay you cash. Sometimes they are
5 late, they pay you for two months; sometimes they are
6 late, they pay you for three months. That is the way
7 those things go. It is not I deal with deposit their
8 rent into your account as such. It doesn't happen that
9 way.

10 Q. How many times would you be receiving cash for rental?

11 A. All the time.

12 Q. All the time?

13 A. Yes.

14 Q. Two of the properties have relatively modest rents. One
15 is \$900 a month, the other is \$1,000 a month but
16 the other two are \$6,500 and \$7,000 a month. Would you
17 be receiving \$7,000 in cash?

18 A. Yes, not at one time. Some pay you today -- you spend
19 that, some pay you tomorrow. You know -- I am sorry
20 that I really can't give you perhaps the answers that
21 you are looking for. I don't do any kind of accounting
22 but that's just -- that is the way it is. You never at
23 one time at the end of the month receive the total
24 amount that you are supposed to get at any given time.

25 Q. So you would regularly have large amounts of cash with

1 which you would pay bills, keep a record of it?

2 A. Yes, sometimes deposit in my account.

3 Q. Do you keep a rent book for these properties? Do you

4 keep a record of the payment as it arrives?

5 A. No, sir.

6 Q. No written record?

7 A. No, but you would know somebody owe you for the month or

8 two months.

9 Q. So you would know if you were owed money or not?

10 A. Yes.

11 Q. How would you know that if you didn't keep a record?

12 Surely they would want a receipt if they were paying you

13 cash, they would want confirmation that you had received

14 it in case you put the money to one side and forgot to

15 credit them with it. No written record?

16 A. No.

17 SIR ROBIN AULD: So what do you do, drive round and knock on

18 the door and collect it?

19 A. Absolutely.

20 SIR ROBIN AULD: They come to you or what?

21 A. Absolutely, drive round and collect the rent every

22 month.

23 SIR ROBIN AULD: Once a month?

24 A. Yes.

25 MR MILNE: If you could turn, please, towards the back of

1 the volume that we are using now.

2 A. Page?

3 Q. It is page 535.

4 SIR ROBIN AULD: I think you would have been better taking

5 my advice, Mr Hall, and taking that last lot out.

6 A. It looks so. I will certainly do that.

7 MR MILNE: Do you have page 535, sir?

8 A. Yes.

9 Q. We have taken your Scotiabank statements which were

10 provided to the Inquiry and these cover a period running

11 from February of 2004 and they run all the way through,

12 and I will qualify that in a minute, to

13 22nd August 2008. So it is covering a fair period.

14 A. Yes.

15 Q. Most of 2004. However, all of 2005 is missing for

16 reasons that we are not entirely clear about. I am not

17 saying that that is in any way something we lay at your

18 door.

19 A. Okay.

20 (3.00 pm)

21 Q. The banks seem to on occasions just lose entire years of

22 records. Scotiabank seem to have difficulties providing

23 that particular year. We have seen letters to that

24 effect. I stress it is not a letter from you but

25 a letter from the bank saying they were having

1 difficulties providing those statements?

2 A. I am happy, because you can see I had difficulties

3 providing it to you.

4 Q. We have all of 2006. Almost all of 2007. For some

5 reason, January is missing but I am not concerned with

6 that.

7 A. Yes.

8 Q. So in fact over a period from 2004 through to the end of

9 2008, which would be five years, in truth is four years'

10 worth of statements.

11 A. Yes.

12 Q. The exercise that we have done with your bank

13 statements, I am afraid, is that we have gone through

14 them and we have recorded every credit that goes into

15 the bank statement, which was a fairly lengthy task and

16 the schedule runs to three full pages. Obviously it is

17 quite clear what some of those credits are. Your

18 salary, your wife's salary where we know what that is.

19 In some cases it is quite clear that you have received

20 a loan from a bank and in those cases we have separated

21 those figures out.

22 A. Sorry, just for clarity. Did you say my wife's salary?

23 Q. Well, I beg your pardon, no, your wife's salary goes

24 into a separate account. This is your salary.

25 A. Thank you.

1 Q. I thought for a minute I was dealing with both there.

2 A. Thank you.

3 Q. The figures that we have are therefore split across

4 various columns. The middle column you will see says

5 "Salary" at the top and we have identified that.

6 A. Yes.

7 Q. The column to the right of that says "loan" or "/EXPL".

8 That is simply an abbreviation for an explained sum.

9 Then we have pages and comments.

10 The column to the left of that though, next to the

11 date, is all of the entries, all of the credits over

12 that period for which there is no obvious explanation.

13 Now, you tell us that in some cases you drew cash or you

14 received cash from your tenants.

15 A. Yes.

16 Q. My understanding, tell me if I am wrong about this, is

17 that you would use that cash then to go out and pay

18 bills. It would not pass through your bank account.

19 A. On occasions it would.

20 Q. So on some occasions you may have received cash and

21 simply gone and paid cash in?

22 A. Yes.

23 Q. In total, however, whilst we can identify 493,000, I am

24 looking at page 537 here, the salary in payroll total is

25 over this period, it is a long period, \$493,850?

1 A. Yes.

2 Q. Sums explained by way of identified loans, 254,000, so
3 just over a quarter of a million.

4 A. Okay.

5 Q. There is a further \$560,000 goes into your bank account
6 for which there is no obvious explanation. Is there
7 some other source of income that we should be aware of?

8 A. No, there is not.

9 Q. Because if I follow you correctly, the rental is not
10 going in, we don't identify in these figures any sum
11 that reflects the monthly rental you talked about. Now,
12 I accept the evidence that you have given me that it may
13 be somebody may, on occasions, pay two months' rent or
14 may pay a lump sum on the balance later on, so it may be
15 that to some degree a rental on your properties is
16 subsumed within that?

17 A. Okay.

18 Q. But there seems, with respect, Minister, to be a lot of
19 cash or forgive me, I use the word "cash" in the generic
20 sense. A lot of money, be that cash or cheques,
21 entering your account for which there is no obvious
22 explanation. I am going to give you the opportunity now
23 to explain where you would have been receiving these
24 sums from that has not been declared.

25 A. Okay. These sums would come from occasional deposits

1 from rental --

2 SIR ROBIN AULD: Sorry?

3 A. Occasional deposits from rental. Political contribution
4 from the party as well as citizens around the country,
5 and I note some would have been small loans that I took
6 out from one or two persons, and I note a sizeable one
7 here on page 535 of \$110,000 that was, I could clearly
8 remember that one. That was deposited into my account
9 from -- to reduce a loan that I had at Scotiabank. And
10 that proceed came from the sale of land in the company
11 that I am sure we will get to later.

12 Q. I am sure we will.

13 A. Yes.

14 Q. I am going to ask you, if you would, it may be easiest
15 to do it this way, remember page 543, the very last page
16 in the bundle.

17 A. Yes.

18 Q. If you take that out and we will perform --

19 MR WILSON: 542?

20 MR MILNE: It should be 543. It is the Quickzoom report.

21 You may not have it in the bundle. We will provide
22 another copy if need be.

23 A. 543?

24 Q. 543. It is easier to take that out and we will compare
25 it to these, to the credits into your bank account.

1 These were sums that came from the PNP. We have --
2 there is a difficulty here with these sums because
3 obviously the first two of them you received in 2005,
4 and we have no bank statement to compare with.

5 A. Okay.

6 Q. The next one is a donation to you on 8th November 2006,
7 and if we turn to 535 to 536, that was a donation of
8 \$6,000.

9 You do pay in \$6,000 on 9th November 2006, at the
10 top of page 536. Should we assume that that is PNP
11 contribution? Do you have that?

12 A. Received on the 8th, paid on the 9th, yes. It is
13 reasonable to assume that.

14 Q. So that would be the same one. But then 22nd December
15 2006. There's \$10,000. Now admittedly we are missing
16 January. So that doesn't appear to be there, but there
17 is no entry for that, is there? Certainly not in
18 December that would equate after 22nd December.

19 15th January, of course we are missing, 15th January we
20 receive another two payments in of \$20,000. But by
21 12th October 2007, you have a further payment of \$20,000
22 and indeed there is a credit there. Again, I am going
23 to assume for our purposes that that credit, half way
24 down page 536, is again the PNP payment.

25 Yes?

1 A. Okay.

2 Q. So so far we have identified two of them. 26th March
3 2008 is the next one. And we have March 2008 towards
4 the bottom of that page and that is a sum of \$5,000.
5 Indeed, 27th March, you pay in \$5,000, so that is
6 another 5,000 there.

7 So your evidence is that this account is being used
8 to pay in these sums from the PNP. Yes?

9 A. Yes.

10 Q. You would be spending, this is your personal bank
11 account, this money, presumably for your own personal
12 purposes as well.

13 A. Political purposes.

14 Q. Political purposes. Do you draw any distinction between
15 personal and political for these purposes?

16 A. My whole life is political. Everything I do is
17 political.

18 Q. So simply by virtue of it being you, it is by definition
19 political?

20 A. Well --

21 Q. Minister, we have identified out of several dozen,
22 I think three, and I accept that in the missing gaps
23 there may be others?

24 A. Yes, yes.

25 SIR ROBIN AULD: Just pause for a moment. When you first

1 mentioned this, Mr Hall, you described these as
2 political contributions as well as from citizens around
3 the country. What did you mean by as well as from
4 citizens around the country?

5 A. Political contributions from citizens around
6 the country.

7 SIR ROBIN AULD: I am going to write there, all political
8 contributions --

9 A. No, sir. If I may, sir, there were occasions, deposits
10 from rents collected, political contributions from
11 the PNP, political contributions from citizens around
12 the country and small loans.

13 SIR ROBIN AULD: I see what you mean. It is political
14 contributions from the PNP and also from individuals.

15 A. Yes, sir.

16 SIR ROBIN AULD: I have got it.

17 MR MILNE: We have done that exercise. Clearly quite a lot
18 of the money you received doesn't appear on here but
19 then again it doesn't appear in the unexplained credits
20 column either.

21 A. Yes, I see.

22 Q. So we can disregard those others. We have identified,
23 I think, 31,000 out of 250. So you will appreciate
24 the figures we are talking about are still well over --
25 I beg your pardon -- the figures we are talking about

1 there are still in excess of half a million dollars. So
2 the contributions in this -- in the Quickzoom, can only
3 be reflected to a very small degree in the unexplained
4 credits. I would submit that half a million unexplained
5 is still rather a lot of money, which is not going to be
6 half a million of cash rental.

7 Before we go any further, though, and we will be
8 taking, I suspect, a break in a couple of minutes. I am
9 going to ask you that you look at another sheet, which
10 is pages 541 and 542 -- 540 onwards. Those should now
11 be the last three pages in your bundle, having taken out
12 the 543. Do you have that?

13 A. 540? Yes.

14 Q. Because we performed a similar exercise, Minister, with
15 your credit cards, you having declared to us your
16 Horizon credit card, your
17 First Caribbean International Bank one and your
18 Scotiabank card. You have three credit cards. What we
19 did, again, was we identified all of the payments
20 against credit cards. That is money paid in. Not
21 concerned here with how you used the card, what you
22 spent it on, but money paid into the credit card
23 accounts.

24 A. Yes.

25 Q. As you look at this chart, which again runs to three

1 pages, we identify the card, the date and this is in
2 date order, the sum paid in, that is the amount paid in,
3 and then we cross-reference that to your bank accounts
4 to see whether we could identify where the money was
5 coming from. In quite a number of cases we could. We
6 see debits coming out of your Scotiabank in many cases
7 and on some occasions, we will come back to this, coming
8 out of Alliance which is a company that you have
9 declared. It is clear that the Alliance bank account is
10 making a debit of the same amount as your credit card
11 credit, so it is reasonable to assume, and we assume in
12 your favour, that Alliance have paid the credit card on
13 that occasion?

14 A. That may have been the case.

15 Q. We are left with dozens and dozens of credits, that is
16 payments against your credit card, which are not
17 identifiable as coming from your bank accounts.
18 Therefore if we turn to the final summary on page 542,
19 we can say and I stress this is over a period of five
20 years, it is a big figure but it is over five years,
21 between 2004 and 2008 we can identify \$425,000 and
22 a little more being paid as credits to your credit card
23 account. 425,000.

24 But of that figure, \$334,607 does not come from any
25 identified account that has been given to us. So as far

1 as we can see, quite apart from the 500,000 into your
2 bank account, over 300,000 has gone into your credit
3 cards with no evident source. I am going to add one
4 caveat to this. We don't have your Scotiabank
5 statements for 2005. So we can't say for certain that
6 the credits to your credit cards in 2005 did not come
7 from Scotiabank. Let us assume to your benefit that all
8 of them came from there, so we could strike out
9 the figure for 2005, but the unexplained sums for 2005
10 are only \$34,000.

11 So the unexplained credit card sums are at least
12 \$300,000, in addition to the \$500,000 on your account.

13 Sir, I am going to suggest that this may be
14 an appropriate point to take a break, and when we
15 return, I will ask the minister for his comments, and
16 give him a couple of minutes to think about it.

17 SIR ROBIN AULD: Are we to take it that we are never going
18 to see these missing credit cards and accounts for
19 the odd years?

20 MR MILNE: Sir, we received some statements directly from
21 the minister and from his attorneys. Matters went
22 rather quiet and I am not casting aspersions but we took
23 the bull by the horns and approached the bank direct and
24 in fairness the minister gave us written permission to
25 do so.

1 As far as Scotiabank is concerned, they disclosed
2 what they had, but what they had appeared to quite
3 cleanly miss out 2005 altogether. They gave us
4 an explanation that there was a glitch which they had
5 struggled to overcome, and that the minister was not
6 the only person who had been struck by this, because
7 other requests for bank statements had similarly blanked
8 out 2005. So we are not making complaint against
9 the Honourable Jeffrey Hall about this.

10 The blame, if any, lies elsewhere. We would
11 probably try again but we are not holding our breath.

12 SIR ROBIN AULD: Thank you. We will break for five/ten
13 minutes.

14 (3.15 pm)

15 (A short break)

16 (3.25 pm)

17 SIR ROBIN AULD: Yes, Mr Milne.

18 MR MILNE: May it please you, sir. Minister, before we took
19 the break, I was asking you about the payments both into
20 your Scotiabank account and into your three credit
21 cards, totalling \$800,000 to make a round sum of it,
22 which are not explained by any other source of income.

23 Can you assist us at all with that?

24 A. Yes. The 800,000, and I take it -- I take that is over
25 a period of years, isn't it?

1 Q. It is over a period of about four to five years?

2 A. Five years, yes, sir. For the lack of not -- I wasn't
3 doing any accounting, what I can say is that I accept
4 the payments that have been identified by yourself on
5 page 540 and 541. Others were paid by cash. They were
6 paid by cash, debit from my account and then payments
7 were made on my behalf. Also, on occasions, in fact all
8 three cards -- my wife is a cardholder so sometimes she
9 would make payments also.

10 Q. Who would make payments on your behalf?

11 A. One or two of my friends.

12 Q. I want to be clear about this. It is not simply a case
13 that you say: I am too busy this afternoon to get to the
14 bank to your friend; will you pop down to the bank and
15 pay this in for me. It is actually friends paying out
16 of their own accounts for your credit cards. I would
17 agree with your assessment to this extent, that if one
18 looks at the credit cards, the payments against
19 the credit cards, on the first page, that is page 540,
20 virtually all of the payments made into the credit card
21 are round sum figures.

22 Page 541, one sees a similar phenomenon. On
23 the occasions when we identify a bank account paying it,
24 there are non-round figures. So a good example on
25 page 541, on one occasion you pay \$5,551.12. That is

1 clearly a cheque drawn on Scotiabank because we see
2 the exact same amount coming out of your bank account?
3 A. That is a debit.
4 (3.30 pm)
5 Q. That is why we can explain some of these items. But
6 a large number of the others are round sums, quite often
7 in multiples of thousands --
8 A. But going to my credit card, you say?
9 Q. Yes, paid to your credit card. I would agree that they
10 have the air of cash payments about them.
11 A. Yes.
12 Q. So, who were the friends who would be making payments to
13 your credit cards?
14 A. A very good friend of mine, Rhynie Campbell.
15 SIR ROBIN AULD: What are you looking at there, please?
16 What were you looking at there? Were you looking for
17 the names of your friends?
18 A. No, no. Rhynie Campbell, Rhynie.
19 SIR ROBIN AULD: Is that a he or a she?
20 A. It is a he.
21 MR MILNE: How often would Rhynie Campbell make payments
22 towards your credit cards?
23 A. On occasions when I asked him to.
24 Q. How many times did you ask him to?
25 A. I can't remember, several times.

1 Q. Several times?

2 A. Yes.

3 Q. Generous friend by the sound of things.

4 A. Very good friend.

5 Q. Rhynie Campbell, if I am not mistaken, is a professional

6 poker player?

7 A. He is.

8 Q. And is he an Islander or is he in fact a US citizen?

9 A. He may be both but he is an Islander, he is a Belonger.

10 Q. My understanding is he lives much of the time in the US

11 although he has come here to run poker championships on

12 at least one occasion, a poker championship, maybe more

13 than one, is that right?

14 A. Most of his time is -- he is here. Recently he has been

15 away for some time.

16 Q. You are making on your declared income \$420,000-odd

17 a year between yourself and your wife.

18 A. Yes.

19 Q. Why did you have to have a friend pay your credit card

20 off?

21 A. Sometimes when you want to travel on occasions, on

22 occasions you want to travel and sometimes you are away,

23 sometimes you want to travel and you need somebody to

24 pay the credit card in full, you ask a friend to do it.

25 And you pay them back.

1 Q. Yes. I accept that that would be the case. But let's
2 take an example. Let's look at page 540. Do you have
3 that?
4 A. 540, I got it.
5 Q. These are payments to credit cards.
6 A. Yes.
7 Q. I am going to pick a year. Probably the easiest one is
8 2006, which is the bottom, just below the middle line of
9 the page. We will just look at some of the credits into
10 your credit card during that period.
11 10th February 2006, \$3,000 was paid in. There
12 doesn't appear to have been any payment in January, at
13 least none that is recorded there. 24th March 2006,
14 \$10,000.
15 21st April, 2000, 28th April, 3,000?
16 A. Which page are we on?
17 Q. Page 540.
18 A. Okay.
19 Q. 21st April, \$2,000. 28th April, \$3,000. That is two
20 payments in a space of a week.
21 A. Yes.
22 Q. There is a payment in June and then there are two
23 payments, 3rd July and 7th July, 2,500 and 2,700?
24 A. Yes.
25 Q. In September, again, two payments on the 7th and the

1 27th. In October, two payments on the 6th and the 19th.

2 The bills that we have been shown, in common with
3 everybody else's credit card bills of course, they send
4 out a bill once a month. Quite often, though, it is not
5 a case of making a payment to make sure that there is no
6 problem with the card; it appears to be payments made in
7 rapid succession, two a month, a lump sum of cash here,
8 a lump sum of cash there. So it can't just be that you
9 are travelling away?

10 A. On most occasions it is when I am travelling.

11 SIR ROBIN AULD: You are what when you are travelling?

12 I didn't hear you.

13 A. I said most occasions is when I am travelling.

14 SIR ROBIN AULD: Most of the occasions?

15 A. Yes.

16 SIR ROBIN AULD: You mean you are travelling a lot?

17 A. I do.

18 SIR ROBIN AULD: Yes, I see.

19 MR MILNE: On many occasions Rhynie Campbell would make

20 payments to your credit cards. Many, some, several, how

21 would you describe it?

22 A. Several.

23 Q. Can you say roughly how much he has paid into your

24 credit cards?

25 A. I am not able to say that.

1 Q. Not even a ballpark figure?

2 A. Like how many times?

3 Q. How much in total? \$5,000, 50,000?

4 A. You mean in total?

5 Q. Yes?

6 A. No, it is about -- it is probably a little less than

7 200,000 or so.

8 Q. So Rhynie Campbell has paid off about 200,000 of your

9 credit card bills.

10 A. Thereabouts.

11 SIR ROBIN AULD: I just don't understand this, forgive me.

12 Do you not have a system in this country where you can

13 just get your bank with whom you have an account

14 automatically to settle your monthly account with

15 whatever credit cards you have? Why do you have to be

16 home to do this?

17 A. You have to.

18 SIR ROBIN AULD: Why? Is it not possible in the

19 Turks & Caicos to get your bank automatically to settle

20 your credit card bill at the end of each month?

21 A. I believe there is. I have never explored it.

22 SIR ROBIN AULD: What is the problem? Is it because you

23 have got nothing in your bank account to do that or

24 because you just never thought of this?

25 A. Never thought of it. Never used that as an option. It

1 is probably an option I should consider.

2 SIR ROBIN AULD: If you are travelling a lot, it is an

3 obvious option.

4 A. It should be.

5 SIR ROBIN AULD: There comes a time when Rhynie Campbell has

6 paid out all this money into your account for you and

7 presumably then wants it back.

8 A. Yes.

9 SIR ROBIN AULD: So how do you deal with that?

10 A. I gave him a loan.

11 MR MILNE: When did you give him a loan?

12 A. Sir, can I -- it was around September 2006.

13 Q. How much was that loan?

14 A. 200,000.

15 SIR ROBIN AULD: In September 2006?

16 A. Yes.

17 MR MILNE: Okay. From which of your bank accounts did that

18 money come?

19 A. Not from my bank account. I gave my lawyer instructions

20 to do so. Again we are going to get to that.

21 Q. Which account did it come out of that you told your

22 lawyer to take it out of?

23 A. I do not know which account.

24 Q. Let's look at it this way, was it your money?

25 A. Yes, it was.

1 Q. Why was it in the hands of your lawyer?
2 A. Because I gave it to him to -- because I gave it to him
3 to hold for me.
4 Q. Why did you give it to him?
5 A. Why did I give it to him?
6 Q. To your lawyer.
7 A. Why?
8 Q. Yes.
9 A. People do that. You have a lawyer and if you have some
10 funds, and you give your lawyer your funds to hold.
11 People do that sometimes. I certainly did.
12 Q. You have a bank account to keep money in.
13 A. I do.
14 Q. So why would you take the money and give it to your
15 lawyer, just so he could have some money? Or for
16 a specific purpose?
17 A. No. I gave it -- it is obviously -- the proceeds of
18 sale that I had that I am sure we are coming to, that
19 the proceeds from that sale was given to my lawyer to
20 administer for me. And he takes instruction as I gave
21 it to him.
22 SIR ROBIN AULD: Did you document the loan to
23 Mr Rhynie Campbell?
24 A. I have it, sir.
25 SIR ROBIN AULD: It is recorded, is it?

1 A. I have, yes, sir.

2 SIR ROBIN AULD: Have you got it there?

3 A. Yes, sir.

4 MR MILNE: Do you have a record of the loan to

5 Rhynie Campbell?

6 A. Yes, sir.

7 SIR ROBIN AULD: We won't forget that Mr Rhynie Campbell was

8 only one of his friends to whom he referred, will we?

9 MR MILNE: It was of course your evidence, Minister, before

10 we leave this topic, that not friend but friends who

11 paid off your credit cards.

12 So can you tell us who the other friends were who

13 made payments towards your credit card?

14 A. I can tell you one more. I did not have the money in my

15 account at the time, and I asked Arlington Musgrove to

16 pay my credit card for me and I paid him back. As

17 a matter of fact I gave him a cheque. So when monies

18 get to my account, he would get his money back.

19 SIR ROBIN AULD: This is Arlington Musgrove, did you say?

20 A. Yes.

21 SIR ROBIN AULD: And you paid him a cheque?

22 A. Yes.

23 MR MILNE: Arlington Musgrove, who is usually known as

24 Chuck Musgrove, isn't he? The same one?

25 A. You are familiar, yes, sir.

1 Q. We know his name. Mr Musgrove who is, I think, in
2 the construction industry, he paid off some of your
3 credit card?
4 A. On one occasion.
5 Q. Do you know how much he paid off on that occasion?
6 A. \$7,000.
7 Q. You paid him back?
8 A. Absolutely.
9 Q. And you paid him back by cheque?
10 A. Yes, sir.
11 Q. Can you tell us roughly when that was that that
12 happened? A year, a month if possible?
13 A. Probably two or three months ago maybe.
14 Q. Two or three months ago?
15 A. I can't tell you the exact time.
16 Q. The end of 2008?
17 A. I can't remember -- it was in 2008 that is for sure.
18 Q. Is Mr Musgrove a close friend?
19 A. He is a friend.
20 Q. On that occasion why was it that you asked him to pay
21 rather than doing it yourself? You were abroad? You
22 were busy or what?
23 A. No, no. I wanted to travel. I did not have the money.
24 I asked him to pay off my credit card. I think it was
25 \$7,000 that I needed to travel on, and I gave him

1 a cheque so that when the monies -- when the funds hit

2 my account he could clear the cheque. That was it.

3 Q. Fine. In fact, there should be a debit in your bank

4 account, albeit slightly delayed?

5 A. Yes.

6 Q. Is there a reason why you could not simply give him

7 a cheque made payable to the bank and say: please would

8 you pay that into the bank for me with my credit card

9 bill.

10 A. Sorry?

11 Q. If you were giving him a cheque for the purposes of

12 paying the credit card bill, why not simply make it

13 payable to the credit card company and post it --

14 A. No, I can't do that, otherwise I would be writing a bad

15 cheque.

16 Q. You didn't have the money at the time?

17 A. No.

18 Q. You wrote a cheque in anticipation of the funds coming

19 in?

20 A. Yes.

21 Q. I see. I follow.

22 So you were having problems, I am not seeking to

23 delve too closely into this, but 7,000 on that occasion

24 posed a problem in terms of cashflow at least?

25 A. Yes.

1 SIR ROBIN AULD: It sounds as if you were living pretty near

2 the margin if you have got to do this. Is that so?

3 (3.45 pm)

4 A. I would not really put it that way.

5 MR MILNE: Before we leave the topic, can you tell me when

6 you last saw Mr Musgrove.

7 A. When last I saw him?

8 Q. Yes.

9 A. I can't. It is maybe a month ago.

10 Q. About a month ago, is that in the TCI?

11 A. Yes.

12 Q. Has he been abroad recently?

13 A. Who?

14 Q. Mr Musgrove?

15 A. I don't know, I don't know his whereabouts.

16 Q. He has not discussed overseas travel?

17 A. With me? No.

18 Q. Are you aware of him going to Dubai?

19 A. No.

20 Q. Mr Musgrove is somebody who has done work on behalf of

21 the government in the past, hasn't he?

22 A. I know his company did.

23 Q. His company?

24 A. Yes.

25 Q. Which company are you talking about?

1 A. JACA TCI.

2 Q. JACA?

3 A. Yes, JACA TCI.

4 Q. Is it actually J-A-C-A?

5 A. Yes.

6 Q. We have seen -- heard of JACA but I think that is

7 probably a mispronunciation.

8 A. It is JACA.

9 Q. So JACA?

10 A. Yes.

11 Q. Let's go back, since Mr Musgrove plays a lesser role in

12 this, to Rhynie Campbell.

13 The loan that you made to Rhynie Campbell,

14 therefore, is money -- \$200,000. And if I follow you

15 correctly, essentially he has repaid that loan by making

16 payments towards your credit cards.

17 A. Yes.

18 Q. It has gone round that way. Is that what was initially

19 intended or is that just the way it worked out?

20 A. No, that was not the way it initially intended.

21 Q. Have you kept an account, then, of each payment to make

22 sure that you get your money back?

23 A. No.

24 Q. How do you know if he repaid you in full?

25 A. Yes.

1 Q. I am sorry, I don't understand. How would you be able
2 to tell if he had repaid or not if you have not logged
3 the repayments?

4 A. Well, I am sure he did. I mean a few dollars here and
5 there don't really matter with friends now, does it?

6 Q. \$200,000 is by most people's standards, quite a lot of
7 money. It is more than you earn in a year by way of
8 salary from the Turks & Caicos Islands government. So
9 it is not just the contents of your back pocket, it
10 is -- this was clearly a serious loan.

11 A. Yes.

12 Q. No doubt taken seriously by you and by him. I think you
13 said a minute ago that you had documentation to record
14 it.

15 A. Yes.

16 Q. What form does that documentation take, is it a letter,
17 is there a signed agreement?

18 A. Yes, it is a promissory note.

19 SIR ROBIN AULD: I think you said you had it there.

20 A. Yes.

21 MR MILNE: Might we see it in that case.

22 A. Yes.

23 MR MILNE: Might we see it now, please, sir.

24 A. Yes. (Handed)

25 Q. The document comprises two sheets and, sir, it may be

1 that we will have to do this later but we will get
2 copies.

3 SIR ROBIN AULD: Shall we call them 544 and 545?

4 MR MILNE: Yes, please, sir.

5 SIR ROBIN AULD: I produced two documents, 544 and 545, yes.
6 What are they?

7 MR MILNE: The second of the two is a cheque drawn on
8 Alliance Realty Limited dated 7/9/06. Should we take
9 that as 7th September or 9th July?

10 A. That would probably be 7th September.

11 Q. In fairness the covering letter is 18th September.
12 The cheque appears to be 7th September and it is for
13 \$200,000, made payable to Rhynie Campbell and it says
14 "loan short-term".

15 The covering document is a promissory note, the full
16 figure in fact \$260,000. It says "due
17 18th September 2006". It is dated at the bottom
18 7th September 2006.

19 It essentially comprises of this. It says:
20 "For value received the undersigned, Rhynie
21 Alexander Campbell, the borrower, hereby acknowledges
22 itself indebted to Alliance Realty Limited, the lender,
23 and promises to pay on demand to or to the order of
24 the lender, Temple Financial Centre, Leeward Highway,
25 Providenciales or as otherwise directed in writing by

1 the lender, the principal sum of \$200,000 plus \$60,000
2 in consideration for lending the principal sum. Payable
3 in six months from the date hereof and not in advance
4 both before and after demand. Maturity ... until paid."

5 Essentially, the agreement that is set out in this
6 document is that you loan in September 2006, 200,000 to
7 Mr Campbell, he will repay it within six months,
8 together with \$60,000 interest.

9 A. Yes.

10 Q. Which is 30 per cent interest for a very short term
11 loan. Thank you. We will copy and return the original
12 in due course.

13 That promissory note, were the terms of that
14 complied with? Did you stick to it?

15 A. No.

16 Q. Because the loan is from -- you are right, we will come
17 back to this in a few minutes -- it is
18 Alliance Realty Limited. It appears the cheque is drawn
19 on Alliance Realty so that the money is coming out of
20 that bank account in September.

21 The aim is that he will make repayment to Alliance
22 Realty at Temple Financial Centre, which is an address
23 in Leeward Highway.

24 SIR ROBIN AULD: I simply can't understand the relationship
25 between that and him paying the odd credit card account

1 for you when you are not in funds to pay it.

2 What is the relationship between those two quite
3 different types of transactions?

4 A. The relationship between that is that the loan agreement
5 as is drawn up was not honoured. So on occasions when
6 I requested, he would pay it against my credit card
7 until the loan is exhausted.

8 SIR ROBIN AULD: So the payment back in dribs and drabs on
9 your credit card was a substitute for this promissory
10 loan, is that it?

11 A. Yes, sir.

12 MR MILNE: So this is not, nor would one expect it to be,
13 but it is not simply a friendly gesture, Rhynie needs
14 some cash and you lend him \$200,000, but rather
15 a commercial transaction entered into by two men and
16 signed and drawn up, it would appear, on -- in your
17 office? Yes? The document isn't actually signed on
18 behalf of Alliance Realty Limited, but there is a box
19 for it to be signed and it has Rhynie Alexander
20 Campbell's signature on it as the borrower.

21 You went to the trouble of drawing up a document and
22 although it does not spell out the interest rate,
23 the interest rate clearly is 30 per cent return over six
24 months, which is good return of interest. But you have
25 not enforced it. Is that right?

1 A. No.

2 Q. Indeed, this is now two and a half years ago and he is
3 still paying contributions?

4 A. No.

5 Q. He has finished now?

6 A. Yes.

7 Q. Has he paid \$260,000?

8 A. No.

9 Q. So he has only paid \$200,000?

10 A. I can't say exactly what the amount is. It is around
11 that. Certainly it is not 260.

12 Q. There is a certain conflict here which I am sure you
13 will appreciate: that you go to the trouble of drawing
14 up a legal or legal-ish document, promissory note at
15 a high rate of interest, with a stipulated period for
16 him to return the money and interest within six months,
17 which would have meant by the beginning of 2007, and
18 then, having done that, you disregard it, you let him
19 pay you back in dribs and drabs, no interest at all,
20 with no proper record of how much is in, whether he is
21 quite there or not quite there. Does it not seem
22 a little strange?

23 A. No.

24 Q. So are we therefore to understand that after September
25 of 2007, most, some of the repayments to your credit

1 cards can be attributed to Rhynie Campbell?
2 A. After September 2006.
3 Q. September 2006, I beg your pardon. I probably misstated
4 that.
5 Would that be right?
6 A. Yes, he was making payments to my credit cards.
7 Q. In fact, and this is a very quick tally, but of the
8 300,000 unexplained, about 200,000 of it post-dates
9 that. So he has paid every unexplained credit card bill
10 for you since then.
11 A. No, sir, I would not say that.
12 SIR ROBIN AULD: You are saying no or yes?
13 A. I am not sure, I would prefer him repeating the question
14 because I am not sure what he said.
15 MR MILNE: Certainly, sir. I will endeavour to make this
16 clear.
17 From about 7th September 2006, we have a series of
18 credit card payments which are unexplained by any of
19 your bank accounts. A very rough figure. It would tend
20 to suggest that since September 2006, about \$200,000 has
21 been paid against your credit cards for which we can see
22 no obvious source.
23 Are we to therefore assume that all of those credit
24 card payments have come from Rhynie Campbell?
25 A. Since 2006 there is about 333,000, according to your

1 calculations, that cannot be identified. And I am
2 saying to you that apart from the obvious debit from my
3 account, they were paid by cash and payments made on my
4 behalf.

5 Q. Did Rhynie Campbell do anything else for you apart from
6 paying off the credit card?

7 Did he do you any other favours, provide any other
8 service, pay any other bills?

9 (4.00 pm)

10 A. No.

11 Q. Whose idea was it that he would borrow \$200,000 from
12 you?

13 A. Whose idea that Rhynie would borrow \$200,000 from me?

14 Q. Yes.

15 A. It must have been his idea.

16 SIR ROBIN AULD: His idea to borrow money from you? Is that
17 what you are saying?

18 A. Yes, if I understand the question right, sir. It had to
19 be his idea.

20 SIR ROBIN AULD: You mean he asked you?

21 A. Yes.

22 SIR ROBIN AULD: It must have been your idea to agree?

23 A. I didn't understand him saying that.

24 SIR ROBIN AULD: I don't know where we are going on this.

25 Are there any other friends of this sort from whom --

1 who paid your -- sums into your credit account? We have
2 got Rhynie Campbell and Chuck Musgrove, anybody else?

3 A. No, sir, not that I recall.

4 MR MILNE: The Rhynie Campbell loan doesn't appear to have
5 been mentioned anywhere else. It certainly has not been
6 mentioned in any of your declarations to the Registrar
7 and it didn't feature hitherto in your declarations to
8 the Inquiry. Did it cross your mind that we might wish
9 to know where this money was going out and coming back
10 in?

11 A. No, it didn't.

12 Q. We obviously were enquiring about your credit cards.
13 Did you not think we might wish to know that another
14 person is paying off substantial amounts of debt to you
15 by covering your credit cards? It didn't occur?

16 A. What occurred to me is that I thought I gave you
17 sufficient information to satisfy you that I would have
18 been in a position to pay off my credit card. That
19 amount to Rhynie was a loan and that was a way of
20 getting my money back.

21 Q. The \$200,000 cheque came from Alliance Realty Limited,
22 didn't it?

23 A. Page?

24 Q. I am looking at the document you have just given us. It
25 appears to be a cheque that is drawn on

1 Alliance Realty Limited.

2 SIR ROBIN AULD: 545 now, I think.

3 MR MILNE: It is 545. The number of the cheque is 102,

4 which is that document. Did you write that out?

5 A. No.

6 Q. Who wrote it out?

7 A. I don't know who wrote it out but I gave my lawyer

8 instruction to do it.

9 Q. Who did you give instructions to?

10 A. My lawyer.

11 Q. Your lawyer. That would be Mr Wilson?

12 A. Yes.

13 Q. And that is Mr Wilson who represents you still today?

14 A. Yes.

15 Q. That cheque drawn on 7th September, \$200,000 appears in

16 the Alliance Realty Limited accounts and so clearly was

17 put through the books immediately. If it assists, sir,

18 we find that in the bank statement at page 219.

19 SIR ROBIN AULD: Thank you.

20 MR MILNE: Did you make any other loans in 2006?

21 A. Yes.

22 Q. To whom did you make loans?

23 A. To the Premier.

24 Q. How much did you loan him?

25 A. 100,000.

1 Q. That was done in May of 2006?

2 A. Could have been.

3 Q. You remember the loan?

4 A. Yes.

5 Q. How did that come about?

6 A. The Premier asked me to borrow \$100,000 and I consented.

7 Q. Did you write him a cheque?

8 A. Again I instructed my lawyer to issue the funds.

9 Q. From which account did you instruct your lawyer to issue

10 the funds?

11 A. I don't know from which account it came from.

12 I instruct my lawyer. My lawyer is holding the money

13 for me, sir.

14 SIR ROBIN AULD: You say you instructed your lawyer. Is

15 this Mr Melbourne Wilson again?

16 A. Yes.

17 SIR ROBIN AULD: To draw it from an account for you, did you

18 say? What was he going to do? How was he going to get

19 the money to lend to the Premier?

20 A. He was holding funds for me.

21 SIR ROBIN AULD: I instructed Mr -- who was holding funds

22 for me.

23 A. Yes.

24 SIR ROBIN AULD: To draw a cheque or to pay the Premier?

25 A. Yes.

1 SIR ROBIN AULD: Was this about the time when you were
2 getting Mr Rhynie Campbell to pay off your credit cards
3 in dribs and drabs?

4 A. That was in May of 2006, I believe, sir.

5 SIR ROBIN AULD: That was a different period of your life,
6 was it?

7 A. Yes, sir.

8 MR MILNE: Has the loan from the Premier been repaid?

9 A. No.

10 Q. Have you asked for it to be repaid? Have you made any
11 request?

12 A. No, I loaned him the money and I said that he was going
13 to pay me back.

14 Q. Did you draw up a promissory note with the Premier?

15 A. No.

16 Q. Any particular reason why not?

17 A. We are colleagues, we see each other just about every
18 day. I didn't think it was necessary.

19 Q. You thought it was necessary with Mr Rhynie Campbell.

20 And he is clearly somebody you regard as a friend.

21 A. Yes, sir.

22 Q. Why not get a promissory note from the Premier?

23 A. I chose not to.

24 Q. \$100,000 is quite a lot of money though, isn't it?

25 A. I will say it is.

1 SIR ROBIN AULD: What account was this drawn from, your
2 attorney's account? Bank account?
3 A. I don't know what account. Like I said, I gave my
4 attorney --
5 SIR ROBIN AULD: Was it paid by way of cheque?
6 A. I gave my attorney instructions to do so.
7 SIR ROBIN AULD: Did he pay the loan by cheque to
8 the Premier?
9 A. I believe it was deposited into -- yes, into an account
10 for the Premier.
11 SIR ROBIN AULD: Your attorney drew a cheque and deposited
12 it into the Premier's account?
13 A. I believe that is the way it was done, sir.
14 SIR ROBIN AULD: You don't know on what account your
15 attorney drew it?
16 A. No.
17 SIR ROBIN AULD: Mr Melbourne Wilson.
18 MR MILNE: You have not invited the Premier to pay off your
19 credit card at any stage, I take it?
20 A. No.
21 Q. Or to make payment by any other means?
22 A. No.
23 Q. Let's go to the context. Let's put this into some sort
24 of place in its true history.
25 If we take the bundle in front of us, at page 12,

1 the history I think of this matter goes back to 2004,

2 doesn't it?

3 A. Yes. I hope we are on the same page. When you are

4 talking about the matter, I am answering prematurely

5 but --

6 Q. I will go through it with you, and if I have

7 misunderstood it, then you will be able to put me right,

8 sir, because what we have on page 12 of our bundle,

9 8th May 2004, this is a letter from the Chief Minister's

10 office. It is signed in fact by Alice Williams,

11 the Commissioner of Lands. This is a letter following

12 an application by yourself apparently for a commercial

13 conditional purchase lease. It is addressed to you by

14 name and it refers to your application. The block in

15 question is 60000, which is the Northwest Point area

16 Providenciales.

17 The letter says:

18 "The executive council at its meeting on

19 12th May 2004 discussed your application..."

20 Essentially recommended approval for a grant,

21 the commercial conditional purchase lease, on survey lot

22 number 1 of block 60000.

23 "This is for the purpose of constructing

24 condominiums in accordance with the terms of the new

25 land policy."

1 It gives a survey fee of \$1,500. It says the lease
2 must be executed within nine months from the date of the
3 executive council's approval, otherwise the offer would
4 be withdrawn.

5 I think we have heard elsewhere there is
6 a nine-month time limit. You either take up the lease
7 or it lapses and you would have to make a fresh
8 application. Following that notice did you take up
9 the commercial conditional purchase lease?

10 A. No.

11 Q. Did you ever take up a commercial conditional purchase
12 lease on that property?

13 A. No.

14 Q. We move on from there, because on 19th July 2005, this
15 is much further on in the bundle. It is page 264.

16 Another letter, this time from the ministry of natural
17 resources. The letter dated 19th July 2005, addressed
18 to yourself, application for freehold title. Again
19 the parcel is the 60000 parcel but it is more specific,
20 it is the actual parcel, number 151. Northwest Point,
21 Providenciales.

22 Reference is made to the above application:

23 "Executive council at its meeting on 7th July 2005
24 discussed your application and advised that it
25 recommended the approval and reaffirmed the freehold

1 title offer..."

2 Granted to yourself, 60000/151, of 4.98 acres for
3 the purpose of pursuing condominiums development.
4 The open market value of the parcel put at \$690,000.
5 Freehold title price, you paid only 50 per cent of open
6 market value which is \$345,000. As is standard with
7 such matters, a charge was to be placed on the parcel
8 for ten years respectively. The discount sum of
9 \$345,000.

10 The purpose of that, as I understand it, being that
11 you get the property freehold at half price, but
12 the condition is that if you sell on within ten years,
13 you pay back to the government the price that you would
14 have paid if you bought it at full freehold value.

15 SIR ROBIN AULD: Do you agree with that?

16 A. Yes.

17 MR MILNE: So you had not at any stage applied for a CPL,
18 but you did apply for freehold land. Just under five
19 acres, is that right?

20 A. Sorry?

21 Q. Is that correct?

22 A. What is?

23 Q. That you had applied for freehold title on five acres at
24 Northwest Point?

25 A. Yes.

1 Q. The letter comes to you from the Permanent Secretary,
2 that is Mr Leo Selver, Permanent Secretary natural
3 resources.

4 As a result of that, you would have been granted
5 that parcel of land.

6 A. Yes.

7 Q. In the following weeks, this being July 2005, a company
8 was set up called Urban Development Limited. In fact it
9 was registered on 15th August. So almost exactly
10 a month later. We have that company, we have
11 the establishing documents at page 267 in our bundle.
12 It is just three pages on. If we turn to that document,
13 we have company agent, the Director, which is a nominee
14 director called Hibernian Directors Limited. Company
15 Secretary, Hibernian Secretaries Limited. So no
16 individuals being named. The subscriber, the very first
17 one to be put in, Windsor Nominees, curiously based at
18 Mr Chal Misick's building in Tropicana Plaza. It seems
19 to have some part in that.

20 MR WILSON: Sorry, that is incorrect.

21 MR MILNE: Are you familiar with the name Windsor Nominees
22 at all, sir?

23 A. No.

24 Q. Mr Misick, who is based at that address, uses Windsor in
25 some of his other companies, but we have not hitherto

1 been told about Windsor Nominees. Maybe we are waiting

2 for it.

3 A. No.

4 Q. In any event, four companies, so this company,

5 Urban Development Limited, is owned by companies,

6 directed by companies; its secretarial responses are by

7 companies. Did you have any involvement with

8 Windsor Development Limited? I beg your pardon,

9 Urban Development Limited.

10 A. Yes, before -- originally.

11 Q. Originally, yes. That being originally when it was set

12 up?

13 A. Yes, before this passed on.

14 Q. Before it was passed on?

15 A. Yes.

16 (4.15 pm)

17 Q. How long did you remain involved? I am using

18 the expression neutrally, how long were you involved

19 with Urban Development?

20 A. I don't know. I don't know how long.

21 Q. We will come back to it in a few minutes.

22 A. Okay.

23 Q. When it started out, what was your involvement? First

24 of all, was it set up at your request?

25 A. Yes.

1 Q. As far as you knew, who set it up?

2 A. It was set up by -- it was set up by my lawyer.

3 SIR ROBIN AULD: By Mr Melbourne Wilson? Or another lawyer?

4 A. The firm at that time.

5 Q. Which firm was it at the time?

6 A. I believe it was out of the office of McLean McNally,

7 I believe. I am not sure about that.

8 Q. Maybe nothing turns on it, but as we understand,

9 Mr Melbourne Wilson previously worked at McLeans, as we

10 have termed it?

11 A. Yes.

12 Q. McLean McNally, you say, and is now in private practice

13 under his own title, Wilson Associates?

14 A. Yes.

15 Q. Until and unless you tell us otherwise, can we assume

16 that Mr Wilson has represented you in your business

17 dealings throughout the relevant period?

18 Have you used other lawyers?

19 A. Yes.

20 Q. You have. I don't want to make an assumption that is

21 false but when you say "my lawyer", it means that I may

22 have to stop and ask you from time to time which lawyer

23 you are talking about, do you follow?

24 A. Okay.

25 Q. In this case you think Mr Wilson, whilst at McLean, set

1 up this company for you, yes?

2 A. It was at that firm, yes.

3 Q. The firm set it up, fair enough.

4 Did you acquire shares in Urban Development Limited?

5 A. Yes.

6 Q. Were you the only shareholder or a joint shareholder?

7 A. No, the Urban Development, as I believe it was, was four

8 Belongers: myself, Samuel Been, Earlson Robinson and

9 Quinton Hall.

10 Q. Let's --

11 SIR ROBIN AULD: Are those names material?

12 MR MILNE: They are, sir.

13 SIR ROBIN AULD: Do we know if they are?

14 MR MILNE: Yes.

15 A. They are.

16 MR MILNE: Now, the other gentlemen, Samuel Been,

17 Quinton Hall and Earlson Robinson I think, is that

18 right?

19 A. Yes.

20 Q. Three friends of yours? Business partners at least?

21 A. Was.

22 Q. They were, okay. The four of you decided to set up

23 a company called Urban Development Limited. Was it

24 an equal division of shares or did you have more than

25 one quarter?

1 A. I don't really remember how it was set up. It is fair
2 to assume that we had equal division of shares.

3 Q. The company record that we have shown you makes no
4 indication of that at all, I am afraid. I recognise
5 this record is not always going to be the clearest. But
6 what we have at page 267 and the documents straight
7 after that tends to suggest that this was simply being
8 held by a nominee on your behalf. So who was the person
9 who was actually controlling it?

10 A. The company on 2, 6 and 7, as I understand it, sir, it
11 has been passed on. So I hold no shares in it.

12 Q. No, and you have told us that and I am not concerned
13 with the position today, I am concerned with
14 the position back when it was set up. The documents we
15 have don't suggest that any shares were issued to
16 shareholders as individuals. Was it being held on
17 trust?

18 A. It may have been, I don't know.

19 Q. Who did you understand was running it, who was actually
20 the controlling person?

21 A. I understood that the four of us had equal shares and it
22 was set up -- the company was set up for us at the law
23 firm.

24 SIR ROBIN AULD: The company was set up for you?

25 A. Yes.

1 SIR ROBIN AULD: By whom?

2 A. I don't know, it is out of the law firm.

3 SIR ROBIN AULD: By a law firm?

4 A. Yes.

5 SIR ROBIN AULD: I think what Mr Milne wants to know is who

6 was doing the setting up, who was the controlling spirit

7 in all this?

8 A. I don't know.

9 SIR ROBIN AULD: So you were just allowing yourself to be

10 set up by somebody whom you didn't know?

11 A. Well, I mean --

12 SIR ROBIN AULD: Come on, Mr Hall, let's get into the real

13 world with some of this.

14 A. If a company is set up -- if a company is created to

15 create companies and issue shares and you want to set up

16 a company to share with others, you would not

17 necessarily have to know who in the firm actually do

18 the work, set up the company. I gather that is what he

19 is asking, sir, unless I'm completely confused.

20 SIR ROBIN AULD: But were you just allowing yourself to be

21 put in there as one of four stooges or did you know what

22 was going on?

23 A. Of course I knew what was going on.

24 SIR ROBIN AULD: Well, what was going on?

25 A. The company was -- the company Urban Development was set

1 up and we negotiated a development agreement from
2 the government.

3 SIR ROBIN AULD: By somebody whom you don't know, is that
4 it?

5 MR MILNE: Why was it set up?

6 A. The company?

7 Q. Yes.

8 A. It was set up to negotiate a development agreement from
9 the government.

10 Q. Set up to negotiate a development agreement?

11 A. Yes.

12 Q. Whose idea was it?

13 A. Fine, here is the story, there was a -- there is
14 a realtor or was by the name of Tim Smith who approached
15 me --

16 SIR ROBIN AULD: Jim Smith?

17 A. Tim Smith.

18 SIR ROBIN AULD: Here is the story: Tim Smith approached me.

19 A. Yes. And he approached me saying that he has a client
20 who was interested in doing a condominium --
21 a hotel/condominium development on West Point. He has
22 done the search and found out that I had an interest in
23 the piece of land down there. The developers wanted
24 20 acres of land to do the development. So I had
25 4.98 acres or 5 acres, Samuel Been had 5 acres, Earlson

1 Robinson had 5 acres and Quinton Hall had 5 acres.

2 SIR ROBIN AULD: So each of you had 5 acres making up

3 the 20?

4 A. Yes. I thought it was a good thing. We put together

5 a company by the name of Urban Development, negotiated

6 a development agreement with the government, made

7 an application and got a freehold offer from

8 the government. The development agreement has been

9 approved, planning permission has been given and all

10 necessary fees are paid for that. We subsequently sold

11 the Urban Development, along with the properties, for

12 which I received \$1 million.

13 SIR ROBIN AULD: Did you all receive the same?

14 A. \$1 million.

15 SIR ROBIN AULD: Sorry?

16 A. \$1 million.

17 SIR ROBIN AULD: Yes, but did each of you receive

18 \$1 million?

19 A. I believe so, yes.

20 SIR ROBIN AULD: Then sold it to this developer?

21 A. Yes.

22 SIR ROBIN AULD: For 4 million. Here is the story --

23 MR WILSON: Sir, if I may correct. That is what he said

24 that he received but it was not sold I think -- for

25 clarification. That is what each one received

1 \$1 million but it probably was not sold for \$1 million.

2 I think that was your last --

3 SIR ROBIN AULD: No, each one got 1 million but the overall

4 price was 4?

5 MR WILSON: No, the price was not 4, sir.

6 SIR ROBIN AULD: So where did the other 3 million come from?

7 Where did it come from if the price of the land was not

8 4 million?

9 A. Sir, the freehold title have to be paid to the Crown

10 and -- but I don't know how the rest of it was

11 distributed.

12 SIR ROBIN AULD: What did the land fetch to the developer,

13 putting aside your co-ownership?

14 A. I am not sure, sir.

15 SIR ROBIN AULD: You sold it to somebody for a price that

16 you don't know but you personally received 1 million?

17 A. That is correct, sir.

18 MR WILSON: Perhaps I could help. The actual sale of that

19 property totalled \$7 million. That was given in

20 evidence some time ago by the Deputy when he was asked

21 or someone actually gave that already. It was 7

22 million, not 4.

23 SIR ROBIN AULD: Thank you, Mr Wilson. So 7 million of

24 which you got 1, the other three got 1. What happened

25 to the other 3 million?

1 MR WILSON: The other 3 was to pay off the stamp duty,
2 freehold title, commission, legal fees.
3 SIR ROBIN AULD: Thank you.
4 MR MILNE: The developers's name please?
5 A. The developer -- the main developer in it, his name is
6 David Wex that I know.
7 SIR ROBIN AULD: Who?
8 MR MILNE: David Wex. The same David Wex who gave you
9 the political contribution you mentioned earlier on?
10 A. That is correct.
11 Q. He is Canadian I think?
12 A. Canadian/Irish, I am not sure. I can't speak.
13 Q. Not from these parts?
14 A. No.
15 Q. Sir, I am mindful of the time. We will, I am afraid,
16 have to explore this a little further.
17 SIR ROBIN AULD: Yes, looks like it. I am sorry we are
18 going to have to bring you back tomorrow,
19 Mr Jeffrey Hall, but that is the way things go.
20 A. Sir, can we continue? It is not possible for us to
21 continue?
22 SIR ROBIN AULD: Can we continue? No because --
23 A. I don't mind.
24 SIR ROBIN AULD: But other people have their obligations.
25 10.30 tomorrow.

1 (4.30 pm)

2 (The court adjourned until 10.30 am

3 on Thursday, 29 January 2009)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1	INDEX	
2		PAGE
3	Submissions by MR SAUNDERS	3
4	Submissions by MR MISICK	18
5	Reply submissions by MS CLARK	19
6	Submissions by MR SMITH	37
7	Decision by the Commission	44
8	Submissions by MR FITZGERALD	64
9	HONOURABLE MINISTER JEFFREY	74
	CHRISTOVAL HALL (sworn)	
10	Cross-examination by MR MILNE	74
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

