

1 Thursday, 29th January 2009

2 (10.30 am)

3 HONOURABLE MINISTER JEFFREY HALL (continued)

4 Cross-examination by MR MILNE (continued)

5 SIR ROBIN AULD: Yes, Mr Milne.

6 MR MILNE: May it please you, sir. Minister, when we
7 finished the evidence last night, we had been dealing
8 with a land transaction in relation to Northwest Point,
9 and you summarised quite shortly for us the lead-up to
10 this.

11 You told us that you had been approached by a man
12 called Tim Smith, a real estate agent and that he had
13 a client who was interested in -- I think your words
14 were "doing a condominium, a hotel/condominium
15 development in West Point", that is Northwest Point.
16 And that that developer or perhaps the agent had done
17 a search and found that you had an interest in a piece
18 of land down there.

19 The developers wanted 20 acres, you had just under 5
20 acres and three of your associates each had 5 acres. So
21 in total you had 20, which is what he would have been
22 looking for.

23 In fact, in each case, am I right, each of you had
24 an option on the land?

25 A. Yes.

1 Q. An option on the freehold.

2 A. Yes.

3 Q. You told us yesterday that you thought it was a good
4 thing. So you put together a company called
5 Urban Development, negotiated an agreement with the
6 government; you said you made an application, got
7 a freehold offer. The development agreement has been
8 approved, planning permission has been given and all
9 necessary fees are paid for that.

10 Then there was some brief discussion and I think in
11 fact Mr Wilson was able to assist with the numbers.
12 I am going to just try to follow the history though,
13 the chronology of what went on, because that probably is
14 quite important. Your evidence is that you had been
15 approached before Urban Development was put together;
16 indeed Urban Development was formed because of the
17 approach, is that right?

18 A. Yes.

19 Q. We know that Urban Development was formally created as
20 a company on 15th August 2005, so the approach to you
21 must have been somewhat earlier than that.

22 A. Yes.

23 Q. Are you able to be any more precise as to when you were
24 first approached by this gentleman, Tim Smith?

25 A. No, I can't say exactly when. It is safe to say that it

1 is perhaps 2005, though.

2 Q. Before August of 2005. Mr Tim Smith, was he somebody

3 who had previously been known to you?

4 A. No, I have seen him but I don't really know him --

5 Q. You knew he was a real estate agent?

6 A. Yes.

7 Q. Tim Smith in fact was working for -- was it TCR

8 Sothebys?

9 A. Yes.

10 Q. During that period.

11 You were approached by him, not a case of you or

12 your attorney approaching Mr Smith, is that your

13 recollection?

14 A. Yes.

15 Q. We touched on some of these. 15th August, having been

16 approached, Urban Development Limited is formed as

17 a company and indeed you, we are told, received shares

18 in Urban Development Limited as did your three

19 colleagues?

20 A. Yes.

21 Q. Equal amounts of shares?

22 A. Yes.

23 Q. Or an equal interest at least?

24 A. Yes.

25 Q. Between the four of you because it seems that shares in

1 that company were not registered in your name.

2 The documents we have suggest that it always remained in

3 the name of a nominee. That is August. In October you

4 became a shareholder in a firm called Alliance Realty

5 and indeed subsequently you were appointed a director of

6 Alliance Realty Limited, is that correct?

7 A. Which year?

8 Q. This is still 2005.

9 A. Okay.

10 Q. Do you remember that?

11 A. I don't remember. I take your word for it.

12 Q. Well, as you will appreciate, sir, I was not there.

13 A. I am talking about the date exactly.

14 Q. I see. So you agree that it happened but you couldn't

15 be precise as to the date, which is obviously a little

16 difficult at this lapse of time. But we have a letter

17 prepared on your instructions, no doubt, but it

18 certainly comes from Mr Wilson and we have this, if it

19 assists you in your main bundle at page 64. It is just

20 one page from a letter.

21 A. Yes.

22 Q. So we are clear it is a letter dated 17th November 2008,

23 addressed to the Commission?

24 SIR ROBIN AULD: I was not paying attention, Mr Milne.

25 Which page number?

1 MR MILNE: The letter begins at page 59, sir, which is

2 17th November.

3 SIR ROBIN AULD: Thank you.

4 MR MILNE: I am concerned simply with one of the answers at

5 page 64, which is the very last page of that letter.

6 SIR ROBIN AULD: Yes.

7 MR MILNE: After you made your initial submissions,

8 the Commission wrote with a number of queries for

9 clarification and this is one of the clarifications we

10 were given at page 64. Mr Wilson indicates:

11 "Our client [yourself] became a shareholder of

12 Alliance Realty Limited on 17th October 2005. He was

13 asked by the principals to be a part of

14 Alliance Realty Limited which he agrees."

15 He goes on to say:

16 "Our client became a director of

17 Alliance Directors Limited on November 1st 2007."

18 Is there a separate company called

19 Alliance Directors or is that an error? Should that in

20 fact be Alliance Realty? We rather assumed it refers to

21 the same company?

22 A. Same company.

23 Q. So in fact -- it is an easy slip, I have made it myself

24 on occasions, mixing up company names --

25 Alliance Directors should read Alliance Realty?

1 A. Yes.

2 Q. So you became a shareholder and then you became

3 a director. Who were the principals of

4 Alliance Realty Limited who invited you?

5 A. The principals who were Melbourne Wilson, Terry Selver

6 and Andrew Jones.

7 SIR ROBIN AULD: I didn't hear those names.

8 A. It is Melbourne Wilson, Terry Selver and Andrew Jones.

9 MR MILNE: Terry Selver and Andrew Jones.

10 A. Yes.

11 Q. How do you know -- we know how you know Mr Wilson

12 because he is your attorney. Again, no criticism, we

13 know his your cousin as well, so obviously you have

14 known him rather longer than simply in a professional

15 context. Am I right about that?

16 A. You are referring to Mr Wilson?

17 Q. Mr Wilson is your cousin, I think?

18 A. No.

19 Q. Not a cousin?

20 A. No.

21 Q. Is there a family relationship?

22 A. No.

23 Q. Forgive me, I was under the misapprehension that you

24 were related as well. But it matters not.

25 So you know Mr Wilson because he is your attorney.

1 How do you know Terry Selver and Andrew Jones?

2 A. Terry Selver and Andrew Jones, we worked together for
3 a significant period when I was working with
4 the Customs Service.

5 Q. There are two companies that we will be touching upon
6 here. Urban Development, formed for the purposes of
7 a development, and Alliance Realty, which as the name
8 suggests is real estate, yes?

9 A. Yes.

10 Q. How long had Alliance Realty been in existence before
11 you became a shareholder of it?

12 A. I don't know.

13 Q. As far as Urban Development was concerned, once you had
14 formed Urban Development Limited, what did you start
15 doing with it then?

16 A. We began negotiating a development agreement.

17 SIR ROBIN AULD: I can't hear you, I am sorry. You began
18 what?

19 A. Negotiating a development agreement.

20 MR MILNE: With whom were you negotiating?

21 A. Through our lawyers with the Cabinet and
22 the Attorney General's chambers.

23 Q. So you were negotiating with the Cabinet through your
24 lawyers?

25 A. Well, Cabinet is where it all began.

1 SIR ROBIN AULD: With the Cabinet and the Attorney General?

2 A. Yes, sir.

3 MR MILNE: The negotiations, who was actually doing

4 the negotiating? Who was making the phone calls, who

5 was writing the letters?

6 A. It would have been the lawyer, our lawyer.

7 SIR ROBIN AULD: Who is your lawyer, Mr Wilson?

8 A. Yes.

9 MR MILNE: No doubt he would have been taking instructions

10 from all four of you?

11 A. No doubt.

12 Q. You were aware that he was doing this on your behalf?

13 A. Yes.

14 Q. Did that start straightaway, as soon as

15 Urban Development came into existence?

16 A. It may have.

17 Q. So from any time from August onwards, he would have been

18 in negotiation, yes?

19 A. Perhaps, yes.

20 Q. You don't remember?

21 A. No.

22 Q. Maybe I can assist you with one aspect of your

23 recollection as regards Alliance Realty. Mr Wilson, we

24 looked at the letter a few minutes ago, had told us that

25 you had become a shareholder in Alliance Realty Limited.

1 I think the date that was put on that was in October of
2 2005. You say you don't know how long it had been going
3 before you started your involvement with it?

4 A. No.

5 Q. Alliance Realty Limited had only been registered as
6 a company for ten days by the time you became involved
7 because it was only registered on 7th October, if I am
8 reading the dates correctly, and I am assuming it is
9 7/10/05. I will be corrected if I am wrong, if that is
10 an American notation. Of course it could be 10th July.
11 It appears to be the case that they use the English
12 notation of day, month, year, because that is certainly
13 what is done on other forms throughout the company
14 searches that we have been looking at.

15 A. Okay.

16 Q. So it appears to be 7th October 2005. So a matter of --

17 A. Can you direct me to the page, sir?

18 Q. Certainly. It is red bundle 4, page 184. Do you have
19 page 184 in front of you?

20 A. Yes.

21 Q. You see, the problem we have here is this, that
22 Alliance Realty Limited had only existed for a matter of
23 ten days when we are told you became a shareholder, but
24 when we looked at the company search for
25 Alliance Realty Limited, we also discovered that in fact

1 you have never been listed as a director at all.

2 The only person who is listed as a director is Mr Wilson

3 himself, and that from April of 2006. So do you think

4 those dates could be wrong?

5 A. I don't know.

6 Q. Although we have been told on your behalf that you

7 became a shareholder in October, you only became

8 a shareholder in fact on 22nd May 2008. Indeed,

9 the shares, all of the shares, those of yourself,

10 Mr Wilson, Mr Selver and Mr Jones were only divided up

11 on 22nd May 2008.

12 That seems to be very late in the day, doesn't it?

13 (10.45 am)

14 A. Yes.

15 Q. The only directorship, as I have said, is Mr Wilson. It

16 would appear from this that you have never been

17 a director. So is that an error as well?

18 A. Well, that is how it appears on the form, whether it is

19 an error or not.

20 Q. Well --

21 A. Um --

22 Q. We have been informed on your behalf, and you appear to

23 agree it as correct, that you became a director of

24 Alliance Realty but in fact there is no record of

25 you ever being a director of that firm, that company.

1 So which is true?

2 A. I assume I was, but I obviously have to rely on the form
3 that is in front of me.

4 Q. So we should disregard that, you were never a director
5 of that company?

6 A. Yes.

7 Q. Indeed, with Alliance Realty Limited, although it says
8 that you were invited by the principals, in fact when
9 the shares are divided up, there are 12 shares issued,
10 which you have -- of which you have five, Mr Wilson has
11 five, Mr Selver has one and Mr Jones has one.

12 So rather than simply being invited to become
13 a participant, they are handing you the store, aren't
14 they? They are giving you virtually all of it?

15 A. Five.

16 Q. Are you sure you were invited? Is it not the case that
17 this is your company from the outset, Alliance Realty?

18 A. Well, if it was, then isn't it safe to assume that
19 I would have been listed on that from the 22nd, from
20 2006?

21 Q. Well, other than your attorney, who was a director from
22 an early stage, a relatively early stage, nobody else
23 seems to be controlling it. The firm was set up --
24 the company was set up by Temple Directors, who were
25 directors for one day. It is clearly an off-the-shelf

1 company. Temple Secretaries were company secretary for
2 one day. On the face of it, if one looked at this and
3 we have seen, as you will appreciate, an awful lot
4 of company searches from the Turks & Caicos Islands,
5 this company actually did nothing at all. It sat on
6 a shelf until April of 2006. There were no active
7 directors other than the formation company
8 Temple Directors Limited until April. So it would be
9 clearly wrong, wouldn't it, to say that it was actively
10 involved prior to that?

11 A. Yes, according to the company search.

12 Q. As you will appreciate, Minister, we can only go from
13 the company records.

14 A. Yes.

15 Q. Of course there is another aspect to this which we can
16 observe quite clearly from page 215 in the bundle.

17 A. Same bundle?

18 Q. Same bundle. No, I beg your pardon. You are looking at
19 the red bundle with the company searches. If you go
20 back to the black bundle which is your main bundle.

21 Look at page 215. Do you have that?

22 A. Yes.

23 Q. That is the very first page of a set of bank statements
24 for Alliance Realty Limited which is established, I
25 think with the First Caribbean International Bank.

1 The statements are certainly their house style and we
2 understand this to be First Caribbean International Bank
3 account.

4 The bank account begins on 22nd May 2006 with a zero
5 balance. It would appear that there was no prior
6 activity. We will deal with the activity that did take
7 place shortly. The first actual payment in was 23rd May
8 but as of 22nd May, it was an empty account, a nothing
9 account. So it clearly came into existence in May
10 shortly after Mr Melbourne Wilson became a director of
11 it.

12 So Alliance Realty Limited didn't do anything,
13 I would submit, before April, May, of the following
14 year.

15 Is that not correct?

16 A. It would appear so.

17 Q. So the submissions we have received about becoming
18 a shareholder were wrong, about being a director is
19 incorrect, you would agree with that?

20 A. I am agreeing with you based on the information that is
21 submitted from the company search.

22 SIR ROBIN AULD: You are agreeing what?

23 A. Based on the information that is in front of me, from
24 the company search --

25 SIR ROBIN AULD: Don't you know?

1 A. -- results. Pardon?

2 SIR ROBIN AULD: Don't you know yourself whether you were
3 a shareholder or a director or what if any activity this
4 company undertook before May of 2006?

5 A. I know I was a shareholder but I couldn't say exactly
6 what date it became effective.

7 SIR ROBIN AULD: So who was doing all this on your behalf?
8 Your lawyer, Mr Melbourne Wilson?

9 A. He formed the company.

10 SIR ROBIN AULD: No doubt he would have been involved in who
11 was a shareholder and who was a director and
12 establishing the company account and so forth.

13 A. He would have.

14 SIR ROBIN AULD: So we should be directing our questions to
15 him, you would say, would you?

16 A. He can probably assist, sir.

17 MR MILNE: We will see if there are some other things that
18 you can assist with first, Minister.

19 Because Urban Development, having been formed back
20 in October -- I beg your pardon, it was formed in
21 August -- you say is in negotiation with the Cabinet
22 with a view to getting some sort of development deal.
23 Could you turn in your black bundle, please, towards
24 the back of that. There are some pages that have been
25 added. Do you have that? Page 546.

1 A. Yes.

2 Q. We have Cabinet minutes from around that period and this
3 is one of the Cabinet minutes. Strictly speaking, of
4 course, the Cabinet was known as the Executive Council
5 still at that stage. The meeting with which we are
6 concerned is the 34th Cabinet Executive Council meeting
7 of 2005. Page 546 is the cover sheet. I insert that
8 simply to demonstrate who was present at the time.
9 Clearly you were and most of the Cabinet was there and
10 the Governor of the time, His Excellency
11 Richard Tauwhare.

12 Over the page at 547, we see one of the minutes from
13 that meeting. The subject -- this is minute 51021 --
14 dealing with the proposed hotel/condominium development
15 at Northwest Point. The Chief Minister introduced this
16 paper, and there was a discussion on how to deal with
17 the charge of properties in respect of Belonger discount
18 when condominium units were sold to non-Belongers. It
19 was agreed it would be impractical to seek to recover
20 the amount of the discount from the developers as each
21 unit is sold.

22 The Attorney General was asked to provide wording to
23 capture this in a paragraph just below. There was some
24 discussion as to whether it would have the effect of
25 creating an incentive in favour of building condominiums

1 rather than hotels, and that perhaps there should be
2 some other incentive to provide hotel developments
3 rather than condominiums.

4 What it approved, it says:

5 "It approved conceptually the proposed sponsor's
6 proposal for the construction of a condo hotel, villas
7 and related amenities on parcel 60000/150 and 151 and
8 152 and 153."

9 That is Northwest Point. It goes on to approve
10 the collateral agreement between the Crown and the
11 government of the Turks & Caicos Islands and
12 Urban Development Limited.

13 It deals with the council's concern about charges
14 entered on the Land Register because they were
15 inhibiting condominium sales and
16 the Attorney General was requested by council to
17 consider whether there may be another mechanism by which
18 the recovery of Belonger discounts could be assured
19 without charges and utilised as security for refund.

20 This would avoid the need for charges to be entered
21 in the Land Register when land is conveyed by the Crown
22 to Belongers for condominium development.

23 I am going to pause there. Our understanding, tell
24 me if yours is different from this, is that the Crown
25 will, from time to time, make grants of land, freehold

1 grants of land, to Belongers so that Belongers may
2 engage in development.

3 One of the devices that is adopted as policy is that
4 a Belonger will get what's called a discount -- freehold
5 discount, often 50 per cent, to encourage Belongers to
6 become involved in development. Is that a fair
7 assessment?

8 A. Yes.

9 Q. However, to avoid the possibility that Belongers will
10 simply sell off the land immediately to some foreigner
11 who wouldn't be entitled to the Belonger discount, some
12 overseas developer, what happens is that there is or
13 there was traditionally a charge, a restriction placed
14 on the land so that if the Belonger sold within
15 a stipulated period, usually ten years, the Belonger
16 would be required to pay back the discount.

17 A. Yes.

18 Q. So if land was of freehold value of \$200,000, I take
19 that purely as a figure out of the air, the Belonger
20 might get it for \$100,000, but if they sold it on at
21 an profit, they would be required to pay back to the
22 government the \$100,000 discount they had been given at
23 the outset?

24 A. If they sold it to a non-Belonger.

25 Q. If they simply sold to another Belonger, it wouldn't be

1 a problem?

2 A. No.

3 Q. This Cabinet minute goes on to deal with that. It deals

4 with charges. It deals with duties and things of that

5 nature. Over the page, the minute continues. It deals

6 with environmental impact assessments. It deals with

7 the possible building of a canal.

8 A. Yes.

9 (11.00 am)

10 Q. It granted approval to "instruct TC Invest with

11 the support of the Attorney General's chambers to

12 negotiate the development agreement and the collateral

13 agreement substantially on the principles outlined

14 above."

15 So that was the approval. This is Cabinet approval

16 for Urban Development to get a development project.

17 A. Yes.

18 Q. You were part and parcel of Urban Development. Why did

19 you not disclose that interest in the Cabinet meeting?

20 A. I note that it is not recorded, sir, but I can safely

21 say that while these discussions were going on,

22 I declared my interest and left the room.

23 Q. There are subsequent meetings where you declare your

24 interest and leave the room. We will come to those in

25 a moment but in relation to this one, there is not

1 a word on the face of the minute and it is quite
2 a lengthy minute, quite a detailed minute, not a word
3 about declaration of interest, not a word about
4 the principals behind Urban Development and not a word
5 about you or indeed anybody else withdrawing.

6 So how can you be so sure that you did that?

7 A. I am sure of it.

8 Q. You remember that meeting?

9 A. I do.

10 Q. You don't seem to remember when you became a director of

11 Alliance Realty or a shareholder. You seem to be, with

12 respect, sir, a little fuzzy on some of the details in

13 other regards but you remember this particular meeting,

14 yes?

15 A. Well, of course I did not set up the company for

16 Alliance Realty, so I can't give you any specific date

17 and I can't -- you know, there is nothing significant to

18 jog my memory. But this I remember, especially when it

19 comes in front of me and I left the room.

20 Q. It is important, isn't it --

21 A. It is.

22 Q. -- that this be completely above board and that it be

23 clear to everybody, if you have an involvement that you

24 have said so and you have withdrawn and not sought to

25 exercise any influence for your own personal financial

1 gain.

2 A. It is.

3 SIR ROBIN AULD: Did you withdraw from the meeting or did
4 you simply declare your interest and stay in the meeting
5 when this was being discussed?

6 A. No, I declared my interest and left the meeting.

7 MR MILNE: Would you turn back, please, to page 546. By
8 the time of this meeting, 24th November 2005, you had
9 been a member of the Legislative Council, House of
10 Assembly, whatever, for six years. You had been
11 a member of Cabinet for over two years.

12 A. Yes.

13 Q. You were indeed probably more experienced as
14 a parliamentarian as an elect official than some of your
15 colleagues in the Cabinet.

16 A. Yes.

17 Q. Normal procedure in Cabinet, as with most meetings, is
18 that there is an agenda and one of the very first items
19 on the agenda, which we see in this case further down,
20 is amendments to the minutes of the last meeting. Yes?

21 A. Yes.

22 Q. His Excellency questioned if there were any amendments
23 to the minutes of the last meeting. So I think we are
24 fairly safe to assume that on the next meeting, after
25 this, when you had been provided with copies of minutes

1 you would have seen that it failed to record your
2 interest, it failed to record your declaration of
3 interest, it failed to record your withdrawal from
4 the meeting and you would have said, surely: please can
5 the minutes be amended to make clear that there was
6 a declaration of interest, that there was a statement
7 that I was involved, and that I actually withdrew from
8 that conversation. Yes? You would have said that?

9 A. There should have been because normally a statement from
10 the clerk, the minute would reflect that a member
11 declared his interest and left the room. I am sure that
12 this happened in this case. It just is not recorded in
13 the minute.

14 Q. Are you sure that you would have said so on the next
15 occasion? Surely somebody would have gone back --

16 A. Every time that this matter would have come to
17 Executive Council at the time, I would have declared my
18 interest and left the room.

19 Q. You see, with respect, Minister, I would suggest that
20 this didn't happen and that it is clear from this that
21 you did not declare your interest. You tell us that you
22 can remember doing so but there doesn't appear to be any
23 record of that.

24 A. No, there is no record.

25 Q. That was the 34th meeting.

1 If we are wrong about this and we have seen no
2 indication that there was an amendment at a later stage,
3 no doubt somebody will be able to point it out to us but
4 as things stand, I would submit to you that it would be
5 impossible for you to remember one meeting at that
6 distance.

7 A. You know, fine, I accept what you say and it is
8 reasonable to assume that it was not -- if it is not
9 recorded in the minutes, but every time a matter comes
10 up to Executive Council or Cabinet and I have
11 an interest, I declared my interest and left the room on
12 every occasion.

13 Q. Turn over the page, if you would, please, to 549. This
14 is the first meeting of the Executive Council for 2006.
15 It took place in January, on 11th January. You were
16 present. Over the page we have discussion. This is in
17 fact -- it is not the following meeting but it is
18 a subsequent meeting where the Honourable Floyd Hall
19 goes back to the November meeting to discuss precise
20 wording. You will recall that the Attorney General was
21 being asked to put some wording in that would reflect
22 charges. In this case your name does come up. You are
23 mentioned by name and I would not wish to represent
24 otherwise.

25 The Deputy Premier, the Honourable Floyd Hall

1 advised, page 2, regarding the wording, that the
2 registering of the land was still not precise enough and
3 issued a form of wording that they believed would
4 suffice. There was discussion. The wording was
5 considered by council. Council agreed.

6 "Council advised the proposal, approved in
7 the earlier executive meeting [that is the November
8 meeting] relating to the grant of 20 acres of Crown land
9 to Urban Development Limited, whose Belonger principals
10 are Jeffrey Hall, Quinton Hall, Samuel Been and Earlson
11 Robinson, fell within the policy established by council
12 in an earlier executive minute and as such there is no
13 requirement for a charge to be noted upon registration
14 of the freehold title in the instant case."

15 Clearly, there has been a declaration of your name.

16 You don't appear to have withdrawn from that one either.

17 There is no suggestion that you withdrew?

18 A. There is no suggestion in the minute that I withdrew.

19 Q. Did you withdraw?

20 A. Yes, I did.

21 Q. You remember that?

22 A. Every time there was a matter in Cabinet or

23 Executive Council at that time and I have an interest,

24 I declared my interest and left the room.

25 Q. This meeting, it is technical language but what it

1 means -- it is not something arcane and a bit remote.
2 The decision that was being taken here was that there
3 was no requirement for there to be a registered charge.
4 There was no claw-back by the government. Is that not
5 the impact of that decision?

6 A. Yes.

7 Q. So that is actually, for a Belonger developer, quite
8 an important concession. You say you played no part in
9 deciding that?

10 A. No.

11 Q. Moving on from there. If you turn to page 563.
12 Urban Development Limited signed a contract with
13 the government dated 30th March 2006. We have a copy of
14 that. It is a development agreement between the Crown
15 and the government of the Turks & Caicos Islands and
16 Urban Development Limited relating to a hotel and
17 condominium resort at Northwest Point, Providenciales,
18 dated 30th March 2006.

19 We can see that this agreement in fact was drawn up
20 with the assistance of the Attorney General's chambers
21 who mark it as such.

22 There are various standard clauses, no doubt, but
23 perhaps the most important aspect of it is this: this is
24 an agreement whereby the Belonger developers,
25 the developer in this case, agrees within three months

1 prior to the completion of phase one to prepare
2 a training plan, to provide training.

3 It goes on to say the developer will contribute, at
4 paragraph 3.3, \$60,000 to the National Scholarship Fund.

5 It deals with repayment of Belonger discount, which of
6 course is a standard term, and the discount that
7 Urban Development is going to get on the land, we see at
8 the top of page 565, is US\$1,368,000, the discounted
9 value. The agreement in fact that goes into this:

10 "The developer hereby covenants with the Crown to
11 pay to the Crown, whether demanded or not,
12 the discounted value with interest thereon at 4 per cent
13 from time to time for the period from the due date to
14 the date of payment in accordance with clause 2 in
15 paragraph 3 of a transfer."

16 So it would appear that there is an agreement
17 a Belonger's discount would be returned, presumably if
18 there was an onward sale to an overseas developer.

19 Is that correct?

20 A. Yes.

21 Q. Is that your understanding?

22 A. It is my understanding.

23 Q. So what we have is this, you formed a company. That
24 company has negotiated a development agreement.
25 Urban Development Limited is going to develop

1 a condominium at Northwest Point. Yes?

2 A. Yes.

3 Q. That is the plan. Right. You get a big discount. You

4 get \$1.3 million discount by virtue of the fact that all

5 four of the gentlemen involved, yourself, and the other

6 three, you are all Belongers. Correct?

7 A. Yes.

8 (11.15 am)

9 Q. That document is signed on 30th March 2006. We are told

10 by your attorney on your behalf that less than two weeks

11 later you have sold your shares in

12 Urban Development Limited for \$1 million to Blue Resort

13 Development Limited, Mr Wex's company, correct? Did you

14 do that?

15 A. No, it was --

16 Q. It is a yes/no question --

17 A. No.

18 Q. You did not.

19 A. From what I understand, it was sold to

20 Urban Development --

21 Q. No, I am talking about your share, your shareholding,

22 although on the face of the documents you had no

23 shareholding. The letter that was provided to us

24 indicates that you had disposed of your interest to

25 Blue Resort Development.

1 Let me help you with this. Page 62 of the black
2 bundle, going back to the letter that Mr Wilson wrote on
3 your behalf on 17th November 2006. Towards the top of
4 that page there is a paragraph, it has a number 9. It
5 is an answer in relation to an earlier request.

6 "The Northwest Point parcel [this is the one we have
7 been discussing] was transferred to
8 Urban Development Limited on 5th May 2006. Our client
9 held two common shares in Urban Development Limited..."

10 Again, not borne out by the documents from
11 the Company Registry:

12 "... and he sold those to Blue Resort Development on
13 the 13th day of April 2006 for \$1 million."

14 Is that completely wrong?

15 A. As I understand it, Urban Development bought -- sold and
16 it -- my shares were sold to or obtained by
17 Urban Development, which is now owned by two Belongers.

18 SIR ROBIN AULD: Two Belongers acquired your shares in
19 Urban Development, is that what you are saying?

20 A. That is how I understand it, sir.

21 MR MILNE: Who are those Belongers?

22 A. Hugh McLean -- I'm just trying to think.

23 Q. Can you not give us their names? The Belongers to whom
24 you sold your share?

25 SIR ROBIN AULD: Shares, isn't it?

1 MR MILNE: Shares.

2 SIR ROBIN AULD: One share?

3 A. I think the owners of Urban Development now, which

4 I have sold, it is a Belonger company owned by

5 Hugh O'Neil and I can't -- it is in your -- if you give

6 me a minute.

7 SIR ROBIN AULD: That is not the answer to the question.

8 The answer to the question should be who were the two

9 Belongers who acquired your shares in Urban Development

10 at that time? Not now.

11 MR MILNE: Minister, do you not remember the names of the

12 people to whom you sold?

13 A. Just a minute. (Pause)

14 208.

15 Q. 208?

16 A. Yes, in core bundle 4. As I understand it, sir,

17 Urban Development, the company that negotiated

18 the development was bought or sold or has been bought by

19 Hugh O'Neil and Finbar Dempsey, who are two Belongers.

20 Q. Hugh O'Neil was recorded as having been

21 a company-related person. It is not entirely clear what

22 that means, because Hugh O'Neil is a lawyer, as

23 I understand it. From 13th April --

24 A. All of them are, yes.

25 Q. Hugh O'Neil and Finbar Dempsey appear to have become

1 involved on 13th April 2006, according to this, but they
2 are not on the face of it shareholders.

3 The company search in relation to
4 Urban Development Limited is such that there are no
5 shareholders other than Windsor Nominees Limited, who
6 acquired those shares on creation of the company in
7 2005.

8 There is no record and you will see that we obtained
9 this as late as November 2008. There is no record in
10 the Company Registry of any sale of shares. There is no
11 record of any issuance of shares. There were no shares
12 to sell.

13 With respect, Minister, that does not make any
14 sense. Let me go back to my original question. Why is
15 it that your attorney, we must assume on your
16 instructions, informed this Commission on 17th November
17 last year that you had disposed of an interest in
18 Urban Development to Blue Resort Development TC Limited
19 on the precise date, 13th April 2006? Why would he say
20 that --

21 A. I know that Blue Resort Development, that apparently
22 would have been the name of the whole development. But
23 as I understand it, sir, Urban Development was sold
24 subsequently by the four of us to the interests of two
25 Belongers, Hugh O'Neil and Finbar Dempsey.

1 Q. So this paragraph that we have in front of us now is
2 nonsense, is it not? It is wrong. That is your
3 evidence. They cannot both be correct. We have two
4 utterly different explanations here. One of them might
5 be true, both of them cannot be.

6 A. What I have just explained to you, that is what
7 I understand.

8 Q. So this is positively wrong? We can put a line through
9 it, and no doubt you would prefer that we forget it, but
10 I will give you a last chance, if you can, to explain to
11 me why we would have been misinformed so egregiously?

12 A. I am unable to explain that.

13 Q. Right. We will leave that.

14 SIR ROBIN AULD: Before you go on, Mr Milne, can you help me
15 about this term or notion of company-related persons on
16 these registered documents? Are they there only when
17 there are no shareholders yet appointed? Do you have
18 both shareholders and company-related persons in the
19 same form sometimes?

20 MR MILNE: You do, sir, but in most cases
21 the company-related person from our reading is
22 essentially the agent, frequently the formation agent
23 who set the company up. In some cases the person or
24 the most often the law firm, firm of attorneys who
25 provide an address.

1 SIR ROBIN AULD: But there is no space on this form, or no

2 block, is there, for shareholders?

3 MR MILNE: That is generally put in after shares have been

4 issued. The block that is of relevance here, subscriber

5 is the initial shareholder. So from the point of

6 creation, the subscriber holds the shares.

7 SIR ROBIN AULD: So that accurately records -- well, it

8 indicates that none have yet been issued.

9 MR MILNE: Only the two initial shares to Windsor Nominees.

10 If there had been a subsequent issuance of shares, that

11 is a proper division of the standard total shares, there

12 would be a further box inserted in the print which would

13 list shareholders and in addition, I should make clear,

14 sir, that the company searches tend to indicate

15 the history of shareholding. So that if a person holds

16 shares and sells them on, it will record the date that

17 they received them and the date they relinquished.

18 Frequently one can see a person relinquishing and

19 another taking them up to indicate the sale between

20 them. There is no record of that of any shares issued,

21 sold or dealt with in any way at all.

22 SIR ROBIN AULD: Thank you.

23 MR MILNE: So, Minister, let's go back to our chronology and

24 we can strike out any disposal. Is it your evidence

25 therefore that you retained your interest in

1 Urban Development Limited throughout April of 2006? Is

2 that correct?

3 A. Throughout April 2006?

4 Q. Yes.

5 A. No.

6 Q. Are you saying that you disposed of it in April 2006?

7 A. Yes, thereabouts.

8 Q. Thereabouts?

9 A. Yes.

10 Q. Well, on 1st May 2006, this agreement, having been

11 signed up, McLeans, the firm with which Mr Wilson was

12 working, and indeed it was Mr Wilson himself, wrote to

13 the acting principal Crown counsel, Mrs Braithwaite of

14 the Attorney General's chambers. He was acting in

15 relation to the parcels. It should be 60000/150, 151,

16 152 and 153. He sent the Attorney General's chambers

17 a cheque for slightly more than \$1.5 million?

18 SIR ROBIN AULD: Which page are we looking at?

19 MR MILNE: This is page 567, I apologise.

20 Do you have that?

21 A. I do.

22 Q. Page 567, Mr Wilson sent in the cheque and essentially

23 what it covers is this: the freehold price of those four

24 blocks of land, 1.367 million; the stamp duty which is

25 about \$133,000; there is a \$10 fee for registration of

1 transfer, although somebody has marked that as 40,
2 perhaps it should have been more; and certified copy of
3 the Register costs another \$14. These are just standard
4 legal charges. But the round figure is \$1,500,306.50.

5 He says:

6 "I look forward to receipt of the registered
7 transfer and certified copy at your earliest
8 opportunity."

9 If we go over to page 568, we have there a formal
10 transfer of the land. The Governor signs this off in
11 consideration of 1,367,000. In fact I think it is
12 1,368,000 -- discount but 1,367,000 was the price.

13 A transfer to Urban Development Limited, for four
14 parcels of land, 150 through to 153.

15 SIR ROBIN AULD: That is 2nd May, isn't it?

16 MR MILNE: That is 2nd May 2006. There is a stamp, I think,
17 two or three days later.

18 Paragraph 2 makes clear that the Belonger discount
19 still applies. In transferring the property there has
20 been a discount of 1.368 million. The transferee,
21 Urban Development, covenants with the Crown to pay to
22 the Crown immediately the discounted sum if within
23 the period of ten years from the date there is transfer
24 to a non-Belonger or a company which is not a Belonger
25 company.

1 So the deal is done. Stamped, signed, sealed, as is
2 normal, on 2nd May 2006. Indeed, in the following
3 pages, 571, 572, 573, 574, each of those four plots of
4 land are recorded as being transferred to
5 Urban Development Limited on the Land Register.

6 So it goes straight to Urban Development Limited.

7 At the date when that took place did you still, as you
8 understand it, have a share in Urban Development
9 Limited?

10 A. No.

11 Q. You did not? Are you sure?

12 A. No, I am not sure.

13 (11.30 am)

14 Q. So you are not sure whether you actually bought
15 \$1.3 million worth of land or not? Is that
16 the situation?

17 A. No, actually the shares would have been transferred on
18 13th April 2006 and the transfer by the register is
19 5th May 2006, which clearly suggests I would not --

20 Q. So you had as of 13th April no further involvement in,
21 no further interest in Urban Development?

22 A. Yes.

23 Q. Your evidence now is that you sold your share in
24 Urban Development about two to three weeks before this
25 deal was done?

1 A. Okay.

2 Q. How much did you get for your shares?

3 A. \$1 million.

4 Q. Could you say that again?

5 A. What was the question, sorry?

6 Q. How much did you get for your shares?

7 A. \$1 million.

8 Q. Into which bank account was that \$1 million paid?

9 A. I don't know, I gave it to my lawyer.

10 Q. You gave it to your lawyer?

11 A. My lawyer (inaudible).

12 SIR ROBIN AULD: Gave a cheque to my lawyer, and I don't

13 know into which account it was paid; and your lawyer,

14 again for the avoidance of doubt, is Mr Melbourne

15 Wilson, is it?

16 A. Yes, Melbourne Wilson.

17 MR WILSON: Sorry, Sir Robin, I didn't hear the witness say

18 he paid a cheque to me.

19 SIR ROBIN AULD: I can't --

20 MR WILSON: I did not hear the witness say that he paid

21 a cheque to me. Perhaps we need to clarify that.

22 SIR ROBIN AULD: My note is, right or wrong, that he said

23 words to this effect: I gave the cheque to my lawyer and

24 I don't know into what account it was paid.

25 A. Sorry, my lawyer --

1 SIR ROBIN AULD: Just a minute, Mr Wilson. In answer to
2 Mr Milne's question, you tell us what happened about
3 the payment.
4 A. I received \$1 million for my shares and the funds were
5 held by my lawyer.
6 SIR ROBIN AULD: The funds were what?
7 A. The funds were held by my lawyer.
8 SIR ROBIN AULD: The funds were held by your lawyer. How
9 did he get to hold them?
10 A. Assuming that a cheque was paid to him.
11 SIR ROBIN AULD: You are assuming that a cheque was paid to
12 him?
13 A. Yes.
14 SIR ROBIN AULD: Again for the avoidance of doubt,
15 Mr Melbourne Wilson was your lawyer.
16 A. Yes.
17 SIR ROBIN AULD: You assume, you say.
18 A. Well, he act on my behalf, he hold the funds --
19 SIR ROBIN AULD: You assume the \$1 million cheque was paid
20 to him, right. So then the next question, Mr Milne, in
21 fact it was the first question, into what account did
22 that 1 million end up?
23 A. I don't know which account I gave it to --
24 SIR ROBIN AULD: I don't know. We seem to have gone over
25 the ground again and accurately supported the short

1 summary I made of your former answers. I don't know

2 into what bank account the \$1 million was paid.

3 MR MILNE: If shares are transferred, do you not have to

4 fill out a form, sign a document to indicate that you

5 are transferring shares? No?

6 A. I don't know how it all works, sir, but I just leave it

7 up to my lawyer.

8 Q. Did you sign anything? They are your shares, not your

9 lawyer's shares, did you sign any document to transfer

10 your shares?

11 A. I don't recall I signed anything.

12 Q. Minister, so we can be quite clear about this, you tell

13 us you owned shares in a company. The Company Registry

14 has no record of that. You tell us you sell those

15 shares. The Company Registry has no record of that.

16 You pick a date, 13th April, because Mr Dempsey, it

17 seems, became the company agent on that day. Mr Dempsey

18 is not recorded as owning any shares or holding any

19 shares or indeed Mr O'Neil; they are simply lawyers.

20 So all of the documentation we have contradicts your

21 explanation. We must assume then you are saying

22 the Company Registry has got it wrong. Is that what you

23 are saying?

24 A. I don't know who got it wrong. I explained to you how

25 the best of my knowledge it all went.

1 Q. So you no longer have an interest. Mr Melbourne Wilson,
2 as of 13th April, may be representing Urban Development
3 but he is not representing you because you have no
4 interest in Urban Development, correct?

5 A. Okay.

6 Q. So Mr Wilson, when he sends off the money for the four
7 parcels, presumably is sending money on behalf of
8 somebody else as well as the other three gentlemen.
9 That must be right, mustn't it? Because he is paying
10 \$1.5 million for a parcel of land that you have no
11 interest in any more. Correct?

12 A. I can't say that, I don't know.

13 Q. Obviously it is not for you to say necessarily who he is
14 representing. That wouldn't necessarily lie within your
15 knowledge, except for this, it is not you, is it?

16 Because you have no further involvement. No further
17 interest in Urban Development Limited?

18 A. According to the company search register, I have to
19 agree.

20 Q. So that must be right. You have severed all ties with
21 Urban Development, wished it well and sent it on its way
22 because you have received \$1 million, correct? Is that
23 right?

24 A. I would not put it that way.

25 Q. Well, you have no more interest in it?

1 A. Yes.

2 Q. In 2006, effectively, that was the last time you were
3 involved in Urban Development in any way at all?

4 A. Yes.

5 SIR ROBIN AULD: Mr Milne, would that be a convenient moment
6 for a break?

7 MR MILNE: It would, sir.

8 SIR ROBIN AULD: Just before we break, Mr Melbourne Wilson.

9

10 MR WILSON: Yes, sir.

11 SIR ROBIN AULD: I am going to consider over the short
12 adjournment we are about to have now and possibly later
13 today your position in this Inquiry as counsel to
14 the Honourable Jeffrey Hall. It may be that you will
15 want to consider it too. I say that so as to give you
16 an opportunity to consider whether and how long you can
17 continue to represent Mr Jeffrey Hall given
18 the questions that have been put to him and what the
19 documents show.

20 MR WILSON: Fair enough.

21 SIR ROBIN AULD: We will adjourn now and we can both
22 consider the matter.

23 (11.37 am)

24 (A short break)

25 (11.48 am)

1 SIR ROBIN AULD: Mr Hall, we have to wait for the return of
2 your lawyer, Mr Wilson, but he will be here,
3 I understand, in a minute or two. (Pause) Yes,
4 Mr Milne.

5 MR MILNE: May it please you, sir. Minister, before
6 the break you had told us that you had disposed of your
7 shares or your share in Urban Development, you thought,
8 in April and you thought to Hugh O'Neil or
9 Finbar Dempsey. You had no further interest therefore
10 in Urban Development Limited. We should take it,
11 I assume, that the reference at page 62, which we looked
12 at before, in the letter from your attorney to say that
13 effectively you had disposed of your shares or that you
14 had undertaken the transfer, that is an error. Correct?

15 A. That I have disposed of my shares?

16 Q. You had -- it is wrong that you sold them to
17 Blue Resort Development TC because you sold them, you
18 say, to a Belonger?

19 A. That is as I understand it.

20 Q. Hugh O'Neil?

21 A. Yes.

22 Q. Hugh O'Neil bought your shares in April 2006, not
23 Blue Resort Development?

24 A. Bought the company as I understand.

25 Q. Bought the company?

1 A. Yes.

2 Q. So is this right, he was not just buying your shares, he

3 was buying everybody else's shares?

4 A. That is the way I understand --

5 Q. Right. So none of the others had any further

6 involvement from that point onwards?

7 A. That is the way I understand it.

8 Q. Again, the company record that says no shares issued, no

9 shares transferred, that must be wrong because that does

10 not reflect the true situation, yes?

11 A. Perhaps.

12 Q. With Urban Development Limited, it is a company that

13 signed a agreement with the government, yes?

14 A. Yes.

15 Q. If we look at your attorney's letter on page 63, did

16 Urban Development have a bank account?

17 A. Not to my knowledge. I don't know if it did.

18 Q. You are not aware of any bank account?

19 A. No.

20 Q. So it is a company that is going to do a development but

21 it doesn't actually have a bank account. Can we assume

22 there that it didn't have any employees?

23 A. I don't know that it did.

24 Q. Did you ever employ anybody when you were one quarter

25 owner of Urban Development Limited?

1 A. No.

2 Q. Did you ever employ an architect?

3 A. Personally, no.

4 Q. Did you, when Urban Development was in your control for

5 several months, preparing a proposal, did you employ

6 anybody to do any work on that proposal apart from

7 Mr Wilson?

8 A. No.

9 SIR ROBIN AULD: Just before you move on, I am sorry to

10 interrupt, but I have a note that shortly before

11 the short break you told me that two Belongers acquired

12 your shares in Urban Development, and now you say

13 Mr Hugh O'Neil bought the company, he bought all

14 the shares. Which is right?

15 A. As I understand it, the two Belongers, Hugh O'Neil and

16 Finbar Dempsey bought Urban Development.

17 SIR ROBIN AULD: Is that what you are saying -- you should

18 have just said "and Finbar Dempsey"?

19 A. Yes.

20 SIR ROBIN AULD: I see, thank you.

21 MR MILNE: You had been actively involved in

22 Urban Development though, had you not?

23 Urban Development was supposed to be a developing

24 company.

25 A. Yes.

1 Q. We have discussed incidents when Urban Development's
2 project, its proposal was being put before the Cabinet
3 in December or November, I should say, of 2005 and then
4 January of 2006. And it had come before the Cabinet on
5 other occasions, hadn't it?

6 A. Yes.

7 Q. If you take the red bundle, core bundle 6.

8 A. Yes.

9 Q. Urban Development Limited is the subject of a minute at
10 the top of the page.

11 SIR ROBIN AULD: Page?

12 MR MILNE: Page 49, I beg your pardon sir. Page 49 of that
13 bundle.

14 SIR ROBIN AULD: The date of this is?

15 MR MILNE: This was 9th March 2006.

16 SIR ROBIN AULD: Thank you.

17 MR MILNE: Cabinet meeting. Lest I am picked up on this
18 later on, I am going to use the expression "Cabinet"
19 even though it was previously Executive Council.

20 A. 9th March 2006?

21 Q. 9th March 2006.

22 "The Chief Minister introduced the paper.

23 The Honourable Jeffrey Hall declared his interest and
24 left the room. Council advised that it approved
25 the extension of the duty reduction period from six

1 years to eight years and it approved the signing of the
2 said development agreement, taking into account
3 the extended duty reduction period once the final draft
4 has been prepared and submitted by the AG's chambers
5 [that is the Attorney General's chambers] for
6 discussion, execution."

7 So we have essentially consideration by the Cabinet,
8 and on this occasion they have correctly recorded that
9 you declared an interest and left.

10 So it has arisen on 9th March for consideration? It
11 arises again on 24th March and we will find this at
12 page 55. The subject just says "Urban Development", but
13 it is clear that it seems to be dealing with the same
14 matter.

15 This was minute 06/183. The Honourable Floyd Hall
16 issued correspondence received from Mr Clayton Been of
17 TC Invest in reference to Urban Development, which was
18 self explanatory.

19 "Both the Honourable Floyd Hall and the Honourable
20 Jeffrey Hall declared their interest and left the room."

21 What was the interest of the Honourable Floyd Hall
22 in Urban Development?

23 A. Quinton Hall, who had an interest, is his brother.

24 (12.00 pm)

25 Q. Right. You think that is all that would be involved?

1 SIR ROBIN AULD: Quinton Hall?
2 A. Yes.
3 SIR ROBIN AULD: Had an interest.
4 MR MILNE: Clearly you can't be responsible for
5 the decisions taken by the Honourable Floyd Hall, but
6 the involvement of Quinton Hall had been known for some
7 time before. This appears to be the only occasion where
8 the Honourable Floyd Hall regarded it as a problem for
9 him and he withdrew. Two weeks before, 9th March, which
10 we were looking at just a moment ago, he didn't see
11 the need to withdraw on that occasion, did he?
12 MR SMITH: I don't see how he could answer that question.
13 It is a question you probably should pose to Mr Hall
14 when he next testifies.
15 SIR ROBIN AULD: It is probably more of a comment than
16 anything else. The document speaks for itself.
17 MR MILNE: I am giving the minister the opportunity because
18 he says on some occasions he withdrew and it was not
19 recorded.
20 A. Yes, I said on all occasions I withdrew but on some
21 occasions it is not recorded.
22 Q. Is it your recollection that on other occasions
23 Floyd Hall withdrew with you and that has also not been
24 recorded?
25 A. Really it will be difficult for me to speak to that

1 because --

2 Q. I am simply asking as to your memory. Do you remember

3 any other occasions when he withdrew from these

4 discussions because you would have left the room

5 together and presumably waited outside together until

6 the issue had been resolved. How often did that happen?

7 A. It is difficult to say, I can't speak for the Honourable

8 Floyd.

9 SIR ROBIN AULD: Just remind me of what Quinton Hall's

10 interest, to your knowledge, was in it. What was his

11 brother's interest in this?

12 A. Same as mine.

13 SIR ROBIN AULD: He was one of the --

14 A. Yes.

15 SIR ROBIN AULD: He is one of the four names you mentioned

16 originally?

17 A. Yes.

18 SIR ROBIN AULD: Thank you.

19 MR MILNE: Just another point in passing, if you could go

20 back to the black bundle please, page 64.

21 I think we should probably read this in the context

22 of the question, which is the previous page, this being

23 a question that was posed by the Commission under

24 the heading paragraph 7, it relates our question.

25 The final sentence asks:

1 "Please give full details of any contracts or work
2 the two companies [those being Urban Development Limited
3 and Alliance Realty Limited] have undertaken for TCI
4 government during the period of office of the Honourable
5 Jeffrey Hall."

6 The answer at page 64 is that:

7 "Urban Development Limited and
8 Alliance Realty Limited has never received any work
9 directly or indirectly from the Honourable Jeffrey
10 C Hall or the government of the Turks & Caicos Islands
11 during the period of the office of the Honourable
12 Jeffrey Hall."

13 But we know that Urban Development signed
14 a contract, a valuable contract and bought land off
15 the government of the Turks & Caicos Islands. Are you
16 able to explain why we were told that?

17 A. Sure. The way I -- the way we interpret the question,
18 asking whether or not Urban Development Limited or
19 Alliance Realty Limited had any contract with
20 the government for monetary gains. That is the way
21 I understood it.

22 Q. Urban Development bought some land in order to develop
23 it. What is that for if not for monetary gain?

24 A. Contract, meaning doing work for the government or
25 rendering service for the government.

1 SIR ROBIN AULD: That was clearly one of the matters about
2 which the Commission asked but your attorney has only
3 dealt with one of them. He says in his answer: has
4 never received any work. He doesn't deal with contracts
5 about which he was asked.

6 A. Right.

7 SIR ROBIN AULD: Details of any contracts or work that the
8 two companies have undertaken for the TCI government;
9 that was the question.

10 A. It is a clear misinterpretation. It is not intended to
11 say that Urban Development did not have an agreement
12 with the government as such.

13 MR MILNE: It goes without saying that the parcel of land
14 with which we are concerned here, 60000/151, which was
15 your parcel, was never ever mentioned to the Registrar
16 of Interests. However, if you turn to page 1 in the
17 black bundle, in September 2008 the Commission asked all
18 ministers to declare land in which they had an interest
19 now, to make a declaration of interest as you would in
20 September 2008. You made a declaration of interest.
21 You declared many properties which had never hitherto
22 been mentioned to the Registrar. Curiously you declared
23 to the Commission, as of September 2008, as being
24 a property in which you had an interest, 60000/151,
25 which it described as Urban Development freehold.

1 Why did you declare that if you disposed of that two
2 years ago?

3 A. Thinking about it now, I should not have. But I thought
4 that I just wanted to be upfront and just declare to the
5 Commission all properties that I got from
6 the Turks & Caicos government as well as private
7 property owned by my wife.

8 Q. It does not make clear that that is a property that you
9 had transferred on, does it?

10 A. No.

11 Q. You had, as we know, set up a company called
12 Alliance Realty Limited, or you had joined a company
13 called Alliance Realty Limited?

14 A. Yes.

15 Q. You told us before the break that you were approached by
16 the principals and invited to join and invited to become
17 a director. Yes?

18 A. Yes.

19 Q. You, through your attorney, had originally told
20 the Commission this happened in October or December,
21 shareholding in October, directorship in December.

22 I suggested to you that that did not tally with
23 the record which tended to show that you became
24 a director and shareholder much later on?

25 A. From the Company Register search, I submit.

1 Q. And again the Company Register, you appear to be saying,
2 is wrong about that. Yes? Alliance Realty Limited
3 opened a bank account, somebody opened one on its
4 behalf. We have that document because we have it in
5 disclosed papers. We looked at it a short time ago. We
6 will come back to it at 215 in your main bundle.

7 Do you have that?

8 A. Yes.

9 Q. Alliance Realty Limited, care of the
10 Temple Finance Centre, the bank account appears to be
11 created on 22nd May 2006?

12 SIR ROBIN AULD: This is a bank account with whom?

13 MR MILNE: This was with, I believe,
14 First Caribbean International Bank.

15 SIR ROBIN AULD: Is that right? This is with
16 First Caribbean International Bank? Alliance Realty's
17 bank account?

18 A. I don't know. I am not sure.

19 SIR ROBIN AULD: I am just trying to identify it for
20 the record, that is what I am doing.

21 A. I don't know. I am not sure about it.

22 MR MILNE: How many people did Alliance Realty Limited
23 employ?

24 A. As much as I know, there are no employees.

25 Q. No employees never? Never anybody?

1 A. Not to my knowledge.

2 Q. What about Mr Tim Smith?

3 A. He may have done some work for Alliance Realty Limited,

4 I am not sure.

5 Q. Let me suggest a scenario to you. Mr Smith was

6 approached and invited to work for

7 Alliance Realty Limited.

8 A. Okay.

9 Q. Is that true?

10 A. That may be the case.

11 Q. That may be the case?

12 SIR ROBIN AULD: Why do you say may? If you can say clearly

13 one way or the other, say it.

14 A. Because he may have been approached by any one of the

15 shareholders.

16 SIR ROBIN AULD: Put your question again, Mr Milne, let's

17 see if we can get a straight answer to this.

18 MR MILNE: You knew Mr Smith, you met him?

19 A. Yes.

20 Q. Mr Smith, you tell us, had approached you or at least

21 Melbourne Wilson on behalf of a potential purchaser,

22 Mr David Wex, the Scottish Canadian?

23 A. Yes.

24 Q. Is it not the case that Alliance Realty Limited invited

25 Mr Smith to be an employee which he was for a brief

1 period of time?

2 A. Yes, he did some work for Alliance Realty Limited for

3 a brief time.

4 Q. He did work for them?

5 A. I believe so, yes.

6 Q. It is coming back now. When he moved to

7 Alliance Realty Limited, was he given a fresh work

8 permit?

9 A. Maybe, I can't confirm that.

10 Q. You were Minister of Immigration at the time, I think.

11 A. Yes.

12 Q. Work permits would come within your department, is that

13 right?

14 A. It would.

15 Q. You can't remember?

16 A. No.

17 Q. I am not suggesting you would remember every work permit

18 issued, but he was the only employee, I would suggest,

19 of the firm that you were one of the only shareholders

20 and directors of, according to your recollection?

21 A. Okay.

22 SIR ROBIN AULD: Could he have worked without such a permit?

23 A. No, he can't. He could not have.

24 (12.15 pm)

25 MR MILNE: Alliance Realty Limited received, on its first

1 day of business, \$1,809,104.91. That is hitting
2 the ground running, isn't it? You would agree? It is
3 a great first day of business for a company where we are
4 not sure if anybody worked for it, doesn't appear to
5 have any assets that it has paid for because it didn't
6 have a bank account the previous day.
7 Alliance Realty Limited gets close on \$2 million. Do
8 you know where the money came from?
9 A. No.
10 SIR ROBIN AULD: Who do you think would know? Who would
11 know where the money came from, Mr Hall?
12 A. The operators of the account.
13 SIR ROBIN AULD: Who were they? It wouldn't be
14 the operators of the account; it would be somebody
15 paying the money to the operators of the account. Where
16 did the money come from? If you don't know, who would
17 have done?
18 A. I certainly don't know. I do not operate this account.
19 I know of -- I don't know any transaction on this
20 account.
21 SIR ROBIN AULD: Who were the operators of the account as
22 you put it, who were they?
23 A. It may be Melbourne Wilson.
24 SIR ROBIN AULD: It may be what?
25 A. Melbourne Wilson.

1 SIR ROBIN AULD: It may be Mr Melbourne Wilson knows.

2 MR MILNE: The company with which we are dealing,

3 Alliance Realty, is a company that you are participating

4 in. You are a shareholder.

5 A. In the company, yes.

6 Q. You are a director, you tell us, of the company?

7 A. Okay.

8 Q. Do you wish to change your mind about that evidence or

9 were you a director?

10 A. I am listed as a shareholder.

11 Q. Were you or were you not a director of

12 Alliance Realty Limited?

13 A. Yes.

14 Q. Who were the other directors of Alliance Realty at that

15 time? The time in May of 2006 when it first opened its

16 bank account? Who else?

17 A. I don't know when the account was opened.

18 Q. You don't know their identities?

19 A. No, I don't know that an account was opened for

20 Alliance Realty Limited. I don't know. I have no

21 knowledge of the account or its activities.

22 Q. Who was the moving spirit of Alliance Realty Limited?

23 Who made the decisions?

24 A. Melbourne Wilson.

25 Q. You are a director, do you not get involved in those

1 decisions?

2 A. No.

3 SIR ROBIN AULD: So Melbourne Wilson was the moving spirit?

4 A. Yes.

5 MR MILNE: On the first day of business, when you got

6 \$1.8 million, did it ever cross your mind to ask

7 Melbourne Wilson, who gave us \$1.8 million?

8 A. I never received \$1.8 million.

9 Q. The company that you tell us you are a director of did.

10 A. I had no knowledge of that.

11 Q. Right. So you had no part in spending this money,

12 moving this money, you got nothing from

13 Alliance Realty Limited, is that correct?

14 A. That is correct.

15 Q. This is totally unrelated to you?

16 A. The account, the bank account, yes.

17 SIR ROBIN AULD: But all the credits and the debits that we

18 can see on this page, 215, none of them has got anything

19 to do with you, is that what you are saying?

20 A. I cannot say for sure, sir, because what I have told you

21 earlier in my evidence, that the proceeds that

22 I received from the sale of the company and the land, my

23 lawyer hold it for me. Which account it went to, I do

24 not know.

25 MR MILNE: So you didn't think there was any link between

1 this money and the money that you got for
2 Urban Development, because you tell us you just made
3 \$1 million out of Urban Development.
4 A. Yes.
5 Q. This is another 1.8 million? Yes?
6 A. I don't know.
7 Q. Either it is the same money or it is different money.
8 Are you saying this is different money?
9 A. I am not saying that. I am saying that I don't know.
10 Q. How would your million dollars have got into
11 Alliance Realty Limited if you had not directed that it
12 go there?
13 A. I did not say that it went there. In fact I don't know
14 which account he would have put it.
15 Q. Take bundle 6, please. Red bundle 6. Turn, if you
16 would, please, to the very last section behind tab 10.
17 Do you have that, sir?
18 A. Behind tab 10. Yes.
19 Q. Behind tab 10 we see some photocopies of cheques.
20 A. Yes.
21 Q. A cheque in each case drawn on
22 Temple Securities Limited. Yes?
23 A. Yes.
24 Q. Have you seen these cheques before?
25 A. Not before -- no. Not before I received this bundle.

1 Q. The first of those cheques, \$1 million, payable to
2 Stanfield Greene, attorney at law?
3 A. Yes.
4 Q. The second of those cheques, payable to Earlson
5 MacDonald Robinson, \$1 million as well.
6 A. Yes.
7 Q. Each of them \$1 million?
8 A. Yes.
9 Q. The third of those cheques, Alliance Realty Limited,
10 \$1,809,104.91?
11 A. Yes.
12 Q. Well, memo, it says at the bottom of the cheque, "sale
13 of property".
14 A. Yes.
15 Q. Over the page, for completeness, Samuel Ernest Been,
16 another cheque for \$1 million.
17 A. Yes.
18 Q. There is a further cheque beyond that, Timothy Smith,
19 \$500,000?
20 A. Yes.
21 Q. Let's do some maths. We have a cheque, a series of
22 cheques. \$1 million goes to Samuel Been. \$1 million
23 goes to Earlson MacDonald Robinson. And \$1 million goes
24 to Stanfield Greene, the attorneys, we are led to
25 understand, of Mr Quinton Hall.

1 1,800,000 in round figures goes to Alliance Realty,
2 the company of which you are a director.

3 We have that, \$4.8 million. We know that
4 Mr Melbourne Wilson has paid out \$1.5 million for
5 the purchase of those parcels of land and we know in
6 addition that Mr Timothy Smith has received half
7 a million dollars. I would suggest, sir, a handsome
8 commission.

9 That takes it up to \$6.8 million, doesn't it, which
10 is very close to the \$7 million that was being mentioned
11 yesterday.

12 All of these cheques, it would seem, are for sale of
13 property.

14 Because that is what they say on the face of them.

15 A. Yes.

16 Q. Alliance Realty Limited may be a real estate firm --

17 A. Yes.

18 Q. -- but \$1.8 million is not a commission payment, I would
19 suggest, but the proceeds of a sale. Isn't it?

20 A. Could be.

21 Q. Let me suggest a scenario to you, Minister. Mr Wex, who
22 is a non-Belonger, doesn't live on the islands, wishes
23 to buy 20 acres of land. You, Mr Earls Robinson,
24 Mr Samuel Been and Mr Quinton Hall decide between you
25 that this is an opportunity to make a handsome profit.

1 So you form a company. You each apply for a parcel of
2 land. The cost of that land is \$1.5 million, including
3 stamp duty, which is a heavily discounted value because
4 of course you are all Belongers.

5 The 1.5 million, of course, you don't have to pay
6 out, because you have already negotiated the onward sale
7 of Urban Development to a Scottish Canadian developer
8 who pays through Mr Melbourne Wilson the money for
9 the freehold; and all you need to do is take the money
10 that comes from Temple Securities, \$1 million for each
11 of your three colleagues, and \$1.8 million for you;
12 which goes into your company, Alliance Realty, on
13 the very first day that its bank account is opened.

14 Does that sound like a realistic scenario to you, sir?

15 A. Except for the fact that I received \$1 million.

16 Q. We only have, with respect, your word for that. We have
17 not been shown a single bank sheet, a single statement,
18 a single receipt, a single piece of paper to support
19 that. Whereas we do have \$1.8 million, a few days
20 later, going into your company bank account. Are you
21 saying that you can produce documentation that there was
22 an additional \$1 million?

23 A. No, I am saying out of the proceeds, I got \$1 million

24 and my lawyer held the funds --

25 SIR ROBIN AULD: Your lawyer did what?

1 A. My lawyer held the funds for me.

2 Q. Let us look, if we could, please, sir, back at the bank
3 account at page 215 of the main bundle for you. Because
4 this new company that has been set up
5 alliance Realty Limited, did it have an office?

6 A. No.

7 Q. Did it have any other facilities when it was set up?

8 A. Not that I am aware of.

9 Q. The cheque arrives on 23 May, \$1.8 million. We can see
10 a little of what happens then. Maroon Honda, which
11 I take to be a car sale company, Maroon Honda of Hol,
12 I suspect it is just cut off.
13 24th May, first day effectively, \$25,969 was spent.
14 The same day at Vera Cadillac Hummer, another \$42,500 is
15 spent. On that same day, a series of drafts are drawn
16 on the bank accounts, \$437,000.

17 So day one is a good day because you get
18 1.8 million. However, you also spend half a million
19 dollars in the space of that day.

20 The following day, \$10,000 is withdrawn. The day
21 after that, another \$177,000. 177,781 is withdrawn.

22 SIR ROBIN AULD: By way of draft.

23 MR MILNE: By way of draft. On 31st May, \$453,725.07 is
24 transferred out to an account.

25 There is another 23,000 spent on 1st June at

1 Maroon Honda, and a further draft to the Scotiabank of
2 \$539 which comes out on 1st June.

3 So in the space of one week the company spent or
4 disbursed or shifted away 1.7 million of
5 the 1.8 million, much of it in transfers out. Did you
6 know anything about that?

7 (12.30 pm)

8 A. No.

9 SIR ROBIN AULD: Did you say no?

10 A. No.

11 MR MILNE: What role did you play, what control did you

12 exercise as a director over the affairs of

13 Alliance Realty Limited?

14 A. I had no activities, really, being a director. I have

15 never really worked a day in it. I have never given

16 any -- and I have given a day's work in it. I have

17 never received any salary as a result of it.

18 Q. So you have never received any money from this company

19 at all. Is that your evidence? You said you never

20 received a salary, you never worked a day. Did you

21 receive monies from it?

22 A. From the company?

23 Q. Yes.

24 A. No, the company, I never received any sort of salaries

25 from the company.

1 Q. No. Did you receive any money, sir? That was
2 the question. Did you receive any money from
3 Alliance Realty Limited?
4 A. I may have.
5 Q. You may have. Could we try for something a little more
6 definite than that?
7 SIR ROBIN AULD: Cast your eye down the list that Mr Milne
8 has just put to you on page 215. Does that jog your
9 memory? What about the \$450,000 on 1st June, or over
10 half a million dollars going on the same day to
11 the Scotiabank?
12 A. None really jog my memory, but I know that I have given
13 my lawyers instructions to pay the monies on my behalf.
14 Now --
15 SIR ROBIN AULD: Out of that 1.8 million?
16 A. No, sir. I received \$1 million.
17 SIR ROBIN AULD: Did you give your lawyer instructions to
18 pay monies on your behalf --
19 A. Yes.
20 SIR ROBIN AULD: -- during the period covered by this
21 account on page 215?
22 A. I gave my lawyer instructions to pay monies perhaps
23 during that period, but I cannot specifically say. It
24 may have come from that account.
25 MR MILNE: Why would you be entitled to have your lawyer pay

1 money out of this account if you were doing nothing for
2 the company?
3 A. My lawyer hold personal funds for me.
4 Q. Are these the personal funds?
5 A. I receive \$1 million, we agreed that. I have received
6 \$1 million.
7 Q. Forgive me, we did not agree that. I don't want there
8 to be any misunderstanding, sir. You tell us you
9 received \$1 million in April.
10 A. Yes, I did.
11 Q. Quite frankly, so we are not under any misapprehension,
12 I do not, with respect, accept that.
13 A. Not physically, but my lawyer receive \$1 million on my
14 behalf.
15 Q. Where did the 1.8 million come from?
16 A. Judging from this, I mean as -- from the documents that
17 is shown here, it obviously came, \$1.8 million came from
18 the sale of land.
19 SIR ROBIN AULD: I didn't hear any of that. Speak up,
20 please, because everybody has got to hear.
21 A. In volume 6, it was pointed out to me that \$1.8 million
22 was paid, proceeds of sales of land.
23 SIR ROBIN AULD: Yes.
24 A. He asked me where did it come from.
25 MR MILNE: You see, we have seen three cheques from

1 the other three men with whom you were in business and
2 they have all come from exactly the same place as
3 the \$1.8 million and yet you tell us you do not remember
4 this, you were not aware of the \$1.8 million, it had
5 nothing to do with you. Yet your three colleagues, with
6 whom you have been in business, each got their money
7 from the same place on the same date, a series of
8 cheques, the sole difference being that you got more
9 than they did. Or at least Alliance Realty Limited took
10 more than they did. So how can it be that this appears
11 to reflect their money, but you say it does not reflect
12 yours?

13 Let me remind you, sir, should you need to be
14 reminded, that in the cheques that we looked at a minute
15 ago, these cheques came from clearly one chequebook
16 because they were in sequence. So whoever wrote them
17 out, wrote cheque 6125 to Samuel Been, 6126 to
18 Alliance Realty Limited and 6127 to Earlon MacDonald
19 Robinson.

20 The Stanfield Greene one was 6121 for completeness.

21 Alliance Realty's cheque is written in a sequence
22 where the one before goes to your colleague, the one
23 after goes to your colleague, they both get \$1 million
24 and you don't know anything about the 1.8 in the middle?
25 How can that be true, with respect, sir?

1 A. I respectfully submit that I received, or my lawyer
2 received on my behalf \$1 million as proceeds from
3 the sale of the company and the land.

4 That is the facts.

5 Q. Well, you used the Alliance Realty Limited account for
6 your own purposes on occasions, did you not?

7 A. I would not say that.

8 SIR ROBIN AULD: You say no?

9 MR MILNE: No, you did not?

10 A. No.

11 Q. If we go to the back of the bundle, big bundle. Behind
12 the tab.

13 A. That is the black one?

14 Q. The black one, please, yes. The page we are going to
15 behind the tab is page 535.

16 A. Yes.

17 Q. Do you have that?

18 A. Yes.

19 Q. This is a schedule, which we have mentioned before. It
20 is the credits that are being received to your
21 Scotiabank account. If we look down the column we see
22 that there are credits which appear in your Scotiabank
23 account and there is a corresponding debit in the
24 Alliance bank account. So on that page, on 2nd June
25 2006, and therefore we are talking --

1 A. 535?

2 Q. It is page 535. 2nd June 2006. Within the first week
3 of the Alliance Realty activity, within the first week
4 of its business, if it was doing business, a sum --
5 a specific sum, \$39,587.75 is drawn on Alliance and is
6 paid into your account.

7 It is debited from Alliance and it appears in your
8 account. Two, three months later, on 5th September,
9 \$200,000 is debited from the Alliance account. That is
10 at page 219. If we look back at page 219 we can see on
11 5th September the Alliance Realty account, \$200,000 is
12 drawn from that account, 5th September. Do you have
13 that?

14 A. 209?

15 Q. Page 219. So \$200,000 comes out of Alliance, \$200,000
16 goes into your personal bank account. But it goes
17 further than that, sir. Do you have 219? Forgive me,
18 I will wait until you have the page in front of you.
19 Yes?

20 A. Yes, I have that.

21 Q. Reading down from the top, there are three entries.
22 There is a customer deposit on 5th September. That is
23 actually -- this is the Alliance account we are looking
24 at, \$320,200. It is deposited on 5th September. We
25 will come back to that.

1 But on 5th September, also, \$200,000 is debited from
2 the Alliance Realty Limited account. That money appears
3 in your Scotiabank account the same day. Whilst we are
4 on this page because it is relevant --

5 A. Can you direct me to my Scotiabank account where the pay
6 is?

7 Q. Yes, give me one second, I will take you straight to
8 that. You will find that at page 376.

9 SIR ROBIN AULD: Can we just see the number of that account.

10 What is the number of that account, please?

11 MR MILNE: Page 376 --

12 SIR ROBIN AULD: No, it is the number of the account.

13 MR MILNE: The number of the account is the Scotiabank
14 account which ends with the digits, 68314.

15 SIR ROBIN AULD: Thank you.

16 MR MILNE: If one turns to page 376, that bank account
17 number appears -- it is landscape, one has to turn it
18 sideways -- but it would appear in the top right corner
19 as one looks at it. On the left-hand side of that sheet
20 a debit -- credit of \$200,000, 5th September appears in
21 your bank account, taking it from \$6,902 in credit to
22 \$206,902 in credit.

23 So you get close on \$40,000 from
24 the Alliance Realty Limited account within the first
25 couple of days of its proper activity.

1 You then get another \$200,000 from its account in
2 September. Lest be there any doubt about this, sir, if
3 we go back to page 219, do you have that? After you
4 have drawn \$200,000 and put it into your own bank
5 account, on 7th September a cheque, number 0000102, for
6 a further \$200,000, is drawn on this account.

7 We know to whom that cheque went because that is
8 the cheque that was paid to Rhynie Campbell. You loaned
9 him \$200,000 out of the Alliance Realty Limited account.

10 How would you do that if this was not your money?

11 (12.45 pm)

12 A. The loan to Rhynie Campbell, I instruct my attorney to
13 lend him \$200,000 as I showed you yesterday.

14 Q. Yes, out of your money?

15 A. Out the funds that he was holding for me, yes.

16 Q. So this is your money?

17 A. He was holding \$1 million for me.

18 Q. He is holding 1.8 million in this account. This is not
19 a solicitor's account. This is not an attorney's
20 account. This is a company account for a company that
21 you are a director of and you tell us you are a
22 shareholder of.

23 \$200,000 that you want drawn out of your money, he
24 takes out of this account because this is your money,
25 isn't it?

1 Let me make it clear, Minister, there is no cheque
2 for \$1 million going into this account at the time you
3 suggest or indeed to the best of my recollection at any
4 time. The only cheque that goes in is the 1.8.

5 You may have taken 1 million of that because we know
6 that Mr Melbourne Wilson drew his commission because
7 Mr Wilson's name appears in the Alliance Realty account.

8 But that 1.8 is your money. That is where you make
9 your profit.

10 SIR ROBIN AULD: I think you have denied that at least 0.8
11 of it was yours.

12 A. Absolutely.

13 SIR ROBIN AULD: That is your position.

14 A. I receive \$1 million.

15 SIR ROBIN AULD: Mr Milne, there is a matter that we need to
16 discuss about housekeeping before 1 o'clock. Was that
17 a natural break or have you a few more questions on
18 that?

19 MR MILNE: I have a few more questions on this.

20 SIR ROBIN AULD: All right.

21 Minister, the week before last the Premier gave
22 evidence and he says that in May of 2006, here I am
23 looking at -- I am afraid you don't have it in front of
24 you, but it is familiar to his attorneys. This was
25 appendix 5 of bundle 4, A originally.

1 The Premier told the Commission that on
2 26th May 2006, he received a loan of \$100,000 and it was
3 from Alliance Realty (Jeffrey Hall).
4 Did you loan him \$100,000?
5 A. I did, yes.
6 Q. Did you take it from Alliance Realty Limited?
7 A. I instructed my lawyer to issue the funds on my behalf.
8 Q. Where did you instruct your lawyer to issue funds from?
9 A. From the funds that he was holding from me.
10 Q. Right. Did you labour under the impression that your
11 lawyer was keeping funds in his client account or did
12 you think the funds were being held in
13 Alliance Realty Limited?
14 A. I did not labour over the idea of where the funds would
15 be kept.
16 Q. You didn't have any idea where the funds were kept?
17 A. No, it was not important to me where it was kept.
18 Q. Did you ever see the bank accounts for Alliance Realty?
19 A. Not until it appeared in the binders.
20 Q. As a director, what did you do?
21 A. Nothing.
22 Q. Nothing. So why would you be entitled to money from it?
23 A. All the monies that I receive were monies that were held
24 by my lawyer for me.
25 SIR ROBIN AULD: You said that many times now. We

1 understand that is what you say.

2 A. Yes.

3 MR MILNE: So you -- I am sorry, I am still struggling, sir,

4 to comprehend this. Looking back now, with the benefit

5 of hindsight, do you believe that the monies that went

6 into Alliance Realty were yours or somebody else's?

7 A. I could assume that some of it is mine.

8 SIR ROBIN AULD: I assumed that some of the monies in the

9 account were mine?

10 A. I can't [sic] assume that some of those monies.

11 MR MILNE: But you are not aware of receiving or being

12 entitled to any cheques from Temple Finance? Is that

13 right?

14 A. Wherever the proceed would have come from, sir, I knew

15 that I was getting \$1 million and my lawyer was

16 instructed to hold it for me.

17 Q. Because all the money that went in was

18 the Temple Security cheques, and if you told your lawyer

19 to move funds on your behalf and he moved these funds,

20 then he at least must have been under the illusion or

21 misapprehension that they were your funds; is that

22 a fair assessment?

23 SIR ROBIN AULD: I think that is an implication which it may

24 or may not be for me to draw. We may need some more

25 information elsewhere on this particular aspect.

1 I think we ought to stop there. I am not stopping
2 you from coming back to the matter after the adjournment
3 but just before we do leave it, why were you lending
4 the Premier \$1 million at this stage?
5 MR FITZGERALD: 100,000.
6 SIR ROBIN AULD: Did I say 1 million?
7 MR FITZGERALD: You did, sir.
8 SIR ROBIN AULD: 100,000. Why were you paying that sum to
9 him at this stage?
10 A. He asked me for -- he knew that I had the money.
11 SIR ROBIN AULD: He knew that you had this money?
12 A. Yes. We know about things and he asked me to lend him
13 \$100,000 and I loaned it to him.
14 SIR ROBIN AULD: What did he say he wanted it for?
15 A. He didn't say.
16 SIR ROBIN AULD: So he knew you had this windfall?
17 A. Yes.
18 SIR ROBIN AULD: And asked you for \$100,000?
19 A. Yes.
20 SIR ROBIN AULD: We will come back to that maybe after
21 the lunch adjournment. Before we do, Mr Melbourne
22 Wilson.
23 MR WILSON: Yes, sir.
24 SIR ROBIN AULD: Have you given consideration to the matter
25 that I mentioned to you shortly before the mid-morning

1 break?

2 MR WILSON: Yes.

3 SIR ROBIN AULD: Have you reached any conclusion?

4 MR WILSON: I have and I will communicate that by e-mail --

5 I have reached a conclusion. What I will do shortly

6 during this break I will communicate that by e-mail,

7 sir.

8 SIR ROBIN AULD: Communicate it by e-mail?

9 MR WILSON: Yes, I will send an email to the Commission.

10 SIR ROBIN AULD: I think we ought to know because your own

11 position clearly, as you must have understood this

12 morning, if not before, is a difficult one now.

13 MR WILSON: Yes, I appreciate that, sir. As I say, I will

14 definitely make one or two calls from my own standpoint

15 and as soon as I can get confirmation that, as I say --

16 it will take me less than five minutes to say.

17 SIR ROBIN AULD: I can't hear what you are saying.

18 MR WILSON: I need a few minutes --

19 SIR ROBIN AULD: To do what?

20 MR WILSON: Based on what happened this morning, obviously

21 I take a position.

22 SIR ROBIN AULD: I understand you are not yet in a position

23 to indicate what conclusion you have reached.

24 MR WILSON: Exactly.

25 SIR ROBIN AULD: That I understand. I must request you and

1 the minister to have no communication whatsoever,
2 directly or indirectly, over the luncheon break.
3 MR WILSON: Yes, fair enough. Thank you.
4 SIR ROBIN AULD: There is one other matter and that is
5 the programme which for all sorts of good reasons is
6 slipping. How much longer do you think you might be,
7 Mr Milne?
8 MR MILNE: I would imagine that I have at least another half
9 an hour sir.
10 SIR ROBIN AULD: Before I come back to Mr Melbourne Wilson,
11 will there be any questions from any of the bar?
12 MR FITZGERALD: There will be about three short questions
13 from myself.
14 SIR ROBIN AULD: Thank you, Mr Fitzgerald. Anybody else?
15 Mr Melbourne Wilson, assuming that you are in a position
16 to ask questions after the luncheon adjournment, how
17 long do you think you might be?
18 MR WILSON: Very short.
19 SIR ROBIN AULD: So we are thinking of something like
20 3 o'clock, possibly, before we get to the next business.
21 MR WILSON: Yes.
22 SIR ROBIN AULD: Mr Smith, you have two applications to make
23 to the Commission?
24 MR SMITH: I think it is one application condensed in
25 a skeleton as submitted.

1 SIR ROBIN AULD: Your skeleton argument indicates two, it
2 doesn't matter whether it is one or two, but you have
3 application or applications to make to the Commission?

4 MR SMITH: Yes, but for the Commission's purposes, I am
5 essentially resting on those skeleton arguments. There
6 is nothing further I need to add unless the Commission
7 asks.

8 SIR ROBIN AULD: So you -- Mr Milne will want to reply.

9 MR SMITH: Yes.

10 SIR ROBIN AULD: We might try to do that at the conclusion
11 of Mr Jeffrey Hall's evidence and that means that
12 the Honourable Lillian Boyce, who is scheduled to start
13 her evidence today, may be a little further delayed.
14 Given what you say, it may not be for very long.

15 MR SMITH: May I inquire if the counsel for the Commission
16 have skeleton arguments of their own in response,
17 because I have not seen it.

18 SIR ROBIN AULD: I have not seen a skeleton argument from
19 Mr Milne, and I have not asked him for one, given
20 the pressures he has been under over the last few days.
21 Your skeleton argument I think was received just
22 yesterday. I think I got it last night. Mr Milne was
23 probably in the same position.

24 MR SMITH: I think it was emailed on Tuesday night.

25 SIR ROBIN AULD: Tuesday night. Well, for all good reasons,

1 I don't expect Mr Milne has had time to prepare
2 a skeleton argument with the various other tasks he had.
3 He will reply orally to your written submission and
4 I will, if I can, give a decision today with reasons
5 probably tomorrow.

6 MR SMITH: Very well.

7 SIR ROBIN AULD: 2.05.

8 (1.00 pm)

9 (The short adjournment)

10 (2.05 pm)

11 SIR ROBIN AULD: Mr Melbourne Wilson.

12 MR WILSON: Good afternoon, sir. In light of the evidence
13 of the Honourable Jeffrey Hall, I have taken
14 the decision to withdraw myself from being his lawyer.

15 SIR ROBIN AULD: It may be you need say no more than that at
16 the moment.

17 The immediate concern is the representation from
18 this minute on of Mr Jeffrey Hall. There are a number
19 of options and I leave you to say what you think.

20 Mr Milne could complete his examination, about
21 another half hour of it, and the examination of Mr Hall
22 could then be adjourned. In the meantime you would
23 remain and be present and hear what he said, but without
24 any move to intervene, but you would be sufficiently
25 informed to be able to assist whoever it is is likely to

1 take over from you at very short notice.

2 That is one option. But I don't think it would be
3 right to go on beyond the conclusion of Mr Milne's
4 examination until Mr Jeffrey Hall has had an opportunity
5 to ensure and know that he has somebody there to protect
6 his interests.

7 MR WILSON: Yes.

8 SIR ROBIN AULD: If you take the view that we should not
9 continue at all, even to the end of Mr Milne's
10 examination, then I would be pleased to hear what you
11 say.

12 MR WILSON: One of the other problems I would have is that
13 even if something is asked of the witness that might not
14 be fair or might prejudice the witness in any way,
15 I would not be in a position to object on his behalf.
16 So that being the case, I don't think it would be fair
17 for me to -- for me to sit and let him continue without
18 having the opportunity of representation.

19 SIR ROBIN AULD: You think it would be unfair.

20 MR WILSON: Yes.

21 SIR ROBIN AULD: I think on reflection that is probably
22 right. There might be matters to which objection should
23 be made on Mr Hall's behalf and they could not be made.

24 No doubt, in the circumstances, you will be
25 arranging for another attorney to be instructed at short

1 justice.

2 MR WILSON: I will.

3 SIR ROBIN AULD: He will of course be provided with all

4 the papers that you have and the papers provided by

5 the Commission and importantly, the transcript of the

6 last two days' hearings and any other relevant

7 transcripts which bear on the position of the minister.

8 It does mean it looks as if we shall have to adjourn

9 the rest of his evidence until he is back and with new

10 representation.

11 MR WILSON: Fair enough.

12 SIR ROBIN AULD: Is there anything else to say?

13 You see what has happened, Mr Hall. It means that

14 you will have to come back. It will probably be now

15 next week. You will need time to give instructions to

16 your new attorney and he will need time to read himself

17 in, in particular paying close attention to the

18 transcript of your evidence yesterday and today, and of

19 any other evidence that has been given which bears on

20 your position. So if you would like to leave now, you

21 need not leave the room but leave the table so that we

22 can ask another minister to come forward.

23 MR MILNE: Sir, before that does happen, the Commission does

24 not have endless copies of the volumes and the core

25 volumes that have been served upon Mr Wilson, the red

1 bundles, we were not anticipating having to serve on
2 a second attorney.

3 SIR ROBIN AULD: If I gave that impression I didn't mean to.
4 I am assuming that all the served bundles, Mr Melbourne
5 Wilson will pass to his successor.

6 MR WILSON: That is correct.

7 MR MILNE: The witness bundle should remain with
8 the Commission as well for the moment, clearly, since
9 the successor lawyer will have the bundle that Mr Wilson
10 has at present, then he will be able to take
11 instructions from the minister in due course.

12 SIR ROBIN AULD: Yes. Well, that concludes your evidence
13 for the moment, Mr Hall. We will see you next week.

14 Mr Melbourne Wilson, I am grateful to you for
15 the assistance you have given the Commission thus far.

16 MR WILSON: Thank you. You are welcome.

17 MR MILNE: Sir, it may be whilst we are waiting for the next
18 witness to give evidence, it might be an appropriate
19 time for another issue that has been raised with
20 the Commission to be resolved.

21 SIR ROBIN AULD: Yes. Do you want to say a few words about
22 it now, Mr Smith?

23 MR SMITH: Yes, sir.

24 Application by MR SMITH

25 SIR ROBIN AULD: You served on the Commission two days ago

1 a skeleton argument in support of an application or
2 applications that you proposed to make today on behalf
3 of Mr Don-Hue Gardiner.

4 The burden of the submissions are that
5 the proceedings, insofar as they have concerned
6 Mr Gardiner by the service of a summons to attend and
7 give evidence and produce documents, and I tried to
8 summarise as best I can your skeleton so that the matter
9 is on the record, are that the process adopted by
10 the Commission in the issuing and serving of the summons
11 is without due process.

12 MR SMITH: Yes.

13 SIR ROBIN AULD: That it is contrary to the constitution of
14 the Territory and in consequence the Commission lacks
15 jurisdiction to enforce the summons against Mr Gardiner
16 or to require his presence in the way it has.

17 MR SMITH: Yes, sir.

18 SIR ROBIN AULD: You say, among other things, that he is not
19 the subject of the Inquiry, but even if he were
20 the subject of the Inquiry, he has a reasonable excuse
21 for not answering to the summons. You rely on his right
22 to privacy under section 8(i) of the constitution and
23 you maintain that any attempt to enforce the summons
24 would be a breach of his constitutional protections in
25 various respects, some of which I have mentioned. Is

1 that a fair summary of the bones of your application?

2 MR SMITH: Yes, sir, it is.

3 SIR ROBIN AULD: I understood from you before the luncheon

4 adjournment that you were content to stand on your

5 skeleton argument and not make any oral supplementary

6 remarks but you are welcome to do so if you wish.

7 MR SMITH: I will stand on the submissions unless

8 the Commission has any specific questions you want me to

9 put my mind to.

10 (2.15 pm)

11 SIR ROBIN AULD: I have not at the moment. I have read your

12 skeleton several times now and clearly I will take it

13 into account. But Mr Milne, who has not had time,

14 I think he like me received the skeleton only yesterday,

15 will make some, I believe, some oral submissions in

16 response to your written ones.

17 MR SMITH: Very well.

18 Reply by MR MILNE

19 MR MILNE: Sir, the skeleton presented on behalf of the

20 Honourable Don-Hue Gardiner works from a premise which,

21 with respect, I would not adopt and the Commission in my

22 submission should not adopt.

23 The premise is this, that it draws a distinction

24 between persons who are subject to the Inquiry and

25 persons who are not.

1 One has to go back, as we have many times, to terms
2 of reference. The subject of the Inquiry is not
3 individuals. The subject of the Inquiry, the purpose of
4 the Inquiry is to inquire into whether there is
5 information that corruption or other serious dishonesty
6 in relation to past and present elected members of the
7 House of Assembly may have taken place in recent years.

8 Therefore, the purpose of the Commission is to
9 determine information. That information may come from
10 many sources. The fact that somebody is summonsed
11 before the Inquiry is not dictated by whether or not
12 they are (1) of the elected members, past or present, of
13 the House of Assembly.

14 Of course most of the witnesses we have seen so far
15 do fall into that category, but not all. Mr Chal Misick
16 has already given evidence. In the coming days we will
17 be hearing evidence from a variety of other persons.
18 The Tribunal already knows that many of those persons
19 could not possibly fall within that category. They are
20 witnesses, they are potentially civil servants and in
21 each case, those persons are people whom we believe may
22 be able to cast some light, assist in some way with
23 advancing the Inquiry into the information regarding
24 corruption.

25 So it is simply, in my respectful submission,

1 pointless to draw a distinction as to the role of
2 the past and present elected members and other people.

3 Conversely, not all of the elected members are to
4 give evidence. The Commission has sought information
5 from a wide variety of people. It has issued summons to
6 a wide variety of people. The issuance of a summons
7 does not dictate or determine whether or not they will
8 ultimately give live evidence.

9 In the process of enquiry, requests were made of all
10 members of the House of Assembly, both elected and
11 appointed, for disclosure.

12 That was done across the board. Mr Don-Hue Gardiner
13 fell within that category and therefore received
14 a summons in similar terms to those of all the other
15 parties.

16 He seeks to now draw a distinction which
17 the Commission does not recognise, that in some way it
18 is unlawful or unfair for him to be asked to provide
19 information.

20 With respect, the only reason that he was ultimately
21 summonsed is because he failed to comply properly or
22 adequately with that initial request.

23 Others, including appointed members, did provide
24 adequate disclosure. It went no further.

25 The disclosure sought from the Right Honourable

1 Don-Hue Gardiner of course does to some degree delve
2 into matters which are personal to him, bank accounts,
3 sources of income, matters of that nature. That is
4 the approach that was taken with all of the elected and
5 appointed members, so he is not in any unusual category
6 because of that.

7 He provided some late and we would say inadequate
8 disclosure, but the disclosure that we did see gave rise
9 to questions which reinforced the Commission in its view
10 that he should come before the Commission and assist.

11 But it cannot have escaped the knowledge of the
12 Commission that this is a gentleman who is personally,
13 both professionally and on a private basis, intertwined
14 with parties who are of prime interest to
15 the Commission.

16 He is of course personally related to the Premier.
17 He is a former Secretary General of the governing party,
18 the PNP. We are led to understand he is now the
19 Chairman of the PNP.

20 It will be abundantly clear that the internal
21 workings of the PNP on a political level are matters
22 that have taken on a direct significance to this
23 Commission.

24 He therefore would be able to assist in relation to
25 that. Professionally he is a lawyer and he is counsel

1 to an organisation which has already arisen as a subject
2 of interest to the Inquiry, that being Turks Limited,
3 the developers of Dellis Cay, that development again
4 a subject of interest to the Inquiry.

5 He is, it would appear, well known to all of the
6 relevant parties we have been hearing from.

7 Therefore, his involvement should be, with respect,
8 obvious. His relevance should be, with respect,
9 obvious.

10 The Commission is entitled under its terms of
11 reference, under the Commission of Inquiry Ordinance of
12 1986, to call before it any persons whom it regards as
13 being of relevance.

14 We have already touched upon this. The Commission
15 is given its power by section 4, the Commission of
16 Inquiry Ordinance and it may for the purposes of
17 complying with the directions, that is the terms of its
18 reference for conducting an Inquiry, receive and
19 consider any material and it may summon any person in
20 the form set out to attend to give evidence or to
21 produce any article or document.

22 Therefore, in my respectful submission, it is
23 an artificial approach to say that we must justify that
24 in advance by reference to the individual. This is not
25 a court of law. This is not a trial. We don't have to

1 serve a case in advance on individuals. In my
2 respectful submission, the material that is presently
3 available makes it quite clear why this gentleman would
4 be of interest. Why this gentleman may be able to
5 assist. The Commission is doing no more than exercising
6 its rights under the Commission of Inquiry Ordinance to
7 delve into the information that he may or may not be
8 able to provide.

9 For that reason, sir, in my respectful submission,
10 we need go no further than that. The references within
11 my learned friend's skeleton argument to considering
12 the approach that might be taken if he were to refuse to
13 give evidence are merely speculative with respect. We
14 don't need to consider what would be done at
15 a Magistrates' Court if he were cited for contempt.

16 Unless there is some compelling reason why it would
17 be impossible or unreasonable to expect him to comply
18 with the summons that has been served upon him, then he
19 should do so forthwith and render such assistance as
20 the other parties have so far.

21 Sir, I don't think I can take that matter any
22 further at this stage.

23 SIR ROBIN AULD: Thank you, Mr Milne. Mr Smith, would you
24 like to reply?

25

1 Reply by MR SMITH

2 MR SMITH: Yes, briefly.

3 I think my learned friend spends a lot of emphasis
4 on the fact that it is a part of my argument that speaks
5 to my client not being an elected member. My argument
6 rests partially on that, but that is not the main
7 infrastructure of my argument. The thrust of my
8 argument, with due respect, is that this Commission,
9 when it issues a summons and requests certain documents,
10 it is basically adopting the same approach that
11 a magistrate would have to adopt if a person decides to
12 refuse to respond to a summons.

13 One of the criteria that the magistrate has to
14 adopt -- has to satisfy himself before they certify
15 the summons is that the person/individual before them
16 failed to comply and had no reasonable excuse to do so.
17 It is my view that is the same test that this Commission
18 has to apply in dealing with that issue.

19 Admittedly some of the points Mr Milne raised in
20 relation to the fact that my client is a Chairman of the
21 PNP and does hold some other executive role within that
22 party, I would yield that to provide the Commission with
23 some reasonable excuse, to make enquiries of him in
24 relation to that.

25 Additionally, given the fact that he is also

1 an attorney for a company whose name has cropped up
2 quite a few times in this Inquiry, I think we have to
3 yield on that as well. Because one could easily
4 ascertain that the Commission has reasonable excuse in
5 relation to those two heads. My concern though, and
6 that is the thrust of my arguments, is in relation to
7 items and documents that they are seeking that doesn't
8 have anything to do with discovery.

9 If I could be a little bit more specific, they are
10 asking for information as to the source of income in
11 relation to properties that he purchased long before he
12 was ever involved in politics. I think for
13 the Commission to be successful, if the matter was dealt
14 before a Magistrates' Court in getting those documents,
15 I think they would have to provide some reasonable
16 excuse as to why they need these documents, and I think
17 to just say that he is the nephew of the Premier would
18 not be sufficient. I think they have to satisfy some
19 nexus that we have X, Y information that seems to
20 indicate that the source of these funds came from
21 something that we are investigating.

22 Similarly, in relation to queries about his bank
23 accounts, that goes way back before a time that he was
24 involved in any political activity. I think similarly
25 with those documents that they are seeking,

1 the Commission cannot -- must, I say, satisfy that they
2 have a reasonable basis for making those applications
3 and reasonable basis, I say, has to be something beyond
4 the fact that this is a Commission under the terms of
5 reference. Because we know the terms of reference does
6 not carry the force of law. These are just the four
7 corners on which the Governor is basically framing
8 the Commission of Inquiry and the role of the Commission
9 of inquiry.

10 So I say that, yes, as to his bank accounts that
11 pre-dates -- a source of income that pre-dates --
12 properties that he purchased before he entered into
13 politics, I think there has to be some rational basis.
14 I think the Commission has to give some reason as why
15 they need those. I think they have failed to do that.
16 I would stand on those grounds.

17 SIR ROBIN AULD: Those are your submissions, Mr Smith?

18 MR SMITH: Yes, they are.

19 SIR ROBIN AULD: Thank you.

20 Decision by the COMMISSION

21 SIR ROBIN AULD: Having read the written submissions of
22 Mr Smith on behalf of Mr Don-Hue Gardiner and having
23 heard his oral submissions in reply to Mr Milne, and
24 taking into account also Mr Milne's arguments, my
25 decision, which I will give now and if necessary give

1 further reasons for probably tomorrow, is to reject
2 the application of Mr Smith on the ground that
3 the Commission has not exercised due process or is in
4 some way in contravention of the fundamental principles
5 of human rights or the constitution in such a way as to
6 override the domestic legal provisions of the
7 Commissions of Inquiry Ordinance to which both attorneys
8 have referred.

9 In my view, the procedure adopted by the Commission
10 in issuing and serving the summons to attend and to
11 produce documents accords with due process in its widest
12 and narrower sense here within the confines of
13 the Commissions of Inquiry Ordinance.

14 I can see no legal or reasonable excuse for
15 Mr Don-Hue Gardiner not complying with the Commission's
16 summons. I consider that no question of human rights or
17 constitutional rights is engaged or interfered with by
18 the lawful issue of the summons within the provisions of
19 section 4.

20 It follows that there is no reason why
21 the Commission should refer the matter to the Supreme
22 Court or to adjourn the matter to allow Mr Smith to
23 argue the matter there as he seeks.

24 The analogy that he draws with the issue of criminal
25 process in the Magistrates' Court is inapt. This is

1 an Inquiry with wide terms of reference, its own terms
2 of reference and an Inquiry into possibilities of
3 corruption or other serious dishonesty.

4 The words from the judgment of the Privy Council in
5 Douglas v Pindling, reported in 1996, 48, WIR1, that
6 I cited in my reasons for rejecting similar applications
7 yesterday, are as applicable here as they were there.

8 This is an Inquiry where, as the Privy Council put
9 it, that the need is to search for material, not to be
10 satisfied that that material is there before the search
11 is made.

12 (2.30 pm)

13 Accordingly, I have, as I have said, rejected
14 the applications. I shall require Mr Don-Hue Gardiner
15 to attend in response to the summons. I shall not allow
16 any application by Mr Smith for adjournment of the
17 exercise of that summons to allow him to proceed with
18 the matter to the Supreme Court, and subject to any
19 representations that Mr Smith may want to make when
20 I have given fuller reasons which I hope to do tomorrow,
21 I shall require him to give evidence probably early next
22 week now and if he fails to do so, then I shall refer
23 the matter to the Attorney General.

24 My report to him being, essentially, in the terms of
25 the reasons that I have given now and will elaborate

1 tomorrow.

2 MR SMITH: Very well. I do have the documents here and

3 I can produce them at the break.

4 SIR ROBIN AULD: I am sorry?

5 MR SMITH: I do have the documents here and I can produce

6 them at the break.

7 SIR ROBIN AULD: You are going to produce the documents?

8 I thought you were seeking not to produce the documents.

9 MR SMITH: That is what I was initially seeking and now

10 the court has ruled, I am indicating to the court that

11 I will produce the documents.

12 SIR ROBIN AULD: Are you telling me that you are complying

13 with the summons, in particular schedule 2 to the

14 summons?

15 MR SMITH: I am telling you that I am as a result of

16 the court's ruling.

17 SIR ROBIN AULD: And what about Mr Don-Hue Gardiner's

18 attendance?

19 MR SMITH: Likewise. I did alert Mr Milne that in fact if

20 the ruling was not going to go my way, I would provide

21 him with the documents and Mr Gardiner would be

22 available to testify.

23 SIR ROBIN AULD: You are saying now that he will comply with

24 the summons in both respects as to schedule 1 and

25 schedule 2?

1 MR SMITH: Given the Commission's ruling, yes.

2 SIR ROBIN AULD: In the circumstances, do you require me to
3 give fuller reasons for my decision?

4 MR SMITH: No.

5 SIR ROBIN AULD: Then we will make arrangements, Mr Smith.
6 It will have to be, I am afraid now, early next week for
7 Mr Don-Hue Gardiner to attend and to give evidence in
8 answer to questions put to him in examination by
9 Mr Milne as indicated in the summons.

10 MR SMITH: Very well.

11 SIR ROBIN AULD: I am grateful to you for having
12 the documents. Are they the documents for which request
13 is made in schedule 2?

14 MR SMITH: Yes.

15 SIR ROBIN AULD: Thank you. If you let Mr Milne or Mrs Duff
16 have copies of those this afternoon, that would be
17 helpful.

18 I understand that the Honourable Lillian Boyce is
19 here and ready. I won't add willing but ready anyway
20 to --

21 MR MILNE: Forgive me, sir. If Miss Boyce will excuse me
22 just a moment. I have been handed a note. I understand
23 that there is to be an application from a lawyer in
24 relation to a future witness, simply for disclosure of
25 some information.

1 SIR ROBIN AULD: Is that a matter to be heard in public or
2 in camera? You had better show it to me.
3 I think copies should be shown to
4 Mr Edward Fitzgerald.
5 Mr Tim Prudhoe.
6 Application by MR PRUDHOE
7 MR PRUDHOE: Yes, sir.
8 SIR ROBIN AULD: You appear here on behalf of Mrs Lisa-Raye
9 McCoy Misick. To appear here, as Mr Smith reminded me
10 yesterday, I need to be satisfied that you or your
11 client regards herself as someone, the subject of or who
12 may be implicated in the Inquiry. I imagine you would
13 have no difficulty making a short submission of yes to
14 that proposition, wouldn't you?
15 MR PRUDHOE: Indeed. But that is not in fact why
16 I contacted the Secretariat today.
17 SIR ROBIN AULD: I know that, but you are here now and
18 before you have a right of audience in the matter, that
19 formality needs to be adopted. I understand why you are
20 here, Mr Prudhoe, is that you have been seeking
21 disclosure from the Premier's attorneys of certain
22 documentation in their evidence which may have a bearing
23 on the evidence that your client is to give tomorrow.
24 MR PRUDHOE: Both that and in fact if there is to be any
25 application by my learned friend Mr Fitzgerald to have

1 sight of anything akin to a proof of evidence or
2 a witness statement, it clearly must be with a view to
3 him posing questions in cross-examination. There has
4 been an on going and outstanding request for documents
5 that have been submitted on behalf of the Premier that
6 have a direct bearing on my client. It is quite clear
7 from the transcript of the Premier's own evidence that
8 there are various documents. One immediate example that
9 comes to mind is everything in relation to the J&T Banka
10 loan, which is said to be a joint and several liability.

11 SIR ROBIN AULD: What are you asking me to do?

12 MR PRUDHOE: I was simply seeking an opportunity to address
13 the Tribunal, not because I expect the Tribunal, as
14 an administrative task, to provide me with a copy of
15 what has been provided to them, but to indicate the
16 Tribunal's view as to the outstanding request at the
17 moment to those instructing my learned friend's
18 attorneys.

19 SIR ROBIN AULD: I have a very patchy familiarity with what
20 has passed between you and Mr Misick's attorneys, but
21 the general drift of it has been that you have been
22 asking for these sorts of documents and they have taken
23 the view that it is not for them to provide them.

24 MR PRUDHOE: Yes. We have been through the transcript of
25 the Premier's evidence and on a line-by-line basis

1 identified a few, by no means all of the documents that
2 have been handed in, and we have prefaced the request on
3 the basis that we don't seek a blanket copy; we seek
4 those documents or copies of those documents that
5 directly relate to our client. The initial response was
6 that because she wasn't a witness in these proceedings,
7 we were simply a member of the public in effect,
8 fishing, prurient curiosity.

9 Matters then moved on to the fact that she was
10 expected to appear and the position taken was that
11 despite an undertaking to pay reasonable copying costs,
12 it simply wasn't, and I paraphrase, the Premier's
13 responsibility to facilitate it.

14 Things have been rather left at an impasse on that
15 basis.

16 SIR ROBIN AULD: In a way he may be right about that. This
17 is not a inter partes matter. This is an Inquiry by
18 the Commission.

19 But let's see what Mr Fitzgerald has to say, whether
20 the attitude may have mellowed a little. The practical
21 answer is that somebody somehow must get these documents
22 to Mr Prudhoe on behalf of his client as soon as
23 possible.

24 MR FITZGERALD: You mean the documents submitted by
25 the Premier?

1 SIR ROBIN AULD: Yes.

2 MR FITZGERALD: Sir, if that is your ruling.

3 SIR ROBIN AULD: No, I have said someone, somehow. You have
4 been asked and you said no.

5 MR FITZGERALD: Yes. I think our concern is that this is
6 a device of her giving evidence in order to obtain this
7 material, and that would be our concern. I have to say,
8 I am also concerned by the contents of an email that
9 I have just been handed which appears to have reference
10 to communications between counsel for Lisa-Raye and
11 the Commission's Secretariat about the amendment of
12 the statement.

13 SIR ROBIN AULD: Let me read that. Where is that?

14 MR FITZGERALD: At the bottom.

15 MR MILNE: I have just been handed a e-mail which seems to
16 have discussion about amendments and good point and
17 things like that being stated which gives me some
18 concern.

19 SIR ROBIN AULD: Yes. There is a draft proof of evidence
20 which has been taken by the Secretariat, by Mrs Duff in
21 fact, which the Commission has in preparation for
22 service on you before the close of play today.
23 I gathered over the luncheon adjournment that there had
24 been some exchanges between Mr Prudhoe and
25 the Secretariat about the content of that, which is

1 reflected in this e-mail. But I know no more about it
2 than that.

3 Clearly, the statement should be served in its full
4 form.

5 MR FITZGERALD: Without amendments.

6 SIR ROBIN AULD: Not one amenable to amendments, at least
7 unless they are of a literary nature or for
8 clarification. Mr Prudeaux, what do you say about that?

9 MR PRUDHOE: Clearly I was not responsible for whatever was
10 handed over, but there is in train at the moment a proof
11 that is being finalised, and when it is finalised, it
12 will be made available to the Secretariat.

13 SIR ROBIN AULD: But it is the Commission's witness and it
14 is the Commission's responsibility to give whatever
15 assistance it needs to a witness in preparation of its
16 proof. Now you have very helpfully been involved as her
17 attorney, but I don't know the detail of what has passed
18 between you and the Secretariat as to what should and
19 should not be in the witness statement. Clearly there
20 could be no pruning of any substantial matter from
21 the witness statement. It should be served in its
22 entirety, if it is in reasonably final shape, but not
23 otherwise.

24 MR PRUDHOE: I don't know whether, sir, you want me to make
25 an explanation but I have never suggested that there

1 should be pruning of anything.

2 SIR ROBIN AULD: Let's deal first with your concern, which

3 Mr Edward Fitzgerald has distracted us and then we will

4 come back to the proof of evidence. Is there any help

5 that you can give this lady and Mr Prudhoe in particular

6 with regard to documents?

7 MR FITZGERALD: Sir, I am afraid I personally have not seen

8 the letter from Ms McCoy's attorneys to

9 Misick & Stanbrook, although my learned friend

10 Akierra Missick has informed me that it exists.

11 If I can just try and do it category by category.

12 Where there is a document such as the J&T Banka loan,

13 I appreciate that if her name -- her signature appears

14 on it, she must be entitled to see it.

15 SIR ROBIN AULD: Yes.

16 (2.45 pm)

17 MR FITZGERALD: But as to whether she is entitled to go

18 through all his documents, that is open to question

19 because as I understand it, it must be limited to

20 matters that bear upon her person.

21 SIR ROBIN AULD: So I would have expected. This is not her

22 Commission of Inquiry. It is our Commission of Inquiry.

23 The question should be simply one of relevance arising

24 out of documents which have been put to the minister or

25 produced by him which may have some bearing on the

1 matters raised by Mrs Lisa-Raye McCoy.

2 MR FITZGERALD: If my learned friend gives a list of the
3 documents that he thinks are relevant, then it may be
4 that we can consider -- I think it may be best if
5 the Commission reaches a view. If he is saying he wants
6 the whole of Mr Misick's statement, then that is
7 a matter for the Commission as to whether that is
8 disclosed.

9 SIR ROBIN AULD: Is there any reason why he should not have
10 the statement --

11 MR FITZGERALD: I suppose it is in the public domain and it
12 has been adopted so I suppose he is entitled --

13 SIR ROBIN AULD: No reason why he shouldn't have the
14 statement, but there needs to be some filleting of
15 evidence bundles so that they relate only to matters
16 which have a bearing on Mrs Lisa-Raye McCoy's evidence.

17 MR FITZGERALD: Our slight concern is that there has been
18 correspondence which has led to the fear that her
19 concern is to obtain material in these proceedings for
20 use in the divorce proceedings. That is our concern.
21 But that would be abuse of her participation in these
22 proceedings.

23 SIR ROBIN AULD: Well, it may be that the Commission --

24 MR FITZGERALD: Sir, I don't have instructions from
25 the Premier about these, but to the extent that matters

1 are before me, the Commission itself -- firstly, those
2 matters that are in the public domain such as his
3 statement, I can see he has adopted it publicly and it
4 is before the Commission. So that if the Commission
5 took the view that that should be disclosed, so be it.
6 But what we are concerned with is that this is
7 an exercise of seeking to obtain all materials from him
8 for use in other proceedings.

9 SIR ROBIN AULD: I can understand that. Look,
10 Ms Akierra Missick and members of the Secretariat have
11 worked very closely together over the last months,
12 really, and there is no reason why with some
13 co-operation, if they can, any of them find time
14 tonight, some filleting can be done of the relevant
15 bundles to produce at least a basic bundle of relevant
16 material or which is perceived to be relevant to your
17 client's evidence.

18 MR PRUDHOE: I wonder if I could just clarify one thing that
19 has been made clear from the very outset from those
20 instructing my learned friend. There is no blanket
21 request and there is an item by item list, referable
22 not just to the page of the transcript but the line of
23 the transcript and the document that appears to refer
24 to. So insofar as Mr Fitzgerald has a fear, it is not
25 borne out by the way that we have approached this.

1 SIR ROBIN AULD: That sounds very promising. The sooner
2 people get talking together over a bundle or two,
3 the better.

4 MR PRUDHOE: They have had that since the 17th.

5 SIR ROBIN AULD: We have had quite a lot going on here.

6 MR PRUDHOE: Of course, which is why I didn't expect
7 the Secretariat to be providing these documents to me.

8 I rather hoped that there might be co-operation.

9 SIR ROBIN AULD: That is thoughtful of you but I am sure we
10 have to find a way of doing that it now, haven't we, Mr
11 Milne.

12 MR MILNE: Might I suggest one solution, sir. We have in
13 relation to the Premier, three bundles which are
14 distinctive to him, coupled with of course
15 the additional bundles put in on his behalf. Certainly
16 from the point of view of the Commission, the easiest
17 first step might be to provide the indices to each of
18 those three bundles. My learned friend Mr Prudhoe could
19 then go through the index, identify which of those
20 documents he would be seeking from my learned friend
21 Ms Missick, simply tick against the list, she can go
22 through. If there is any objection to specific ones,
23 that can be brought back before the Commission. If
24 there is no objection, that could be copied. We have
25 copying facilities that would allow it to be done.

1 SIR ROBIN AULD: We could do a rough filleting job in that
2 way. Perhaps if the assistant secretary to the
3 Commission and possibly Mrs Duff too might liaise with
4 you and with somebody from those instructing you,
5 Mr Fitzgerald.

6 MR FITZGERALD: Sir, yes. Our concern remains (1) I really
7 do need to get some instructions from the Premier on
8 this particular issue. (2) that whether that in itself
9 will involve disclosure beyond that which has been
10 stated.

11 SIR ROBIN AULD: Any points in issue with you, can resolve
12 as the morning wears on. You can raise them. So they
13 needn't be in any bundle and when Mr Milne gets to the
14 point in the evidence that a particular document he
15 considers is relevant and you don't, we can have
16 an argument about it.

17 (2.50 pm)

18 MR FITZGERALD: The proposal, so I can understand it, is
19 that the index of their index be disclosed, the contents
20 be the subject of argument if necessary.

21 SIR ROBIN AULD: If necessary. You tick the indices or
22 the index with what you consider is relevant and
23 Mr Prudhoe can do the same, and Mr Milne can do, or
24 the members of the Secretariat can do the same, and we
25 might be able to put together some sort of makeshift

1 bundle by the morning. It is very important that we get
2 through this tomorrow, because time is getting very
3 short in every respect.

4 MR FITZGERALD: My concern is without access to her
5 statement --

6 SIR ROBIN AULD: That is the next point. Now, what is
7 happening about the statement, Mr Prudhoe?

8 MR PRUDHOE: That I anticipate will be available before
9 close of proceedings today.

10 SIR ROBIN AULD: You are not seeking any significant
11 redactions from it, are you, before it is served on
12 Mr Edward Fitzgerald?

13 MR PRUDHOE: No. It would be served in a form to be handed
14 over or to whomever, we will provide to the Secretariat.

15 SIR ROBIN AULD: It is the Secretariat will really have to
16 take a view on the document itself. I have seen a draft
17 proof which looked fine to me. I didn't really
18 understand there to be a need for any editing of any
19 sort but then I only read it quickly.

20 MR PRUDHOE: Sir, as you appreciate it has to be verified as
21 being factually correct by the person whose proof it is
22 intended to be.

23 SIR ROBIN AULD: If there were mistakes, you mean.

24 MR PRUDHOE: Yes.

25 SIR ROBIN AULD: That is something that ought to be done,

1 but Mr Fitzgerald will be asking tomorrow morning for
2 an adjournment because he has not had time to consider
3 the statement, and the bundles are only hurriedly being
4 prepared.

5 MR PRUDHOE: Bundles? I am sorry?

6 SIR ROBIN AULD: The bundles of documents for which you have
7 been asking and over which there has been and there may
8 yet be dispute as to their relevance.

9 MR PRUDHOE: Yes, and I would ask you, sir, at that time, if
10 I am asked to bear in mind that we have been asking that
11 question since the 17th.

12 SIR ROBIN AULD: I know that but we are here, we are where
13 we are now and we have got to find a way of getting
14 through this.

15 MR PRUDHOE: I wonder, sir, if you could just clarify,
16 pending the process that my learned friend has outlined
17 in terms of the index, it seems now to be accepted in
18 any event that the statement submitted by the Premier
19 will come to us now.

20 SIR ROBIN AULD: There is no question, of course they must.
21 Any relevant material to her evidence, which may bear on
22 its strength and the weakness of any evidence that the
23 Premier may have given on the same topic, are clearly of
24 importance to the parties and should be available for
25 production.

1 That is a matter which will have to be dealt with in
2 a practical way by sitting, looking first at the ticks
3 on the index to which Mr Milne has referred.

4 MR FITZGERALD: Yes. Sir, so your ruling, and I totally
5 appreciate the reasoning behind it, is that
6 the statements will be shown by the Commission in its
7 own right to the witness's lawyers and --

8 SIR ROBIN AULD: I am sure we can produce the statements.
9 By reference to the transcripts.

10 MR FITZGERALD: Absolutely. I accept that once he has
11 adopted a statement in open court that that becomes
12 a document the Commission has in its own power to --

13 SIR ROBIN AULD: As indeed do all the exhibits referred to
14 in the statement to which he referred in his evidence.
15 But you can be sure that I won't allow this to descend
16 into a preliminary divorce hearing.

17 MR FITZGERALD: That is our concern. The other concern,
18 sir, and I am just flagging it up, I hope we can assist
19 by cross-examination tomorrow, but we will have to
20 obviously take instructions on whatever it is that this
21 witness is saying and that may take some time.

22 SIR ROBIN AULD: How soon can we get this proof of evidence
23 finalised?

24 MR PRUDHOE: By the end of today.

25 SIR ROBIN AULD: What time is that?

1 MR PRUDHOE: I am very hopeful it will be by 5 o'clock.

2 SIR ROBIN AULD: It must be by 5 o'clock because

3 Mr Fitzgerald and those with him will need a good deal

4 of the evening and possibly the night taking

5 instructions on it. If we are going to have

6 an effective day tomorrow.

7 MR PRUDHOE: I understand.

8 SIR ROBIN AULD: The Commission Secretariat will give you

9 whatever help it can.

10 MR PRUDHOE: Thank you.

11 SIR ROBIN AULD: Is there any more to be said now?

12 MR FITZGERALD: No, sir, but in due course it may be that

13 I will make an application to see earlier drafts of

14 statements that she has made to the Commission, because

15 I am concerned as to what she has said earlier, and

16 whether it is consistent with what she is saying now.

17 Can I leave that.

18 SIR ROBIN AULD: That was not a risk to which the Premier

19 was subject when he gave his evidence, and I bet his

20 went through some drafts as well. I won't ask you that

21 but --

22 MR FITZGERALD: Sir the point is, as I understand it, she is

23 not being called as someone whose conduct is under

24 question. She is being called as a witness by

25 the Commission.

1 SIR ROBIN AULD: That is right.

2 MR FITZGERALD: And in a slightly different position.

3 SIR ROBIN AULD: I don't want to turn this into a process of
4 mutual discovery as if it were civil litigation.

5 All right, those with me have heard what you have
6 said and we will see what emerges. If there are any
7 other problems in the course of the afternoon, perhaps
8 you will mention them to the assistant secretary in
9 the corner of the room. She will see that something is
10 done swiftly.

11 MR MILNE: Sir, if I might just touch on one topic. It is
12 only by way of raising a caution at this stage. I have
13 not personally been involved in the production of the
14 proof of evidence, and I know that the final version is
15 imminent, but I have been made privy to the fact that
16 Ms McCoy Misick is coming from the US, will be here
17 tomorrow but would not be able to be with us on Monday.

18 Now, if that does prove to be the case, and there are
19 other witnesses also coming from the USA tomorrow, it
20 might be that we would have to invite the Commission to
21 consider, if we would not finish by close of business
22 tomorrow night, that we consider sitting briefly perhaps
23 on Saturday morning. I don't do that with a light
24 heart, given the weekend is useful for many things.

25 Apart from relaxing there is other work to be done.

1 SIR ROBIN AULD: Certainly if we have to deal with it in
2 that way, then I will invite the parties to consider
3 that. It is a question of organising things here, but
4 yes in principle.

5 MR MILNE: I put it forward so it is on the record and the
6 parties may address their minds to it if need be.

7 SIR ROBIN AULD: Thank you. The Honourable Lillian Boyce.

8 MRS LILLIAN BOYCE (sworn)

9 Cross-examination by MR MILNE

10 SIR ROBIN AULD: Mrs Boyce, the system is, as you have
11 probably seen, we have a set of core bundles which are
12 the red bundles on your left which contain material
13 common to the Inquiry as a whole and to the people in it
14 and you have your own personal black bundle.

15 A. Yes, I do.

16 (3.00 pm)

17 SIR ROBIN AULD: Yes, Mr Milne.

18 MR MILNE: May it please you, sir. Good afternoon,
19 Mrs Boyce. I am going to be asking you a number of
20 questions.

21 Unlike your predecessors, I will not be able to use
22 the title minister for you as I understand you are no
23 longer a minister?

24 A. You are correct.

25 Q. Although you have obviously served as a minister for

1 a number of years in the present government. You
2 remain, if I am correct, a member of the House of
3 Assembly though?

4 A. Yes.

5 Q. The starting point for you, as with all other ministers
6 or former ministers, is the declarations that have been
7 made to the Registrar of Interests.

8 I wish to briefly, I hope, take issue with a number
9 of the entries that have been made.

10 Can I say, though, at the outset, and it is
11 reasonable to put this in context, that whilst criticism
12 may be made, the criticism is, I hope, going to be
13 relatively muted, the reason being this: that your
14 disclosure, the Commission accepts, was far fuller, far
15 more detailed and in many cases far more appropriate
16 than some of your colleagues at the time.

17 So I say that simply to put it in context. We take
18 points but they are only on a limited basis, do you
19 follow?

20 A. Yes, I do.

21 Q. You have over the years made a number of declarations.
22 Should we need to refer to these, they have been
23 inserted in the front of the bundle, that is the black
24 bundle with your name on the face of it and they are
25 numbered -- these are pages 1 to 38, which are in each

1 case the declaration made, that is the form of
2 declaration as filled out by yourself and the register
3 completed by the Registrar of Interests which followed
4 on from it. We have also interleaved with that the most
5 recent, I think they were called reconstructed returns,
6 which were prepared on your behalf by your attorneys at
7 the time. Do you follow?

8 A. Yes, I do.

9 Q. So a good example of that, I will take the first one
10 simply so it is clear, are pages 1 through to 5 in that
11 bundle.

12 Do you have in front of you the registration of
13 interests declaration? I want to be sure that we are
14 looking at the same papers. (Pause)

15 A. Yes, we are.

16 Q. Simply so we are clear about this, pages 1-5, an example
17 of your declaration, this one in fact reflecting
18 the year 2003. The following two pages, the register as
19 set out at the time, and after that, the two-page
20 reconstruction put together on your behalf by your
21 attorneys at the time. Have you seen those documents
22 before?

23 A. Yes, I have.

24 Q. You are represented today --

25 MR SMITH: I am sorry.

1 MR MILNE: -- by Mr Smith.

2 MR SMITH: My bundle doesn't seem to have any
3 reconstructions. (Pause)
4 I apologise.

5 MR MILNE: Do you have them?

6 MR SMITH: Yes. You are referring to reconstructions done
7 by former attorneys, is that correct?

8 MR MILNE: Yes.

9 SIR ROBIN AULD: Sorry, I missed that, Mr Smith, because
10 I was not paying attention to you.

11 MR SMITH: You didn't miss much. We sorted it out.

12 MR MILNE: Mr Smith was concerned that we were on different
13 pages, sir, but in fact it is -- I was going to make
14 the point and it is worth making now, that
15 the reconstructions, and we have here an example at
16 page 8 and page 9, you were initially represented by
17 the firm of Misick & Stanbrook. What we have here is
18 the pro forma that they used, the template that they
19 used of reconstructing the submission of the
20 registration of interests, correct?

21 A. Correct.

22 Q. So page 8 and page 9 in fact prepared by
23 Misick & Stanbrook, you are now represented by Mr Smith
24 of Stanfield Greene?

25 A. Yes.

1 Q. Obviously it is not his document but he will have access
2 to it should he wish to. A broad point first,
3 Mrs Boyce, in relation to the returns. Throughout,
4 there are boxes for financial sponsorship gifts
5 et cetera. Nothing is ever filled in, we have no entry
6 on any of those. Was there at any stage money given to
7 you, gifts or financial sponsorship during the course of
8 your term as minister?

9 A. Yes, during 2003 to 2005, I have received political
10 contribution from my political party and I regret not
11 putting them -- declaring them. It was -- I learned
12 through the Commission \$72,000, I did not keep record of
13 it for five years.

14 Q. The money that we have now learnt has been handed by way
15 of what is termed campaign stipend comes to a total of
16 72,500. There is as with many of these, sir, what is
17 termed a suspense adjustment of \$2,500 which appears to
18 date back to 1st December 2004. But that's a common
19 feature in all of the Quickzoom reports.

20 We know, however, that you received two sums, 20,000
21 and subsequently 50,000 on 15th January and on
22 23rd January 2007. Those are the two payments to which
23 you are referring?

24 A. Yes.

25 Q. So that totalling \$70,000, clearly in each case, those

1 are within a matter of a few weeks prior to the last
2 election?

3 A. Prior to -- during 2003 to 2005?

4 Q. Well, although the report that we have from the PNP
5 covers the period of 2003 through to 2008 in fact,
6 the only two entries from the PNP records that we have
7 been provided with that relate to payments to you detail
8 two payments in January of 2007 totalling some \$70,000.

9 Is your evidence that that is the only money that you
10 have received or would there be other money that did not
11 appear in this ledger?

12 A. That must be the only money I received because I did not
13 receive anything else to my knowledge.

14 SIR ROBIN AULD: That is outside the 2003 to 2005 period?

15 A. Yes, absolutely.

16 MR MILNE: As you will appreciate by now, it has become
17 known to the Commission that the PNP at that time, in
18 the period leading up to the election and indeed beyond
19 it, was operating a number of accounts. The ledger we
20 have reflects the First Caribbean International Bank
21 account. We know of another bank account kept at the
22 Belize Bank on which an overdraft essentially was run
23 up, and that was in turn converted into a loan account.

24 To the best of your knowledge and belief, have you
25 ever received money from the Belize Bank account of

1 the PNP?

2 A. I believe one of those cheques may have been

3 the Belize Bank, but I am not sure.

4 Q. If I can assist you, the evidence we have so far are

5 that these two are from

6 the First Caribbean International Bank.

7 A. Okay, well.

8 SIR ROBIN AULD: Have you a recollection of receiving some

9 payment at some time from the Belize Bank account of the

10 PNP?

11 A. I cannot recall, but I know that the PNP accounts were

12 at the Belize Bank and

13 First Caribbean International Bank and they would have

14 been the only donations that I received. So I can't say

15 for sure that it came from the Belize Bank but one of

16 the two banks.

17 MR MILNE: Just dealing with that account, there was

18 reference made in earlier evidence to the trustees of

19 the party. Were you, as far as you knew, considered to

20 be a trustee of the party.

21 A. No. We have elected trustees of the party. We are

22 considered elected members or caretakers, members of the

23 Executive Council of the NEC, we would call it in

24 the party.

25 SIR ROBIN AULD: You were a member of that?

1 A. Yes.

2 SIR ROBIN AULD: And are?

3 A. I hope so, still.

4 MR MILNE: So when the expression "trustee" was used, is

5 that simply a rather generic term to reflect somebody

6 who is in a senior position within the party or was it

7 a very specific role?

8 A. Senior position in the party. But specifically to three

9 persons who are trustees of our party.

10 Q. Those being which persons?

11 A. I believe at this present time Arabella Smith, I believe

12 Mac Stubbs and perhaps Emily Saunders may be

13 the trustees.

14 Q. Arabella Smith we know of. We know her name because she

15 is, we are told, a signatory on the account. The other

16 two are not as familiar. Could you give those names

17 again?

18 A. Arabella Smith, Emily Saunders and I believe MacDonald

19 or Mac Stubbs. I can't be so sure but I believe they

20 are the ones.

21 Q. Thank you. Were you aware in 2006 when a Treasurer's

22 report was prepared by the Honourable Floyd Hall that it

23 deliberately, on his evidence, excluded an element of

24 the party funding in that it failed to take account of

25 the overdrawn Belize Bank account, did you know that?

1 A. I did not.

2 Q. As regards political funding, financial sponsorship,
3 obviously we have seen the elements that are contained
4 within the PNP ledger, that is the \$70,000; did you
5 receive personal donations or financial sponsorship that
6 did not pass through their account but came directly to
7 you?

8 A. Probably from constituents, \$100, some monies to buy
9 drinks or chicken or stuff like that. Small monies.

10 Q. Small monies?

11 A. Small monies or in kind, the items or small money to buy
12 something for a rally or so forth.

13 Q. Leaving aside, and I am going to pick a figure which is
14 not an official figure, but if I took a cut-off point of
15 say \$500, excluding everything below \$500, were there
16 any significant payments to you above that level?

17 A. No, not to my knowledge.

18 Q. Do you run or keep any sort of campaign fund or bank
19 account separate from your own accounts?

20 A. No, I don't.

21 Q. Did you keep receipts or any log of the monies that came
22 to you in terms of political donations?

23 A. No.

24 Q. As regards the stipend that came from the PNP, I use
25 that expression because it is their expression, but

1 the money that came to you in January of 2007, can you
2 say now how that was expended?

3 A. I had to pay for my rally. I had a very large rally in
4 my constituency. Paying for bands, barbecue, drinks,
5 from time to time I would have helped the people of my
6 constituency, because I happened to have a very
7 depressed constituency and I am always trying to help
8 them to the best of my ability.

9 (3.15 pm)

10 SIR ROBIN AULD: Did it get to the stage of handing out
11 small sums of cash?

12 A. It may have, yes.

13 SIR ROBIN AULD: You say it may have -- what sort of sums
14 and how many, roughly?

15 A. I would perhaps help someone with their light bill and
16 I still do that today. I have been doing that most of
17 my life. Since I have been earning a salary, I have
18 done that through my business and with any money that
19 I have, it is normally the people's money, I help my
20 constituency very much.

21 Q. Finally, before I leave this topic and it is the last
22 matter in relation to the Register of Interests, there
23 is no declaration made for 2004. It seems that
24 the Registrar never received a declaration from you. It
25 is the only year. I accept that the other years, 2003,

1 that we have been looking at, 5, 6, 7, there were full
2 and fairly detailed declarations. Is there a reason why
3 there was no declaration made in 2004?

4 A. I also asked the Registrar, and I inquire why it was not
5 done, because I always would fill them out, but however
6 we filled them out, sometimes at our desk at Parliament
7 in the corridor, we probably should have done a better
8 job at filling them out because he would normally be
9 there waiting. I never tried not to make a declaration
10 every year so when I saw that is an omission, I was
11 quite surprised myself.

12 Q. I am sorry, I may not be following correctly. You say
13 "pull" them out. To the best of your understanding, was
14 it simply that it was not done, or is it your
15 understanding that it was done and for some reason it
16 got lost in transit?

17 A. I am normally filling them out. I don't know if it get
18 lost in transit or something like that but I am normally
19 filling them out.

20 MR MILNE: Sir, I am going to move on in a few moments to
21 a new topic.

22 SIR ROBIN AULD: Let's pause there. I am sorry you have
23 only just started and you are now stopping for a while.
24 There is just some housekeeping. I have learned that
25 the state of play between the Premier and his former

1 wife is that until the witness proof is handed over,
2 the Premier and those acting for him will not make
3 a start on identifying documents that they are prepared
4 to disclose. Is that really the state of play we have
5 got to in this Inquiry?

6 MR FITZGERALD: Sir, how did you learn that? I am sorry
7 sir --

8 SIR ROBIN AULD: The assistant secretary told me, having, at
9 my request, consulted both Mr Prudhoe and
10 Ms Akierra Missick. I wondered what they were doing
11 sitting there and no sign of activity.

12 MR FITZGERALD: Can we have a --

13 SIR ROBIN AULD: I wish you would.

14 MR FITZGERALD: I am sorry I am --

15 SIR ROBIN AULD: This is not civil litigation, it is not
16 divorce litigation and --

17 MR PRUDHOE: Sir, the fact that I am sitting here does not
18 mean that there isn't activity in relation to --

19 SIR ROBIN AULD: I am glad to hear it, Mr Prudhoe. You have
20 probably got thousands at your bidding speeding over
21 land and ocean without rest --

22 MR PRUDHOE: I would like to think so but there are others
23 involved.

24 SIR ROBIN AULD: While we are looking --

25 MR FITZGERALD: Can I just understand it. The problem that

1 has arisen is about the disclosure -- I think
2 the Commission is deciding, I accept it has jurisdiction
3 to do so, that the statements of the Premier should be
4 disclosed by the Commission itself to --
5 SIR ROBIN AULD: Only as a matter of convenience. They are
6 already in the public domain.
7 MR FITZGERALD: So if that takes place, then the only issue
8 is which of the documents in the bundle disclosed by him
9 should be withheld.
10 SIR ROBIN AULD: There are obvious candidates for
11 disclosure, but if you are going to hold out until you
12 see exactly what Mrs Lisa-Raye Misick is going to say,
13 people will be up all night.
14 MR FITZGERALD: Sir, can I just discuss it with my learned
15 friend because I don't know what our instructions are.
16 SIR ROBIN AULD: Please do. Just another matter, are we
17 going to have the privilege of an argument on
18 section 105 of the Evidence Ordinance tomorrow?
19 MR FITZGERALD: Sir I will take instructions on that matter
20 too. You have a short summary of our position.
21 SIR ROBIN AULD: Have I?
22 MR FITZGERALD: Yes, we have handed it in.
23 SIR ROBIN AULD: Good. At the moment, you are at least
24 preparing contingently to argue that Mrs Lisa-Raye
25 Misick may not say anything about what her former

1 husband said to her.

2 MR FITZGERALD: We are preparing to argue that.

3 SIR ROBIN AULD: You are really going to run that one along

4 with all the other evidence that she can legitimately

5 give.

6 MR FITZGERALD: Sir, I am going to take instructions on

7 this.

8 SIR ROBIN AULD: All right.

9 MR PRUDHOE: Sir, I wonder if I might have a copy of that as

10 well if they have handed in what amounts to a skeleton

11 argument.

12 SIR ROBIN AULD: Let me have a look at it first and we will

13 come back to it after the short adjournment.

14 (3.20 pm)

15 (A short break)

16 (3.30 pm)

17 SIR ROBIN AULD: Yes, Mr Milne.

18 MR MILNE: May it please you, sir.

19 Ms Boyce, one of the companies that you declared in

20 your declarations to the Register of Interests and

21 indeed to the Commission is a company called KSK, is

22 that correct?

23 A. Yes.

24 Q. I think you describe yourself as being the Managing

25 Director.

- 1 A. Yes.
- 2 Q. The shareholders are, if I am correct, your three
3 children, is that right?
- 4 A. Yes, sir.
- 5 Q. Are you a shareholder yourself, or is it simply your
6 children who hold the beneficial shares in this?
- 7 A. My children.
- 8 Q. By way of explanation, this is a management company,
9 an operating company, and the nature of its trade is
10 that it runs the airport in, is that right?
- 11 A. Yes.
- 12 Q. The hotel by the airport in Providenciales?
- 13 A. Yes, sir.
- 14 Q. Does it also have a role in car rental?
- 15 A. Yes, sir.
- 16 Q. So it has two areas of trading, residential, hotel and
17 car rental management.
- 18 Are there any other directors apart from yourself on
19 KSK?
- 20 A. With KSK?
- 21 Q. Yes.
- 22 A. No, sir.
- 23 Q. So you are the sole director?
- 24 A. I am the director, yes.
- 25 Q. And your children are the shareholders?

1 A. Yes, sir.

2 Q. I touch upon that now because we are returning
3 ironically to a subject that has occupied the Commission
4 for much of the day. In 2006 parcels of land, four
5 parcels of land were combined and the Commission
6 understands that they were sold to a Mr David Wex,
7 a Canadian Scottish developer.

8 You have been at the Commission today while
9 the Honourable Jeffrey Hall has been giving evidence, at
10 least for part of that, is that right?

11 A. If I am a part of that?

12 Q. Forgive me. You have been present today whilst
13 the Honourable Jeffrey Hall was giving evidence?

14 A. Yes I was.

15 Q. You heard some of his evidence in relation to this?

16 A. Yes.

17 Q. It is, to avoid any doubt, the same topic to which I am
18 returning. The reason I return is this: that one of his
19 partners, Earlson Robinson, is your brother?

20 A. Yes, he is.

21 Q. Earlson Robinson, as we have already said today,
22 received a cheque for \$1 million. Is that right?

23 A. Yes, you are right.

24 Q. That cheque was drawn on the Temple Securities,
25 Temple Finance. Did you see the cheque yourself at the

1 time?

2 A. Yes, I saw the cheque.

3 Q. We understand that cheque was paid into the KSK bank

4 account, is that correct?

5 A. That is correct.

6 Q. Why was that done?

7 A. That cheque was paid -- if it is not the KSK it would be

8 one of my accounts, the savings account because Earlson

9 is my brother and he brought the cheque to me and

10 I asked him if I can use some of it to secure a loan for

11 TC National car rental and in fact he wanted me to share

12 it with the family so that everyone would benefit from

13 it.

14 Q. When you say you wanted it to secure a loan, what

15 exactly do you mean? How would you secure a loan with

16 funds? You would be borrowing money on top of that?

17 A. Yes. I asked him to allow me to use some of his cheque

18 to secure in a CD account, that is a term deposit, so

19 that I can borrow money on his money.

20 His money would have been the collateral so that

21 I could borrow money for TC National car rental.

22 Q. Would it not have been easier simply to borrow the money

23 from him and pay him the interest?

24 A. Well, I wanted Earlson to benefit from his money and he

25 would get it back as soon as my loan is paid.

1 Q. But the money could not be spent, could it? If it is
2 securing a loan it would have to remain in the bank, so
3 it wouldn't be of any great benefit to the family whilst
4 it was securing other funds?
5 A. You are correct about that.
6 Q. How much of it was used to secure a loan?
7 A. \$600,000 of it.
8 Q. What happened to the remaining \$400,000?
9 A. \$100,000 was loaned to the Premier.
10 SIR ROBIN AULD: To the Premier?
11 A. To the Premier.
12 MR MILNE: And what else?
13 A. And the rest of it, Earlson and I decided that we would
14 share the -- the family had small amounts and we did
15 some -- well, we actually, Earlson and the rest of the
16 family, we repaired or I think we totally demolished our
17 mother's home and rebuilt it with 300,000 of it that was
18 shared.
19 Q. Did your brother not have a bank account of his own at
20 the time?
21 A. Yes, I am sure he did.
22 Q. Did you inquire of him how he came into possession of
23 \$1 million?
24 A. Yes, I did.
25 Q. What was your understanding?

1 A. That he sold a piece of land along with the other names
2 that were called, Samuel Been, Quinton Hall,
3 Jeffrey Hall.

4 Q. Were you present in Cabinet on occasions when
5 the Urban Development project was being discussed?

6 A. Yes, I believe I was.

7 Q. Did you ever retire or withdraw from Cabinet during
8 the course of those discussions?

9 A. I probably did not. I don't think I did.

10 Q. Were you aware at the time that your brother was likely
11 to be a beneficiary of this development project,
12 Urban Development?

13 A. Not of Urban Development, no.

14 Q. Did Urban Development as a name mean anything to you?

15 A. Well, I heard it a lot today and I learned more than
16 I have ever known about Urban Development today.

17 Q. We know that in late 2005 the matter did come before
18 Cabinet and it was either late 2005 or early 2006.

19 The names of the persons involved in this project were
20 put on record so they were clearly read out at some
21 point in the Cabinet. Would you agree with that?

22 A. I would agree.

23 Q. Would you say that it would have been appropriate for
24 you to withdraw from any conversation where it might
25 result in the benefit accruing to your brother?

1 A. My understanding of the declaration is for myself, my
2 spouse and my children and Urban Development didn't mean
3 anything to me that Earlson -- Earlson had the land but
4 I did not know of Earlson being involved in the company.

5 Q. We have learned now, of course, Earlson didn't strictly
6 speaking have the land. He had the option to purchase
7 freehold about five acres. We have also learnt that
8 Earlson obviously sold that land on through the middle
9 man of Urban Development to Mr Wex pretty well
10 instantaneously. Prior to this, was Earlson a wealthy
11 man?

12 A. No, he was not.

13 Q. So this would have been a big break for him, a big
14 opportunity that he would not previously have had?

15 A. Yes.

16 SIR ROBIN AULD: Forgive me for asking, how old was he and
17 what was his job at the time?

18 A. How old, Earlson is probably 27 or so. Or older.

19 SIR ROBIN AULD: And his job?

20 A. 2006, I don't recall what Earlson was doing:

21 SIR ROBIN AULD: Was he doing anything?

22 A. I am sure he was working. He is always working.

23 MR SMITH: I am not clear, was he 26 then or 26 now?

24 A. I am not sure --

25 SIR ROBIN AULD: In his mid-20s.

1 A. Yes.

2 SIR ROBIN AULD: Was he a man of means or just doing

3 a fairly menial job? What was his position in life?

4 A. Very promising young man.

5 SIR ROBIN AULD: Still living at home?

6 A. Yes:

7 SIR ROBIN AULD: Mid-20s, still living at home. Thank you.

8 MR MILNE: Forgive me, living at home with your family or

9 living at home with --

10 A. With my mother.

11 Q. Are you able to tell us how it first came about that he

12 became part of this land deal?

13 A. I don't know the details, I can't tell you.

14 Q. Did you ever ask?

15 A. I did ask Earlson and he said that he -- I think he said

16 him and Quinton and Samuel and Jeffrey had land and they

17 were going to do -- had an opportunity for a condominium

18 deal or something.

19 Q. Was he a friend of Quinton and Samuel?

20 A. Yes, he was.

21 Q. Samuel Been, I think, is your former husband?

22 A. Yes, he is my ex-husband and they have a relationship,

23 they had a relationship and still do.

24 Q. A relationship in the sense that they get on on

25 a friendly basis?

1 A. Yes, friendly basis.

2 Q. Was there a link between your brother and the Honourable

3 Jeffrey Hall?

4 A. They are also friends.

5 Q. Did you ever learn who it was who first suggested

6 the idea of this sale, the idea of this development?

7 A. No.

8 Q. Has Earlson involved himself in developments of this

9 sort before that you are aware of?

10 A. No.

11 Q. Clearly, for somebody who holds down a job, for somebody

12 who is earning a salary or a wage, this is

13 a life-changing opportunity, potentially. Did you

14 become aware that this involved the sale of Crown land?

15 A. No, sir.

16 Q. You know now that it did but --

17 A. I didn't know then.

18 Q. Not at the time?

19 A. Not at the time.

20 Q. When did you become aware that it might include the sale

21 of Crown land?

22 A. I would have asked Earlson from time to time about their

23 project and later learned that it would have been a sale

24 of Crown land. And I would have asked the Honourable

25 Jeffrey Hall too but I did not know at the beginning.

1 SIR ROBIN AULD: I didn't catch your last words there.

2 A. I did not know prior to --

3 SIR ROBIN AULD: Prior to the deal?

4 A. Yes.

5 (3.45 pm)

6 MR MILNE: Would you have involved yourself in the sale of

7 Crown land sold to Belongers, directly to a foreign

8 investor?

9 A. No, I would not.

10 Q. Would you regard that as a proper application of Crown

11 land policy?

12 A. It is not to my -- I think there is a matter of years

13 before you can sell Crown land to a developer.

14 Q. This has been described or similar exercises have been

15 described as flipping. Are you familiar with that

16 phrase?

17 A. It has become a local phrase and it is quite sickening.

18 Q. But the money having gone into his account, did your

19 brother know the Premier?

20 A. Yes, he did.

21 Q. Whose decision was it to loan \$100,000 to the Premier?

22 A. The Premier continued to pressure because he knew that

23 my brother sold the land and he continued to ask and ask

24 me and I continued to ask my brother and in fact my

25 brothers, if they would lend the Premier the money,

1 because he kept saying how badly he was in need of the
2 money and he was broke, so I convinced them to lend
3 the Premier the money.

4 SIR ROBIN AULD: So that was what the Premier said to you.

5 A. Yes.

6 SIR ROBIN AULD: That he badly needed money and he was
7 broke.

8 A. And he was broke, yes.

9 SIR ROBIN AULD: Did the Premier know of this windfall for
10 the family?

11 A. Yes, he did.

12 SIR ROBIN AULD: It was shortly after that occurred that he
13 asked to have the money?

14 A. Yes.

15 SIR ROBIN AULD: Has he paid it back?

16 A. No, he did not, but I would like him to.

17 MR MILNE: The Premier in his evidence has described as
18 a loan from you. Is that an accurate depiction of it?

19 A. No, sir, it is not.

20 Q. Because the documents we got from the Premier recorded
21 it as -- against your name, which is obviously why we
22 are raising it with you. The Premier has told us, and
23 we spent quite some time dealing with his loans, that he
24 is a man of substantial means with substantial property
25 holdings. When asked about loans in excess of

1 \$20 million, he seemed to take the view that he was good
2 for the money, that his property exceeded that value.
3 Indeed, he has borrowed on occasions not hundreds of
4 thousands but millions of dollars. Can you cast any
5 light on why the Premier would have gone to your
6 brother, a man of modest means, to seek a loan of
7 \$100,000?

8 A. Sir, that bothered me straight through when I listened
9 to the, or read the transcript. I really thought
10 the Premier needed the money and begged my brother to
11 loan the money to the Premier, and to my disappointment,
12 when I learned that the Premier, of course, yes, had
13 millions of dollars, I felt disappointed that he
14 continued to pressure me to pressure my brother to lend
15 him the money.

16 SIR ROBIN AULD: Are you talking in retrospect now or are
17 you talking of what you felt at the time?

18 A. At the time when he asked and continued to ask over and
19 over, I felt pressured that he really needed the money
20 and he said he was broke. I did believe him at that
21 time. Now that I have learned that the Premier had
22 millions and millions of dollars, I am quite
23 disappointed that he pressured me to pressure my family
24 to lend him \$100,000, out of that money that he knew my
25 brother had come into.

1 MR MILNE: Mrs Boyce, you yourself are on the face of it
2 a successful businesswoman apart from your role in
3 Parliament, in government. Presumably you could have
4 raised \$100,000 had you wished to do so.

5 A. I could have. But as successful as I may be, you may
6 know that I realised that business is up sometimes and
7 sometimes it is down and I am a better businesswoman
8 than that to just -- so I thought my brother had
9 the money and I really begged him, in fact he began to
10 put pressure on me now to get the money back from
11 the Premier for him.

12 Q. One can understand that but if I take the declarations
13 made, I am afraid I have to press this point to some
14 extent, in 2006, you yourself a Managing Director of
15 KSK Limited, a director remunerated for
16 Island Publishing Limited, your husband who I think is
17 the editor of the Turks & Caicos Sun, is that right?

18 A. Yes, sir.

19 Q. Had business interests in two companies. I needn't read
20 them out here. He is a successful man, with respect,
21 you are a successful woman. You have capital, you have
22 cashflow, obviously as a business you have liabilities.
23 Surely you would have stood between the Premier and your
24 brother. Your brother's money, much of it, was already
25 committed as a loan security. What was left,

1 the 400,000 was to be spread amongst the family. You
2 took or allowed your brother to take a quarter of that
3 remaining money and give it to the Premier who had just,
4 as we understand it, had a wedding costing clearly many,
5 many thousands of dollars, probably hundreds of
6 thousands of dollars, who had just gone round the world
7 apparently on an expensive honeymoon. Essentially, was
8 this not Robin Hood in reverse? It was taking from
9 the poor to give to the rich? How can that be right?

10 SIR ROBIN AULD: Who were the poor here, Mr Milne?

11 MR MILNE: Well, in relative terms, sir,

12 Mr Earlson Robinson, Mrs Boyce's brother, although he
13 had received \$1 million, 600 was tied up, 400 was
14 available, and of what -- this appears to be his only
15 significant capital, and that was being loaned to a man
16 who was on his own declaration to us a multimillionaire
17 with massive capital assets.

18 MR SMITH: I am trying to find the question in there. To me
19 it is more of a comment than a question.

20 MR MILNE: I am asking why that would be allowed to happen?

21 A. Sir, for some reason I did believe the Premier needed
22 the money at that time. I now feel that it was greed on
23 his part, that he wanted to borrow the money from my
24 brother.

25 Q. Mrs Boyce, there are points that we have raised with the

1 Premier and through written submissions no doubt will be
2 dealt with again. But there is a different conclusion
3 that can be drawn here. I am going to give you
4 the opportunity to comment on it. The sale of the
5 property at Northwest Point benefited four parties. One
6 of them your brother, one of them your ex-husband,
7 the others we would submit were the Honourable
8 Jeffrey Hall and Mr Quinton Hall, the brother of the
9 Honourable Floyd Hall.

10 Immediately that happened, immediately each of those
11 men received a large sum of money. The Premier took, he
12 says by way of loan, 100,000 from the Honourable
13 Floyd Hall on his version of events, 100,000 from
14 the Honourable Jeffrey Hall and 100,000 from you. That
15 is how he describes it. Some might regard that as
16 a kickback. Is that a fair assessment?

17 A. It sounds fair but I certainly didn't see it that way.

18 I certainly didn't understand it that way.

19 Q. You did not see it that way at the time?

20 A. I didn't see it that way at the time.

21 Q. Do you see it that way now?

22 A. It is a beautiful scenario.

23 SIR ROBIN AULD: When you say it sounds fair, a kickback for

24 what? A kickback for what?

25 A. I cannot see it or do not understand it, not then, not

1 now as a kickback because I really understood that my
2 brother was in a sensible deal or opportunity and
3 I don't see why the Premier would have wanted a kickback
4 from an opportunity that those people had. I don't see
5 it as a kickback.

6 SIR ROBIN AULD: You mentioned a moment ago, unless
7 I misheard you, that your brother began to pressure you
8 to get the money back from the Premier. Did I mishear
9 that?

10 A. You heard that because that is true.

11 SIR ROBIN AULD: When did he begin to put pressure on you to
12 get his money back from the Premier?

13 A. Well, because I continued to have his other monies tied
14 up with the loan and he will get that as soon as I can,
15 my loan is over --

16 SIR ROBIN AULD: But when did he begin to put pressure on
17 you to get the money back?

18 A. He has from time to time and I have also asked
19 the Premier from time to time to pay it back.

20 SIR ROBIN AULD: And when you have asked the Premier, what
21 has he said?

22 A. That he was broke. He didn't have any money.

23 SIR ROBIN AULD: When did you last ask the Premier for
24 the money back?

25 A. Not since the Inquiry, and I learned that there are

1 monies, but throughout the year.

2 SIR ROBIN AULD: So during 2008 and up to the time when

3 the Inquiry began to work?

4 A. Yes.

5 SIR ROBIN AULD: And his reply was always the same, was it,

6 he was broke?

7 A. Yes, he didn't have any money.

8 MR MILNE: You see the view that I referred to is that this

9 is not a loan at all. These are payments, because none

10 has ever been repaid at all. We know that.

11 A. It was a loan. He asked for a loan. It was a loan,

12 sir. He will definitely pay it back, he told me that he

13 would.

14 Q. He told you that at the outset?

15 A. That he would pay it back, yes.

16 Q. Whilst we are on the subject of KSK, am I right in

17 thinking also that your brother, Philip Robinson, has

18 money in the company?

19 A. Yes.

20 Q. Why is that?

21 A. Philip is like a part of the company, he ran

22 the business, he is there all the time, he used to live

23 on property, he is a part. I tried to make the business

24 a family business.

25 Q. So he is an investor, yes?

1 A. Yes.

2 Q. But not in any way a shareholder?

3 A. Not yet, no.

4 Q. The \$600,000 that went into KSK, why did it go into
5 the company? Why not simply put it into a bank account?

6 Why not put it into your bank account, come to that?

7 MR SMITH: I think she testified that it went into a term
8 deposit. I think she testified that the \$600,000 went
9 into a term deposit, not into the business.

10 SIR ROBIN AULD: I understood that it was a sort of deposit
11 account and it sat there in this account by way of
12 security or on which there could be a -- to which there
13 could be recourse if something went wrong with the other
14 loan. Am I correct?

15 A. Yes, sir.

16 MR MILNE: This is the company bank account loan, yes? KSK
17 bank account?

18 A. I believe it either went into KSK or into my savings
19 account. I really should have checked.

20 Q. The \$600,000 that we are talking about that is
21 the liability, that doesn't seem to appear on the books.

22 A. It seems to be.

23 Q. It does not appear on the books because if it is money
24 borrowed by the company it is a liability, isn't it? It
25 is money due back.

1 A. Yes.

2 (4.00 pm)

3 Q. Would you agree that is not actually entered on your
4 company accounts?

5 A. It is not on my company's account?

6 Q. I believe not. Be that as it may --

7 A. What do you mean, sir?

8 Q. Money borrowed on a company's accounts will normally
9 appear as a liability. That is, it has to be paid back
10 at some point and it has to appear on the accounts, and
11 the accounts that we have been shown, the disclosed
12 accounts, don't actually refer to it. You do disclose
13 it, you have made it known to us, but I am simply
14 querying, is there a reason why it would not appear on
15 the company's accounts as money borrowed?

16 A. Okay. I know -- yes, I declare it with you from
17 the outset, but you want to know why it was not declared
18 in my company's.

19 Q. I wondered if there was a particular reason for that?

20 A. Absolutely not. No reason.

21 Q. I am going to turn, if we could please, to the question
22 of scholarships.

23 During your time as a minister you were responsible
24 for the scholarships policy for some of that time?

25 A. Yes, sir.

1 Q. I think in fact before you came out of the Cabinet, that
2 responsibility was one that was rotated, was it, to Dr
3 Carlton Mills?

4 A. In the second term of the government, Dr Carlton Mills
5 was appointed minister of education.

6 Q. But prior to that, you had been -- it had been part of
7 your portfolio, you took care of education?

8 A. Yes, sir.

9 Q. The information that the Commission has includes audit
10 reports in relation to the scholarships policy. It
11 would seem to be clear from that that one of the
12 criticisms that was being levelled was that in a number
13 of cases, students were abusing the system without any
14 steps being taken? Students would claim a grant and
15 fail to complete a course but they would not repay
16 the money. They would undertake a course which was
17 approved by the TCI government, get to the university
18 and immediately switch to another course but nobody
19 would ever claim back the scholarship funds.

20 Did you seek to address the criticisms made in the
21 audit reports whilst you were responsible for education?

22 A. Sir, I seek to address the problems as they came up and
23 I do recall these problems in the audit report and my
24 staff and I, we addressed it, we were very disappointed
25 in the students who were conducting these fraudulent

1 activities; and we also forwarded to the AG chambers to
2 make sure that monies would be deducted from their
3 subsistence; and we got some of the money back and we
4 also wrote to the schools, asking the schools not to
5 refund students; and as far as the audit report is
6 concerned, my staff continued to work with audit.
7 I encouraged them to do so but in 2006, when this audit
8 report was produced, we were moving closely towards
9 the 2007 general elections and I could not have answered
10 some of the queries that they have, but we dealt with
11 them while I was still minister of education.

12 Q. The Commission has received reports that on occasions
13 there would be monies returned from universities where
14 a student dropped out of the university. Do you
15 remember that happening?

16 A. I remember my staff, the PS or the Undersecretary would
17 say to me that monies were returned, and I am sure that
18 they would have done the right thing and re-deposit it
19 or something, but it would never ever be one of the
20 tasks that I had because I never dealt with monies in
21 government.

22 Q. The Commission has been led to understand that on
23 occasions, we can't say how often, when funds were
24 returned to your department, in fact there were cheques
25 made payable to you personally?

1 A. That is absolutely not the truth and if you investigate
2 every bank account that I have or throughout
3 the government, you will never find a cheque from any
4 universities in the US or in London or even in
5 the Turks & Caicos, nowhere, sir, because I would have
6 never, never received any kickbacks from education. It
7 was too dear to me. I worked hard to make sure that our
8 people were educated and I never would have wanted any
9 personal gain from it. Furthermore, I am a very honest
10 person. I would never take kickbacks from scholarships
11 or anything else that I had to deal with for my people.
12 That is the truth, God knows it is the truth and it is
13 the honest truth.

14 Q. Mrs Boyce, you are leaping in a sense ahead of me.
15 I was not suggesting that you had necessarily sought
16 that or encouraged that. My query was actually far more
17 limited. It was simply this: to the best of your
18 knowledge, have there ever been occasions when
19 the university, which would have been beyond your
20 control, sent a cheque back, maybe in error, payable to
21 you rather than to the TCIG which you then had to
22 endorse on or anything of that nature?

23 A. No, sir, never.

24 MR SMITH: I think if -- to me that insinuation, I would
25 assume that the Commission, being as thorough as they

1 are in the way they have prepared for this case, would
2 have had some cheques from some universities to present
3 to Mrs Boyce and confront her with that.

4 SIR ROBIN AULD: That is a point you can make in a speech
5 when the time comes, Mr Smith.

6 MR SMITH: Very well.

7 MR MILNE: Sir, I dispute the expression "insinuation".
8 I am not insinuating anything. I am simply asking,
9 because that is information that was put to us. You are
10 in the best position to deal with it.

11 A. But would you say for sure, that was information, but in
12 your investigation did you find any cheques made out to
13 me from universities, I would like to know that?
14 I would like it to be recorded and it would be important
15 for the public to know that.

16 Q. We have not seen any cheques from any of the
17 universities --

18 A. Thank you so much, sir.

19 Q. I can make that clear.

20 A. Thank you so much.

21 Q. I am grateful for your clarification.

22 A. Thank you so much.

23 SIR ROBIN AULD: Was there ever an instance when money was
24 returned and there was an issue to which minister or
25 department it should be returned from any of these

1 educational establishments?

2 A. There were cheques returned, I believe the Turks &
3 Caicos Islands government's name on it, because that
4 would be the payee into university's account. If it
5 went to other ministries I am not sure, but I would
6 doubt very much that it would come back to any minister
7 name for that matter --

8 SIR ROBIN AULD: I am just asking you if you knew of any
9 such instance.

10 A. I don't know. But I don't believe it happened.

11 SIR ROBIN AULD: Nor of any issue as to which department or
12 minister should receive it which required
13 the intervention of another minister? You know nothing
14 of that?

15 A. I don't -- I know that it would go to the ministry,
16 to -- the Turks & Caicos Islands government name on it,
17 so that means it will go to the PS or the undersecretary
18 with the government's name on it. Not to individuals.

19 MR MILNE: During the course of the evidence from
20 the Premier and indeed the Deputy Premier, it has been
21 pointed out to them that they intervened on many
22 occasions to sign -- sign off scholarships or to insist
23 or instruct, which was the phrase used in the audit
24 report, that individuals be given scholarships.
25 The Premier, when asked to explain this, described it in

1 terms of the chaotic state of the ministry of education.

2 First of all, would you agree with that characterisation
3 of that ministry?

4 A. No, I would not, sir.

5 Q. Was there ever any need for the Premier to intervene in
6 the scholarship programme?

7 A. No, sir.

8 Q. Did you, as ministry of education, ever take
9 scholarships to him for him to sign?

10 A. I may have because we conduct scholarships, literally
11 together as a pre-Cabinet -- in a pre-Cabinet
12 environment and so --

13 Q. What would be his input? What would he be able to bring
14 to it that you as minister of education could not do for
15 yourself?

16 A. The Premier was the minister of all ministers. He had
17 some autonomy, if he wanted to do so, but I am sure that
18 I was able to do anything that was set out in the
19 ordinance for me to do.

20 SIR ROBIN AULD: When you say we, are you talking about just
21 the Premier and you, or do you mean all the ministers
22 who were members of the Cabinet before a formal Cabinet
23 meeting?

24 A. Yes, from time to time we did go over applications along
25 with members from the ministry of education.

1 SIR ROBIN AULD: So really at Cabinet level ministers were
2 discussing who should get scholarships and who
3 shouldn't?

4 A. Ministers along with members from the ministry in --
5 from time to time went over huge amount of applications
6 in a list. Not looking at who the person was but
7 a compiled list, not individual applications. Simply
8 because people were applying for scholarships in a way
9 that they have never done before after we got into
10 power. People were excited about education and we just
11 wanted to get involved because that was one of the
12 promises we made to our people, that we would educate
13 them.

14 SIR ROBIN AULD: Why should ministers be involved in this
15 exercise? I don't understand. Was it to try to see
16 that the bias of the list was reflective of the mix of
17 the community here or what?

18 A. That was also a purpose, that ministers got involved
19 because we wanted to make sure that every islander and
20 everyone had an opportunity. So many times we would go
21 over the list and work with the Undersecretary or
22 the Permanent Secretary and with the board for
23 the awarding of scholarship.

24 SIR ROBIN AULD: This is an expensive use of ministerial
25 time, isn't it? To be going through lists of applicants

1 for scholarships.

2 A. Not individual applications, a compiled list.

3 MR MILNE: Minister, it is a laudable aim to have

4 a scholarships policy. It is a laudable and indeed

5 sensible approach to make sure that money is available

6 for education. Nobody would dispute that.

7 Political points, with respect, have been made by

8 both the Premier and the Deputy Premier, who have made

9 much, as one might expect, of the education policy.

10 This government has spent a lot on education. Nobody

11 would take issue with that.

12 Clearly education is a major budgetary item. It is

13 expensive to send people overseas to colleges, isn't it?

14 A. Yes, sir, it is.

15 Q. Therefore it has to be taken seriously, it has to be

16 approached in a rigorous and methodical manner, would

17 you agree?

18 A. Yes, sir.

19 Q. There is a committee set up to scrutinise applications,

20 is there not?

21 A. Yes, sir.

22 Q. Do you select the Committee or are you party to

23 selecting that committee?

24 A. I select the Committee.

25 Q. Over what period of time do the members of the committee

1 sit?

2 A. The ordinance did not say how many times they had to
3 sit, but I believe they would sit -- we tried to arrange
4 quarterly meetings.

5 Q. Clearly the nature of education is such that almost
6 everybody will be going to a university or a college of
7 some sort where there will be defined start dates,
8 defined end dates, you will know in advance decisions
9 must be made, perhaps weeks, months ahead of
10 the proposed course.

11 So it is not something that arises on the spur of
12 the moment; it is something that can be planned and
13 organised, is that right?

14 A. Yes, sir.

15 (4.15 pm)

16 Q. Forgive me, I probably didn't make my earlier question
17 clear enough. The Committee, one must assume, would be
18 appointed, the members would be appointed to serve for a
19 specified term of office?

20 A. Yes, sir.

21 Q. If you felt unhappy for any reason, dissatisfied with
22 the quality of their work, you could replace them,
23 refresh the make-up of the committee, bring new people
24 in, bring new experience in.

25 Can you tell me this, taking the year which we are

1 concerned because it is covered by the audit report,

2 2005 to 2006, did you have any complaints or concerns

3 about the quality of work done by the Committee?

4 A. I did not.

5 Q. So would we be entitled to think that you were happy

6 that they were doing a good job, applying government

7 policy and making appropriate decisions?

8 A. Yes.

9 Q. You see, for that year we know that there were many

10 interventions, interventions by ministers who stepped in

11 and basically overrode the directions of the committee.

12 SIR ROBIN AULD: Which year are we talking about?

13 MR MILNE: I am dealing with 2005 and 2006, sir. It appears

14 from the audit report this had been a problem for some

15 time. And the audit report, we touched upon this

16 before, made reference to over 100 such interventions by

17 the Premier, and 30 or 40 by the Deputy Premier.

18 MR SMITH: I think I have to rise. I don't think it was

19 a situation where they overrode the directions of the

20 committee because what --

21 SIR ROBIN AULD: I think you are giving evidence now. Let

22 the minister give the evidence.

23 MR SMITH: The only reason why I rise is because Mr Milne

24 is --

25 SIR ROBIN AULD: He may have got it wrong and the minister

1 will correct him. Let her give the evidence.

2 MR MILNE: If it assists, I can take you to the page, it may
3 be easier if you have that in front of you, Mrs Boyce.
4 If you turn to your left there are a number of red
5 bundles in a row. Bundle 3. As you open that, you will
6 find a number of dividers. The section with which we
7 are concerned is behind divider 5.

8 Do you have the front cover of that? This was
9 an audit report into the scholarships programme from the
10 ministry of education. The date of the report was
11 issued on 12th October 2006. Were you minister of
12 education at that time?

13 A. Yes, I was.

14 Q. Would you therefore have seen this particular report at
15 that time?

16 A. I believe I did, yes.

17 Q. I suspect a lot of documents crossed your desk?

18 A. Absolutely.

19 Q. This clearly would be one of those, the minister would
20 be expected to at least read at some point?

21 A. Yes.

22 Q. The page to which we have been referring, you will
23 see -- it is very small but at the bottom there were 34
24 original pages and it is page 8 of 34, which is a short
25 way into that document?

1 SIR ROBIN AULD: This was the page put to the Premier,
2 wasn't it?

3 MR MILNE: It was, sir, yes. I think in turn to
4 the Deputy Premier. This simply sets out the nature of
5 the problem as it was identified. An important
6 distinction to be drawn, not a case of pre-Cabinet
7 meetings where the Premier was signing or countersigning
8 or even approving decisions made by the Committee, but
9 rather a situation where the Committee had simply been
10 bypassed and there were letters from the Premier or from
11 the Deputy Premier instructing, and that is the word
12 that is used, instructs the ministry to issue
13 scholarship awards. Did you ever, in I am sure the most
14 polite fashion, tell these other ministers to back off?

15 A. Yes, sir, I did.

16 Q. Would it be fair to say it doesn't appear to have
17 worked?

18 A. It worked at times, but like they both have constituents
19 and every -- almost every student continued to lobby
20 ministers. I believe they were also under pressure but
21 I was very unhappy with this operation because I wanted
22 to really let the policy work.

23 SIR ROBIN AULD: The Premier, when asked about these
24 examples given on page 8, said that the instructions
25 attributed to him here were made by him on advice from

1 your ministry.

2 A. He is probably correct about some of it. Some of the
3 persons who went through the ministry, but you had
4 students going directly to the Premier or
5 the Deputy Premier lobbying scholarships. You had
6 parents and teachers and everyone. Like I said people
7 were excited and this was new for us. When we started
8 we probably had less than 100 students on scholarship,
9 and people really became excited about being educated.

10 MR MILNE: In a community where education has been
11 the preserve of the few, one can understand that there
12 would be excitement if it was being opened up to
13 the larger population.

14 But there must have been a purpose behind the policy
15 of having a committee review applications, would you not
16 agree?

17 A. Yes, I agree.

18 Q. For the Committee to be sidelined, bypassed in this
19 fashion, firstly undermines that policy completely, does
20 it not?

21 A. Well, the policy was established in 2005, and after
22 the policy was established, we really tried to stick to
23 it as much as possible. I believe most of this were
24 done during -- well, you can see prior to the policy in
25 June 2005. But thereafter we really tried to stick to

1 the policy.

2 SIR ROBIN AULD: You say tried. It was an effort, was it?

3 A. It was a big effort.

4 SIR ROBIN AULD: Because?

5 A. Because we had a very good policy. We by then had sent

6 a lot of students away to school. We had looked at the

7 needs of our country. From our scholarship policy we

8 wanted to alleviate poverty, and so we began to tone

9 down and wanted our policy to work, but I believe

10 that -- not only that I believe, I know that the

11 pressure continued to come, because people pressured all

12 ministers and myself, the Premier and the deputy, and

13 sometimes it was just difficult because we saw education

14 as an investment, and we really thought that we were

15 doing the right thing.

16 SIR ROBIN AULD: So the pressure reached you principally

17 through the Premier and the Deputy Premier? Is that

18 what you are saying?

19 A. Well, I have also had my own pressure where students

20 would also come directly to me.

21 MR MILNE: And did you cave in?

22 A. At times I did. Simply because again I really thought

23 that education was an investment and it was so important

24 to fast forward our people for our developing country.

25 Q. But --

1 A. And the money was of course there.

2 Q. Well, you make an important point. The money you say
3 was there but this was budgeted. This was or should
4 have been a specific budget. If the Committee is making
5 decisions on the allocation of scholarships and the
6 Committee must obviously be doing so on the basis of
7 a budget, that would be proper policy. By allowing
8 people to get round that policy, the budget would also
9 be undermined, wouldn't it? You risk spending far more
10 than had been budgeted.

11 A. All the time we took into consideration the budget,
12 whether it was a letter from the Premier or the Deputy,
13 we always took the budget into consideration.

14 Q. The other risk of course is that people who simply were
15 not qualified to undertake the education they wanted to
16 go on to, would get through because they shouted loudest
17 or they made the most fuss or they approached the right
18 person, that can't be fair, can it?

19 A. That was just not always the case or the case at all
20 because our policy and our intention was to also give
21 those who were not in the A bracket or the excellent
22 bracket an opportunity. We introduced technical
23 subjects, in fact technical opportunities at technical
24 schools abroad, so that, across the field, a level
25 playing field, all of our students, whether they were

1 bright, smart, excellent, they would have gotten

2 an opportunity.

3 Q. But the point I make and it is a short one and we

4 needn't labour it much more is simply that that is why

5 you have a committee, to make these decisions; to look

6 at the supporting documentation, to consider these

7 submissions.

8 A. Yes.

9 Q. If somebody steps in, minister or non-minister, and

10 simply says: this person has been ringing me all week,

11 give them a scholarship to make them go away, that is no

12 way to do business, is it?

13 A. No, it is not.

14 Q. Before I leave this topic I would invite you to turn, if

15 you would please, to page 29 of 34. Do you have that?

16 A. Yes.

17 Q. The heading on this is "Appendix D". This is the audit

18 report and it is a list of the awards issued outside the

19 Committee's scrutiny for 2005/2006. That is awards that

20 were made that did not go through the Committee. In

21 most of those cases the notation -- the comment against

22 the name and the date is "minister awarded". It doesn't

23 specify which minister but it does say "minister

24 awarded", yes?

25 A. Yes.

1 Q. I am not going to read out the name. But I am going to
2 ask you to look at number 27. You know the name.

3 A. Yes, sir, I do.

4 Q. Did you authorise that particular scholarship?

5 A. In a cabinet setting with all ministers. Together we
6 did.

7 Q. Again, I am not going to read out the name, but that is
8 your child?

9 A. That is my child.

10 Q. So was this not at least at risk of being seen as
11 special treatment for your own?

12 A. No because -- it would not, sir, because in the setting
13 that my child received the scholarship, all ministers
14 were present and it was one of the ways that we treated
15 lots of other students' scholarships who were Turks &
16 Caicos islanders.

17 Q. And was the name read out in Cabinet when that decision
18 was taken?

19 A. It was pre-Cabinet setting that I am talking about.

20 Q. So it would not appear in any Cabinet minute?

21 A. It would not be in Cabinet minutes but in a pre-Cabinet
22 setting.

23 Q. Then, Mrs Boyce, with respect, my question remains
24 the same, notwithstanding the fact that you did this
25 with your colleagues, do you not see that that could be

1 viewed as special treatment for one of your own?

2 A. I see where it could be but I will not agree because in

3 a pre-Cabinet setting, where all ministers are

4 participating and making sure that their constituents or

5 people who are qualified, names are sent before the

6 Committee for approval or to the Ministry for approval,

7 I don't see where my daughter should have been deprived

8 from a scholarship -- who is an excellent student,

9 listed in the Who's Who of America, have already gotten

10 her Associates and her Bachelors and about three classes

11 left in her Masters, all with one scholarship in

12 the short space of three years.

13 SIR ROBIN AULD: So why did she have to get the scholarship

14 by this route? Why couldn't it be dealt with in the

15 conventional way before the Committee?

16 A. Because I have already said that that was one of the

17 route that we took and we may have -- we should --

18 looking at it now probably we should not have but we

19 wanted to fast forward education. My daughter just

20 happened to be one of the names among 400 names.

21 SIR ROBIN AULD: But why couldn't she have gone the

22 Committee route and been fast forwarded that way?

23 A. Sometimes the Committee did not meet on the date prior

24 to departure for school and so that is why some of these

25 actions were taken.

1 MR MILNE: Well, with respect, Mrs Boyce, you say she was
2 one of 400 names. She is actually one of 48 on this
3 appendix.

4 A. Well, 400 scholarships in the audit report that was
5 awarded through this way, but I realise that my
6 daughter's name was among a list of 48. But 400
7 scholarships went through either the Committee,
8 the Premier, the Deputy Premier, all ministers, Ministry
9 of Education staff and myself.

10 Q. Sir, I would anticipate moving onto a different topic.

11 SIR ROBIN AULD: Yes.

12 (4.30 pm)

13 We have reached the time. How long do you think you
14 might ask Mrs Boyce to remain tomorrow?

15 MR MILNE: Sir, I think that I may have 30 or 35 minutes.

16 It is not a long period of time. I am concerned because
17 we -- there is a degree of time pressure tomorrow. We
18 have witnesses coming from a long distance who will have
19 difficulty remaining. I have been handed a document, if
20 you will excuse me a moment.

21 Rather like Neville Chambers, I have in my hand --

22 SIR ROBIN AULD: You look very happy, Mr Milne.

23 MR MILNE: I think it may be peace in our time. I have been
24 handed the signed copy of the proof from Lisa-Raye McCoy
25 Misick and I am told that that can now be disclosed to

1 the Premier's representatives and --

2 SIR ROBIN AULD: How does that relate to what we are doing

3 about the Honourable Lillian Boyce?

4 MR MILNE: I hope it will --

5 SIR ROBIN AULD: Your relief is so great that you forgot

6 the subject in hand.

7 MR MILNE: I beg your pardon, sir.

8 SIR ROBIN AULD: Are you concerned with Mrs Boyce,

9 Mr Fitzgerald?

10 MR FITZGERALD: No, sir. I did wish to seek guidance before

11 we adjourn.

12 SIR ROBIN AULD: I have not got to that stage yet. I am

13 trying to sort out Mrs Boyce's life at the moment.

14 MR MILNE: The choices, sir, with respect, are these for

15 the Commission: either we invite Mrs Boyce to return in

16 the morning to finish questioning. Clearly Mr Smith may

17 have questions, other members of the bar may have

18 questions. I suspect there are points that may cross

19 over into the Premier's realm. I could be longer,

20 I could be an hour and the risk is that we would lose

21 a substantial portion of the morning.

22 The alternative option of course is to, with our

23 apologies, invite her to return at some point next week.

24 We have a collection of part heard witnesses.

25 SIR ROBIN AULD: We do. What is your position next week,

1 Mrs Boyce, are you available to return next week?

2 A. I can make myself available but I really wish that I was

3 able to complete this.

4 SIR ROBIN AULD: It doesn't look like it now because we have

5 got probably a good hour or more and we do have to -- we

6 are tied to tomorrow because of the travelling

7 arrangements of the three witnesses concerned.

8 Would early in the week be better for you?

9 A. Yes. Since we are negotiating, I can propose that you

10 continue now.

11 SIR ROBIN AULD: We can't continue now, we have staff and

12 other arrangements to consider and we have to do some

13 work for the next day ourselves, as you know. So

14 I didn't mean to be negotiating, I was asking you

15 politely, so as to avoid inconvenience to you. But is

16 Monday inconvenient, for example?

17 A. I will do my best to be here whenever.

18 SIR ROBIN AULD: Or Tuesday? Monday or Tuesday or whenever.

19 A. Or whenever.

20 SIR ROBIN AULD: Thank you. Thank you very much.

21 Discussion

22 MR FITZGERALD: Sir, I am very sorry to have to raise it at

23 this stage but there is a problem in relation to this

24 question of disclosure overnight. Can I just lay it

25 before you briefly, sir?

1 MR FITZGERALD: Yes. Can we postpone this until she has
2 given her evidence and then at that stage if there is
3 an application that this matter be disclosed, after she
4 has given her evidence, can we then deal with that
5 because obviously the Commission is free overnight to
6 show her anything she wishes to see that arises out of
7 the transcripts and we have no objection to that but
8 we -- some of these things are 19 separate matters and
9 we simply can't do both exercises overnight.

10 SIR ROBIN AULD: All right.

11 MR FITZGERALD: We would prefer therefore, sir, that if
12 there is to be disclosure to her of materials in order
13 that she can comment, it be through the Commission
14 without her taking copies of them, so that it is
15 the Commission saying these are the matters you may have
16 to deal with, rather than her having a roving permission
17 to take all the documents. That is our concern.

18 SIR ROBIN AULD: Just a minute. What has happened?
19 Mrs Lisa-Raye McCoy Misick will need to have to prepare
20 tonight as well. She needs to know what matters she may
21 and what documents may be relevant to her evidence.
22 What has happened to her statement, please?

23 MR PRUDEAUX: I provided it. I have not turned it over --

24 SIR ROBIN AULD: It has been provided to you, has it?

25 MR PRUDEAUX: I have been provided with it. I have turned

1 it over.

2 SIR ROBIN AULD: Has Mr Fitzgerald been provided with it?

3 MR PRUDEAUX: I had expected the Secretariat to do that.

4 SIR ROBIN AULD: I am not asking -- I am not criticising, I
5 just simply want to know.

6 MR PRUDEAUX: I have not done that --

7 SIR ROBIN AULD: That is all I want to know.

8 The alternative is that Mrs Lisa-Raye Misick could give
9 her evidence tomorrow, you should not have advance
10 notice of her witness statement and she will not have
11 advance notice of the documents that you would be minded
12 to put to her and we will get to the end of her evidence
13 in chief and we will see where we are. Otherwise this
14 is going to be a wholly unbalanced and unfair procedure,
15 coupled as I understand it with a submission from you
16 that her evidence is not allowed to be given in certain
17 respects as well.

18 MR FITZGERALD: Sir, can I just address you on that.

19 I really would invite you just to see what the document
20 says because it is not about --

21 SIR ROBIN AULD: It is very plain to me that it is a burden
22 too great for you and those instructing you tonight and
23 I understand that. No doubt it would be a terrible
24 burden for those in the Secretariat and Mr Prudhoe to
25 prepare as well. But that is fine. If they can't be

1 provided, they can't be provided. And it seems to me
2 that fairness would require that the witness statement
3 of Mrs Misick should not be provided to you either.
4 Then we have an equality of arms in this.

5 MR FITZGERALD: Sir, can I just address you on that.
6 The person whose conduct is under question as
7 I understand it in these proceedings in relation to
8 allegations -- potential allegations of corruption and
9 serious dishonesty is the Premier. There is a statement
10 obtained by the Commission from Lisa-Raye McCoy which
11 is -- the evidence is going to be given tomorrow. There
12 is quite -- obviously we need to deal with that evidence
13 as fully and fairly as possible.

14 Quite separately from that, there is a request which
15 was originally made before she was going to be a witness
16 in these proceedings, and therefore which appeared to be
17 in the context of we would like to know generally all
18 that is going on, which asks for a whole series of
19 details of things which are not to do with any
20 allegations that she is making against the Premier as
21 far as we can tell, but may well have been of interest
22 to her in the matrimonial proceedings.

23 SIR ROBIN AULD: You could have weeded those out. This
24 exchange, I gather, has been going on for some time.
25 You could have weeded it out and given her what you

1 thought was relevant, at least made a start on it
2 instead of a blanket refusal.

3 MR FITZGERALD: With respect, sir, the original request, and
4 I do ask you just to see how the request is worded.
5 The original request was in the context where she was
6 not a witness. Of course at that stage the Commission
7 were perfectly entitled and we could have had no
8 objection, if she had said to the Commission: look,
9 before I make a statement or before I give evidence,
10 I would like to see X, Y and Z. We could not have
11 objected to the Commission deciding that it was relevant
12 that she should be shown that, that she should see, for
13 example, the J&T Banka contract.

14 But she is asking us here to list all the wedding
15 gifts that were given.

16 SIR ROBIN AULD: Tell her you can't do it and do what you
17 can. Isn't that the answer here? If you can't do it,
18 it is too big a problem to do or it is not relevant,
19 then don't do it and do what you consider is
20 a reasonable request. At the moment the two parties are
21 in a state of stand-off. You won't deliver any
22 documents to Mr Prudhoe, and he doesn't want to deliver
23 the statement until he has got some discovery.

24 MR FITZGERALD: With great respect, sir, the situations are
25 not identical in the sense that one party, that is to

1 say the Premier, is the subject --

2 SIR ROBIN AULD: I have got that point. I have that point.

3 MR FITZGERALD: Sir, it is not an equality of arms position.

4 It is that she is using her position as a witness to

5 make demands which would make it impossible for us --

6 SIR ROBIN AULD: I have got that point too. In those

7 demands, and I have not seen the list but there must be

8 at least some reasonable requests for documents which

9 might be material to the evidence that she is going to

10 give.

11 MR FITZGERALD: We would have no objection to the Commission

12 making those available to her, to show them to her, but

13 what our concern is finding documents posted on the

14 Internet or use made of them which is an abuse, rather

15 than the Commission sifting what she as a witness is

16 entitled to see and making that available to her. That

17 is our concern. Sir, obviously if you give a direction,

18 I will obey whatever direction you give. I am not in

19 a position at present.

20 SIR ROBIN AULD: I am disinclined to instruct

21 the Secretariat to disclose her statement to you tonight

22 without some indication of at least halfway going

23 towards meeting the requirements that she should be

24 given some disclosure of documents that are already in

25 evidence before the Commission.

1 MR FITZGERALD: Would it be of assistance, sir, if
2 the statement -- the statement contains, I think, just
3 two references to things which could be in any way
4 critical of her, the whole of it.

5 SIR ROBIN AULD: This is the statement -- the supplementary
6 statement?

7 MR FITZGERALD: No, the first statement which has been
8 referred to. That is one of the things that is asked
9 for.

10 SIR ROBIN AULD: The Premier's statement.

11 MR FITZGERALD: If you directed that that first statement
12 should be disclosed to us, then of course it would be
13 disclosed to her --

14 SIR ROBIN AULD: I should not have thought it was necessary
15 to give a direction. It is blindingly obvious it should
16 be disclosed to her.

17 MR PRUDHOE: I beg to apologise for interrupting. I should
18 make it clear that in fact during the course of the
19 afternoon, pursuant to your earlier indications, I have
20 received a copy of the various statements to which
21 Mr Fitzgerald --

22 SIR ROBIN AULD: So I would have expected.

23 MR PRUDHOE: I thought that should be made clear.

24 SIR ROBIN AULD: It is the second statement which remains in
25 issue too which has been served on the Commission,

1 I believe.

2 MR FITZGERALD: With respect, sir, if you give a direction

3 that that should be disclosed, our respectful submission

4 would be that at that stage the witness would have

5 everything from us. The J&T Banka contract, of course,

6 we accept -- that is to say the loan contract -- we

7 accept it is something that she should see. For us to

8 try to sift through the documents and find the various

9 lists of wedding gifts and lists of all the travel, we

10 simply won't be able to do it. I fail to see how --

11 SIR ROBIN AULD: Are they in the Commission documents at the

12 moment?

13 MR MILNE: No. There is no list of all wedding gifts.

14 There is no list of all travel. One would have to, as

15 it were -- also, sir, so far as I know, it is not

16 relevant to her evidence.

17 SIR ROBIN AULD: What is the answer, for somebody to give me

18 this list and I will go through it and I will tick what

19 should be produced?

20 MR FITZGERALD: That might well assist.

21 SIR ROBIN AULD: Then perhaps with some co-operation between

22 those instructing you and the Secretariat, one way or

23 another, we can produce a little bundle. When that will

24 be, goodness knows. Ideally before 10.30 tomorrow

25 morning.

1 MR FITZGERALD: Sir, if you could give an indication to
2 those that you direct that that be disclosed, I would be
3 obliged.

4 SIR ROBIN AULD: What do you say about that, Mr Milne? Have
5 I asked the impossible of you and your colleagues too?

6 MR MILNE: We will try and rise to the challenge as far as
7 that is concerned.

8 SIR ROBIN AULD: Mr Prudhoe, have you any contribution to
9 make to this? I feel like a master in chambers sitting
10 here.

11 MR PRUDHOE: Only that the list is referential to
12 the transcripts because I was trying to be as specific
13 as possible, so it is a little difficult to take
14 a summary view without reference back to the
15 transcripts. This was a document that I expected to be
16 dealt with some time ago. Sir, do you have a letter
17 dated 20th January?

18 SIR ROBIN AULD: That is what I have just been given.

19 MR PRUDHOE: That list has been replicated in subsequent
20 correspondence, but the list has not changed since
21 20th January.

22 SIR ROBIN AULD: So far as you know, all of these documents
23 are in the Commission documents which have been
24 exhibited?

25 MR PRUDHOE: It has never been confirmed or denied. My

1 difficulty is that it has been necessary for me to try
2 to infer from the transcript relevant documents. There
3 has never been a point taken against me that these
4 documents are not there, so, naturally I am somewhat in
5 the dark. I have done my best to identify what is
6 obviously relevant, but inevitably the process is
7 somewhat speculative.

8 SIR ROBIN AULD: Looking at the letter, there are only 16 --
9 there are 16 days but there aren't that many more items.

10 MR PRUDHOE: There are 16 total requests because
11 the numbering runs through the days and they relate
12 simply to the Premier's evidence.

13 SIR ROBIN AULD: I have seen more oppressive requests for
14 disclosure than this and more copious requests. I will
15 go through this list and do my best. What about
16 Lisa-Raye McCoy Misick's witness statement; what is your
17 position on that now, still without any disclosure?

18 MR PRUDHOE: Yes, I would urge the Commission to proceed as
19 you have indicated. If we are not to get disclosure of
20 these documents, there seems to be no fairness in
21 providing a copy of the statements in advance.
22 I accept, of course, that I have seen at least the two
23 statements from the Premier.

24 SIR ROBIN AULD: Mr Milne?

25 MR MILNE: Sir, I have a sympathy obviously with the

1 position of my learned friend, Mr Prudhoe, that there
2 should be an even-handed approach to this. I suspect,
3 sir, that we may be able to resolve these matters
4 relatively quickly because I rather suspect that in fact
5 if we go through the document; identify what might
6 potentially be disclosable; check with my learned friend
7 who is staying here with us in any event, he is in
8 the same hotel, so we can easily speak this evening;
9 identify those documents; confirm in advance before any
10 disclosure that these are relevant and disclosable and
11 there is no objection taken; I am sure that I could then
12 later speak to my learned friend Mr Prudhoe with a view
13 to letting him have this. We may have to do a little
14 bit of shuttle diplomacy, but I think we can probably
15 leave this matter.

16 SIR ROBIN AULD: This list doesn't look too bad to me, Mr
17 Fitzgerald. I will look at it immediately now we rise,
18 and then we will liaise with Mr Prudhoe, and for
19 the moment at any rate, he will retain the witness
20 statement and you need take no action on disclosure.
21 Before we rise, what is the position about section 105
22 of the Evidence Ordinance?

23 MR FITZGERALD: Sir, I am going to take instructions and
24 I will let the Tribunal counsel know within the next
25 hour or two.

1 SIR ROBIN AULD: Thank you very much.

2 MR FITZGERALD: We have provided a very short skeleton
3 argument.

4 SIR ROBIN AULD: I am not anxious for myself I am only
5 interested in the time. 10.30 tomorrow.

6 (4.50 pm)

7 (The court adjourned until 10.30 am
8 on Friday, 30th January 2009)

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