

1 Monday, 9th February 2009

2 (10.30 am)

3 HONOURABLE MCALLISTER HANCHELL (continued)

4 SIR ROBIN AULD: Good morning, everybody. Mr Fitzgerald,

5 I think that you were in the middle, or you might have

6 reached the end of asking Mr Hanchell some questions.

7 MR FITZGERALD: No, sir, I didn't have the questions. My

8 learned friend Mr Ariel Misick did.

9 Cross-examination by MR MISICK (continued)

10 MR MISICK: I have a few more questions to ask Mr Hanchell.

11 Mr Hanchell, I believe at the end of the day on Friday,

12 you had been asked to conduct a search to ascertain

13 whether there were any documents in your possession or

14 in your ministry which relates to objection or challenge

15 to the valuation --

16 A. Yes, sir.

17 Q. -- by the developer. Do you recall giving evidence that

18 you thought that there had been such a challenge?

19 A. Yes, sir.

20 Q. Did you do a search --

21 SIR ROBIN AULD: Just for the record, make plain which

22 development you are referring to.

23 MR MISICK: Yes, this is the Joe Grant's Cay.

24 A. Yes, sir, correct.

25 SIR ROBIN AULD: I interrupted your question. I think you

1 were asking Mr Hanchell whether he found any documents.

2 A. Yes, I did.

3 MR MISICK: Did you find any documents suggesting that

4 the developer had challenged the valuation?

5 A. I found a series --

6 Q. Can you just answer that question?

7 A. Yes.

8 SIR ROBIN AULD: Found some letters of challenge to the

9 valuation?

10 MR MISICK: Yes, could you just --

11 SIR ROBIN AULD: That is the valuation of Mr Hoza.

12 MR MISICK: Could you just listen to the question carefully:

13 did you find any documents showing that the developer

14 had challenged Mr Hoza's evaluation.

15 A. No, sir.

16 Q. You found some other documents which throw some light on

17 the situation?

18 A. Yes, sir.

19 SIR ROBIN AULD: When you say a developer --

20 MR MISICK: I thought I said the developer.

21 Do you have those documents in front of you?

22 A. Yes, sir.

23 Q. I think it might be useful for this exercise just to go

24 a little bit through the chronology. The documents are

25 in core 6, tab 9. I don't know whether they have been

1 inserted yet or not. (Pause)

2 SIR ROBIN AULD: So that is volume 3, is it?

3 MR MISICK: It will be core 6, tab 9.

4 SIR ROBIN AULD: Thank you very much.

5 MR MISICK: Before we get to those documents, I would like

6 to refer you to the Cabinet minute of 27th June 2007,

7 when the price -- I believe it was at that meeting that

8 the question of price of the land was first considered

9 by Cabinet. That document, sir, is in core 6, tab 9

10 also.

11 SIR ROBIN AULD: Page?

12 MR MISICK: It is one of the documents that is not dated but

13 if you go from the very back of the documents, it is

14 after the various cheques, then there are two Cabinet

15 minutes.

16 I may have given you the wrong date. The minutes

17 are actually dated 30th May 2007. Do you have that?

18 SIR ROBIN AULD: Not yet but I will catch up with you. You

19 carry on.

20 I am pretty near it. Don't wait for me.

21 MR MILNE: There are no page numbers on these, I am afraid,

22 sir, within the small section. What we have is

23 a Cabinet action minute dated 7th June 2007.

24 SIR ROBIN AULD: I have that.

25 MR MILNE: And a further one dated 27th June 2008. I think

1 it is the June 2008 one that my learned friend is --

2 MR MISICK: No, the one prior to that, the 2007 one. Thank
3 you.

4 You see that the action minute says that the Premier
5 raised the matter and that Cabinet advised that -- do
6 you have that?

7 A. Yes, sir, I have the minute.

8 Q. Item 3:

9 "It approved for the company to acquire the freehold
10 title of the hotel site of 200 acres for US\$2 million
11 payable in case until November 30th."

12 Do you see that?

13 A. Yes, sir.

14 Q. As I understand that, the hotel site was being sold for
15 \$2 million and a payment had to be received by 30th
16 November 2007?

17 A. That is correct.

18 Q. Was that your understanding?

19 A. That is my understanding.

20 Q. Then at the bottom of the page, item 8, it instructed
21 the Attorney General and TC Invest to immediately
22 prepare a development agreement along the lines set out
23 above.

24 Now, we know the land was not transferred by
25 November 30th 2007?

1 A. That is correct.

2 Q. Nor had the government and the developer entered into

3 any development agreement by that date?

4 A. That is correct.

5 Q. Help us if you can, can you tell us why -- what was

6 the reason for imposing the November 30th deadline?

7 A. The government -- there are two points about that, (1)

8 the commitment from the developers at the time and it

9 needed the monies into the general revenue at that

10 particular time.

11 SIR ROBIN AULD: They were needed for the general revenue by

12 then?

13 A. Yes.

14 SIR ROBIN AULD: So the capital monies received from

15 the sale of the land were going to finance current

16 expenditure.

17 A. I cannot say that. I'm not too certain exactly --

18 MR MISICK: Well, it goes --

19 A. But it goes to the Treasury.

20 MR MISICK: It goes without saying if you needed the money,

21 you needed the money for expenditure on general

22 government expenditures.

23 A. I think that is more fair, yes.

24 Q. Are you able to tell us why the transaction was not

25 completed by November 30th 2007?

1 A. The survey registration and mutation of the land was not
2 completed, enabling the transaction to go through by
3 that date. I believe that was only completed in
4 June of -- early June 2008.

5 Q. Had the development agreement been -- can you help us as
6 to why the development agreement had not been executed
7 by November 30th?

8 A. The development agreement had not been executed because
9 a part of the execution called for the paying of the
10 \$2 million in minute 07401 simultaneously. When
11 the development agreement is executed the money is paid
12 in at the same time.

13 Q. Were there ongoing negotiations between the government
14 and the developer in relation to this development
15 agreement?

16 A. At what particular time? Around November?

17 Q. Since this Cabinet meeting in May 2007. Were there
18 ongoing negotiations subsequent to that?

19 A. There may have been.

20 Q. Can we just fast forward to 2008. In June 2008
21 the development agreement had still not been executed,
22 nor had the land been transferred?

23 A. That is correct.

24 Q. There was a meeting planned -- there was a meeting
25 planned for, I believe it was 14th June 2007, at which

1 the land was to be transferred and the \$2 million paid?

2 A. That is correct.

3 SIR ROBIN AULD: What are you looking at now in the new

4 bundle, Mr Misick?

5 MR MISICK: I will come to it in just a minute.

6 SIR ROBIN AULD: You are not there yet?

7 MR MISICK: Yes.

8 Let's go to it. Can I refer you to page 1 of the

9 bundle.

10 SIR ROBIN AULD: Thank you.

11 MR MISICK: You see there is a ... (Pause).

12 SIR ROBIN AULD: This is an enquiry from Mr Hanchell to

13 the attorney's chambers regarding the Cabinet decision

14 of 30th May of the previous year.

15 MR MISICK: Yes. Can I first go to page 4, before I get

16 there sir. That is a letter addressed to

17 Rhondalee Braithwaite, the Deputy Attorney General, and

18 it came from Mr Owen Foley.

19 SIR ROBIN AULD: It doesn't have a date.

20 MR MISICK: The date is on page 3. It is an email

21 correspondence. June 11th.

22 SIR ROBIN AULD: Thank you.

23 MR MISICK: It says at the top of that letter on page 4:

24 "In connection with this matter" --

25 Sorry, the subject Joe Grant's Cay, land transfer.

1 It says:

2 "In connection with this matter, you will have seen

3 the correspondence yesterday in getting the parcel

4 number. The freehold parcel is 30101/25,

5 West/East Caicos. I am instructed that the transfer

6 will be taken in the name of Star Platinum Hotel

7 Limited. Can you please prepare the transfer and have

8 it executed by the Governor? In relation to the closing

9 agreements, as we mentioned at the meeting last week,

10 the initial acquisition is to be financed.

11 Jonathan Katan of Miller Simons O'Sullivan is acting for

12 the lender. In the usual way the lender will advance

13 funds only on the basis that it is charged if

14 registered. What is proposed therefore is that there

15 will be a three-way closing in Grand Turk on Friday,

16 presumably at the Land Registry, at which land transfers

17 will be delivered for stamping and registration,

18 together with the lender's charge. The intention is

19 that the funds released at the same time to TCIG.

20 "Obviously that necessitates an instruction from

21 someone in authority to the land Registrar as to the

22 urgency of the matter and as to closing arrangements to

23 ensure immediate registration. Can you arrange that?

24 Can you let me know at what time on Friday morning would

25 suit so that we can have the necessary people and

1 documents in Grand Turk."

2 So this is on 11th June 2008.

3 SIR ROBIN AULD: This letter, though, headed

4 "Joe Grant's Cay Land Transfer", is it about it?

5 MR MISICK: Yes, it is, sir. This was the first time

6 the parcel number of the hotel site was being

7 identified, is that correct?

8 A. That is correct.

9 Q. Now, if we go to page 2. It is the response from

10 Ms Braithwaite to Mr Foley. It says:

11 "Thank you for your e-mail. I have also received

12 copies of the register pages indicating the parcel

13 number. Attached you will find the transfer form which

14 I will have executed by the Governor in advance of

15 Friday's exchange. I will make contact with the

16 Registrar of lands and arrange a time for lodging

17 the transfer and bank charge in exchange for

18 consideration and stamp duty payments and get back to

19 you with a confirmed time tomorrow."

20 So that would have been the -- in fact it would have

21 been -- the closing should have taken place on the 12th.

22 Is that correct?

23 A. That is correct.

24 Q. Then we go to page 1. You will see that there is

25 a further e-mail from Ms Braithwaite to you?

1 (10.45 am)

2 SIR ROBIN AULD: Of the same date, 12th June?

3 MR MISICK: 12th June, yes, sir.

4 It says:

5 "Dear Honourable Hanchell, the minute 07401 from

6 the meeting held on 30th May 2007..."

7 That is the Cabinet minute that we first saw earlier

8 on:

9 "... I have in hand regarding the transfer of the

10 hotel land refers to the land being acquired prior to

11 November 30th 2007. Is there a later minute authorising

12 to proceed? If not, perhaps you should make contact

13 with the Governor and see if he would be willing to have

14 a round robin decision taken which could be confirmed at

15 your next meeting."

16 What did you understand Ms Braithwaite to be telling

17 you when you received this e-mail?

18 A. I understood her to be saying that the minute that

19 allowed the \$2 million for the hotel site had expired on

20 November 30th 2007, and she was looking for a further

21 authorisation, and she was asking me to perhaps contact

22 the Governor to see if he would be willing to have

23 a round robin to confirm if government was still willing

24 to go ahead based on that minute, and have that decision

25 confirmed at the meeting on Wednesday, which would have

1 been the 18th.

2 Q. The round robin, who would have been involved with the

3 round robin? It would be members of Cabinet?

4 A. Yes, there would have been -- all members of Cabinet

5 would have been more than likely contacted by telephone

6 or by some e-mail or something in relation to

7 the decision.

8 Q. So she was asking for confirmation that the transaction

9 ought to proceed, notwithstanding the November 30th

10 deadline?

11 A. Yes.

12 SIR ROBIN AULD: But the valuation would have been out of

13 date by then, at least, wouldn't it? I don't know what

14 the date of the comparators were but the original

15 valuation for the June approval would have been well out

16 of date by this time.

17 A. It would have --

18 MR MISICK: If there was one.

19 SIR ROBIN AULD: If there was one.

20 MR MISICK: Because I think she speaks to that as well.

21 SIR ROBIN AULD: You think there wasn't?

22 MR MISICK: She suggests there might not have been one in

23 the next e-mail correspondence.

24 SIR ROBIN AULD: Whatever the basis of the price, it would

25 need review, wouldn't it?

1 MR MISICK: Yes.

2 Speaking to that, can we go to the e-mail that she
3 sends on page 21. It is a letter dated 13th June, from
4 Ms Braithwaite to Mr Foley. At the bottom of page 21,
5 it says:

6 "Thank you for your letter. I am sorry for
7 the short notice of this delay, but I informed you as
8 soon as I became aware. I am taking instructions on how
9 and when we will be in a position to proceed with
10 the transfer of the land. The main issue is that the
11 Cabinet decision taken to offer to sell the land was
12 time limited to November 30th 2007 and since it did not
13 take place at that time, there needs to be a new
14 decision taken."

15 Then she adds this:

16 "It also appears that no valuation was done in
17 relation to the price of the land."

18 Are you able to help us as to whether or not
19 a valuation was done?

20 A. I am not certain if a valuation was done prior to this.

21 I know the minute speaks about the \$2 million but
22 I believe, speaking from memory, somewhere in one of
23 these bundles there may have been a 2007 valuation.

24 That is my memory, I believe seeing that.

25 SIR ROBIN AULD: At any rate by this time it would have been

1 well out of date.

2 MR MISICK: Yes.

3 MR MILNE: Sir, if I can assist, there is a November 2006

4 valuation, although it is not on exactly the same

5 parcel, that is in the same section we have been dealing

6 with at red core 6, section 9. It is a valuation on

7 7th November 2006 by Mr Hoza addressed to

8 Mr Conrad Higgs.

9 SIR ROBIN AULD: We have not a page number on this?

10 MR MILNE: It is about the fourth page in, sir.

11 SIR ROBIN AULD: Thank you.

12 MR MISICK: That is the valuation for the 75 million, is

13 that correct?

14 A. Yes, that would have been for the entire island.

15 Q. I think we've seen that earlier on.

16 A. Yes.

17 Q. Just to put it in context, perhaps I should have read

18 this letter first, at page 9 is Mr Foley's letter, to

19 which Ms Braithwaite was responding.

20 I am told it is also at page 23.

21 SIR ROBIN AULD: June 11th?

22 MR MISICK: It is the one at page 23.

23 SIR ROBIN AULD: Not 9?

24 MR MISICK: Not 9, yes. June 13th.

25 This was a Friday, the 13th?

1 A. Yes.

2 Q. It says:

3 "Joe Grant's Cay. Dear Ms Braithwaite, as you know
4 we act in tandem with Chalmers & Company for developers
5 of the Joe Grant's Cay development. In that respect our
6 clients are dismayed and disappointed that
7 the last-minute postponement of TCIG of the closing of
8 the acquisition of the hotel site on Joe Grant's Cay.
9 As you know, the closing was intended to take place
10 today and was postponed by TCIG yesterday afternoon.
11 The closing could not have taken place before now,
12 because the necessary mutations had been registered only
13 this week. Our clients negotiated the main commercial
14 terms of this transaction with the Crown over a year ago
15 as reflected in TCIG's letter of 5th June 2007. Since
16 then our clients have been spending considerable money,
17 time and effort in the planning of a major hotel, golf
18 and villa resort for Joe Grant's Cay. Throughout that
19 process they had been in regular contact with TCIG
20 regarding their plans, regarding the mutation of the
21 land required for the development, the terms of the
22 development agreement and related issues and so on.
23 Those contacts and discussions included a meeting last
24 week at which you, the Premier, Minister Galmo Williams
25 and Jeffrey Hall and Conrad Higgs of TCI Invest attended

1 on the government's side. During that meeting the offer
2 letter of June 2007 was specifically referred to by you.

3 "Our clients cannot understand how despite all of
4 this contact, discussions, correspondence and
5 negotiations, the very first indication that they had
6 from TCIG that the date of 30th November 2007 referred
7 to in the offer letter was in any way significant was
8 yesterday afternoon, 24 hours before the intended land
9 closing. This is simply not a proper way to conduct
10 business and our clients are dismayed that TCIG should
11 have behaved in that fashion. Joe Grant's Cay is
12 a remote, uninhabited cay without a dock, road,
13 electricity, or any other infrastructure of any kind.
14 It is located in a remote section of the archipelago and
15 accessible only by sea. The journey time from
16 Providenciales by boat is one and a half hours.
17 The development poses any developer significant
18 logistical difficulties and related expense. With that
19 in mind, the developer in its negotiations with TCIG
20 proposed and finally negotiated commercial terms which
21 would allow TCIG and the public ... a significant upside
22 in the added value of the land that would be brought
23 about by the development being carried out at the risk
24 and expense of the developer. In that respect, TCIG
25 gets 15 per cent of the gross revenue of the sales of

1 lots in the main villa section of the development ..."

2 SIR ROBIN AULD: I think we could probably shorten this,

3 Mr Misick. It is a detailed protest going to two

4 matters, one, delay and the valuation itself.

5 MR MISICK: Yes.

6 SIR ROBIN AULD: The new valuation.

7 MR MISICK: Yes, that is page -- I think we can do that,

8 yes.

9 SIR ROBIN AULD: That is one of the protests which

10 Mr Hanchell referred to this morning.

11 MR MISICK: I don't think this protest was directed to

12 Mr Hoza's valuation.

13 SIR ROBIN AULD: Was it not? I read the two paragraphs you

14 have just read as a general plea to bear in mind all

15 the difficulties. This was a protest at the original

16 valuation.

17 MR MISICK: No, it was a protest (a) at the delay and (b) at

18 the suggestion that the land should be revalued but not

19 specifically in relation to Mr Hoza's valuation.

20 I think Mr Hanchell's evidence before you, he suggested

21 that the protest was in relation to Mr Hoza's valuation,

22 I don't think we can go that far.

23 SIR ROBIN AULD: So protest at to re-value at all.

24 MR MISICK: Yes.

25 Can I just pause there. Why did

1 the Deputy Attorney General contact you in relation to
2 this problem? Why were you involved?

3 A. As a minister of natural resources, from time to time
4 I am contacted to follow up on important mutations for
5 registration for closing with the Land Registry and also
6 as the minister where a valuation is required, sometimes
7 I am contacted to give instructions to provide
8 valuations.

9 Q. At any rate she contacted you and -- before I ask you
10 that, can we look at page 2?

11 A. Yes.

12 Q. There is an email from you dated 12th June also?

13 SIR ROBIN AULD: I think we have looked at that already.

14 You want us to look at it again?

15 MR MISICK: It is one to Mr Delton Jones, not
16 the Attorney General. It is the one at the top of that
17 page.

18 SIR ROBIN AULD: Thank you.

19 Q. It says:

20 "Dear Delton, please make note that \$2.2 million is
21 expected."

22 A. Yes.

23 Q. Please tell us why were you writing to Mr Jones in those
24 terms?

25 A. At that particular time Mr Jones forecast, I believe and

1 for a better word, was experiencing a problem of
2 potential cashflow shortage and as normal as sometimes
3 the chambers will involve me as minister of natural
4 resources to follow up on mutations and also the finance
5 department, in particular Mr Delton Jones, whenever I am
6 aware or we are aware of stuff, he is being kept up to
7 date all the time with what monies is expected to come
8 to government. So I was simply informing him of what he
9 should -- what monies he should be expecting at
10 a particular time and this is not an unusual thing.

11 Q. You were expecting these \$2 million; were you expecting
12 other monies as well?

13 A. There were a number of transactions that the government
14 was expecting monies to come from. Normally there is
15 a general list of where monies are coming into
16 the government, especially substantial sums of monies.
17 There would normally be myself, Mr Jones and
18 the Deputy Attorney General and those three different
19 individuals will basically feed information as to when
20 monies are coming in. This is one of the many other
21 transactions.

22 SIR ROBIN AULD: But it sounds as if you have relied --
23 the government, that is, for some time on these capital
24 disposals to fund your current revenue.

25 A. Yes, I think that is --

1 SIR ROBIN AULD: Fund your current revenue expenditure

2 account.

3 A. I think it is budgeted, those numbers are taken into

4 consideration.

5 MR MISICK: I think it is a typical example.

6 SIR ROBIN AULD: This is probably the wrong question to ask

7 you, and no doubt we have it somewhere in the papers,

8 but can you give any indication of how much government's

9 current expenditure in, say, last year or the year

10 before or the year before has been funded out of these

11 capital disposals?

12 A. I prefer not because I don't have the slightest clue.

13 I don't want to give the wrong numbers.

14 SIR ROBIN AULD: It is an unfair question to ask you, but we

15 can probably find it in the papers somewhere. Thank

16 you.

17 MR MISICK: Now, at any rate, we arrive at a situation on

18 Friday, 13th June where there was this protest by

19 the developer and the Deputy Attorney General, having

20 legitimately raised an issue of the -- quote as to value

21 and the offer based on -- the price based on the offer

22 having expired, is that correct?

23 A. That is correct.

24 Q. It was her suggestion that it be dealt with by way of

25 round robin of the Cabinet?

1 A. That is correct.

2 Q. Was there internal discussion as to how this ought to be
3 dealt with?

4 A. Yes, it was.

5 Q. Were you involved in those internal discussions?

6 A. No, I wasn't involved in internal discussions, meaning
7 sitting down at a table at a meeting.

8 At the end of the day, I was giving instructions to
9 request valuations.

10 Q. Do you know who were involved in the discussions?

11 A. It would have been the Attorney General, it would have
12 been His Excellency the Governor, it would have been
13 maybe the Premier and maybe TC Invest. I am using those
14 maybe because at that particular stage, those are
15 the agencies responsible for development agreements. My
16 role was simply to follow up with, you know, from the
17 ministry of natural resources' perspective in procuring
18 fresh valuations.

19 (11.00 am)

20 MR MISICK: Was it the result of these internal discussions
21 that you sought valuations both from Mr Hoza and from
22 BCQS?

23 A. Yes, and at that particular time, the mutations were
24 completed and in my request to both -- Mr Hoza and BCQS,
25 we were able to identify exactly the hotel site and

1 the villa site so you would notice that both of the
2 valuations has a line item for the different -- I think
3 it is four different parcels that was mutated.

4 Q. Just to finish the chronology, we know that the
5 transaction did in fact proceed, I think this was round
6 about 18th June?

7 SIR ROBIN AULD: I think we should look before that,
8 shouldn't we, at page 28, which is Mr Hanchell's
9 instruction to the new valuers in London for
10 the valuation which they eventually gave.

11 A. Thank you.

12 SIR ROBIN AULD: Is that right?

13 A. Yes, thank you.

14 SIR ROBIN AULD: That is an email of 13th June.

15 A. To BCQS.

16 MR MISICK: It says:
17 "The value is to be based on the market value of the
18 raw land in its present state."

19 A. Yes. Then there is one somewhere in here, exactly
20 the same thing to Mr Hoza.

21 Q. That is at page 11.

22 A. On the same date, yes.

23 SIR ROBIN AULD: Ditto to Mr Hoza?

24 A. Yes. The exact same thing.

25 MR MISICK: The instructions were in identical terms.

1 A. Yes, cut and paste.

2 Q. As far as you were concerned, you were asking them to
3 give values based on the undeveloped value of the land
4 at that time?

5 A. Yes, sir.

6 Q. I would like you to have a quick look at the BCQS
7 valuation. That is at page 33 of this little bundle.

8 A. Yes.

9 Q. At page 35, this is the valuation summary that starts
10 off:

11 "In our opinion the current market value of the
12 undeveloped land registered at block 3010, parcel 25,
13 27, 28 and 29, is in the region of 7,700,000."

14 So they have used the expression "undeveloped land".

15 Was that what you were seeking both from them and from
16 Mr Hoza?

17 A. Yes, sir.

18 SIR ROBIN AULD: Well, yes. So that purported to be
19 the current market value, that is the best way, but
20 looking at undeveloped land without any regard to its
21 discounted potential.

22 MR MISICK: I am coming to something else which I hope will
23 dispel that.

24 If you go to page 37, there is a description of the
25 property in the BCQS report. At the bottom of that

1 page, it says:

2 "The potential [the last paragraph] of
3 Joe Grant's Cay is considerable. However, substantial
4 funds would need to be invested in infrastructure to
5 make any large scale tourist-based development industry
6 viable. Parrot Cay is an example of a successful
7 tourism development on an island which faced the same
8 challenges. Today Parrot Cay is a high-end tourism
9 resort ... from both North Caicos and Providenciales
10 with a hotel as well as a private estate and home
11 sites."

12 Then he goes on, and at page 7, he identifies
13 current development issues. Paragraph 3.3.

14 A. You mean page 40?

15 MR MISICK: Page 40, I am sorry.

16 For the sake of completeness, 3.4:

17 "The land is currently undeveloped and is surrounded
18 by water. The nearest development is found within
19 the inhabited island of Middle Caicos as described in
20 section 3.1 of this report. It is assumed that planning
21 permission is available for the subdivision of the land
22 for residential plots for commercial use. Having given
23 consideration to the current development of similar cays
24 within the Turks & Caicos Islands, it is assumed that
25 planning permission for commercial use would include

1 a condominium hotel related development."

2 So this valuation is not based on agricultural use,
3 is it?

4 A. No, it is not.

5 Q. It does assume that the island would be developed in
6 much the same way as Parrot Cay and other islands.

7 A. Yes.

8 SIR ROBIN AULD: So that's the heavily discounted potential
9 for the reasons they give, enormous investment required
10 to develop it and the risk involved.

11 MR MISICK: Well, I think that speaks not so much to the
12 discount, but to the --

13 SIR ROBIN AULD: You have always got to discount the
14 potential value of land when developed by all
15 the development costs, the uncertainties. This seems to
16 set out a -- no doubt in their view correctly -- heavily
17 discounted potential of the present value of the land.

18 MR MISICK: Yes. I think it is also fair to say it is
19 a wholesale point rather than a retail price for
20 individual lots.

21 SIR ROBIN AULD: Yes, of course. It is apparent from this
22 valuation that they are familiar with other
23 developments, including Parrot Cay, for instance, in
24 the Turks & Caicos Islands. They have had to advise on
25 property here before. Thank you.

1 MR MISICK: I say this, probably more like a comment than
2 a question: you also see from the description of the
3 property that they have given a very detailed
4 description of the property, so it is not a case
5 where -- even though they have not visited the property,
6 the description is very, very detailed description of
7 the property, including a map showing its location.

8 SIR ROBIN AULD: Would they have identified that from
9 contours on the map or would they have had other
10 information?

11 MR MISICK: They could have identified that from
12 Land Registry maps.

13 A. I can shed some light on that. When the mutation was
14 done, there was an overlay from the Land and Survey
15 department, so they both were provided with the map
16 showing the contours in a colour form and the various
17 mutations.

18 SIR ROBIN AULD: They refer in the ante-penultimate
19 paragraph at page 5 to a topographical survey provided.

20 I don't know whether that was provided for
21 the purpose of this exercise or they already had it.

22 Did you send other material to the London valuers in
23 addition to the letter that you have shown us at
24 page 28?

25 A. The maps, the maps would have come --

1 SIR ROBIN AULD: Just the maps?

2 A. Yes, the maps, and it shows the contours of the land,
3 topographical stuff. Those --

4 SIR ROBIN AULD: That would be the topographical survey?

5 A. Yes, it would have the contours.

6 MR MISICK: We touched on this on Friday and I would be
7 happy to show you the page if you like, but I believe it
8 is true that Mr Hoza's valuation -- perhaps I can just
9 pause here for a minute.

10 Sticking with the BCQS report, if you can go back to
11 the basis of the valuation, I think that is on page 38.

12 SIR ROBIN AULD: Or is it 35?

13 MR MISICK: Sorry, it is 44. Valuation methodology:
14 "There are three basic approaches to valuation of
15 real estate property and the valuer has to consider
16 the applicability of each of the approaches to arrive at
17 an indication of the fair market value for the subject
18 property."

19 They identify these as the cost approach, income
20 capitalisation approach and the comparable sales
21 approach.

22 Do you see that?

23 A. Yes.

24 Q. They go on to say that:
25 "In our opinion the appropriate method of valuing

1 the subject land is based on a comparison of the subject
2 property with recorded sales and listings of comparable
3 properties ... we have used comparable sales approach of
4 property valuation and list the following comparable
5 properties."

6 So you see they used the comparable sales approach
7 and they have identified parcel -- can you tell from
8 these numbers where these parcels are located, 20101, 2,
9 3, 4 and 5?

10 A. The 2s can either be Ambergris Cay or South Caicos;
11 the 4s is Middle Caicos; and the 3s is -- the official
12 description is East Caicos. The 3s is
13 the Joe Grant's Cay area and the west side of --
14 the western side of East Caicos.

15 SIR ROBIN AULD: The most recent comparators there are in
16 mid-2007. The others are 2004 and 2006.

17 MR MISICK: Just to be fair to Mr Hoza, he adopted
18 the comparative sales approach as well, is that not
19 correct?

20 A. Which page?

21 Q. It is in his --

22 SIR ROBIN AULD: We can see at page 2 of his letter,
23 I think, of -- it is unnumbered. No, it is
24 the memorandum. Premier appraisal, isn't it?

25 MR MISICK: Yes, at 32D.

1 SIR ROBIN AULD: I have looked at transactions at
2 Ambergris Cay. One of the comparators used by BCQS.
3 MR MISICK: If you look at 32G you will see the ones that --
4 the main ones that he relied on were --
5 SIR ROBIN AULD: Some of those are pretty old too.
6 A. Page 4?
7 SIR ROBIN AULD: He says he looked at the
8 North Caicos Yacht Club, the marina project, Sandy Point
9 nearing completion and so on.
10 (11.15 am)
11 MR MISICK: Yes. Just to ask you one question about
12 North Caicos, the yacht club, that is on North Caicos,
13 which has considerable infrastructure, is it not?
14 A. Yes, a marina --
15 Q. And a marina?
16 A. Yes.
17 Q. He also, I think we touched on this on Friday, he also
18 relied on Ambergris Cay.
19 Have you been to Ambergris Cay?
20 A. Yes, I have.
21 Q. Is there any comparison between Ambergris and
22 Joe Grant's Cay?
23 A. No.
24 Q. Can you tell us what you will find on Ambergris Cay?
25 A. As a matter of fact I do not think there is a comparison

1 between Ambergris Cay and Providenciales. Ambergris Cay
2 is a private island which sits south of South Caicos.
3 It has an international airport of maybe 6,000 feet of
4 runway. It has all its utilities underground,
5 electricity and water. It is the only island in this
6 country which has an underground sewer system.
7 Everything is self-generated on the island, water
8 making, the treatment of the sewer system. It has
9 a marina that is not completed but obviously a port
10 facility. Overall it is a self-sufficient island that
11 has all of the amenities and can function, unlike North
12 and Middle Caicos which has to have power on the sea
13 cable from Providenciales.

14 Q. Can I just ask you one more question before we move on
15 from this --

16 SIR ROBIN AULD: I suppose the question really might be,
17 whichever valuation was correct, why was the government
18 opting for the far cheaper one in its capacity as vendor
19 and trustee of the interests of the people of the
20 Turks & Caicos in maximising the source of revenue? You
21 were substituting in a way I suppose your own view,
22 which was the more likely to be accurate valuation. It
23 may be that was a proper approach, but nevertheless you
24 had a valuer appointed by the government who had
25 recommended to you or indicated to you a very much

1 higher valuation, and there you were as the vendor not
2 appearing to want to take advantage of it in your
3 dealings with this developer. That might be
4 the question.

5 A. Okay, let me try to answer it for you fairly. If we go
6 back to the minute of 2007, I can't comment on how
7 the price of \$2 million for the hotel site was derived,
8 but that obviously came with other benefits that
9 government would have gotten -- this is 2007 now --
10 would have gotten 15 per cent of the gross sales after
11 the improvement. So there is long-term greater revenue
12 from government. If you notice to the minute 08468 of
13 June 18th 2008, there was discussions in Cabinet as it
14 relates to arriving at this. The government end up not
15 only getting \$2 million for the hotel site. It end up
16 collecting \$1.2 million in addition to that, to
17 \$3.2 million.

18 But to answer the question specifically as to why
19 government chose the BCQS evaluation, I think it is only
20 fair to say that along the lines of what the 2007 minute
21 did, was to set a price, however that price came about,
22 for the hotel site and the mechanism remained that there
23 would be 15 per cent on the resale of the other lands.

24 I believe those are the basis of where Cabinet must
25 have made the decision, because they were not selling

1 the land outright as a one-time sale and that's it.

2 I believe that is the best I can try to explain what
3 you have asked me.

4 SIR ROBIN AULD: Thank you.

5 MR MISICK: Did you believe in the accuracy -- accuracy is
6 not the right word for this, a valuation can be
7 subjective -- but did you believe that the BCQS
8 valuation was a proper valuation?

9 A. Not only I believed, based on the Cabinet decision,
10 the Cabinet seems to also believe that the BCQS
11 evaluation were more relative and hence we have
12 the decision.

13 Q. Now, in agreeing to accept the BCQS evaluation, and I am
14 asking you to speak for yourself now, were you motivated
15 by any corrupt or dishonest motives or desires?

16 A. No, sir.

17 Q. I think I can leave that now, unless you want to explore
18 that further, sir?

19 SIR ROBIN AULD: No, thank you very much. Thank you for
20 following that up.

21 MR MISICK: I want to ask you a few questions, before Friday
22 I was asking you a few questions about the land policy
23 and its application. I just want to complete that now.

24 If we can refer to the letter from Mrs Campbell,
25 your PS, to the Commission on 29th January. I think

1 that is in bundle --

2 SIR ROBIN AULD: I think Mr Milne had prepared a separate

3 bundle, didn't he?

4 MR MISICK: Yes. Do you have it, sir?

5 SIR ROBIN AULD: I have it in the main.

6 MR MISICK: Do you have it?

7 A. The small white bundle, no. Unless it got stuck in one

8 of these. I think I put it in one of these, you know.

9 MR MISICK: I think I can perhaps ask you this without

10 reference to that. If we need it we will find it. You

11 will recall that she in her evidence, in this letter to

12 the Commission, she stated that --

13 A. Mrs Campbell?

14 Q. Mrs Campbell. That there are three methods, however

15 land was allocated, some came from you, some from

16 ministers, some from applicants; that there was no --

17 that the system was informal?

18 A. Yes.

19 Q. Do you accept that?

20 A. I accept that.

21 Q. Do you also accept that, whether you call them

22 instructions or directions, however, there was contact

23 made with public officials directly by ministers and

24 members of Parliament in relation to the issue of

25 specific plots to specific individuals, do you accept

1 that?

2 A. Yes.

3 Q. That is a practice that pertains?

4 A. Yes.

5 Q. She also said in her letter to the Commission that these

6 instructions not only come in writing but they also are

7 given orally?

8 A. Yes.

9 Q. Do you also accept that a system of allocating and

10 processing applications for lands to Belongers, an oral

11 system is not an appropriate system?

12 A. Not at all.

13 Q. Can you explain to the Commission why is it that you

14 feel that you, as a minister, leaving aside your

15 responsibility for oversight of the policy, why would

16 you be -- were you involved in individual applications?

17 A. Well, sir, we live in a very small community. Everybody

18 practically know each other. If we go to the grocery

19 store, it takes you an hour to buy something because

20 individuals are making that oral representation because

21 they perhaps are putting in an application and haven't

22 heard from it, go to churches, it is the same kind of

23 representation. Even here in the Commission at the

24 break, people will pull you aside and say: what happened

25 to my application.

1 I don't think the informal system is perhaps
2 the best kind of system to use. I know we have made
3 commitments and tried to put in systems.
4 The Cayman Islands Land Registry system is one of the
5 systems we are going to pull from to help create
6 a database for management and allocation. I prefer not
7 to ever have to be working in such a system that will
8 constantly create the kind of atmosphere of favouritism
9 and perhaps corruption and so on and so forth. I would
10 prefer a system that is in place, and whatever my role
11 as minister of natural resources is, I prefer to play
12 that role, but a system that sort of have minister of
13 natural resources and not necessarily me, whoever it
14 would be in future generations to be more hands-off
15 because it just creates too much unnecessary
16 accusations. It puts you in a position where, quite
17 frankly, you run into someone, they give you a story:
18 I have been applying for land, five years, six years,
19 ten years; you go to the office and say: look, I just
20 ran into this person and give him a piece of land. That
21 is considered instructions and perhaps that is not right
22 because other individuals would have been
23 disenfranchised because they didn't run into you to make
24 a specific request on their behalf.
25 MR MISICK: Can I ask you this: have you benefited

1 personally and financially from any of the applications
2 you have submitted or given instructions on?
3 A. No, sir. Not at all.
4 Q. One more question, sir --
5 SIR ROBIN AULD: Are you leaving that subject --
6 MR MISICK: I have one other question but if you want to
7 ask.
8 SIR ROBIN AULD: No, you finish it.
9 MR MISICK: Leading up to the elections in 2003, did your
10 party make any campaign promises regarding Crown land?
11 A. Yes, we did. During our campaign, and I think it is
12 clear in our manifesto, we made it very clear that it is
13 our belief that every Turks & Caicos Islander should be
14 afforded an opportunity for both a residential and
15 a commercial parcel of land. We were very, very vocal
16 and repeatedly campaign on that and that is the case.
17 Q. During the time that you were in government, have you
18 been trying to give effect to that campaign promise?
19 A. Yes, we have. As a matter of fact, we have created
20 a number of more subdivisions over the six years that we
21 have been in power, versus, and I say this loosely
22 because I don't have the stats, versus accumulative
23 subdivisions over successive governments. That can't
24 come about from the various demands. People migrating
25 to the islands, Providenciales, is mainly the island

1 where everybody migrates for employment. People moving
2 back into the islands because of the economic feeling
3 and opportunities and so on and so forth. As a result
4 we have created a number of subdivisions throughout
5 the country.

6 SIR ROBIN AULD: Making small plots available?

7 A. Small and large plots available, large meaning up to 10
8 acres.

9 SIR ROBIN AULD: But making more individual plots of
10 different sizes available?

11 A. Yes.

12 MR MISICK: I am now finished with that subject.

13 SIR ROBIN AULD: Just one question for a point of
14 information, you mentioned the Cayman Islands system,
15 Mr Hanchell.

16 A. Yes.

17 SIR ROBIN AULD: That is much more formalised than here, is
18 it?

19 A. What the Cayman Islands system is, it is
20 a Land Registry-based system and out of that
21 Land Registry-based system, there are certain elements
22 of that that has already been identified that can be
23 applied to a system that would be a managing tool for
24 the allocation of Crown land and statistical purpose.
25 So it would be all integrated with Lands and Survey,

1 with the valuation department, with -- and also
2 the general public would be able to feed into
3 the system. At the moment, just to give you a example,
4 if someone needs a copy of the register, a certified
5 copy, that is done as a manual thing. In
6 the Cayman Islands, you can go online and put a credit
7 card in and pull that up. So there are a number of
8 stuff that that system has already identified that is
9 going to enhance a land management system.

10 SIR ROBIN AULD: I thought you were moving toward an online
11 registration system here?

12 A. Yes, we are. That is part of the Cayman Islands system.

13 SIR ROBIN AULD: Does that feature in the new Crown lands
14 ordinance that is proposed? Or in some other proposed
15 piece of legislation?

16 A. What, the new system that we are putting in place?

17 SIR ROBIN AULD: What you have just described.

18 A. No, as a matter of fact, it is my understanding that the
19 new system that we are putting in place in the
20 Land Registry, there is no requirement, no amendment is
21 necessary by law to give it effect. It is my
22 understanding from chambers that the way the law reads,
23 it allow digital submissions as well as manual
24 submissions as it is.

25 SIR ROBIN AULD: It is a management tool really.

1 A. It is a management tool really.

2 SIR ROBIN AULD: But is there anything else in the

3 Cayman Islands system which I thought you were

4 suggesting overall was more formalised?

5 A. Yes, for instance, just to give you an example of what

6 the Cayman Islands system will do to help enhance

7 the Land Registry management tool system -- sorry,

8 the Cayman Islands Land Registry tools system will do to

9 enhance the Crown land management system. For example,

10 they have already identified that it is possible to have

11 sort of a separate register in the Land Registry that

12 will identify and separate Crown land transactions or

13 Crown land from land that is private.

14 So those are one of the things that the Crown land

15 management system, it is going to be important for them

16 to derive from the Land Registry system, as coming from

17 the Cayman Islands. They are going to be able to

18 integrate, I am told, but the Land Registry system that

19 is coming from the Cayman Islands, it is not in its

20 entirety the land management system for Crown land.

21 That is something different, but I am told that they

22 will be able to integrate into this Cayman Islands

23 system to help provide information and efficiency in

24 the database in particular.

25 SIR ROBIN AULD: I may have misunderstood you but I thought

1 you were saying that there was something in
2 the Cayman Islands system which went to systems of
3 allocation?

4 A. No.

5 SIR ROBIN AULD: Which you thought might be a useful way of
6 protecting ministers like yourself from the individual
7 approaches that you have here?

8 A. No, the Cayman Islands -- I don't think they have
9 an abundance of Crown land. There would have to be
10 a new software, put it like that, that will manage
11 the Crown land allocation and record keeping.

12 What I am saying, already identification has been
13 made to certain elements of the Cayman Islands
14 Land Registry system that has been implemented now that
15 the Crown land unit will be able to extract and
16 integrate to help manage and get information.

17 I am trying to give you the best from my memory of
18 what I have been told.

19 SIR ROBIN AULD: I just want to get an idea. Thank you very
20 much.

21 MR MISICK: Lastly, Mr Hanchell, I just want to ask you
22 a couple of questions about the campaign donations that
23 you receive into your PNP account.

24 (11.30 am)

25 A. Yes.

1 Q. I think we can summarise it by saying in and around

2 the campaign of 2007, I believe you received some

3 \$300,000 from Chuck Musgrove, is that correct?

4 A. Yes.

5 Q. In relation to that sum and any other sums you received,

6 would all of those monies have been spent within your

7 constituency?

8 A. No, not at all.

9 Q. Can you tell us how it would have been spent?

10 A. Well, for instance, South Caicos is very small, so it

11 would have been spent in both constituencies in the case

12 of South Caicos, we don't necessarily separate out

13 meetings or events. Also, we would travel throughout

14 the Turks & Caicos Islands and I would bring

15 a delegation from South Caicos. That delegation

16 wouldn't necessarily represent my constituency because

17 they were very small. It would represent the island.

18 We would go to Grand Turk, come to Provo, there is

19 transportation, accommodations and all that kind of

20 stuff. So it spread. There is no one specific

21 allocation that the monies would go to.

22 Q. We know that -- were there any special events which took

23 place in December 2006?

24 SIR ROBIN AULD: 2006?

25 MR MISICK: 2006, yes.

1 A. There was -- apart from Christmas, I think we had
2 a convention, did we? I think we had a convention in
3 Grand Turk. I think that was the most significant
4 December one, apart from the usual Christmas
5 activities --

6 SIR ROBIN AULD: So a PNP convention, is it?

7 A. A PNP convention in Grand Turk.

8 MR MISICK: How long did the convention last for?

9 A. Four or five days from my recollection.

10 Q. Was any of that money spent on this convention?

11 A. Yes, of course. I would have had to bring people from
12 South Caicos to come to Grand Turk. They would have to
13 have accommodation and so on and so forth. I would not
14 necessarily pay the monies directly to like the airline
15 and so on and so forth because what normally happens, we
16 have a number of people working in your campaigns, and
17 they would be responsible, nothing formal, let's say
18 a meeting is tomorrow, you would make some funds
19 available and they would gather persons and get them to
20 Provo and rent some cars, or Grand Turk or wherever, we
21 would get some accommodation. That sort of informal
22 stuff. That is how it is done.

23 Q. In relation to Mr Chuck Musgrove, was there any bargain
24 between you and him that he was to be compensated in any
25 way?

1 A. Not at all. I know Chuck all my life. No bargain.

2 MR MISICK: Thank you, sir. I think those are

3 the questions.

4 SIR ROBIN AULD: Ms Missick is still searching frantically.

5 There might be one.

6 MS MISSICK: There isn't, sir.

7 MR MISICK: Thank you.

8 SIR ROBIN AULD: Thank you, Mr Misick. Mr Smith?

9 MR SMITH: I already posed my questions, sir.

10 SIR ROBIN AULD: Attorneys?

11 MS BROOKES: No.

12 SIR ROBIN AULD: Let's just check the time. It is 11.40.

13 Are you likely to be long, Mr Milne?

14 MR MILNE: No, sir, I shall be as short as I reasonably can.

15 I hope within the next five minutes.

16 Minister, the convention you referred to a few

17 minutes ago, you said took place in December 2006; was

18 that the main convention for the year in 2006?

19 A. 6 or 7, I know it is December. When you say the main

20 convention, like the overall party, where all of the

21 constituency will go?

22 Q. The party gathering?

23 A. Yes, the party gathering. You vote for officers and

24 members. That is my recollection.

25 Q. Because we have seen the Treasurer's report which

1 prepared for a convention in September 2006; is that

2 a different meeting?

3 A. It may be. My memory tells me there was something in

4 Grand Turk around December. It could very well be

5 a different meeting.

6 SIR ROBIN AULD: You might have had two.

7 MR MILNE: Could it have been two or was it one in

8 September, rather than one in December?

9 A. I can't really remember September but my memory tells me

10 it would have been around December.

11 Q. What were the 200 members of the PNP doing for four to

12 five days on Grand Turk?

13 A. Meetings. You will have different sessions. You will

14 have -- the way we run our campaigns, you will have, for

15 instance, a morning session, motivational people will

16 come and speak, then there would be another day talking

17 about party business.

18 Q. It is meetings, it is convention-type business?

19 A. Yes, meetings, convention and probably a lay day or

20 something like that.

21 Q. Let's go back briefly to the question of

22 Joe Grant's Cay.

23 You have told us that you obtained these different

24 reports and it has been pointed out that the comparative

25 value that is used by surveyors is to look at other

1 equivalent islands, and indeed to see if the same sort
2 of prices can be achieved. You take issue with the idea
3 that Ambergris Cay is a relevant consideration,
4 a relevant comparison?
5 A. If I agree that Ambergris Cay is a relevant comparison.
6 Q. You don't think it is a proper comparator?
7 A. No, I don't. I can tell you why.
8 SIR ROBIN AULD: I think you already have told us why.
9 MR MILNE: I just want to clarify.
10 A. Sorry.
11 Q. You would be aware that property prices change and have
12 changed quite drastically in recent years. Property has
13 increased in value, hasn't it?
14 A. Yes, property has been increasing in value over the past
15 years.
16 Q. If we take your little bundle and look at page 44?
17 A. Yes.
18 Q. The comparisons that BCQS apply are for property prices,
19 all of which are at least a year out of date.
20 June 2007, one in March of 2006, one of them as far back
21 as 2004. So three years, four years earlier. Do you
22 see that?
23 A. Yes.
24 Q. Dates of sale?
25 A. Yes.

1 Q. If we turn forward to page 32G. Mr Hoza, who I would
2 submit to you knows the islands very well, has taken
3 comparison transfer dates of April and May 2008. So
4 only a matter of weeks before his report was being
5 prepared.

6 A. Yes.

7 Q. Which do you think would be a better guide, 2004 or
8 April 2008?

9 A. Well, let me -- just bear with me, page 32G of Mr Hoza's
10 comparative land transfers. The 205 numbers are
11 Ambergris Cay, and I don't have to explain about
12 Ambergris Cay because I did already.

13 The 201s, I said the 201s, the 202s is either
14 Ambergris Cay or South Caicos. It looks to me that this
15 may very well be South Caicos. South Caicos is closer
16 to Joe Grant's Cay than Ambergris Cay. The 402 is right
17 in Middle Caicos. And so on --

18 Q. Let me pause you a second because we may be at odds
19 here. Is your answer essentially it is not the period
20 you should look at, it is not the timing, you should
21 look at the parcel, you should be looking at different
22 islands for comparison?

23 A. You are trying to get me in a technical area.

24 Q. I know. You are the one who is raising this with
25 respect. You are saying these are not proper

1 comparisons because they are the wrong islands to be
2 looking at. The question I asked you, though, is did
3 you think that a 2004 price was more useful than a 2008
4 price when doing comparisons?

5 A. Well, I don't think -- I don't think you ought to
6 separate them, because if you only separate price and
7 date and take out of context locale, or location for
8 consideration, I think it all -- they all should be
9 looked at in the same.

10 Q. Right. Let's take that answer. If you agree -- if it
11 is your position that one has to look at both
12 the position and the time, then surely you must have had
13 serious concerns about BCQS because even if they were
14 looking at the right sort of properties, they were
15 looking at them well out of date. Did that not cause
16 you any concern? Or did you not read that?

17 A. No, not at all, sir. With the greatest respect, BCQS,
18 I understand to be a very reputable firm that has been
19 in these islands and all over the region for a very,
20 very long time.

21 Q. Did you look at that part of their report?

22 A. No, sir.

23 Q. So you didn't read that part of their report that said
24 we are making comparisons as far back as 2004?

25 A. Sir, you are getting confused with my role. My role was

1 to request the evaluations from these two individuals in
2 their professional capacity and forward it on for
3 Cabinet to make a final decision. That was my role.

4 Q. Who was in the Cabinet? Yourself?

5 A. Yes, I was a part of Cabinet.

6 Q. So you were part of that and Cabinet would have been
7 looking to the minister of natural resources because
8 the valuation falls within that, does it not?

9 A. No, Cabinet wouldn't be looking at -- Cabinet is
10 a collective discussion for the collective decision.
11 Cabinet would not be looking at the minister for natural
12 resources. This is not like a matter the minister of
13 natural resources will propose to Cabinet. This is
14 something which the minister for natural resources would
15 have done his job in bringing the matter for decision.

16 Q. Sir, does it come down to this: back in 2007 Cabinet
17 proposed a price which was time limited and that time
18 limit was not met. The time limit applied specifically
19 to the hotel, nothing else and that was the \$2 million
20 price tag, correct?

21 A. That time limit was the fault of the government and
22 because if -- you may know a little that there is
23 a history with registration late and mutations take
24 forever.

25 SIR ROBIN AULD: It is not a question of blame for it

1 becoming stale; whatever the reason was, it was stale

2 when looked at a year or so later?

3 A. It was stale, yes. It is clear.

4 MR MILNE: Ms Braithwaite for the AG's office rightly

5 pointed out that essentially it was a time limit that

6 she could not simply ignore. The Cabinet had said if

7 the deal had been done for this period, it can be done

8 for this price; the deal wasn't done and so she had no

9 authority without the Cabinet making a fresh decision.

10 A. That is correct. The deal wasn't done. It wasn't done

11 because the government didn't mutate the land in time.

12 Q. Indeed, the government on the face of it appears not to

13 have even done a valuation or not an up to date

14 valuation when this offer was being made in June 2007.

15 But that is history, would you agree? That had

16 passed by at this stage?

17 A. What had passed by?

18 Q. Well, the deal had fallen apart or at least the offer

19 had lapsed.

20 A. Yes, the offer had lapsed.

21 Q. In June 2008 TC Invest was still seeking a report from

22 Mr Hoza which they got and it was you who sent

23 the offer -- the valuation back effectively and said:

24 I want a further valuation done.

25 Yes?

1 A. No.

2 Q. You were the one who said you wanted an assessment for
3 raw land, yes?

4 A. Yes, but it didn't -- the way you are putting it --

5 SIR ROBIN AULD: I understand what you said about that,
6 there was a round robin and this was a collective
7 decision.

8 A. Thank you, sir.

9 SIR ROBIN AULD: But you communicated it?

10 A. Yes, that is my job.

11 MR MILNE: Two things I am going to ask you to look at and
12 then I will finish, sir.

13 Mr Hoza responded to you --

14 A. Which page?

15 Q. This is page 13. He sent an email. He has clearly had
16 two e-mails from you. Those are attached below. He
17 says in his e-mail:

18 "I am a bit confused as to what course of action is
19 required of me, principally because I do not seem to
20 receive your e-mail of this morning. I am also not in
21 the picture as to what the numbers 30101/25, 27, 28, and
22 29 refer to.

23 "As to your e-mail of yesterday evening, I want to
24 clarify a few points. The value for land is determined
25 by forces of demand and supply for goods and services.

1 In trying to satisfy this demand, suitable land for
2 development is sought after. This means that the demand
3 for suitable land is derived presumably from demand.
4 This is why a very prominent lawyer once said that it is
5 not planning permission itself which increases value, it
6 is planning permission coupled with demand. I am trying
7 to address your statement that the valuation should be
8 based on the market value of the raw land in its present
9 state. This is why every valuation report has to have
10 an assumption as to planning permission."

11 He says he awaits your further instructions on this
12 matter.

13 (11.46 am)

14 Subsequent to that you were to tell the Tribunal
15 that you couldn't understand why he would have prepared
16 a report based on an agricultural value. But if we look
17 at page 32D, planning assumptions is the bottom
18 paragraph?

19 A. Yes.

20 Q. "While it is intended to develop the above" --

21 SIR ROBIN AULD: Let's just identify this, shall we, please?

22 This is from Mr Hoza.

23 MR MILNE: It is the memorandum. This in fact becomes one
24 of his valuations. The planning assumptions attached to
25 it, this is the one that is done in relation to

1 agricultural land.

2 SIR ROBIN AULD: Of the same date?

3 MR MILNE: 13th June:

4 "While it is intended to develop the above parcels
5 as indicated, in this valuation report I have assumed
6 that the land will be put under agricultural use in
7 order to comply with the guidance that a valuation
8 should be based on the market value of the raw land in
9 its present state. It is my view that the use of it
10 comes close to this requirement is agriculture."

11 So you had your explanation as to why he was using
12 agriculture as a benchmark?

13 A. Sir, if you go to page 31 of this same bundle, since
14 I was -- my last time here with the Commission was on
15 Friday, I have since repeatedly, and you go over to 31,
16 32 and 33, and it is clear what I asked Mr Hoza.

17 SIR ROBIN AULD: We are now in February 7th 2009?

18 A. Yes, sir.

19 SIR ROBIN AULD: This is a memo from you to Mr Hoza?

20 MR MILNE: These are e-mails of this weekend?

21 A. Yes, sir.

22 Q. And you were asking Mr Hoza: why did I get
23 an agriculture report.

24 A. Exactly. The reason why I ask Mr Hoza that, sir,
25 because this agriculture report shows up in

1 the Commission. You produce a chart and it could be
2 easily assumed that I completely disregarded this
3 agriculture valuation in not submitting it to Cabinet,
4 because I do not have a copy of it, we don't have a copy
5 of it in my office, he hasn't answered me yet; and
6 I simply ask him to please send me some evidence of
7 where I requested a valuation for agriculture purposes.

8 My terminology of raw land may not be -- you may not
9 agree and others may not, what it means. Mr Hoza may
10 interpret that completely different, but if I am dealing
11 with an agricultural matter I believe I will clearly
12 write and ask for an evaluation on agricultural land.
13 So I am puzzled as to where this agricultural valuation
14 comes up. When I write Mr Hoza and ask him to provide
15 me of, you know, my instructions because I clearly wrote
16 instructions, I didn't pick up the telephone and say
17 I need it for agricultural land. He writes me back and
18 say -- on page 32, this is at February 7th:

19 "Honourable Minister Hanchell, as requested here is
20 a copy of the report" --

21 SIR ROBIN AULD: Which page are you on now?

22 A. Sorry, page 32. He writes me back on February 7th:

23 "Honourable Minister Hanchell, as requested here is
24 a copy of the report reflecting agricultural use."

25 I go back to him on page 32C. I say:

1 "Dear Mr Hoza, [this is February 8th, Sunday] this
2 is my second request. Can you kindly provide me with
3 evidence of a request for me seeking a valuation of
4 Joe Grant's Cay for agricultural purposes."
5 SIR ROBIN AULD: There is no point in going through this.
6 He has already told you that the nearest he could get to
7 understanding that request was to fix on agricultural
8 value. Now, he may have been right or he may have been
9 wrong about that.
10 A. My only contention is, sir, that I should have been
11 provided with that valuation.
12 SIR ROBIN AULD: I understood that when you gave your
13 evidence earlier. You didn't think agricultural value
14 was an appropriate response to your request.
15 A. That is how I read it based on my interpretation.
16 SIR ROBIN AULD: I understand that. You have had some
17 communication over the weekend to the same effect.
18 MR MILNE: Did you say you did not get that report?
19 A. No, sir.
20 Q. Why have you got the e-mail which purports to attach it?
21 A. Pardon.
22 Q. Why do you have the e-mail which purports to attach it?
23 A. That is February 7th, that is Saturday.
24 Q. Did you not receive it in June of 2008 at all?
25 A. No. That's my point, what I am saying, because you

1 produced a chart showing these three valuations and one
2 could assume that I intentionally didn't submit this
3 agricultural report.

4 SIR ROBIN AULD: Did you say "intentionally"?

5 A. I said one could assume that I intentionally may not
6 have produced this agriculture report and that is why
7 I am asking him --

8 SIR ROBIN AULD: I do not think that ever crossed my mind.

9 If you did or didn't get it never was an issue in your
10 evidence earlier. I think we all assumed that you did
11 but we may have been wrong about that.

12 A. No, there is no record.

13 SIR ROBIN AULD: There is no suggestion that you
14 intentionally --

15 A. Okay, all right.

16 MR MILNE: With respect, Minister -- I am very conscious of
17 the time, sir -- the minute we have on June 27th.

18 SIR ROBIN AULD: Page?

19 MR MILNE: This is the very back of red volume 6, section 9.

20 The minute of 27th June, the Premier noted in this
21 minute, 27th June that they were in receipt of
22 valuations, one from BCQS and the other from
23 the government valuation office.

24 A. Yes.

25 Q. So which was the valuation from the government valuation

1 office that you had at that Cabinet?

2 A. The one for \$89 million.

3 Q. That is the one for commercial use?

4 A. I don't have it in front of me. The \$89 million one.

5 Q. Although we have a report addressed to your office,

6 the second report of the same day, saying you never

7 received that?

8 A. No, sir, and I have gone on the record to ask him: where

9 did I instruct you to ask for this agricultural stuff.

10 The matter was not an agricultural matter.

11 Q. Sir, I think that is probably as far as we can take it.

12 SIR ROBIN AULD: I understand what you are saying but it is

13 really a side issue, isn't it? Because Mr Hoza didn't

14 even consider an agricultural valuation was

15 an appropriate one. He thought a commercial valuation

16 was what was required here. He only provided whatever

17 he did reluctantly in response to your letters of

18 13th June.

19 A. Whether he provide them reluctantly or not, sir, my

20 letters were simply trying to explain to him, and we may

21 differ with my terminology of raw land, or undeveloped

22 land. That was all I was trying to make clear.

23 SIR ROBIN AULD: Whatever you were asking him for, he didn't

24 think appropriate in his professional judgment as

25 a valuer. You thought he was wrong or think he was

1 wrong in the way he went about it, but his approach was
2 one of commercial valuation, not agricultural; you asked
3 him for raw land and the nearest he thought he could get
4 to that was agricultural and that is where we have ended
5 up on this, isn't it?

6 A. Perhaps. That is his thought. I really can't say his
7 thought.

8 SIR ROBIN AULD: Shall we pause there for five to ten
9 minutes.

10 MR MILNE: Sir, I don't propose to take it any further.

11 SIR ROBIN AULD: I didn't mean to cut you off if you have
12 any other questions.

13 Mr Milne, there is great confusion among the
14 pagination and it may make it worse when one starts
15 looking at the numbers in the transcript later.

16 But certainly I think it would help everybody if we
17 had a chronological series of this correspondence
18 interleaved, maybe in a separate bundle, with whatever
19 we have already got on it in red volume 6 at tab 9. To
20 add to the problems, this new bundle this morning is
21 itself not in chronological order and goes back and
22 forwards.

23 But that is a luxury for later.

24 Five/ten minutes.

25 (11.55 am)

1 (A short break)

2 (12.00 pm)

3 SIR ROBIN AULD: Mr Hanchell, I don't know why we have kept

4 you there, because Mr Milne indicated he had finished

5 his questions and I should have said thank you and

6 good-bye. Thank you for attending as you have on

7 a number of days to give evidence.

8 A. Thank you.

9 MR MILNE: Sir, before the next witness, two small matters

10 of housekeeping.

11 SIR ROBIN AULD: Is Mr Fitzgerald involved in any of these?

12 MR MILNE: I don't believe he is, sir, no. The first is

13 this: there have been queries raised with the Commission

14 following a question asked by my learned friend

15 Mr Misick on Friday, that question couched in terms that

16 the Commission had written to the Premier and to the

17 Permanent Secretary of natural resources seeking

18 assurances that the Salt Cay development would not be

19 allowed to proceed.

20 For clarification, sir, the letter in question

21 stated that the Commission was simply seeking

22 confirmation from the Premier and the department that if

23 not all of the necessary permissions had been granted,

24 that there should be no work commenced effectively

25 without those permissions having been completed.

1 That was the letter. It is possible that that may
2 have been misinterpreted. We are anxious that it should
3 not be seen in terms of the Commission telling
4 the government what it should be doing, rather it should
5 be seeking clarification.

6 SIR ROBIN AULD: Thank you for clarifying that, Mr Milne.

7 MR MISICK: Yes, I accept that is exactly what the letter
8 says.

9 MR MILNE: There is a second matter that we have been asked
10 to provide clarification on. This has come on behalf of
11 the former partners of McLeans, who are now known by
12 the professional title of Bishop, Papachristou and
13 Prudhoe. They have been in touch with the Commission to
14 indicate that they wish to totally refute the assertions
15 made by Mr Melbourne Wilson implicating them in the sale
16 by the Honourable Jeffrey Hall and others to the
17 Canadian developer David Wex of land at Northwest Point.

18 Those gentlemen in the new firm are concerned in
19 particular to make it clear that no person at McLeans
20 other than Melbourne Wilson was involved in this
21 transaction, and they have provided to the Commission
22 written statements and accounting records to demonstrate
23 that the only fees received by McLeans were those billed
24 by Melbourne Wilson.

25 They go on to say that unless the suggestion that

1 McLeans received extensive funds is expressly retracted,
2 the partners have stated they will obtain and forward to
3 the Commission all paid cheques so that the full money
4 trail can be established beyond doubt.

5 I have been asked to indicate that Mr Wilson's
6 former partners were unaware of the details of this
7 transaction. They utterly reject any suggestion that it
8 would (inaudible) or could have countenanced a form of
9 client indemnity that Mr Wilson required his clients to
10 sign.

11 The Commission is asked to place this information on
12 record to demonstrate that Bishop, Papachristou and
13 Prudhoe have taken advantage of the opportunity to
14 provide the Commission with their version of events
15 backed up by extensive documentation and in doing so
16 they wish to set the record straight.

17 SIR ROBIN AULD: Now, Mr Misick, contained in that statement
18 of clarification from the authors of that letter is
19 an invitation to you on behalf of your client
20 Mr Melbourne Wilson to retract the allegations that
21 prompted the letter. I am sure you are not in
22 a position to do that and may never be. Had you notice
23 of the letter before Mr Milne read it?

24 MR MISICK: I am hearing it for the first time now.

25 SIR ROBIN AULD: Are you minded to take instructions from

1 Mr Melbourne Wilson on the invitation?

2 MR MISICK: I certainly would, sir. I think I should.

3 SIR ROBIN AULD: Because unless I think we hear pretty soon,

4 I will have to ask for the audit trail of cheques to

5 which they refer and which they say they can produce to

6 demonstrate what they say is the truth.

7 MR MISICK: I think that would be a natural thing for you to

8 do. I accept that.

9 SIR ROBIN AULD: May I leave you to take instructions from

10 Mr Melbourne Wilson?

11 MR MISICK: Yes.

12 SIR ROBIN AULD: Thank you.

13 MR MILNE: Sir, the next witness will be the Honourable

14 Wayne Garland.

15 HONOURABLE WAYNE GARLAND (sworn)

16 Direct-examination by MR MILNE

17 MR MILNE: Sir, might I indicate that in this case, unlike

18 many others, our bundle is blissfully small and it

19 consists of just a few pages which the Honourable

20 Wayne Garland should have in front of him now. We will

21 come to those in a few minutes.

22 Honourable Garland, can you please confirm, you are,

23 I think, a Member of the House of Assembly, is that

24 correct?

25 A. That is correct.

1 Q. You are a member of the PNP?

2 A. That is correct.

3 Q. I think until recently, tell me if this is still

4 the case, you have been for some time the Chairman of

5 the tourist board, is that also right?

6 A. That is correct.

7 Q. Do you still hold that position?

8 A. Yes, I do.

9 Q. I think you are -- the tourist board is based

10 principally in Providenciales, is that right?

11 A. That is correct. We had an office in Grand Turk as

12 well.

13 Q. As I understand it, there are full-time officials of

14 whom Mr Lindsey Musgrove is the director and

15 Mr Ralph Higgs, the Deputy Director of the board?

16 A. That is correct.

17 Q. But there are a number of people appointed as board

18 members, effectively as supervising board for

19 the tourist board?

20 A. Yes, the board of directors.

21 Q. Other than its position in the TCI itself, the board,

22 I think, has tourist offices overseas in London and

23 New York, is that right?

24 A. Yes, that is correct.

25 Q. I think there was a proposal in fact to open a Canada

1 office in Toronto?

2 A. Yes.

3 Q. Did that come to anything, the Canada office?

4 A. Yes, we have a space that we have rented for the

5 purposes of opening up an office.

6 SIR ROBIN AULD: You have rented space there.

7 A. Yes.

8 SIR ROBIN AULD: But not occupied or used yet?

9 A. It is just occupied by one person we have who works for

10 us in Canada.

11 SIR ROBIN AULD: So it is in use?

12 A. Yes.

13 MR MILNE: Is that Brian Been who works in Canada?

14 A. No.

15 Q. Who is it there then?

16 A. Rosemary Wilson.

17 Q. I see. Was Mr Been sent to Canada to work for the board

18 there?

19 A. Yes, that was the intention of the board, for Mr Been to

20 go to Canada.

21 Q. Is it right the tourist board there actually has been

22 served with an eviction notice already?

23 A. That is correct.

24 SIR ROBIN AULD: This is in Toronto, is it?

25 MR MILNE: In Toronto. It sounds as if this is in trouble

1 before it even gets off the ground; would that be a fair

2 assessment?

3 A. I guess one can say that.

4 SIR ROBIN AULD: What is the ground for the eviction order,

5 or the claim for an eviction order?

6 A. Payment of the rents.

7 SIR ROBIN AULD: You have not paid your rent?

8 A. Yes. That has since been rectified though.

9 MR MILNE: The tourist board, the Commission has been given

10 to understand, has a history of overspending; would you

11 say that is an accurate description?

12 A. Not really, no. I would not say that.

13 Q. You don't think that it has overspent in recent years?

14 A. I would say it has overspent in recent years, yes, but

15 with reason.

16 Q. What is the principal reason for that overspending?

17 A. The last year I know the reason for the overspending was

18 we had a directive from the ministry of finance to

19 manage the parks through the board's office in

20 Grand Turk with the understanding that we would be

21 reimbursed the funds at the end of the financial year.

22 Q. What about advertising commitments? Do you have many

23 advertising commitments?

24 A. Yes, we do.

25 Q. You did, at one stage, I think, have a contract with

1 a company called Blur Advertising Agency, is that right?

2 A. I think so but that was before my time. I think that it

3 was a contract with them.

4 Q. When did you first take up your post as Chairman?

5 A. This was 12th February 2007.

6 Q. Before you, am I right in thinking Don Gardiner was the

7 Chairman of the board?

8 A. That is correct.

9 SIR ROBIN AULD: That is just Don Gardiner?

10 MR MILNE: Don, not Don-Hue, but just Don Gardiner who

11 I think now serves as your deputy.

12 A. That is correct.

13 Q. Did there come a point where you were involved in

14 negotiations with a company called

15 Kerwin Communications?

16 A. Negotiations as far as a contractual agreement?

17 Q. Yes.

18 A. No.

19 Q. You didn't play any part in that?

20 A. No, I did not.

21 Q. Did you become aware, though, that there were

22 negotiations, and that essentially Kerwin Communications

23 was taken on as the advertising agency in North America

24 for the tourist board?

25 A. Yes, I became aware.

1 Q. How much was committed to that particular contract? How

2 much were you going to pay for Kerwin?

3 A. I made the marketing budget for 2007 to 2008 and 2008 to

4 2009, 7 million was committed with 3.5 committed for

5 each year.

6 SIR ROBIN AULD: You are going to have to say that all again

7 a little more slowly, please. Are you giving us

8 a figure for two or three years?

9 A. For two years.

10 SIR ROBIN AULD: From 2007 to 2009.

11 A. 2007 to 2009, the total of \$7 million was committed.

12 SIR ROBIN AULD: Thank you very much. A budget of

13 \$7 million.

14 A. Yes.

15 MR MILNE: Were you not present in June 2007 when

16 a delegation from the TCI went to the Caribbean Week

17 convention, which was held in New York?

18 A. Yes.

19 Q. Did you meet Mr Jim Kerwin then?

20 A. Yes, I did.

21 Q. I think on that occasion you were with Kingsley Been,

22 who runs the New York office, and Lindsey Musgrove?

23 A. That is correct.

24 Q. Anybody else there?

25 A. I think Mr Higgs was there as well.

1 Q. He would be the Deputy Director?

2 A. Yes.

3 Q. I think on that occasion -- was that the occasion when

4 Mr Kerwin presented a proposal for a contract for

5 advertising and promotion which was effectively

6 the 7 million you are discussing?

7 A. That is correct, yes.

8 Q. I think it was 6.9, but not a lot in that. So 7 million

9 in round figures.

10 A. The contract for the proposal that I saw, I think it was

11 \$5.8 million.

12 SIR ROBIN AULD: I understood your 7 million a little while

13 ago to be the total budget for the tourist board, not

14 just for advertising.

15 A. It is the total budget for marketing and advertising.

16 SIR ROBIN AULD: For marketing and advertising?

17 A. Yes.

18 SIR ROBIN AULD: But other expenditure and salaries and so

19 on was on top of that, was it?

20 A. Yes.

21 MR MILNE: Was it not you who signed the contract with

22 Kerwin Communications?

23 A. Yes, it was myself.

24 Q. To what extent did the Premier play a role in choosing

25 Kerwin Communications as the advertising agency?

1 A. I would not know that. Like I said that was before my
2 time when the contract was -- a contractual agreement
3 with Kerwin and the tourist board was established.

4 Q. Did he ever discuss it with you, the Premier, that is?

5 A. We had a discussion. He told me that we had entered
6 into agreement. I didn't know the extent of the
7 agreement, but we had entered into an agreement for
8 Kerwin to do the marketing.

9 SIR ROBIN AULD: With whom?

10 A. With Kerwin Communications.

11 SIR ROBIN AULD: This was before the proposal was accepted
12 by the board, was it?

13 A. Yes.

14 MR MILNE: Was it put to the board?

15 A. The proposal, no.

16 Q. So you just signed it without referring it to the board?

17 A. Well, the budget itself was under the office of the
18 Premier. It was not budgeted under the tourist board.

19 We just had oversight to see the marketing campaign.

20 Q. So why did you sign the contract?

21 A. Because I was acting for the Premier at the time in
22 signing the contract.

23 Q. So you signed on behalf of the Premier's office, not on
24 behalf of the tourist board?

25 A. It is a conjunction of both. It is not only -- because

1 we had oversight, like I said, for seeing the marketing
2 campaign.

3 Q. I am going to show you a document and you can tell us if
4 it is the same one or a different one. If you take
5 the little bundle we handed out a minute ago. After
6 the cover sheet, the first page, page 1, is headed
7 "Kerwin Communications". It is an advertising
8 agreement.

9 If you flick a few pages on to page 5, we see
10 a signature which appears to be -- it is a little hard
11 to tell but is that your signature?

12 A. That is my signature.

13 Q. So the one on the right, Chairman, obviously
14 Turks & Caicos tourist board and James Kerwin,
15 president, signing on behalf of Kerwin Media?

16 SIR ROBIN AULD: Did you say page 9?

17 (12.15 pm)

18 MR MILNE: Page 5 has the signature.

19 This particular agreement, if we go back to page 1,
20 is dated 10th March 2007.

21 Yes?

22 A. Yes, it is.

23 Q. Do you recall signing this document?

24 A. No, sir.

25 Q. You don't?

- 1 A. I don't.
- 2 Q. But you accept it is your signature?
- 3 A. I accept it is my signature.
- 4 Q. This is not the June 2007 one, is it?
- 5 A. No, sir, it is not.
- 6 Q. Because that came later. Did you take any advice on
- 7 this agreement when you signed it?
- 8 A. Do you mean in June?
- 9 Q. This advertising agreement?
- 10 A. You mean this agreement here?
- 11 Q. Yes.
- 12 A. I didn't sign it, I recognised it is my signature but
- 13 I don't sign this agreement.
- 14 Q. You did not sign this agreement?
- 15 A. No.
- 16 Q. Have you ever seen this agreement before?
- 17 A. No, I have never seen this agreement before.
- 18 Q. Can you cast any light why your signature will be on
- 19 a document?
- 20 A. I have no idea but I have never signed this.
- 21 SIR ROBIN AULD: Can we identify this document.
- 22 MR MILNE: It is an advertising agreement.
- 23 SIR ROBIN AULD: Undated.
- 24 MR MILNE: No, sir, it is not. It is dated.
- 25 SIR ROBIN AULD: Where is it dated?

1 MR MILNE: The first page, this advertising agreement made

2 out --

3 SIR ROBIN AULD: March 10th.

4 MR MILNE: March 10th 2007 between the Turks & Caicos

5 tourism board, giving an address and Kerwin Media LLC, a

6 New Jersey limited liability company, giving

7 the address.

8 SIR ROBIN AULD: Pages 1 to 5, I did not sign this

9 agreement. Where did the June agreement come from then?

10 A. The June agreement was not an advertising agreement. It

11 was a media schedule. It is a marketing schedule that

12 I signed.

13 MR MILNE: Have you ever had anybody refer back

14 advertisements to you under this particular agreement?

15 A. No.

16 Q. We don't have a copy of the June agreement, but let me

17 see if I can understand this correctly, the June

18 agreement was to pay Kerwin Communications \$7 million?

19 A. No, the June agreement was the marketing schedule. It

20 had various vendors and marketing magazines. It had

21 a proposed total of \$5.8 million at the time.

22 Q. Essentially was that a total figure, it was a capped

23 figure, the 5 million? 5.8 million?

24 A. Yes, 5.8 million, yes.

25 Q. You would pay that, they would organise advertising, you

1 would not need to get anything further? You would not
2 need to pay anything further?

3 A. No, that was the -- that is what we signed for
4 the marketing campaign for that period.

5 Q. This document is markedly different in its nature.

6 I take on board what you say. You say you have never
7 signed it, although your signature is at the end. There
8 are numbered pages. So it appears -- it is not that
9 there appears to be, as it were, a signature tacked on
10 at the end, but it is a numbered page, page 5 of 6.

11 This document, if you will forgive me for
12 summarising it, essentially authorising
13 Kerwin Communications to undertake advertising on behalf
14 of Turks & Caicos Islands government.

15 It does not anywhere in the document put a limit on
16 that advertising but it allows for the TCI government to
17 indemnify the TCI -- Kerwin Communications for all
18 costs. Do you follow what I mean?

19 A. Yes.

20 Q. So if Kerwin go out and place an advertisement, the TCI
21 government will pay for it and indeed the TCI government
22 will pay a percentage of the cost of the advert as
23 a commission to Kerwin.

24 SIR ROBIN AULD: Can we just identify the provisions in
25 the documents that say that, please.

1 MR MILNE: The commission, sir, page 2, paragraph 4.1:

2 "TCI agrees to pay Kerwin a commission of 15
3 per cent of the cost of the advertising placed by Kerwin
4 on behalf of TCI."

5 It actually goes on to say:

6 "For example, assume Kerwin places a newspaper
7 advert, advertisement for TCI, and the advertiser bills
8 TCI \$5,000 for such newspaper advertising, for such
9 advertising TCI will pay Kerwin a \$750 commission."

10 SIR ROBIN AULD: It pays all government and additional pay
11 at 4.3, all travelling expenses.

12 MR MILNE: Yes. The indemnity is at the top of that page,
13 2.3:

14 "Kerwin is authorised to enter into one or more
15 contracts as an agent for TCI with third parties, each
16 a media contract, to carry out the purposes of this
17 agreement and purchase print media and broadcast media
18 advertisements for TCI.

19 "Kerwin is not responsible to pay for the cost of
20 such advertisements and TCI will indemnify and define
21 Kerwin..."

22 I presume that should be "defend Kerwin":

23 "... against any and all claims, damages and losses
24 related thereto. In addition Kerwin will coordinate
25 with each advertiser to bill TCI directly for the net

1 cost of all such advertisements."

2 Now, that document is essentially a blank cheque to

3 Kerwin, would you agree?

4 A. Yes, it is, I would agree, I would tend to agree.

5 Q. Kerwin can place as many adverts as they like, wherever

6 they like and TCI will pick up the bill. TCI will be

7 bound because Kerwin is its agent and Kerwin will get

8 paid a commission. Is it not the case that the TCI

9 government, and you would be aware of this, is now being

10 sued by a number of advertisers because of

11 advertisements placed by Kerwin, presumably as a result

12 of that contract?

13 A. Yes, as a result of non-payment.

14 Q. So if you were simply working under the June agreement,

15 you would have no further liability because you have

16 paid the 6 million. But this appears to be creating

17 further liabilities for the TCI government, does it not?

18 A. Yes, under this agreement Kerwin would place

19 the advertising and the bill would come directly to the

20 board and then we will pay the vendor directly.

21 SIR ROBIN AULD: Was this ever an agreement? You said you

22 didn't sign it.

23 A. No, that was the agreement that was in place, that was

24 made -- I never signed -- it was the first time I am

25 seeing this agreement.

1 SIR ROBIN AULD: Are you saying there was such an agreement?

2 A. Under the agreement that I came to know, when we signed

3 the marketing campaign, was that we place the ads,

4 the government will place the ads, then the vendor will

5 bill us directly and then we pay the vendor.

6 SIR ROBIN AULD: You were there on 12th February 2007, so

7 you became the Chairman very shortly before this

8 agreement was purported to be made on its behalf on

9 10th March of 2007.

10 A. Yes.

11 SIR ROBIN AULD: Who made this agreement if you didn't?

12 A. I have no idea, sir. I didn't see this agreement.

13 I was made to understand that there was agreement in

14 place with Kerwin Communications prior to me coming to

15 the board.

16 SIR ROBIN AULD: Who made you to understand that?

17 A. I understand that from the director.

18 SIR ROBIN AULD: Mr Don Gardiner?

19 A. Mr --

20 MR MILNE: Lindsey Musgrove, I think.

21 A. Lindsey Musgrove, yes.

22 SIR ROBIN AULD: So Lindsey Musgrove told me this agreement

23 was in place.

24 A. Yes.

25 SIR ROBIN AULD: But it had come into place after you became

1 Chairman.

2 A. I don't know.

3 SIR ROBIN AULD: Well, it must have done if it is true on
4 its face as to its date.

5 MR MILNE: Honourable Garland, if you turn within the little
6 bundle to page 9, we have an internal memorandum which
7 is prepared recently and which has been obtained by
8 the Commission from within the tourism department. This
9 is a memorandum being sent in fact to the Deputy
10 Director, Mr Higgs, from Mrs Snjezana Andrews saying:

11 "Mr Higgs, attached is the revised listing of all
12 marketing outstandings that we are currently aware of.

13 This report gives a breakdown of what is due to each
14 vendor. The listing includes both vendors in
15 the Kerwin Media schedule, as well as those contracted
16 outside of Kerwin Communications, totalling
17 \$6,099,258.34."

18 Current accounts payable, that is recurrent
19 expenditure, totals a little over \$200,000.

20 I think the schedule that is being discussed is
21 within these documents.

22 SIR ROBIN AULD: That is the June 2007 schedule, is it?

23 The marketing schedule or is it something different?

24 MR MILNE: We take it to be the marketing schedule under
25 the contract we have been shown, sir. Certainly we have

1 a summary, a debt summary at page 7 within the bundle.

2 SIR ROBIN AULD: Where is that marketing schedule to which

3 the witness has referred?

4 MR MILNE: Sir, we don't have that.

5 SIR ROBIN AULD: Do you have a copy, Mr Garland?

6 A. I think so.

7 SIR ROBIN AULD: Let's have a look at it.

8 A. If I don't, I can get one.

9 SIR ROBIN AULD: Is that the media schedule that is referred

10 to on page 9 that Mr Milne referred to?

11 A. This would be the media schedule, yes.

12 SIR ROBIN AULD: Marketing and media schedule?

13 A. Yes.

14 SIR ROBIN AULD: I think we ought to have that produced and

15 copied. You have not seen this, Mr Milne.

16 MR MILNE: No, we have what we think is a similar document.

17 It is dated the same date, which is why we have included

18 it at page 7, which I am about to ask the witness about,

19 which is headed "Turks & Caicos Tourist Board A/P Ageing

20 Summary".

21 SIR ROBIN AULD: That is a summary of outlays but it is not

22 a schedule, is it?

23 MR MILNE: It is a schedule of debts owed, virtually all of

24 which are more than 90 days outstanding.

25 SIR ROBIN AULD: Mr Garland referred to this document

1 earlier as a marketing schedule. He now says it is
2 a marketing and media schedule but suggests a programme
3 of marketing yet to be done, is that right?
4 A. Yes, the whole marketing and media schedule is just one
5 company will do everything.
6 SIR ROBIN AULD: Have you got that document now, Mr Milne?
7 MR MILNE: I don't, sir, no.
8 SIR ROBIN AULD: Where is it, please?
9 A. This is just a breakdown of the activity.
10 SIR ROBIN AULD: Have you got the marketing schedule of
11 June 2007?
12 A. I don't have that with me, sir.
13 SIR ROBIN AULD: Where is it?
14 A. It is at the office.
15 SIR ROBIN AULD: I think it should be produced. Can you
16 arrange for that over the luncheon adjournment, please?
17 A. Sure, no problem. I can go and try to dig that up for
18 me.
19 SIR ROBIN AULD: There is one at the back of the room. That
20 looks very helpful. Might we borrow that document,
21 please, sir. What is your name?
22 MR MUSGROVE: Mr Musgrove.
23 SIR ROBIN AULD: Thank you for your help.
24 MR MILNE: Let's take page 8 first of all within the little
25 bundle if we could.

1 This is transactions by account for the tourist
2 board as of January 16th 2009.

3 The total breaks down the number of accounts that
4 are -- that would appear due?

5 A. Yes.

6 Q. Do you recognise this document?

7 A. Yes, I do.

8 Q. These are matters that have been billed and not yet
9 paid, is that right?

10 A. That is correct.

11 Q. They total some \$508,000 in that case.

12 Is that right?

13 A. Yes, I think the invoice for Star Communications,
14 I think that one was paid.

15 Q. Page 7 is slightly different. This appears to be a debt
16 summary. Do you have that?

17 A. Yes.

18 Q. This is more worrying in a way because this one totals
19 5.518 million in the "Total" column?

20 A. Yes.

21 Q. Are these essentially a series of organisations which
22 are pursuing the TCI tourist board for money?

23 A. Some of these, yes.

24 Q. And some of them running to seven figures?

25 A. Yes.

1 Q. Particularly Kerwin Media itself is listed as being owed

2 1.053 million?

3 A. Right.

4 Q. We see that Conde Naste, I think it is corporate

5 department fashion, are owed \$1 million?

6 A. That is correct.

7 Q. Many of these are in the six-figure brackets. Some of

8 them are high six-figure bracket.

9 So there appear to be an awful lot of commitments

10 that have been entered into, and these are clearly in

11 some cases US commitments, whereby the TCI government

12 owes third parties large amounts of money?

13 A. That is correct.

14 Q. As far as you are aware, were these entered into under

15 the Kerwin agreement that we have been looking at?

16 A. Yes, everything on this page that we are looking at now

17 is entered under the Kerwin agreement.

18 SIR ROBIN AULD: That is the June 2007 marketing programme?

19 A. Yes.

20 MR MILNE: Sir, the figure that was mentioned earlier on,

21 the 6099 can be achieved by adding the total on page 7

22 together with the total on page 8.

23 A. That would be correct, sir.

24 Q. So in total the tourist board has commitments that are

25 outstanding of some \$6 million?

- 1 A. That would be correct.
- 2 Q. Which no doubt are in a number of cases approaching
3 litigation?
- 4 A. That is correct.
- 5 Q. Virtually all of these are more than three
6 months overdue, is that right?
- 7 A. That is correct.
- 8 Q. How did it reach the position that the tourist board
9 committed itself that far?
- 10 A. Well, what happened, when we committed to the marketing
11 schedule at that time, like I said, it was budgeted at
12 \$7 million over a period of two years. From that budget
13 we have probably just received just over \$1.5 million,
14 so it is about \$5.5 million outstanding on that campaign
15 still.
- 16 Q. Sorry, received from where?
- 17 A. From the Treasury.
- 18 Q. Is it simply that you are not receiving the money from
19 the Treasury?
- 20 A. That is correct.
- 21 Q. What is your budget for this sort of expenditure within
22 a year?
- 23 A. Like I said, we budget 3.5 in each year so \$7 million in
24 total.
- 25 Q. But as I understand your evidence,

1 the Kerwin Communications June contract ate up most of

2 that?

3 A. That is correct.

4 Q. So the 6 million, or at least 5 million of it from other

5 sources is not included, is it?

6 A. The 5 million?

7 Q. Yes.

8 A. The 5 million is Kerwin. Everything that is on this

9 page that we just looked at, page 7, was placed by

10 Kerwin.

11 Q. The problem is that you are paying out to Kerwin a fixed

12 fee over two years for them to organise advertising,

13 yes?

14 A. Yes.

15 Q. For which they will pick up the bill from their \$5

16 million or \$6 million fee, correct?

17 A. Yes.

18 (12.30 pm)

19 Q. But at the same time you are running a second contract

20 with Kerwin whereby they are committing you to

21 magazines, to Conde Naste, to whatever, whereby

22 additional charges are coming in without any sort of

23 control, is that not right?

24 A. No, that is not right.

25 Q. So what are we to make this of advertising agreement of

1 March then?

2 A. I am lost with that, sir. I truly am. Because -- and

3 the reason why I say that, because any contracts of this

4 nature, what we would first do is refer to our

5 attorneys, to Saunders & Co, and let them vet it before

6 we sign any contract of that nature.

7 SIR ROBIN AULD: Refer to whom?

8 A. Saunders & Co, that is our retained attorney.

9 SIR ROBIN AULD: Norman Saunders & Co. So you would refer

10 to him.

11 A. Yes. We would refer to him for him to vet.

12 SIR ROBIN AULD: Are you saying all commitments are referred

13 to him first?

14 A. Yes, all contractual agreements of this magnitude.

15 SIR ROBIN AULD: All contractual agreements referred to

16 Norman Saunders?

17 A. Yes.

18 SIR ROBIN AULD: So that would include these two agreements,

19 the March and June 2007 documents to which you referred

20 us today.

21 A. June was not an agreement. It was basically the media

22 marketing schedule out of what was budgeted that they

23 did.

24 MR MILNE: So we come back to this, we have a contract

25 signed for the board, with your signature on the back

1 which you can't explain how it got there.

2 A. I really can't.

3 Q. Although this was in the middle of your period as

4 Chairman?

5 A. Yes, March 10th, it would have been the time when I was

6 Chairman.

7 Q. You must have become aware that this contract was in

8 place because quite simply your department is being sued

9 as a result of it. When did you first become aware of

10 this document?

11 A. Of this document here?

12 Q. Yes.

13 A. In all honesty it is the first time I have seen this

14 document.

15 Q. Surely when you started getting lawsuits, you must have

16 said: what is it we have signed that led to this.

17 A. The lawsuit is coming directly from the vendors. So we

18 know what the cost of the media buyer would have been.

19 It is the fact that the payment was delinquent.

20 That is the reason why we are being sued, because we

21 have not honoured our obligation to pay in time.

22 Q. Forgive me, I don't wish to cut across you, you didn't

23 place the adverts, Kerwin did?

24 A. Yes.

25 Q. Did you never say to Kerwin: hang on a minute, why are

1 you placing adverts, what is the agreement that allows

2 you to place adverts that we then have to pay for?

3 A. Because like I said earlier, I understand that there was

4 an agreement in place with Kerwin Communications prior

5 to me joining the board, so all we had to do is put

6 the media schedule together for Kerwin to place

7 the adverts.

8 Q. Did you approve all of these adverts in advance?

9 A. Not myself. It was a collective approval.

10 Q. Did you become aware that Kerwin Communications was

11 using Lisa-Raye McCoy Misick?

12 A. No.

13 Q. In the advertisements?

14 A. No.

15 Q. No?

16 A. I know she was being used on billboards and there was

17 a media schedule for her to be used in magazines. Yes,

18 I knew that.

19 Q. At the meetings that were held at the tourist board,

20 were these matters not discussed?

21 A. Yes, some of them were. I remember in some meetings

22 discussing the media situation with Mrs Lisa-Raye McCoy.

23 Q. Was there ever any concern about keeping these matters

24 within budget?

25 A. I did -- the situation with Mrs Lisa-Raye McCoy, that

1 didn't come directly through the board, as far as

2 I know.

3 Q. How did it come about?

4 A. I honestly don't know. I think that is a separate

5 arrangement that was made outside of the board. I was

6 not part of what that agreement or what that arrangement

7 was.

8 Q. We have one of the sets of minutes which starts at

9 page 10 of this little bundle. This was a minute from

10 your meeting, Turks & Caicos Islands tourist board, of

11 27th June 2007. There is discussion at what is our

12 page 11 within the bundle of the new destination

13 marketing campaign?

14 A. Mmm hmm.

15 Q. It is the Deputy Director in this case updating board

16 members. I am reading from paragraph 10:

17 "He updated the board members that the new

18 destination marketing campaign is being well received.

19 He said that maybe by the next board meeting he will be

20 in a position to show board members a flow chart of

21 where the TCI is being seen and what times we are being

22 seen. He added that the campaign is certainly

23 aggressive but his only concern is the cost associated

24 with the campaign, which is incredibly expensive."

25 Those are the words in the minutes, "incredibly

1 expensive".

2 "He added that the amount budgeted for is
3 \$3.5 million and the amount agreed to, since
4 the campaign started, is \$6.5 million.

5 "The Chairman then explained that in the tourism
6 budget there are no funds available for a marketing
7 campaign. All the funds for this campaign comes
8 directly from the office of the Premier via
9 ministry of finance. He said that this marketing
10 initiative that we have undertaken for 6.5 million is
11 guaranteed which will be paid this year. He added that
12 if the amount exceeds that, then we will commit to more.
13 He said that the balance will be carried over into next
14 year's budget and this marketing campaign is
15 \$6.5 million over two years and the tourist board is
16 only responsible for management of the marketing
17 campaign."

18 So the Kerwin agreement falls on the shoulders of
19 the office of the Premier, is that right?

20 A. That would be correct, sir.

21 Q. So in fact the debts should be falling to that office as
22 well?

23 A. That is correct.

24 Q. But the debts all seem to be mounting up in terms of
25 lawsuits against the tourist board. Why is that?

1 A. Because it is assumed that the contracts -- since we
2 were managing the campaign for the office of the
3 Premier, all of the debts came -- all of the bills came
4 to us, to the tourist board. So that is why we are
5 being liable or held liable for these amounts.

6 Q. Have you ever spoken to the Premier and said it is for
7 you to deal with these, take them away?

8 A. No, I have never done that.

9 Q. Why not?

10 SIR ROBIN AULD: Sorry, you have never spoken to the Premier
11 about this at all?

12 A. I have spoken to the Premier about it, but I have never
13 spoken to him about taking -- that it is not our
14 responsibility, should be taken away, which was
15 the question.

16 SIR ROBIN AULD: I don't follow what you are saying. You
17 have spoken to the Premier about it but never about
18 what? Did you say about responsibility?

19 A. Yes, Mr Milne asked the question that if I had spoken to
20 the Premier about saying that this is not my debt, why
21 don't you take it away; and I said no, I never spoken to
22 him about debt. But we have spoken about the debt
23 itself.

24 SIR ROBIN AULD: So you never said to him: it is your
25 responsibility, not the board's.

1 A. Yes, I never said that. We have never had that

2 conversation.

3 MR MILNE: Is it correct that on 9th January this year there

4 was a meeting called of the tourist board by

5 the Premier?

6 A. That is correct, yes.

7 Q. Were you told to move your desk out of the -- or move

8 out of the Premier's office?

9 A. I was not at that meeting but I was told that --

10 subsequently I received a memo from

11 the Permanent Secretary to the minister asking me to

12 vacate the office with immediate effect.

13 Q. Permanent Secretary to which minister?

14 A. To the Premier.

15 Q. That is Mr Gloyd Lewis?

16 A. That is correct.

17 Q. So you were moved out of the Premier's office?

18 A. That is correct.

19 Q. Did you query why that would be happening?

20 A. I had a subsequent conversation with him asking why. He

21 said that he wanted his Permanent Secretary to be next

22 to him and that was the only space available. That was

23 the reason he gave.

24 Q. Am I right in thinking there have been a number of

25 meetings to discuss tourist board finances at which

1 the Premier has been present?

2 A. No.

3 Q. There have not?

4 A. A number of meetings where the Premier has been present

5 at the tourist board, no.

6 Q. Not necessarily of the tourist board but meetings with

7 the Premier to discuss tourist board finances?

8 A. I think we probably had about two or three meetings if

9 I recall correctly, yes.

10 Q. So the Premier is made well aware that the tourist board

11 is running up large debts?

12 A. Yes.

13 Q. Does it not come down to this: the Premier himself has

14 on occasions committed the tourist board by signing

15 agreements?

16 A. That is correct.

17 Q. The Premier, I think, personally intervened when there

18 was a music festival to say that you would pay for

19 Alicia Keys to play at that festival, is that right?

20 A. I know of Alicia Keys. I never committed to that. I

21 remember --

22 Q. I am not suggesting you did. I am suggesting

23 the Premier did?

24 A. I can only assume, sir, yes, he did.

25 Q. She did come?

- 1 A. She did come.
- 2 Q. And it cost you \$1 million?
- 3 A. That is correct.
- 4 Q. And that wasn't in the budget for that year, was it?
- 5 A. No, sir.
- 6 Q. Can you tell us this: when the Premier travels abroad,
7 as he appears to on a fairly regular basis, the costs of
8 that travel, do they fall to the office of the Premier
9 or the office of the tourist board?
- 10 A. To the office of the Premier.
- 11 Q. So you are not picking up any of the bills for
12 the Premier's travel?
- 13 A. No, not to my knowledge. No, sir.
- 14 Q. Just one other topic you may be able to help with. Is
15 it right that the tourist board rents apartment spaces
16 around the island?
- 17 A. That is correct.
- 18 Q. And that some of those apartments simply sit empty?
- 19 A. That is correct. One of them is sitting empty now, yes.
- 20 Q. I think the tourist board is paying the salaries for,
21 you touched upon this, the parks on Grand Turk?
- 22 A. Was until the end of last financial year.
- 23 Q. The parks on Grand Turk employed 150 people?
- 24 A. That is what I understand, yes.
- 25 Q. You were having to pay the salaries of all 150 of them?

1 A. Yes, but the salaries weren't coming directly from
2 the tourist board budget. It was a separate arrangement
3 by the ministry of finance.

4 Q. Where was the money coming from?

5 A. It was paid through the tourist board to be reimbursed
6 at the end of the financial year.

7 Q. Has it been repaid so far?

8 A. No, sir.

9 Q. Where was it coming from originally?

10 A. It was coming from the tourist board.

11 Q. Let me re-phrase that. It may be the way I put
12 the question. The tourist board have paid out for these
13 salaries but you hope to be reimbursed?

14 A. That is correct.

15 Q. Do you know which budget it is coming from that will
16 reimburse you?

17 A. From the ministry of finance directly.

18 SIR ROBIN AULD: Who made that arrangement? Was it the
19 minister of finance?

20 A. I think it was made with the minister of finance, yes,
21 sir.

22 MR MILNE: I said finally, there is always one more
23 finally --

24 SIR ROBIN AULD: Did we get a round figure for this? I got
25 150-odd people.

1 MR MILNE: I am afraid I do not have a figure.

2 SIR ROBIN AULD: What is the approximate figure? What have
3 you paid out that you are waiting for repayment for from
4 the finance minister?

5 A. I think it is around \$1.2 million.

6 SIR ROBIN AULD: Totalling 1.2 to be reimbursed by finance
7 department.

8 MR MILNE: Honourable Garland, am I right in thinking that
9 you have met with the Premier within the last few days?

10 A. No, sir.

11 Q. Has he approached you at any time in the last two weeks?

12 A. The last two weeks, I think maybe about two and a half
13 weeks, yes, I think we had a meeting.

14 Q. Was there any discussion between the two of you as to
15 your future role in the government of the TCI?

16 A. There was discussions about our roles as going forward
17 in the party. Certainly I am aware that we had some
18 split of -- where we think the party should have been
19 going.

20 Q. There is clearly a split within the party?

21 A. That is correct.

22 Q. Can you tell us whether you were offered any inducements
23 to support him in the present situation?

24 A. There were some conversations thrown about, not so much
25 in any monetary -- I was offered a ministerial post if

1 I was to come back on the other side and I flat out
2 declined.

3 SIR ROBIN AULD: You were offered a ministerial post if you
4 went back --

5 A. If I had changed my mind, yes.

6 MR MILNE: You said there was no monetary offer made to you.

7 A. No, sir.

8 Q. No other inducement, no other, as it were, sweetener to
9 go with that?

10 A. No.

11 SIR ROBIN AULD: If you would re-join the Premier.

12 MR MILNE: Thank you, sir. I have no further questions.

13 (12.45 pm)

14 SIR ROBIN AULD: Are there any questions from the bar?

15 MR FITZGERALD: Just a few questions.

16 Cross-examination by MR FITZGERALD

17 MR FITZGERALD: Mr Garland, I have not had time to take
18 instructions so I am going to do the best I can with
19 you. You said that last year the reason for
20 the overspend of the budget was because of the directive
21 to administer the parks.

22 A. Yes, in the last five years.

23 Q. That was the sole reason for the overspend?

24 A. That was not the sole reason. That was the major
25 reason.

1 Q. As to Kerwin Media, can I just understand the position,

2 Kerwin Media, this agreement that my learned friend

3 referred to in March, you don't know anything about?

4 A. No, I don't.

5 Q. As far as you are concerned, the controlling agreement

6 is the agreement reached in June with Kerwin Media?

7 A. No, that is not the controlling agreement, no.

8 SIR ROBIN AULD: That is just a schedule. Do you have

9 a copy, Mr Fitzgerald?

10 A. Yes, it would be the schedule.

11 SIR ROBIN AULD: So Mr Garland describes it as.

12 MR FITZGERALD: I see.

13 SIR ROBIN AULD: He knew there was some agreement, he says,

14 but not this particular one.

15 MR FITZGERALD: As far as you understood it, was

16 the agreement essentially that they should get a fee as

17 agents?

18 A. Yes.

19 Q. And I think it mentioned 15 per cent but anyway there

20 was some agency fee?

21 A. There was some agency fee.

22 Q. Essentially, this is a perfectly normal agreement

23 whereby a percentage is due of the advertising --

24 A. Yes, for every advert they would place, they would get

25 a percentage.

1 Q. What they are going to do, as I understand it, is to
2 locate organisations, media organisations, whether it be
3 Forbes or Conde Naste, that are going to place big
4 adverts for the TCI?
5 A. That is correct.
6 Q. They are obviously going to have to pay a lot of money
7 for that?
8 A. Some of them.
9 Q. And TCI is going to be billed for that?
10 A. That is correct.
11 Q. But the idea is to boost the profile of the TCI?
12 A. That is correct.
13 Q. If you look down the list that we have of the debtors --
14 SIR ROBIN AULD: Creditors.
15 MR FITZGERALD: Yes, sir, I am so sorry. Absolutely right.
16 The creditors at page 7, one has Hamptons, one has
17 Forbes Life, one has Conde Naste Traveler, Robb Report,
18 Town and Country, Vanity Fair, what this is all about is
19 those media outlets, through their magazines or
20 publications, putting a big, several-page chunk, saying
21 come to the Turks & Caicos, and then some profile of how
22 beautiful it is and perhaps some article by someone
23 saying how much they enjoyed their stay there.
24 A. That sort of thing, yes.
25 Q. And just broadly speaking, is this right, it has been

1 a very successful campaign?

2 A. I think it has been a very successful campaign.

3 Q. Robb Report, Forbes, Vanity Fair, Conde Naste are

4 carrying massive advertisement which is attracting

5 people to come here and spend money here or spend

6 holidays here?

7 A. That is the goal, yes.

8 Q. Is this right, that during the last years there has been

9 a massive increase in tourism to the TCI?

10 A. No, that wouldn't be correct. There has not been

11 a massive increase in the last few years.

12 Q. Has there been an increase over the years?

13 A. Over the last year, no.

14 Q. Since 2003?

15 A. 2003.

16 Q. So there has been an increase?

17 A. There has been an increase up to 2007. Then after that

18 we start to see a decrease --

19 SIR ROBIN AULD: Don't talk across him, please,

20 Mr Fitzgerald.

21 MR FITZGERALD: I am sorry.

22 SIR ROBIN AULD: There has been an increase until 2007 when

23 there was a decrease; is that right?

24 A. Yes.

25 MR FITZGERALD: Is that decrease due to global factors?

1 A. I would say so to a large extent, yes.

2 Q. One sees in the minutes of the discussion that there

3 is -- you have a discussion there at page 10 and 11.

4 There is Member Durliat saying that this was a positive

5 campaign; and that speaking from a tourism provider, he

6 thinks it is good we are spending 6.5 million on

7 promoting our country and it is the uttermost important

8 thing to remember; and that it means that the hotels

9 which would otherwise not be filled can be filled.

10 A. That is correct.

11 Q. So clearly within the tourist board meeting, there are

12 people saying this is a positive thing?

13 A. Yes.

14 Q. As I understand it, what you are saying is that in

15 June there was an agreement as to engaging the services

16 of Kerwin Media for this particular 3.5 million on each

17 year for two years?

18 A. That is correct.

19 Q. If one looks at the sums that have been billed, they are

20 within that framework of -- total of 7 million?

21 A. That is correct.

22 Q. The sums that are outstanding are about 5 million?

23 A. That is correct, yes.

24 Q. 5.5 million. So that is within what was --

25 A. What was budgeted for.

1 Q. Now, whether or not that was a good idea or not such

2 a good idea, that was the agreement in June --

3 SIR ROBIN AULD: It was not an agreement in June. It was

4 an agreement of which he learned subsequently that had

5 been in place some time in March.

6 MR FITZGERALD: No, sir, what I understand from this witness

7 is, in June you had a meeting with Kerwin Media, is that

8 right?

9 A. That is correct.

10 Q. At that meeting it was agreed that there would be

11 a budget of 7 million over two years?

12 A. No. At that meeting, this is what we discussed and this

13 is what was signed.

14 Q. But does that come within the terms --

15 A. Yes, it comes within the terms.

16 Q. The idea is that Kerwin Media will provide

17 advertisement, will go out and get advertisements --

18 A. They would place it as based on the schedule.

19 Q. Yes, and does the total of this schedule we have just

20 been provided with come to in the region of 7 million?

21 A. Yes.

22 Q. I see. So you go to the meeting with other

23 representatives of the tourist board, is that right?

24 A. That is correct.

25 Q. You agree a campaign. The budget for the campaign is

1 7 million over two years, is that right?

2 A. That is correct.

3 Q. And they carry out the advertisements in accordance with

4 that agreement?

5 A. Yes, that is correct.

6 Q. The only question is, should they be receiving an agency

7 fee for that?

8 A. Yes.

9 Q. But would you accept it is quite normal that providing

10 that service --

11 A. It is perfectly normal.

12 Q. -- you do charge some agency fee?

13 A. Of course.

14 Q. As to the earlier agreement in March, you have got --

15 you certainly didn't sign it?

16 A. No, it is the first time I have seen it.

17 Q. And as far as you are concerned, what has actually been

18 happening on the ground has been in accordance with what

19 was agreed in June, is that right?

20 A. That is correct.

21 Q. So there is no question of anything that was not

22 contemplated in June and discussed in June with

23 Kerwin Media having happened?

24 A. Yes.

25 Q. So whatever the explanation of March 2007 agreement, as

1 far as you are concerned, that doesn't have anything to

2 do with this expenditure, is that right?

3 A. No.

4 Q. This has all been openly agreed and openly discussed,

5 this 7 million spend over two years?

6 A. That is correct.

7 Q. The sums that we are looking at are within those terms?

8 A. Again, that is correct.

9 Q. I think you referred to the fact that there had been

10 some earlier discussions with Kerwin Media. You are not

11 involved in those?

12 A. I was not involved in earlier discussions, no.

13 Q. But from the point of view of you going to that meeting

14 in June and reaching this agreement with them, was there

15 anything unusual or abnormal about this?

16 A. No.

17 Q. Or was this, as far as you were concerned, perfectly in

18 order?

19 A. It was perfectly in order. We had it prior to the

20 meeting so we knew what it was.

21 Q. It is clear that members of the tourist board think that

22 this is a good thing and a reasonable expenditure of

23 money?

24 A. Yes.

25 Q. I think you were also asked questions about the use of

1 Lisa-Raye McCoy's picture. We know that she was paid
2 a fee by Kerwin Media for, I think it is 350,000 --
3 A. I don't know that.
4 Q. You don't know about that?
5 A. No.
6 Q. But it is right that you probably are aware she was
7 the face of TCI?
8 A. Yes, for a year.
9 Q. For a year and if someone is the face of TCI or used for
10 advertising, one would expect them to be engaged?
11 A. I would think so, yes.
12 Q. And paid a fee for it?
13 A. I would think so.
14 Q. Now, I think you have said you have not spoken to
15 the Premier about it. There seems to be some question
16 raised about who should be responsible for this
17 marketing campaign, who should be responsible for paying
18 the sums due, is that right?
19 A. I think that --
20 Q. When you went to that meeting in 2007, did you
21 understand that it was going to be something that would
22 be met out of the tourism budget?
23 A. No.
24 Q. And that it was going to come out of the Premier's
25 budget, is your understanding?

1 A. Yes.

2 Q. I am afraid I do not have specific instructions on that.

3 That was because it was a special budget --

4 A. It was a special budget allocated under the office of

5 the Premier.

6 Q. You then finally -- there is just another matter.

7 Alicia Keys was hired. Was that for the music festival?

8 A. I know she played in the music festival. I had no --

9 I didn't know that she was being hired. We later got

10 instructions that she was going to be playing at the

11 music and cultural festival --

12 Q. She did perform here?

13 A. Yes, she did.

14 Q. Is it right that she has performed elsewhere in the

15 Caribbean?

16 A. Yes.

17 Q. I think it is in Jamaica that they have a similar

18 festival?

19 A. Yes.

20 Q. So she would have been hired there?

21 A. Yes, she has performed in Jamaica and Bermuda

22 subsequently.

23 Q. Again, something that boosted the event and attracted

24 publicity for it?

25 A. That was the intention, yes.

1 Q. I understand that Conde Naste Traveler was one of the

2 sponsors of her coming to sing, is that right?

3 A. I later understood that there was some agreement between

4 Alicia Keys and Conde Naste Traveler.

5 Q. Is this right, that the Premier held discussions with

6 the tourist board and they agreed to proceed with

7 the deal and that it was a good idea?

8 A. We never had any discussions. We were told that

9 Alicia Keys was going to be playing at the music and

10 cultural festival.

11 SIR ROBIN AULD: Now you will have to say that all again

12 more slowly. Are you saying there was never any

13 discussion with the tourist board?

14 A. No, we never had any discussion. We were just informed

15 and instructed that Alicia Keys would be playing at the

16 music and cultural festival and we were to entertain it.

17 SIR ROBIN AULD: Who informed and instructed you?

18 A. The Premier himself.

19 SIR ROBIN AULD: The Premier?

20 A. Yes.

21 MR FITZGERALD: I have only just been able to take

22 instructions over the phone. I understand that -- can

23 I just put to you exactly what the Premier's

24 recollection is. There were discussions with

25 the tourist board and they agreed to proceed with the

1 deal which was a package offered by
2 Conde Naste Traveler.
3 A. I was never in any discussions with that.
4 Q. As well as getting Alicia Keys, the tourist board became
5 one of the fashion sponsors of a New York fashion show;
6 does that ring a bell?
7 A. I know there was a show, a fashion show in New York.
8 I was not there. So I can't.
9 Q. Yes. In any event, is it your understanding that this
10 is a commitment not of the tourist board but of
11 the Premier's office?
12 A. That is my understanding, yes.
13 Q. But would you accept this, that Alicia Keys singing was
14 certainly a boost to the event?
15 A. I don't know if it was a boost. I mean she sang.
16 Q. I think you have accepted already that it is not as if
17 this is the only jurisdiction in the Caribbean that has
18 sought to get Alicia Keys to sing?
19 A. No.
20 Q. Jamaica, can you confirm that they --
21 A. I know she sang in Jamaica and in Bermuda.
22 Q. So this is, as it were, keeping up with the other
23 Caribbean islands by having a similar status star here?
24 A. She was here before Bermuda, so I guess they were trying
25 to keep up with us.

1 Q. You have fairly said the travels abroad of the Premier

2 are in fact the responsibility of the Premier's office?

3 A. Yes, to my knowledge.

4 Q. But it is right that on his travels abroad, he obviously

5 boosts both the tourism industry here and the whole --

6 one of his tasks is to raise the profile of

7 the Turks & Caicos on those travels?

8 A. Yes. That would be a fair assessment. Yes.

9 Q. There has been some suggestion about some discussion

10 between yourself and the Premier but there is nothing

11 sinister, is there, about being told that you may have

12 a ministerial post if you serve under the Prime

13 Minister?

14 A. I don't know if it is anything sinister --

15 Q. The suggestion from my learned friend was that it was

16 tantamount to receiving cash but --

17 SIR ROBIN AULD: He didn't suggest that. He asked whether

18 this was the fact and asked whether there were in

19 addition any other blandishments and the witness said

20 no.

21 MR FITZGERALD: So this was just a political discussion

22 about you receiving a ministerial --

23 A. I took it to be particularly odd under

24 the circumstances.

25 SIR ROBIN AULD: Rather what?

1 A. Rather odd.

2 MR FITZGERALD: Is this right, you are in the opposition
3 group if I can call it --

4 A. Yes, that are opposed to the Premier, yes.

5 Q. But it was no more than saying, there will be a -- come
6 on board and there is a ministerial post, is that --

7 A. I think the idea was to again try to gain control of the
8 majority of the elected members. That was the whole
9 idea and plan behind it and I said no. I am supporting
10 my stand and I still do.

11 Q. But normal political discussions such as one has with
12 Margaret Thatcher when there are rebels or any other
13 Premier, would you accept that?

14 A. No.

15 SIR ROBIN AULD: This is comment, Mr Fitzgerald. This is
16 for a jury, not for me. I know in a sense I am the jury
17 for the purpose.

18 MR FITZGERALD: You are, sir.

19 SIR ROBIN AULD: You can make it so much more eloquently to
20 me in a little while.

21 MR FITZGERALD: I will, I will suspend -- sir, I have not
22 obviously had opportunity to take any, but I don't think
23 there will be any further matters with this witness.

24 SIR ROBIN AULD: Mr Fitzgerald, I would not want the Premier
25 to be disadvantaged because you have not had

1 an opportunity to take instructions adequately from him.
2 I have noticed on this occasion and others that you have
3 been able to receive instructions in the course of your
4 cross-examination. Where is the Premier now? This
5 minute?
6 MR FITZGERALD: I am not absolutely -- we are getting him
7 over the phone.
8 SIR ROBIN AULD: You are?
9 MR FITZGERALD: There have been occasions when we have asked
10 him to attend. Sir, it may be that we can --
11 SIR ROBIN AULD: If he were here, if he were nearby, you
12 could no doubt have him here with you giving
13 instructions.
14 MR FITZGERALD: Absolutely sir. It seems that he will be --
15 with any luck he will be in at lunchtime. Sir, I don't
16 think there will be any further questions but I had
17 better just check.
18 SIR ROBIN AULD: You should feel free to take instructions.
19 If you are disadvantaged by the difficulty, tell me.
20 MR FITZGERALD: Absolutely, sir. If I could then --
21 the time is now --
22 SIR ROBIN AULD: We have just gone past 1. So it is a good
23 time to break.
24 MR FITZGERALD: If there is anything else I will raise it
25 with the witness afterwards.

1 SIR ROBIN AULD: Yes. Very well. 2.05.

2 (1.01 pm)

3 (The short adjournment)

4 (2.05 pm)

5 SIR ROBIN AULD: Yes, Mr Fitzgerald.

6 MR FITZGERALD: There is just a couple of matters that

7 I need to clarify. First of all, if we go to page 11 of

8 the bundle that you have been provided with, the last

9 paragraph 10:

10 "The Chairman then explained in the tourism budget

11 there are no funds available for a marketing campaign.

12 All the funds come from this campaign from the office of

13 the Premier via the ministry of finance."

14 Can I just see if we can get this straight, is this

15 the position, that the marketing campaign was what was

16 called a special project with special financing?

17 A. Yes, that is correct.

18 Q. In other words, it is outside the ministry of tourism

19 budget, as you have quite rightly said?

20 A. It is outside of the tourist board's budget.

21 Q. Actually the reason was the ministry of finance was

22 saying that the ministry of tourism is always over

23 budget so we are going to deal with this directly?

24 A. No, that was not the case.

25 Q. Is this right: the ministry of finance, on being

1 submitted the bills from the ministry of tourism, will
2 in fact pay the bills for this particular campaign?
3 A. They will go --
4 Q. They go to the ministry of finance?
5 A. No, they go to Premier's office.
6 Q. In the end they go to the ministry of finance?
7 A. I would think so.
8 Q. And they would pay them?
9 A. I would think so.
10 Q. The Premier says it is not via his office, but to the
11 ministry of finance, because they want to have control
12 over how much is spent on this?
13 A. I don't know what the intricacies of that was but I know
14 [overtalking].
15 Q. We are agreed that it is not the ministry of tourism
16 that pays for this, it is a special budget?
17 A. Ultimately -- [overtalking]
18 Q. Yes --
19 A. -- pay for that.
20 Q. It is the ministry of finance that will ultimately pay
21 for it?
22 A. I would think so, yes.
23 Q. That is why you are able to say that the ministry of
24 tourism itself is within budget, but for the problems
25 with the taking control of the parks?

1 A. Yes.

2 Q. Can I just turn to the Alicia Keys situation. That
3 again you have dealt with. Can you confirm this: there
4 was a special package agreement with
5 Conde Naste Traveller and their corporate department of
6 fashion to pay for this?

7 A. I don't know about [overtalking] that.

8 Q. We do see a \$1 million bill?

9 A. \$1 million.

10 Q. Conde Naste Traveller and then corporate department of
11 fashion, which I understand -- the corporate department
12 of fashion is part of the Conde Naste Traveller, is that
13 right?

14 A. I don't know, I can assume so.

15 Q. I had better put this to you and see if you can help.
16 There was an agreement with Conde Naste Traveller for
17 a package to be provided as part of the marketing, do
18 you remember that?

19 A. We had taken out some media buys with
20 Conde Naste Traveller, the magazine, yes.

21 Q. Is this right, that there was an agreement with
22 Conde Naste under which they were to provide three
23 things: (1) that Alicia Keys was to sing in the music
24 festival; (2) that TCI was to become the sponsors of
25 a thing called Fashion Rocks in New York; and (3) there

1 was to be advertisement from Conde Naste Traveller.

2 A. If there was, I don't know. I don't know.

3 Q. That's what the Premier understands to have been

4 the situation, that there was an overall package with

5 Conde Naste Traveller for all three of these things to

6 be provided?

7 A. Okay I guess he is familiar --

8 Q. And that Alicia Keys was part, not being disrespectful

9 of her, part of the package. Just see if you can help

10 us, the total \$1 million was to cover all three items?

11 A. It might have been. I was not a part of that agreement

12 or part of that conversation.

13 MR FITZGERALD: I think those are the only questions, sir.

14 SIR ROBIN AULD: Thank you, Mr Fitzgerald.

15 MR SMITH: I have a few.

16 Cross-examination by MR SMITH

17 MR SMITH: Good afternoon.

18 A. Afternoon.

19 Q. Let me see if I am correct, the tourism board is

20 a statutory body; is that correct?

21 A. That is correct.

22 Q. Would you agree with me that they have their own annual

23 budget?

24 A. That is correct.

25 Q. They get a budget and at the beginning of the financial

1 year and it is their responsibility to administer that
2 budget, is that correct?

3 A. That is correct.

4 Q. Let me ask you this: for the year that you said that you
5 were over budget as a result of certain directives from
6 the ministry of finance, what year was that?

7 A. That was in 2007, 2008.

8 Q. What was your budget for that year?

9 A. The budget for that year was 7.5 million, I believe.

10 Q. Let me ask you this: of that \$7.5 million, will you
11 agree with me that \$3.5 million was dedicated to this
12 advertising campaign?

13 A. No. It was something totally separate.

14 Q. It was separate and apart from that?

15 A. Yes.

16 Q. How was that \$3.5 million paid?

17 A. How was it paid?

18 Q. Yes.

19 A. It is not paid yet. It was budgeted through a separate
20 arrangement under the office of the Premier totally
21 apart from the budget of the tourist board.

22 Q. So will you agree with me, then, if it has not been paid
23 yet, that you are over budget even that additional
24 \$3.5 million, you are still owed that?

25 A. No, we are still owed, but we are not over budget. We

1 are still in the --

2 MR SMITH: Let me understand you: when you say you are over
3 budget as a result of the directives from the ministry
4 of finance, what do you mean by that?

5 A. That has to do with the budget of the tourist board. We
6 ended up owing through that directive somewhere in the
7 neighbourhood of \$1.2 million.

8 Q. You are saying \$1.2 million in excess of the 7 --

9 A. I accept the 7.5, that is correct.

10 Q. You owe other funds, is that correct?

11 A. We are owed the funds.

12 Q. You are owed other funds, is that correct?

13 A. Yes, we are.

14 Q. You owe the \$3.5 million for the advertising campaign?

15 A. But it is not to us, it is to the office of the Premier.

16 Q. But the bills come to you, am I correct?

17 A. Yes.

18 Q. You don't consider that part of your budget?

19 A. It is not part of our budget, no.

20 Q. You don't consider that you owe that money?

21 A. No.

22 Q. Bills don't go to the Premier's office, though?

23 A. We forward them to the Premier's office through our
24 tourist board.

25 Q. You are also responsible for the music festival, is that

1 correct?

2 A. Yes. We have been held responsible for it. We had
3 oversight for it. Again, that was something that was
4 budgeted directly under the office of the Premier,
5 separately and apart from the tourist board budget.

6 Q. I just want to make sure I am understanding you. You
7 are saying that the music festival, you only have
8 oversight of it but it is not part of your budget?

9 A. No, it is not.

10 Q. I am still trying to understand the distinction.

11 The Premier is the person with oversight of the tourist
12 board?

13 A. That is correct.

14 Q. He is responsible for tourism; is that correct?

15 A. That is correct.

16 Q. You are saying there is a distinction between the budget
17 that that tourist board has for its disbursement for
18 the purposes of running tourism, and a separate budget
19 that the Premier's office has in relation to tourism; is
20 that correct?

21 A. No, that is not what I am saying. The question was
22 asked earlier whether the budget for the music and
23 cultural festival was under the tourist board and I said
24 no. It is a separate budget apart from the tourist
25 board, operational budget. It is two totally different

1 things.

2 Q. What role does the tourist board play in relation to the
3 music festival?

4 A. We help to organise the music and cultural festival by
5 organising the artists, the performers, the various
6 activities and we work along with -- actually the last
7 one, we work along with Ms Desiree Adams who was
8 the assistant and adviser to the Premier's office then,
9 and she oversaw all of the expenditure through
10 the tourist board.

11 Q. The questions posed by Mr Milne in relation to the \$1
12 million that was supposed to be paid to Alicia Keys,
13 that is not a responsibility that the tourist board
14 would bother themselves with, is that correct?

15 A. We don't know anything about it.

16 Q. Is the answer yes, it is not your responsibility?

17 A. It is not my responsibility. If I don't know anything
18 about it, it can't be.

19 Q. So we can get an overall picture, none of the expenses
20 that were incurred for the music festival would be your
21 responsibility? It would be the Premier's office's
22 responsibility, is that correct?

23 A. If it is budgeted under the Premier's office, I would
24 think it would be their responsibility.

25 Q. The same thing in relation to the film festival: none of

1 those expenses would be one that would come under your
2 purview that you would be responsible for, is that
3 correct?

4 A. No, that is correct.

5 Q. So we agreed on this -- will you agree with me that both
6 the music festival and the film festival, those operated
7 at a loss, is that correct?

8 A. We cancelled the film festival last year.

9 Q. At the time it was operating, would you agree with me
10 that it operated as a loss?

11 A. Yes.

12 SIR ROBIN AULD: Could you speak a little more slowly,
13 Mr Smith, to make it easier for the court reporters.

14 MR SMITH: We also agreed that music festival also operated
15 at a loss, is that correct?

16 A. Yes, the music festival operated at a loss, that is
17 correct.

18 Q. Whether the money has to come from your budget, we have
19 a tremendous loss that has -- somebody in the country
20 has to find the money to pay for, is that correct?

21 A. I would think so, yes.

22 Q. We have identified at least \$3.5 million, at least
23 \$5 million in relation to this campaign, is that
24 correct?

25 A. Come back, sorry?

1 Q. We have identified at least \$5 million in relation to --
2 that is owed in relation to these advertising campaigns?
3 A. That is correct, yes.
4 Q. In relation to the music festival, what is owing in
5 relation to that?
6 A. Repeat the question.
7 Q. In relation to the music festival, what is the loss in
8 relation to those?
9 A. What is the loss in relation to the music and cultural
10 festival?
11 Q. Yes.
12 A. I think it ended up over budget by somewhere over
13 \$1.5 million.
14 Q. And the film festival?
15 A. The film festival was cancelled. The year prior to
16 that, maybe something in the neighbourhood of \$300,000.
17 Q. Would you agree with me that ultimately, as you
18 indicated to Mr Fitzgerald, those sums have to come from
19 maybe the consolidated fund, or the ministry of finance
20 would have to find somewhere to get that money?
21 A. Yes, I can agree with that.
22 Q. Now the parks programme that you speak of, would you
23 agree with me that that was a programme that was started
24 at the initiative of the tourist board?
25 A. No.

- 1 Q. Well, will you agree with me that it was a
2 beautification programme, was it not?
- 3 A. The building of the parks themselves, not the management
4 and the labour of the parks.
- 5 (2.15 pm)
- 6 Q. But the building of the parks?
- 7 A. The building of some of the parks, yes.
- 8 Q. That was a tourist board project, is that correct?
- 9 A. Yes, it came under product development.
- 10 Q. You are not saying that you build the parks and leave
11 them to take care of themselves?
- 12 A. No, of course not.
- 13 Q. There would be a necessary need to have those parks
14 properly maintained?
- 15 A. Of course.
- 16 Q. You would agree with me that at that point in time,
17 there is an attempt to increase the tourist attraction
18 in Grand Turk?
- 19 A. That is correct.
- 20 Q. At that particular time as well, there was an increase
21 in visitors to Grand Turk as a result of the cruise
22 ship, am I correct?
- 23 A. That is correct, I would agree with that.
- 24 Q. You want to present Grand Turk as a place a tourist
25 should visit?

- 1 A. Yes.
- 2 Q. It had to be clean?
- 3 A. Yes.
- 4 Q. So that I am correct, you are not telling this
- 5 Commission that that park programme was not a necessary
- 6 programme?
- 7 A. I must say it was a necessary programme, but that was --
- 8 we funded and renovated two parks. There is probably
- 9 a total of maybe about four or five parks that are in
- 10 Grand Turk.
- 11 Q. Are we agreed that it is necessary?
- 12 A. I think, of course, yes, it is necessary.
- 13 Q. Whether it was a directive or not from the ministry of
- 14 finance, would you agree with me, sir, that this is
- 15 a programme that you would have subscribed to as
- 16 a Chairman of the tourist board, to keep these parks
- 17 clean?
- 18 A. Of course I would subscribe to the programme. It
- 19 probably would have been managed differently, but
- 20 I would have subscribed to it.
- 21 Q. Who was responsible for the management of the programme?
- 22 A. I think there was an arrangement made with the
- 23 accountant at the time, who was Mrs Pauline Saunders.
- 24 SIR ROBIN AULD: Whose accountant?
- 25 A. The tourist board's accountant.

1 SIR ROBIN AULD: But who would have instructed her?

2 A. I would think probably the minister, I think there was

3 some arrangement that was made --

4 SIR ROBIN AULD: Say that again, which minister?

5 A. I think that was an arrangement that was made --

6 SIR ROBIN AULD: By whom?

7 A. By the minister of finance or the ministry of finance.

8 SIR ROBIN AULD: Mr Floyd Hall?

9 A. Yes, either Mr Floyd Hall through his ministry, I am not

10 sure which one it was.

11 SIR ROBIN AULD: He made the decision and she carried it

12 out.

13 MR SMITH: This is a person from your office?

14 A. Yes.

15 Q. This is a person that as Chairman of the office, you

16 have some control over, is that correct?

17 A. That is correct.

18 Q. Being in fact that it was an activity that would benefit

19 the tourist board, and you being the Chairman, I am

20 assuming you would pay some close attention that it was

21 being monitored properly?

22 A. But it had nothing particularly to do with me as

23 Chairman.

24 Q. That is not the question I am asking. We already agree

25 that this is a programme that would benefit the tourist

1 board, we are agreed on that, correct?

2 A. Yes.

3 Q. We are also agreed that this is a programme that you
4 would have supported regardless of where the directive
5 came, is that correct?

6 A. Yes.

7 Q. We agree also that you are the chairperson?

8 A. That is correct.

9 Q. We are agreed also that this person was a liaison with
10 the ministry of finance was a person who worked for you?

11 A. That is correct.

12 Q. We agree also that you would describe yourself as
13 a particularly meticulous and detailed chairperson, is
14 that correct?

15 A. I would think so.

16 Q. You want to make sure what is going on in your ministry?

17 A. Yes, sir.

18 Q. Since we are agreed on all those factors, are we also
19 agreed that this is a situation that you should have
20 paid some close attention to to make sure it was
21 monitored properly?

22 A. Because the directive came from the ministry of finance
23 itself or from the minister's office, however it was,
24 the special arrangement that they had with
25 the accounting at the time.

1 Q. What was the arrangement that was made with your

2 employee, sir?

3 A. To oversee the management of the park.

4 Q. You are saying that because the arrangement was made

5 with the minister of finance, you close your eyes to

6 the monitoring?

7 A. I didn't close my eyes, but I had a more of a hands-off

8 approach, yes.

9 Q. What is the difference between closing your eyes and

10 having a hands-off approach?

11 A. I don't know. Let me close my eyes. I don't know, but

12 I took a stance from it because I --

13 Q. No problem. Am I correct that the situation with the

14 parks programme is that you would make the payments and

15 you would be reimbursed?

16 A. That was supposed to be the agreement, yes.

17 Q. In fact you made the payments?

18 A. Yes.

19 Q. Would you agree with me, like other bills that are owed,

20 based on the country's economic situation, that

21 \$1.2 million was not reimbursed?

22 A. It was not reimbursed.

23 SIR ROBIN AULD: Based on the economic situation, what do

24 you mean by that?

25 MR SMITH: The bills for the tourist board for the Premier's

1 office, 3.5 is not paid, the \$5 million in relation to
2 the advertising, that was not paid, am I correct? That
3 is still owing?
4 A. Some of that is still owing, yes.
5 Q. There was an instance that you mentioned where there was
6 an eviction situation with the office in Toronto. That
7 was not being paid?
8 A. Yes.
9 Q. What would you say was the reason for the -- use that as
10 an example -- eviction situation in Toronto to get to
11 that stage?
12 A. Just insufficient funds.
13 Q. Insufficient funds was due to the fact that the
14 government didn't have sufficient funds?
15 A. I would say yes.
16 Q. I guess my question then is that given the fact that
17 there was insufficient funds could be the reason why
18 like eviction situation, like this \$5 million would be
19 the reason why \$1.2 million was not paid as yet?
20 A. It could be.
21 MR SMITH: I have nothing further.
22 SIR ROBIN AULD: Any questions on behalf of the attorney?
23 MS BROOKES: No, sir.
24 SIR ROBIN AULD: Mr Milne?
25 Re-direct by MR MILNE

1 MR MILNE: Honourable Garland, just one or two points. You

2 said in response from a question from my learned friend

3 Mr Fitzgerald that the June agreement with

4 Kerwin Communications was openly agreed.

5 Was it put before the tourist board?

6 A. No, it was not.

7 Q. You signed it?

8 A. Yes.

9 Q. On whose behalf?

10 A. I signed it on behalf of the office of the Premier, on

11 behalf of the Premier.

12 Q. So you were acting as the representative of the Premier,

13 not as the representative of the tourist board?

14 A. Yes.

15 Q. If these are bills for the Premier's office, why is it

16 that they are still being brought up in the tourist

17 board accounts as debts owed by the tourist board? Why

18 not have a separate heading and simply direct them

19 straight through to the Premier's office?

20 A. We just actually decided in the last board meeting to

21 look at doing that. I think we have an arrangement now

22 with the Permanent Secretary for the minister of finance

23 to do that, to take over those accounts.

24 Q. The commitment to take this contract on, \$6 million,

25 \$7 million, was made in the year 2007?

- 1 A. Yes.
- 2 Q. Up until that point your tourist numbers had been
- 3 rising?
- 4 A. Has been.
- 5 Q. Up until 2007 your tourist numbers were rising?
- 6 A. Yes.
- 7 Q. From 2007 your tourist numbers have been falling?
- 8 A. No, from 2008 we started to see a decrease.
- 9 Q. You say there is a rebound in 2008?
- 10 A. Yes.
- 11 Q. By how many?
- 12 A. We started seeing a decrease in the year 2008, 2009,
- 13 that is when we start to see a decrease.
- 14 Q. A decrease or an increase?
- 15 A. A decrease in tourist arrivals.
- 16 Q. I think you said before lunch it was from 2007?
- 17 A. I said that because the budget is 2007 to 2008.
- 18 Q. So from the same year when this 6/7 million first
- 19 started being applied, the numbers started to fall?
- 20 A. No, the latter part of the year 2008 when that season
- 21 began. The season normally begins around December into
- 22 April, the beginning of the year.
- 23 Q. So are the numbers still falling?
- 24 A. Yes, I think we are still seeing a decrease in some of
- 25 the numbers.

1 MR MILNE: Thank you, I have no further questions, sir.

2 MR FITZGERALD: Sir, can I just check that the answer was

3 that it was from the latter part of 2008 was the fall?

4 A. Yes.

5 Q. So from the latter part of 2008?

6 A. Yes.

7 SIR ROBIN AULD: What was?

8 MR FITZGERALD: The fall in tourist figures.

9 SIR ROBIN AULD: That is not what he said before.

10 MR FITZGERALD: That is what I heard him say, that the fall

11 was from the latter part of 2008, just now.

12 A. Not the latter part of 2008. I said the beginning of

13 the season of 2008. From January 2008 when the year

14 began.

15 MR FITZGERALD: From January.

16 A. Yes, exactly.

17 SIR ROBIN AULD: Yes, that is what I understood broadly from

18 his earlier answers.

19 Mr Garland, you took up your post as Chairman in

20 December of 2007, didn't you?

21 A. In February of 2007.

22 SIR ROBIN AULD: The audit's report on the tourist board for

23 that year was highly critical, wasn't it?

24 A. Yes.

25 SIR ROBIN AULD: You read it?

1 A. Yes. I remember perusing through it.

2 SIR ROBIN AULD: In December of 2007, the public accounts
3 committee held a meeting at which it examined not only
4 the then Chief Auditor and senior auditor, but also
5 Mr Lindsey Musgrove, the director, and Ms Pauline
6 Saunders, the chief accountant?

7 A. Yes.

8 SIR ROBIN AULD: It doesn't look as if you were there?

9 A. No, I was not there. That was for the prior years,
10 I think.

11 SIR ROBIN AULD: Well, I have under my right hand nearly
12 100 pages of minutes of that public accounts meeting
13 which was chaired by the Honourable Floyd Seymour.
14 I have read every word of it. Have you?

15 A. No, sir.

16 SIR ROBIN AULD: Why not?

17 A. I have perused it. Because it was for the years prior
18 to my being the Chairman.

19 SIR ROBIN AULD: But did you not think there were lessons
20 you could learn from it that would help you during your
21 tenure as Chairman?

22 A. Yes, I didn't look through with any great detail but
23 I did.

24 SIR ROBIN AULD: Then you did look at some of it, did you?

25 A. Yes, I looked at some of it. I was advised by

1 Mr Musgrove.

2 SIR ROBIN AULD: So I would expect. But you didn't read it

3 all, and did you learn some lessons from it?

4 A. Of course. We learned some lessons from it --

5 SIR ROBIN AULD: Did you learn some lessons from it as

6 Chairman?

7 A. Yes, I did.

8 SIR ROBIN AULD: Among the serious criticisms made which

9 echoed many of those in the audit report, there were

10 the following: that the board at that stage in

11 December 2007 was significantly over budget; that is

12 right, isn't it?

13 A. Yes.

14 SIR ROBIN AULD: That was a criticism made in the course of

15 very rigorous questioning. There were inadequate and

16 poorly kept records, another criticism made.

17 A. That was part of it, yes.

18 SIR ROBIN AULD: There was no efficient control over or

19 scrutiny of expenses of the tourist board's staff in

20 various offices, yes?

21 A. Mmm hmm.

22 SIR ROBIN AULD: Consistent failure to reconcile such

23 accounts as the tourist board kept with bank accounts,

24 yes?

25 A. Yes.

1 SIR ROBIN AULD: No criteria for or scrutiny of whether

2 people were entitled to claim untaken vacation leave?

3 A. Yes.

4 SIR ROBIN AULD: No exercise undertaken to assess whether

5 the expenditure that you were incurring on behalf of

6 the tourist board represented good value for money?

7 A. I would not agree totally with that one.

8 SIR ROBIN AULD: I am sorry?

9 A. I would say I would not agree totally with that.

10 SIR ROBIN AULD: That was a criticism which was made, an

11 acceptance by Mr Musgrove and Ms Pauline Saunders that

12 you had not put in place any system which would help you

13 to assess whether you were getting good value for

14 the high expenditure that you were incurring on behalf

15 of the board. Yes?

16 A. Yes.

17 SIR ROBIN AULD: Undue reliance on the government auditors

18 department to undertake much of the accounting work that

19 your accounting staff should have done?

20 A. That is correct.

21 SIR ROBIN AULD: In particular as to reconciliation of

22 the board's accounts with the bank's accounts.

23 A. But what we have done subsequent to that, sir --

24 SIR ROBIN AULD: Let me get to the end of this list and you

25 can tell me what you have done. Insufficient accounting

1 staff. Ms Saunders was claiming to be hopelessly
2 overworked, wasn't she?
3 A. Yes.
4 SIR ROBIN AULD: She was looking for an assistant accounting
5 clerk.
6 A. That is correct.
7 SIR ROBIN AULD: Improper use of tourist board staff housing
8 allowances, yes?
9 A. Yes.
10 SIR ROBIN AULD: Lack of accurate preparation of statistical
11 data?
12 A. That is correct.
13 SIR ROBIN AULD: Those were just some of the more important
14 of the many criticisms made. But you only gave
15 a passing look at these minutes, is that right?
16 A. Yes, but I know about all of the -- most of the
17 criticisms that were made.
18 SIR ROBIN AULD: In the ordinary way, there would have been
19 a report from the Chairman of the public accounts
20 committee in the light of the auditor's report for
21 the year in question and on the examination of
22 Mr Lindsay Musgrove and Ms Saunders, but there has been
23 no such report, has there?
24 A. No, I have never seen it.
25 SIR ROBIN AULD: Tell me what steps did you take to meet

1 these very serious criticisms in the 2007 auditor's
2 report and in what looks like to have been a very full
3 day before the public accounts committee of their
4 equally serious criticisms of the way the place was
5 being run?

6 (2.30 pm)

7 A. With regards to the accounts, we realised that we were
8 not getting proper accounting done. Subsequent to that
9 the next year we set out to hire a fully certified
10 accountant.

11 SIR ROBIN AULD: Which year?

12 A. Last year in 2008. We hired a certified accountant.

13 And, sir, we hired an accounts assistant, a certified
14 accounts assistant, to start to reconcile and make good
15 on most of the recommendations that was in that report
16 as far as accounting and proper record-keeping is
17 concerned.

18 We also started a review of our staffing. We had
19 the directors sit down and liaise with them, make them
20 more responsible for what they were doing and how they
21 were carrying out their daily activities. So we ensured
22 that we were getting value for money from all of our
23 employees.

24 We have contracted since then with Sabre ADI to
25 begin to get proper statistical data.

1 SIR ROBIN AULD: You say we have begun to; when did all this

2 happen?

3 A. Sabre ADI started probably about five months ago we

4 contract with them out so they can get statistical data

5 that we can begin to publish on a monthly basis, on a

6 monthly, quarterly, and yearly basis, that hopefully we

7 will be able to produce some reports hopefully by

8 the end of this month and prior to the end of the

9 financial year.

10 SIR ROBIN AULD: Those are general observations, probably

11 appropriately from the Chairman as distinct from

12 the director of the board, but did you or

13 Mr Lindsay Musgrove set out the gist of the serious

14 criticisms made by the auditor, Chief Auditor, and the

15 committee and systematically run through them with

16 meetings of your board executives?

17 A. No, we did not, in all honesty.

18 SIR ROBIN AULD: What you needed was a little list, didn't

19 you? These are the things which are wrong; what are we

20 going to do to put them right? That was never done?

21 A. No, that was some discussion that we had with

22 Mr Musgrove and the accounting at the time but not with

23 the board of directors, no.

24 SIR ROBIN AULD: So we would look in vain, would we, for any

25 minutes of meetings, memoranda, proposals to remedy

1 the serious criticisms made of the board at the end of
2 2007?

3 A. The gist of most of it was -- as indicated when you just
4 spoke, it is around pure accounting, poor accounting.

5 SIR ROBIN AULD: But is what I have just said right: we
6 would look in vain for any agenda, minutes of meetings,
7 reports, proposals setting out in any organised and
8 comprehensive way how you were to respond to these
9 serious criticisms.

10 A. Yes, we never put a list -- not to my knowledge, there
11 was no official response made to the list of criticisms.

12 SIR ROBIN AULD: When the tourist board is audited again and
13 appears before the public accounts committee or its
14 equivalent again as it will shortly, would you say that
15 you had made any significant, or would you say you had
16 made significant improvements on the situation as it was
17 in December 2007?

18 A. I think so. I think we have made some significant
19 improvements.

20 SIR ROBIN AULD: Well, we shall see. Thank you very much.

21 MR MILNE: Thank you, Mr Garland.

22 SIR ROBIN AULD: Any questions arising out of mine?

23 MR MILNE: No, sir, thank you.

24 SIR ROBIN AULD: Thank you very much, Mr Garland.

25 MR MILNE: Sir the next witness will be Mr Lindsey Musgrove.

1 MR LINDSEY MUSGROVE (sworn)

2 Direct-examination by MR MILNE

3 MR MILNE: May it please you, sir. Good afternoon

4 Mr Musgrove.

5 A. Good afternoon.

6 Q. You have, I think we are all aware, been sitting in the

7 hall throughout the evidence of the Honourable

8 Wayne Garland who came immediately before you, so I hope

9 I can take matters perhaps slightly more shortly.

10 Can I deal first of all with the contract which is

11 in the small bundle in front of you, that is the one

12 provided by the Commission. If you could turn over to

13 the first page of that, behind the cover sheet and can

14 you tell me, do you recognise that document at all?

15 A. This is the first time I have seen this document.

16 Q. You have never seen that document before?

17 A. No, I have not.

18 Q. We have been provided with a copy of this document and

19 as you will have seen, the Honourable Wayne Garland

20 accepts that on page 5 of that his signature appears.

21 It is quite clear that it has been signed either by

22 or on behalf of James Kerwin, president of Kerwin Media

23 LLC, and it was apparently put together in March of

24 2007. Were you aware that any contract of this nature

25 had come into existence?

1 A. No.

2 Q. Can you cast any light on how his signature, that is
3 the Honourable Wayne Garland's signature, would be on
4 a document of this sort?

5 A. I --

6 Q. If he didn't sign it?

7 A. I don't have a clue. The only time I can recall
8 Honourable Garland signing any document was in June 2007
9 and I didn't recognise it to be this particular
10 document.

11 Q. This is clearly not the document of June. It pre-dates
12 it by several months, by three months. As of the early
13 part of 2007, did you believe there was any contract
14 between yourselves as tourist board and
15 Kerwin Communications?

16 A. No. But I will say this, as far as the tourist board is
17 concerned, I prepare all the agendas for the meetings,
18 and the proposal nor a contract was ever submitted to
19 the board. So this was something that was done outside
20 of the tourist board and board meetings.

21 Q. It appears to be signed on behalf of the tourist board?

22 A. I certainly don't understand that. I was listening to
23 Honourable Garland earlier, and I must say that
24 the marketing campaign is actually a project in the
25 ministry of tourism budget, just like tourist board

1 budget is separate and distinct from it.

2 Q. It is important we draw this distinction because the

3 ministry of tourism answers ultimately to the minister

4 of tourism who is the Premier, yes?

5 A. Yes.

6 Q. Although as we understand it, the TCI government

7 provides for a separate budget for the ministry of

8 tourism, as distinct to that from the office of the

9 Premier?

10 A. Yes.

11 Q. That is your understanding. You are by virtue of your

12 post a civil servant. You work full-time for the

13 ministry of tourism, is that correct?

14 A. Tourist board. A statutory body.

15 Q. You work for the tourist board?

16 A. Yes.

17 Q. A tourist board being essentially political

18 appointments, although I think the Honourable

19 Wayne Garland is an executive Chairman, so he is not

20 just one meeting a month; he is regularly on site and

21 plays an active role, is that correct?

22 A. Not executive Chairman. If you check the Gazette you

23 will see he is a Chairman like all other chairmen. Just

24 have a Chairman and Deputy Chairman.

25 Q. Let's try to trace the history. When did you first

1 become aware of Kerwin Communications? What was your
2 first contact with them?

3 A. My first contact with Kerwin Communications was before
4 the 2007/2008 financial year. I got a call from
5 James Kerwin that he needs some Beta video footage
6 for -- to develop a video piece to be aired on various
7 screens and monitors throughout private and
8 international airports. I know that we had about three
9 or four hours' worth of video footage that I asked
10 Mr Ralph Higgs to send to Kerwin that was sent, and we
11 got some exposure at these private jet terminals and
12 airports throughout the United States, I think it was
13 some 50.

14 Q. Let me pause you there. You said before a particular
15 financial year; that doesn't, I am afraid, mean a lot to
16 non-accountants. In real year times, was this
17 2006/2007?

18 A. It was before April 1st 2007. Before that financial
19 year.

20 Q. Mr Kerwin rings you up and asks for video footage of the
21 TCI. At that point did you think he was working for
22 the TCI?

23 A. I believe it was a special project because I can recall
24 the Premier telling me to give this gentleman a call and
25 he has some -- he needs some items from me.

1 Q. Let me pause you again; when was it the Premier told you

2 to ring Jim Kerwin?

3 A. That was prior to March 1st -- April 1st 2007.

4 Q. Can we take it that is either late 2006 or early 2007?

5 A. Yes, I would say late 2006, early 2007.

6 Q. Were you at that time the director?

7 A. Yes, I have been the director since December 2003.

8 Q. Was it common --

9 SIR ROBIN AULD: 2003, did you say?

10 A. Yes.

11 SIR ROBIN AULD: Sorry, Mr Milne.

12 MR MILNE: I beg your pardon, sir. Was it a common

13 experience for the Premier to intervene and tell you to

14 make contact with particular people?

15 A. Well, yes because I was a little bit disturbed myself

16 because we had on file Blur Communication as advertising

17 agency. From that I gathered that Kerwin were probably

18 phased Blur out, but I know that Blur was

19 the advertising agency on contract and not Kerwin.

20 Q. How much were you paying for Blur Advertising Agency?

21 A. It would have been about \$50,000 a year for their

22 services.

23 Q. So 50,000 a year for Blur; was it your idea that Kerwin

24 come in to replace Blur?

25 A. No, it was not my idea. I don't have a clue. I just

1 learned about it afterwards.

2 SIR ROBIN AULD: From whom?

3 A. From discussion with Ralph Higgs and the former

4 Chairman, Mr Don Gardiner.

5 MR MILNE: Somebody must have set this ball rolling. Who

6 was it who first suggested to you -- maybe it was

7 the Premier, you have told us he told you to ring

8 Mr Kerwin -- was that the first time you had ever been

9 told to have any contact with Kerwin Media or

10 Kerwin Communications?

11 A. That was the first time.

12 Q. If I follow your evidence correctly, when you rang

13 Mr Kerwin, he was clearly working on something to do

14 with the TCI?

15 A. Yes, prior to that -- to my calling him, yes.

16 Q. So you as director of the tourist board had no knowledge

17 of this and yet he has already started doing what

18 appears to be tourism promotion?

19 A. Exactly.

20 Q. It is the Premier that has put you in touch with him?

21 A. Yes.

22 Q. I don't know how often you have met with the Premier.

23 Did you ask the Premier why we are dealing with

24 Mr Kerwin?

25 A. No, I did not, because as far as I am concerned,

1 Blur Communications supposed to be advertising agency at
2 the time. I just assume it was a special project that
3 Kerwin Communications was going to be managing.

4 Q. Was it common practice for work that one would expect to
5 fall within the remit of the tourist board to be taken
6 away from the tourist board and run as a special
7 project?

8 A. No, not to my knowledge. That was the first time.

9 Q. Did you later get to meet with Mr Kerwin?

10 A. The first time I met with Mr Kerwin was doing
11 a Caribbean Tourism Organisation weekend in New York and
12 the Premier invited me, Mr Ralph Higgs and
13 Mr Don Gardiner, the former Chairman, to his suite in
14 New York and that was the first time I met James Kerwin.

15 Q. We have heard description of this, I think. Is this
16 the meeting, the Caribbean Week convention which I think
17 was in June 2007 in New York?

18 A. Yes, but we met Mr Kerwin before that, I suppose.

19 Q. How long before did you first meet him?

20 A. It would not have been in June 2007, because that is
21 the time when the Honourable Garland was at that
22 meeting. That meeting would have been -- maybe eight
23 months before that.

24 Q. So eight months before June 2007?

25 A. Probably eight to ten months.

1 Q. Eight to ten months before June 2007?

2 A. Yes.

3 Q. So we are talking the latter half of 2006?

4 A. Yes.

5 Q. You first met him. When you first met him, at that

6 stage, did you understand -- had he been given

7 a contract to work with the Turks & Caicos Islands?

8 A. No, what happened is that there was some discussions

9 with him prior to that meeting to prepare a proposal

10 illustrating how Kerwin Communications can promote

11 Turks & Caicos in the print and broadcast media. Like

12 I said, present at a meeting with Mr Ralph Higgs, who is

13 responsible for marketing himself, Mr Don Gardiner.

14 Q. So Mr Don Gardiner, yourself and Ralph Higgs all met

15 with him in late 2006 and he was presenting plans for

16 advertising essentially to the media?

17 A. Yes.

18 Q. When that happened, did you at that stage give any

19 indication as to whether you were agreeable to this

20 proposal?

21 A. No, it was just a work in progress. He just showed us

22 what he has done for other destination. I believe he

23 was working with Israel or some other destination, and

24 he did some mock-up of the Turks & Caicos and how our

25 ads can be showcased by Kerwin Communications.

1 Q. Forgive me, I may be getting confused here. At that

2 meeting, yourself, Mr Higgs and who else?

3 A. Mr Don Gardiner.

4 Q. Who at the time I think was chair?

5 A. Yes.

6 Q. Was there any discussion as to price at that stage?

7 A. No. We did not discuss price.

8 Q. Surely that would have been a very big factor?

9 (2.45 pm)

10 A. No, what happened is that in the proposal, he had

11 a number of different magazines that we have, and we

12 have been advertising in and we had on our wish list to

13 advertise in in the course of a full page or double

14 page; and he was telling us how through media buy he can

15 get ads in these various magazines at a substantial

16 discount. But we never discussed the overall price,

17 I don't recall us discussing an overall price for

18 the ads and also Kerwin Communications fees at that

19 time.

20 Q. Did you never tell him: we only have a budget of

21 a certain amount and tell him what your budget was?

22 A. I believe he was aware of that because he had talks with

23 the Premier prior to that meeting.

24 Q. Presumably he told you he had spoken to the Premier

25 prior to that meeting, did he?

1 A. Yes.

2 Q. So given that he had spoken to the Premier,
3 the impression that you are left with from that meeting
4 in late 2006, did you believe that any promises had been
5 made to Mr Kerwin about his future employment by
6 the TCI?

7 SIR ROBIN AULD: You said "did you believe"; did you mean to
8 say "believe"?

9 MR MILNE: I did sir, yes.

10 SIR ROBIN AULD: All right.

11 A. Yes. I left the meeting with the belief that we have
12 a new advertising agency, it passed to
13 Kerwin Communications.

14 MR MILNE: And that that had been agreed before you ever met
15 him, yes?

16 A. No, it would be after that meeting.

17 Q. Maybe we are at cross-purposes. Let's see if I can
18 clarify this. You met him in late 2006. He told you he
19 had previously met with the Premier. My understanding
20 of what you just said was that you came away from that
21 meeting thinking: this is our new advertising agency.

22 A. Yes.

23 Q. Did you come away with that view, not because you had
24 made the decision, but because the Premier had made
25 the decision?

1 A. Based on the nature of the discussion at that meeting,
2 I left with the understanding that this would be a new
3 advertising agency.

4 Q. Did you have any choice in the matter?

5 A. Well, at that time a decision was made for
6 Mr Ralph Higgs to be responsible for marketing and it
7 was not my decision, he would have been heavily involved
8 in that, because -- it has been brought up earlier but
9 actually there were two directors, myself, Mr Higgs, and
10 he was tasked with that responsibility, but it had some
11 financial implications because it was a project. So it
12 was not me to make that decision or to even form
13 the opinion that this should be advertising agency. It
14 was Mr Higgs, who was next.

15 Q. No doubt, but whilst you were there, did you and
16 Mr Higgs put your heads together, or did Mr Higgs say to
17 you: this is the way it is going to be, we are going to
18 have these people?

19 A. What we did is that we discussed the various magazines
20 and the cost of advertising in those magazines. During
21 our side talks, we agreed that I do not think we can
22 afford this, because you must remember, we had a budget
23 that was far less than \$1 million. When you look at
24 some of those magazines, Mr Higgs and I had those
25 magazines on our wish list, like Elite Travel and

1 the others. We had them on our wish list when we have
2 sufficient funds in our budget to afford it, so we left
3 thinking that this is pretty expensive. Not the overall
4 amount but the individual cost to advertise in each of
5 the magazines.

6 Q. Mr Musgrove, it comes down to this, does it not:
7 advertising is very costly at the top level?

8 A. Yes.

9 Q. Very pricey indeed. If you had a budget of 10 million,
10 you would probably be able to spend that. I suspect if
11 you had a budget of 20 or more million, you would be
12 able to spend that?

13 A. Yes.

14 Q. One could advertise in every magazine going. Ultimately
15 there is no end to it.

16 You had an advertising agency already,
17 Blur Advertising Agency for whom you were paying \$50,000
18 a year, you have told us.

19 Why did you need a new advertising agency since Blur
20 could have gone to these magazines on your behalf in the
21 first place, couldn't they, if you had the money?

22 A. Yes.

23 Q. So you didn't need a new advertising agency?

24 A. Like I said, the decision wasn't mine. It was something
25 that was discussed long before we had that meeting.

1 I made it clear that there was a division and
2 responsibility of Mr Higgs dealing with marketing and me
3 with administration and the other areas.

4 Q. Mr Musgrove, the way you present it, am I wrong in
5 thinking that after you had met with Mr Kerwin, it was
6 clear to you this was a fait accompli? This was being
7 presented as a done deal. The Premier had decided this
8 would be the new advertising agency. Is that not
9 the truth?

10 A. I cannot say that.

11 Q. You came away believing that they were now going to be
12 your advertising agency.

13 A. Mmm hmm. I cannot say it was a done deal.

14 Q. There came a time you told us when you met Mr Kerwin in
15 New York at the -- we are talking about June 2007. This
16 would be at the Caribbean Week convention, is that
17 right?

18 A. Yes.

19 Q. By this stage I think Mr Garland had become the
20 Chairman. Were you also with Kingsley Been on that
21 occasion and I think Ralph Higgs?

22 A. Yes, I was.

23 Q. You met Mr Kerwin, and I think he presented a proposal
24 to you for a contract, is that correct?

25 A. I believe it was a media schedule that he want us to

1 review and sign off on.

2 Q. Now, somewhere in between this document has come into
3 existence, assuming that it is dated correctly, but you
4 knew nothing of that?

5 A. No, I have never seen that document before.

6 Q. Although it says not that it is between the Premier's
7 office and Kerwin Communications or Kerwin Media, but
8 between the Turks & Caicos tourism board and
9 Kerwin Media. Would it have caused you concern if you
10 knew somebody had signed on behalf of your organisation
11 without telling you?

12 A. Certainly because like I said earlier, the marketing
13 campaign was treated as a project, separate and distinct
14 from tourist board budget, and to have a document that
15 is signed in the name of the tourist board, the proposal
16 nor the contract presented to the board at its regular
17 meeting, it certainly caused concern for me.

18 Q. When you met in June, a further contract was signed. As
19 far as you knew, it was the first contract, of course.
20 Is that right?

21 A. In June -- a media schedule is not a contract. It is
22 one that I presented earlier. I gave a copy of it.
23 That is what was presented. That is not a contract. It
24 is just a matter of signing off on it, saying these are
25 the magazines, the billboards that we intend to showcase

1 Turks & Caicos on.

2 Q. If this is only -- if this is the only document from

3 them, a media schedule which sets out proposals is no

4 more than a wish list if there is no binding agreement

5 with Kerwin. So where did you think the binding

6 agreement with Kerwin had been signed?

7 A. I would say it is probably before that meeting in June,

8 because for Honourable Garland to sign off on a media

9 schedule, it must have been a contract signed or

10 reviewed prior to June 2007.

11 Q. Did you get a copy of it?

12 A. The contract?

13 Q. Yes.

14 A. No, this is the first time I have seen the contract.

15 Q. We are not, with respect, even sure this is the same

16 document.

17 A. I don't know. I just seen a copy of the media buy,

18 the media schedule I gave earlier.

19 Q. Sir, maybe things work differently in the tourist board,

20 but you are the director, this is a contract to spend

21 millions of dollars; did you not ask at any stage:

22 please can I see the contract with these people.

23 A. No, like I said earlier, the marketing campaign was

24 a project. The finances of it was managed by the

25 ministry of finance through the ministry of tourism.

1 As long as it is not in tourist board budget for
2 that financial year, 2007/2008 and 2008/2009, I didn't
3 have anything to do with it, because I am only
4 responsible for the tourist board's budget.

5 Q. How did you know that it was the responsibility of the
6 Premier's office?

7 MR FITZGERALD: Sir, he said the ministry of finance. He
8 didn't say the Premier's office.

9 MR MILNE: How did you know that it was not your
10 responsibility, the Turks & Caicos tourist board's
11 responsibility if you had not seen the contract?

12 A. Well, it was discussed outside of board meetings.

13 Q. Where was that, please?

14 A. Yes, Kerwin Communications and possible contract, it was
15 discussed outside of board meetings, me and Mr Higgs and
16 the former Chairman, and I didn't ask for the contract,
17 I assumed someone must have signed it because it never
18 came to the board of directors.

19 Like I said earlier, as long as the marketing
20 campaign and the cost associated with it is not in the
21 tourist board budget, I didn't have to worry myself with
22 it, nor the board of directors, because I said earlier,
23 the board never seen the contract, never seen
24 the proposal and since it is not in our budget and
25 I assisted with preparing the budget, I did not have to

1 worry about it, who is paying for it or whatever
2 the case may be.

3 Q. We know it is being discussed at the tourist board
4 meetings because we have at page 11 of that bundle
5 a meeting of June 2008?

6 A. What the board of directors have done from time to time,
7 because as you know, the tourist board responsible,
8 Mr Ralph Higgs was executing it, even though it was not
9 in our budget, he was the one executing it. The board
10 from time to time would ask for an update.

11 SIR ROBIN AULD: But the marketing schedule was nothing to
12 do with you either on that approach.

13 A. No. I just happened to be --

14 SIR ROBIN AULD: Why was the tourist board bothering its
15 head with the marketing schedule in June if all this was
16 being decided upon by someone else and paid for by
17 somebody else?

18 A. I would not say the tourist board per se. Honourable
19 Garland, as you know, he is the Chairman and also he
20 works closely with the Premier. So at that meeting in
21 June when it was signed, it was signed on behalf of the
22 ministry of tourism, not the tourist board. I just
23 happened to be at that meeting.

24 SIR ROBIN AULD: What was signed in June?

25 A. The media schedule.

1 SIR ROBIN AULD: The schedule is signed somewhere, is it?

2 A. That may not be the copy that was signed, but it is

3 a copy of it.

4 SIR ROBIN AULD: Where do I find the signatures on this?

5 A. No, I said that may not be the copy that was signed.

6 That is just a copy of the media schedule that I printed

7 from my --

8 SIR ROBIN AULD: But is it a copy of the original that you

9 say was signed?

10 A. Yes.

11 SIR ROBIN AULD: Where was it signed?

12 A. I don't know but I know he signed the document.

13 SIR ROBIN AULD: There is budget agreement, signature on the

14 very last page at the foot which here is blank. This

15 doesn't purport to be a copy of the original.

16 A. No, it is not a copy of the original.

17 SIR ROBIN AULD: May we see a copy of the original, please.

18 A. I don't have it.

19 SIR ROBIN AULD: What do you mean, you don't have it?

20 A. I don't have it.

21 SIR ROBIN AULD: Who has it?

22 A. I would think -- I don't know, Mr Higgs or Honourable

23 Garland, but definitely I know that leaving that

24 meeting, James Kerwin left with that signed document.

25 I don't think a copy was made.

1 MR MILNE: This was definitely in June 2007?

2 A. 2007, yes.

3 Q. June 2007?

4 A. Yes, because Honourable Garland's tenure starts sometime

5 in April 2007.

6 Q. This document, sir, is dated in August 2007 in the top

7 left-hand corner. Are you sure it is the same one?

8 A. I would believe it is the same one. I must --

9 SIR ROBIN AULD: One would expect to see the copy of it then

10 reproducing the original signatures.

11 A. I believe that Mr Ralph Higgs got a copy of the original

12 one from James Kerwin. Mr Higgs would agree when he

13 comes next that there were several revisions to the

14 media schedule because there were some additional

15 magazines and billboards added.

16 So that copy was printed in August but the one that

17 was presented to us in June, I guess would have the date

18 June or maybe May.

19 SIR ROBIN AULD: Mr Musgrove, your board is facing multiple

20 litigation claims for unpaid bills, isn't it, arising

21 out of work done presumably in pursuance of this

22 marketing schedule?

23 A. Well, I cannot agree with you when you say the board.

24 Reason being is that if a proposal or a contract wasn't

25 presented to the board, the board is not liable for it.

1 SIR ROBIN AULD: I am not talking who is liable. I am
2 talking about the claims which you are facing. There
3 are claims against the board, aren't there?

4 A. Yes.

5 SIR ROBIN AULD: Litigation.

6 A. Yes.

7 SIR ROBIN AULD: Official documents in the courts claiming
8 that the board is liable for not paying its bills.

9 A. I have seen a few of them.

10 SIR ROBIN AULD: Are you saying that notwithstanding
11 the commencement of litigation on behalf of more than
12 one serious creditor, you have not looked for
13 the original contractual basis upon which you can either
14 admit the claim or defend it?

15 (3.00 pm)

16 A. No. Like I said earlier and I am going to repeat it
17 again I was not responsible for the marketing campaign,
18 the finances, the contract, the proposal. I was not
19 responsible for it. There is nowhere in our minutes
20 that you have that would indicate that I was responsible
21 for it.

22 SIR ROBIN AULD: Haven't your attorneys asked you for copies
23 of the original contractual documents so that they can
24 assess whether you are liable and to what extent?

25 A. Mr Ralph Higgs was the one who was dealing directly with

1 the contract between us and Kerwin and the attorneys.
2 I believe he was the one who presented a copy of it to
3 the attorneys to review, and he was the one who got
4 the final copy and must have given it back to
5 Kerwin Communications, but I have never seen
6 the contract before, the signed one or the unsigned one.
7 I have never seen the contract before.
8 MR MILNE: Would you please have a look at this document,
9 sir.
10 Is that the June one?
11 A. Pardon me?
12 Q. Is that the June document?
13 A. It looks like it.
14 SIR ROBIN AULD: Signed?
15 A. I do not know. The June document, I don't remember --
16 SIR ROBIN AULD: Does it bear a copy signature there?
17 A. It has a signature, yes.
18 SIR ROBIN AULD: Well, that's a start.
19 A. It is dated 15th June 2007.
20 SIR ROBIN AULD: You don't know whose signature it is?
21 A. It looks like Honourable Garland's signature.
22 MR MILNE: So this is a later print, a later version.
23 A. I said earlier there was a number of revisions to
24 the media schedule.
25 Q. The revised later one appears to have grand totals of

1 some \$6.5 million. \$6,471,000.

2 What was the period that the 6.5 million was
3 supposed to be spent over?

4 A. It was supposed to be spent over two years.

5 Q. Which two years was that?

6 A. April 1st 2007 to March 31st 2009.

7 Q. So it sounds as if, if the contract was in place by

8 April 1, 2007, that the document we have seen in

9 the little bundle bearing the heading

10 "Kerwin Communications" might well be the only contract

11 that there is.

12 A. I would think so.

13 Q. Right.

14 SIR ROBIN AULD: Did you say yes to that?

15 A. Yes.

16 MR MILNE: So in fact that is the extent of it, that is

17 the contract, which is an open ended agreement; there is

18 no reference in there to \$6.5 million but you say that

19 was agreed subsequently.

20 A. The total amount to spend was about 7 million.

21 Q. But by June most of that had been committed already?

22 A. Yes.

23 Q. So within two months the entire budget for two years had

24 been committed.

25 A. I don't know at what point during the 2007/2008

1 financial year most of it was committed, but I believe
2 that more than 80 per cent was committed at some point
3 before March 31st 2008.

4 Q. Because it seems as if you are the keepers of the
5 special project money, you are the people responsible
6 for spending it, yes?

7 A. Not me directly.

8 Q. You are in charge of the tourist board.

9 A. I made it clear that I am only responsible for tourist
10 board budget and at that time it was 7.5. You want to
11 make me to say that I am responsible for a project that
12 I had no control over the spending, no control over
13 the contract, no control over the marketing plan and
14 I have never signed any contracts. So I cannot say that
15 I am responsible for it. I can say that I am
16 responsible for the tourist board budget. Marketing was
17 separate from it. So I had no responsibilities for it.

18 SIR ROBIN AULD: So who was responsible? Mr Higgs?

19 A. Mr Ralph Higgs.

20 SIR ROBIN AULD: It was all down to him, was it?

21 A. Mr Ralph Higgs was helping the ministry of finance to
22 manage it.

23 MR MILNE: You see, the Honourable Wayne Garland, you tell
24 us, is signing off this schedule of advertising, his
25 signature is on the contract, we know not how, or at

1 least he knows not how and it has been signed in the
2 name of the tourist board.

3 Whether or not you are going to be reimbursed by
4 another part of the government, it has got an awful lot
5 of tourist board thumbprints on it, would you not agree,
6 that tend to point in your direction?

7 A. Yes, but it shouldn't have been that way.

8 Q. Maybe it shouldn't have been, but it clearly was.

9 A. Yes.

10 Q. You say it is not your responsibility in any way, shape
11 or form?

12 A. I certainly maintain that.

13 Q. What was the tourist board doing, aside from this, in
14 terms of advertising? Anything?

15 A. Our budget was less than \$1 million prior to April 1st
16 2007 and -- you probably have the audit report -- we
17 have accumulated some \$3 million above that for
18 advertising. So that in itself we can say was more or
19 less the forerunner of what is to come in 2007/2008.

20 Q. I will confess, sir, that I am at a bit of a loss.
21 The tourist board, it seems to me, is there to promote
22 tourism?

23 A. Yes.

24 Q. It is fairly obvious. One of the major ways a tourist
25 board will promote tourism is by advertising?

1 A. Yes.

2 Q. Indeed you have an advertising budget?

3 A. Yes.

4 Q. But then it would appear that this new advertising
5 budget of \$6.5 million to \$7 million is conjured up, you
6 are present when it is being signed, it has been
7 discussed at your board meetings, the money is
8 apparently coming via your office and yet you say this
9 has got nothing whatsoever to do with yourself?

10 A. Let me explain it. Prior to April 1st 2007, marketing
11 was included in tourist board budget. After March 31st
12 2007 it was treated as a separate project.

13 The board never reviewed a proposal pertaining to
14 marketing and the marketing campaign with Kerwin, nor
15 did the board ever look at an contract.

16 I said earlier that the Premier made the decision to
17 take the responsibility of marketing direct from me and
18 gave that to Mr Ralph Higgs. So he is the one who most
19 of these questions you should pose to, not me. I am
20 only responsible for tourist board's budget, and from
21 2007 to 2009, marketing is never included in the tourist
22 board's budget as a separate project. The funds were --
23 in the Premier and the ministry of tourism budget as
24 a project and the ministry of finance was making
25 the payments. Mr Ralph Higgs was the one managing it

1 along with Kerwin Communications. If I was the one
2 managing it, you would see my signature on the
3 contracts. The signature is not on any contract.
4 Q. One other topic, do you recognise this document?
5 SIR ROBIN AULD: You are holding up?
6 MR MILNE: I am holding up a glossy brochure titled "Our
7 Wedding".
8 A. That is the first time I have seen that.
9 Q. You have never seen that before?
10 A. No.
11 Q. Were you aware of its existence?
12 A. I heard about it maybe a few weeks ago.
13 Q. Are you able to say whether the tourist board budget was
14 used in any way for the production of this document?
15 A. No, it was not.
16 Q. Do you know who was responsible for the production?
17 A. No, I do not.
18 Q. To make clear, sir, it is the essentially the wedding
19 photographs of the Premier and Ms Lisa-Raye McCoy Misick
20 done in extremely glossy and heavy duty paper?
21 SIR ROBIN AULD: Is this something that's individually
22 bespoke or is it something that a company does for
23 people's weddings?
24 MR MILNE: It is very hard to say. I am sure there are
25 companies that do these, sir. It is a highly glossy,

1 well produced set of wedding photographs for
2 the Premier's wedding.
3 SIR ROBIN AULD: Bound up in magazine form?
4 MR MILNE: In magazine format, and clearly for rather larger
5 scale production, I think, than simply one-off.
6 But we have seen a number of these and we are just
7 intrigued to know if any government department was
8 responsible for paying for or producing it?
9 A. I cannot say it. The tourist board hasn't paid for it.
10 Q. Indeed, was the tourist board responsible for any
11 payments towards the Premier's wedding?
12 A. No, that I am aware of.
13 Q. None at all?
14 A. No, not at all.
15 MR MILNE: Thank you. I have no further questions, sir.
16 SIR ROBIN AULD: It might be a suitable moment to break,
17 mightn't it? You will be a little while, Mr Fitzgerald?
18 MR FITZGERALD: Yes, I will take a few minutes.
19 SIR ROBIN AULD: Will you need to pause to take
20 instructions?
21 MR FITZGERALD: I think I may do, yes.
22 SIR ROBIN AULD: Five/ten minutes.
23 (3.10 pm)
24 (A short break)
25 (3.20 pm)

1 SIR ROBIN AULD: Mr Fitzgerald, are you likely to need that
2 sort of time with the next witness, Mr Higgs, to take
3 instructions?

4 MR FITZGERALD: I just don't know, sir. It depends on what
5 he says.

6 SIR ROBIN AULD: Wouldn't it be easier if your client were
7 in the room listening to the evidence instead of sitting
8 in a room somewhere in this hotel, giving you
9 instructions in the way he has been doing in this and in
10 other cases? Then he could hear the evidence and give
11 you instructions straightaway.

12 MR FITZGERALD: Sir, I will see what we can arrange.

13 SIR ROBIN AULD: We know he is in the building.

14 MR FITZGERALD: There is no secret, he was not actually in
15 the building until about five minutes ago but he has
16 been in and out. Sir, can I just try to deal ...

17 Cross-examination by MR FITZGERALD

18 MR FITZGERALD: The first meeting I understand you had with
19 Kerwin Media was at the end of 2006, is that right?

20 A. Yes.

21 Q. You were there with Mr Higgs and Mr Don Gardiner?

22 A. Yes.

23 Q. Is this right, that it may be that Mr Higgs and
24 Mr Don Gardiner had had more to do with Kerwin Media
25 than you?

1 A. Correct.

2 Q. But was it clear that there had been communication
3 between members of the tourist board
4 and Kerwin Communications already? They had obviously
5 had some phone discussions directly?

6 A. Yes, Mr Don Gardiner and Mr Garland.

7 Q. Mr Don Gardiner and Mr Garland had been in touch with
8 him by phone before this meeting obviously to set it up?

9 A. Which meeting are you referring to?

10 Q. The end of 2006, you say you had a meeting with
11 Kerwin Media and you say that there was present
12 yourself, Mr Higgs, and Don Gardiner. Can we infer from
13 what you say that there had been contact between either
14 Mr Higgs or Mr Don Gardiner and Kerwin Media before
15 that?

16 A. I would not say that, no.

17 Q. So you just all happened to be in the same room as him
18 without any pre-arrangement?

19 A. No, like I said earlier, the Premier invited us to his
20 hotel room and there was Kerwin, Jim Kerwin and a few
21 others from his company. So this was the first time --

22 Q. This was in New York?

23 A. Yes. This was the first time I have ever seen
24 Jim Kerwin.

25 Q. You say the Premier was there?

1 A. Yes, he was there.

2 Q. Is this -- so this would be sometime between October and
3 December 2006?

4 A. I can recall it was at the time we had a conference in
5 New York. Mr Higgs and I spoke earlier. He said it was
6 during the launch of a film festival in Atlanta but
7 I can recall it was in New York and it was during
8 the annual conference.

9 Q. Just so that it is clear, what the Premier says is that
10 the tourism board then decided to conclude a contract
11 with Kerwin Media to take them on to do a media
12 advertising campaign, is that right?

13 A. Well, I cannot say so, because for the tourist board to
14 make such a decision (1) it had to be an agenda item,
15 (2) it had to be presented to the board to make
16 the board liable and that was not done, and I am the one
17 who prepares all the agendas.

18 Q. Except we do have this signed contract. Just help us on
19 this: do you recognise the signature there as that of
20 Mr Garland?

21 A. Yes.

22 Q. Page 9, I think it is.

23 A. Yes.

24 Q. Sorry, page 5. It has 25 crossed out. So that is his
25 signature?

1 A. Yes.

2 Q. It is on behalf of the tourist board?

3 A. Yes.

4 Q. Is it not the case that there was clearly an agreement

5 between the tourist board and Kerwin Media that they

6 would take on their services?

7 A. Like I said before, you only can bind the tourist board

8 if something was presented to the board of directors on

9 which to make a decision. Since that was not the case,

10 you cannot say it was an agreement between the tourist

11 board and Kerwin Communications. It was never presented

12 to the board of directors, never minuted.

13 Q. Was there an agreement, for example, that Lisa-Raye

14 should become the face of the islands and that she

15 should appear on advertising campaigns?

16 A. Well, the only knowledge I am aware of with Lisa-Raye

17 was when she signed the first agreement to promote

18 Turks & Caicos. That was for the \$150,000. That is

19 the only one I am aware of. The second one, I happened

20 to hear it in circles, discussions, but I have never

21 seen that contract --

22 Q. Did Mr Kerwin tell you, this is what we have -- we are

23 going to do? We are going to have Lisa-Raye as the face

24 of the Turks & Caicos?

25 A. No he didn't tell me.

1 Q. Did you -- when you saw her as the face of
2 Turks & Caicos, did you say, that is Kerwin Media?
3 A. When I saw her, I was aware of it and it was discussions
4 outside the board meetings that Lisa-Raye would be
5 the face of Turks & Caicos.
6 Q. That was through Kerwin Media?
7 A. It was a discussion with Mr Higgs, Mr Gardiner, yes but
8 not --
9 Q. But it was --
10 SIR ROBIN AULD: Let him finish, please.
11 A. I only had two meetings with Kerwin. The first one was
12 with the Premier when he invited us to his hotel and the
13 second one was when Mr Kingsley Been was present.
14 I have never ever spoken to him after that. I had no
15 need to.
16 Q. I think you said that you thought Mr Don Gardiner may
17 have been having more dealings --
18 A. Don Gardiner and Ralph Higgs. They were dealing with
19 Kerwin Communications more than I have.
20 Q. If we come on to June 2007, the marketing campaign. You
21 say a signature was given by Mr Garland on behalf of the
22 tourist board? He signed up to the agreement?
23 A. He signed it, yes.
24 Q. When we say the agreement, it was a schedule?
25 A. It was a schedule. I cannot say it was a contract, it

1 was a media schedule.

2 (3.30 pm)

3 Q. But there was an agreement that they should perform

4 those services for the Turks & Caicos tourist board?

5 A. Yes.

6 SIR ROBIN AULD: Mr Fitzgerald, do you now have a copy of

7 the original, seemingly signed agreement of June?

8 MR FITZGERALD: No, I don't. I have the August one, yes.

9 I understand. It was signed and it was signed by

10 Mr Garland, is that right?

11 A. The media schedule, yes.

12 Q. So he was agreeing on behalf of the tourist board to

13 these services being performed by the various magazines

14 that advertise the Turks & Caicos?

15 A. My understanding was he was agreeing to sign on behalf

16 of the ministry of tourism, not the tourist board.

17 Q. He would not have had any authority to sign on behalf of

18 the ministry of tourism, would he --

19 A. He would have no authority to sign on behalf of the

20 tourist board for that particular situation, because it

21 was never presented to the board of directors, they have

22 never seen the proposal, they have never seen

23 the contract. My understanding was that he signed on

24 behalf of the ministry of tourism. He was wearing

25 another hat that represents the ministry.

1 Q. If we go on to the discussion, the minutes at pages 10

2 and 11, one sees there the discussion of the new

3 destination marketing campaign. You have got

4 the document, have you? If you look at page 11.

5 A. Yes. I have it.

6 Q. You see:

7 "The Deputy Director updated board members at

8 page 11. New destination marketing campaign was being

9 well received.

10 "Next board meeting, he will be in a position to

11 show board members a flow chart of where the TCI is

12 being seen, at what times it is being seen, certainly

13 aggressive, his only concern is the cost."

14 At this meeting it is clear the board is discussing

15 the campaign?

16 A. Yes, the board was very much concerned, because at the

17 end of the day it is the promotion of the country and

18 overseas markets. So the board asked Mr Higgs, who is

19 an employee of the board to, give an update. But

20 Mr Higgs was just managing the campaign on behalf of the

21 ministry of tourism/finance.

22 Q. You do see at the end that the tourist board is only

23 responsible for management of the marketing campaign?

24 A. Yes.

25 Q. So does it follow that they were responsible for the

1 management of the marketing campaign?

2 A. I would say the execution of the marketing campaign.

3 Q. I don't think there is any dispute that there was

4 a special arrangement whereby the bills would be, is

5 this right, put into you but then passed on to

6 the ministry of finance?

7 A. Yes.

8 Q. That was because the ministry of finance was going to

9 cover this as a special item?

10 A. Yes.

11 Q. It was thought better that the bills come to you but be

12 paid by --

13 A. By the ministry of finance.

14 Q. There is no dispute. What I am putting to you is that

15 the management, the decisions as to what should happen

16 in this campaign were being taken by the tourist board.

17 A. I certainly disagree. I must say to you that we have

18 various committees on the board of directors, one of

19 which is a marketing committee, a subcommittee, and

20 the subcommittee has never ever discussed or meet to

21 discuss the media plan as far as I am concerned; I do

22 not think there are any minutes.

23 Q. The signature which you recognise is that of your

24 colleague, Mr Garland. You just can't enlighten us as

25 to why he signed on behalf of the tourist board?

1 A. Well, he gave the evidence earlier. He said that he

2 signed on behalf of the ministry of tourism.

3 Q. Sorry, there is an agreement of March 2003.

4 A. That I don't know anything about.

5 MR FITZGERALD: Sir, I do not think I can take it any

6 further.

7 SIR ROBIN AULD: Thank you, Mr Fitzgerald.

8 Cross-examination by MR SMITH

9 MR SMITH: What is your role as director?

10 A. Well, before March 31st 2007, my role was to promote

11 Turks & Caicos as a reputable destination in key markets

12 around the world. After March 31st 2007 that was

13 changed because the marketing responsibility was given

14 to Mr Higgs and I was left with product development,

15 administration, human resource matters.

16 Q. I just want to be clear: what is your role, what is

17 the difference between the director and the Chairman.

18 A. The director in most cases has to apply for

19 the position. The Chairman is more or less appointed by

20 the Premier and supported by the government. In my case

21 I had to apply for the position. The Chairman is more

22 or less --

23 Q. You have the same responsibilities --

24 A. Different responsibilities. I am responsible for the

25 day-to-day operation of the board and the Chairman

1 chairs the board of directors and we meet on a monthly
2 basis.

3 Q. As an individual responsible -- you are responsible for
4 the day-to-day activities of the board. Would you agree
5 with me that you have a very intimate knowledge of the
6 workings of the board?

7 A. Yes.

8 Q. You would agree with me then that you also would have,
9 in your knowledge, an idea of what the budget would be
10 in relation to any particular year?

11 A. I play an instrumental role in preparing the budget.

12 Q. Prior to 2007, you said marketing was part of your --
13 the tourist board's portfolio, is that correct?

14 A. Prior to April 1st 2007, yes.

15 Q. By that you mean that any decisions in relation to
16 advertising would have to be within your budget?

17 A. Yes.

18 Q. As a result of that, you were careful to make sure you
19 are not taking on tasks that you could not afford?

20 A. I was careful, but you can only be careful enough. When
21 you receive directives, ministerial directives, then
22 that will cause you to spend outside your budget, and
23 that happened for the 2006/2007 financial year.

24 Q. I just want to be sure on this. You agree that after
25 2007 --

1 A. Can you give me a month?

2 Q. The period we are talking about, April 1st 2007. At
3 that point in time you had paid no particular concern as
4 to what advertising cost because it was no longer within
5 your budget, is that correct?

6 A. It was no longer in my budget, yes.

7 Q. Because as you indicated before, you wanted to access
8 some of these magazines but you were not able to because
9 you didn't have the cost to do it?

10 A. Yes, it was on our wish list.

11 Q. Did you ascertain prior to entering into this schedule
12 as to what was the budget that was set aside for
13 marketing? Or you just didn't care?

14 A. \$7 million over two years.

15 Q. Let me totally understand you on this: it is the tourism
16 ministry that makes the decision how to spend this
17 money, is that correct?

18 A. Are you talking about marketing --

19 Q. Yes?

20 A. I believe that the ministry of tourism had some input
21 with Kerwin Communications. I believe that
22 Mr Ralph Higgs and Mr Don Gardiner at the time had some
23 input as well but the most input I have had or actually
24 I was privy to that was when we had the first meeting at
25 the Premier's hotel with Kerwin and that is when I was

1 aware of that.

2 Q. My question to you is that the role the ministry of
3 finance would play in this is actually just to pay
4 the bills once it is presented to them, is that correct?

5 A. Yes.

6 Q. You would agree with me that even prior to 2007
7 the tourist board was already operating over budget?

8 A. Yes.

9 Q. Even before you had to deal with the issues of marketing
10 and the music festival et cetera, is that correct?

11 A. I can agree with you in part, because since I became
12 director, I don't want to appear boastful, but since
13 I became director, whatever budget we have had for
14 the financial year 2003/2004, up until 2006/2007, we
15 were within budget. What threw us over was
16 the ministerial directive to advertise in magazines that
17 was not on our list.

18 Q. But you also agreed that in relation to the audit report
19 that Sir Robin put to Mr Garland, those concerns were at
20 a time when you were the director, is that correct?

21 A. Yes.

22 Q. So in relation to inadequate records, no reconciliation
23 of bank accounts, that was in your time, is that
24 correct?

25 A. Yes. I don't know if you want me to expand?

1 Q. I am trying to find out if that was during your time?

2 A. Yes.

3 Q. I think Honourable Garland indicated that the budget for

4 last year was as a result of some failure to reimburse

5 payments by the ministry of finance on the park project?

6 A. This year, we are still in that financial year --

7 Q. You are not telling us, I just want to be sure of this,

8 that that is the sole reason why you are over budget?

9 A. For the 2007/2008 financial year and also up until June

10 of last year, that was the cause of us being over

11 budget.

12 Q. Are we agreed that even before then, you had problems

13 reconciling your bank statements?

14 A. I mentioned earlier that it is because of the

15 ministerial directives to advertise in magazines that we

16 didn't budget for. That was the only reason why, yes.

17 Q. So whatever the reason for failing to do that,

18 the answer is yes, even before you are attributing this

19 loss to the ministry of finance. You had problems

20 reconciling your bank statements, is that correct?

21 A. Over-budgeting, over-spending, yes.

22 Q. Again, even before the time period when you are

23 attributing this budget problem to the

24 ministry of finance, you were keeping inadequate

25 records?

1 A. Not me. It is the accountant.

2 Q. Well, you are the person in charge?

3 A. Yes.

4 Q. You just indicated that you were the person responsible

5 for the day-to-day running of this entity?

6 A. Yes, the accountant, yes, she was keeping --

7 Q. Pardon?

8 A. The accountant, because most of the shortcomings in

9 the audit report pertains to pure accounting.

10 Q. But the accountant responsible reports to you?

11 A. Yes.

12 Q. Again, you are the person responsible for the day-to-day

13 running of these entities?

14 A. Yes, I agree, but I must also say the accountant used to

15 be a Chief Auditor at the time and she was hired to

16 manage our books. She had not a lot of knowledge of

17 accounts, that is the -- hence the reason why we have

18 accountants here. We just hired a couple of them.

19 Q. You take no responsibility?

20 A. Pardon me?

21 Q. You take no responsibility?

22 A. I would not say that. I am responsible. I am just

23 telling you, it is because the shortcomings came as

24 a result of hiring someone who is not a professional and

25 certified accountant.

1 Q. So you take that responsibility?

2 A. Yes, not for the hiring because I didn't do it. She

3 just happened to be hired.

4 Q. What about the misuse of vacation leave? Do you agree

5 with me that it also contributed to the fact that you

6 are over budget?

7 A. No, I certainly disagree with you. Misuse of vacation

8 leave, that came up when I first became director of

9 tourism, and I could not take vacation at the time that

10 I wanted to because you have -- me being new in the

11 position and travelling quite a bit, and I was able to

12 accumulate maybe a couple of years of vacation.

13 It is either one of two things. Either I take

14 the two years' worth of vacation or be paid for it. It

15 happened that the board agreed for me to be paid for it.

16 It is not really a misuse. Either you take the vacation

17 or you --

18 Q. Would you agree with me, sir, that if a person goes on

19 vacation, the tourist board still pays them?

20 A. Yes.

21 Q. Would you agree with me that misuse of vacation could

22 mean that persons who are taking vacation and getting

23 paid at the time when they are not entitled to it, is

24 that correct, is that a factor?

25 A. That is not --

1 Q. What do you understand that to mean, the misuse of

2 vacation?

3 A. I don't -- it came up in the audit report --

4 Q. What do you understand that to mean?

5 A. Misuse of vacation?

6 Q. Yes.

7 A. I have not got a clue what it is. It doesn't make much

8 sense to me.

9 SIR ROBIN AULD: I think I can help on this. One of the

10 criticisms, and it was only one of them in the public

11 accounts committee meeting minutes, was that there was

12 no proper record kept by those of days when they had not

13 taken holidays when they were entitled to them, and just

14 total figures were put in, sometimes long after

15 the event of unpaid leave, without any record of whether

16 they were working or not on the days in question. No

17 proper records, apart from anything else.

18 A. That is incorrect, because we do have proper records.

19 We had a vacation database set up from 2005/2006.

20 SIR ROBIN AULD: I am merely recording what the criticisms

21 were of the committee when they questioned you and,

22 I think, Mr Saunders about this.

23 A. Yes.

24 MR SMITH: Would you agree with me if that was correct, that

25 would also be another item that would impact on your

1 budget?

2 A. No.

3 Q. No.

4 What about the fact that you lacked a system to
5 assess whether you had good value for money? Would you
6 agree with me, sir, that possibly you were paying out
7 more than you really should pay for services that are
8 performed on the tourist board's behalf. Would you
9 agree with me that that means that?

10 A. Yes.

11 Q. Would you also agree with me that that's also an item
12 that could impact on your budget?

13 A. Yes, it can.

14 Q. You were always over budget, is that correct, as long
15 as -- since the time you were director?

16 (3.45 pm)

17 A. Yes.

18 Q. So it is not fair then to say, sir, would you agree with
19 me, that the main reason for your over budget of last
20 year, since you were over budget then coming forward, is
21 a result of the minister of finance's directive?

22 A. It is fair to say that. The reason being is that
23 the marketing was taken away from us from 2007/2008,
24 from the tourist board. It was separate and distinct.
25 It was a project, and the only on-budget items we had

1 was associated with the parks, and that amounted to some

2 US\$1.2 million.

3 Q. As someone who was in charge of the tourist board at

4 some point in time, I am sure you wrote some letter to

5 the ministry of finance saying: listen, this is

6 outrageous, we can't continue with that.

7 A. Certainly.

8 Q. And you can produce those documents?

9 A. I believe I can. I don't have it here now but I believe

10 I can.

11 Q. When was that written?

12 A. In the 2007/2008 financial year.

13 MR SMITH: I have nothing further.

14 SIR ROBIN AULD: Thank you, Mr Smith. Mr Carlos Simons,

15 I imagine you have no questions of this witness?

16 MR SIMONS: No, sir.

17 MS BROOKES: No, sir.

18 Re-direct by MR MILNE

19 MR MILNE: Mr Musgrove, two points. You said a moment ago

20 that ministerial directions pushed us outside our

21 budget. Was that in the year 2006 to 2007?

22 A. Yes.

23 Q. What was those directions?

24 A. Pardon me.

25 Q. Which directions were they that had that effect?

1 A. It was a joint advertisement between Turks & Caicos
2 tourist board and TC Invest and numerous magazines
3 including Fortune, Panorama, Forbes. There were others,
4 but those were the two/three that I can remember.

5 Q. Which minister was giving those directions?

6 A. It was the Premier.

7 Q. So the Premier was intervening to order you to place
8 adverts in particular magazines?

9 A. The Premier at that time was responsible for TC Invest
10 and tourist board. He indicated that he would like for
11 us to do joint advertisement to promote Turks & Caicos
12 as an investment destination. Opportunities came,
13 I supported it, because when these opportunities come,
14 if you don't embrace it, another destination will.

15 Q. But you accepted then that what he was doing was going
16 to push you way off budget?

17 A. Yes, but I also accept the fact that we would be able to
18 promote Turks & Caicos in magazines that target
19 the audience that really patronise the destination.

20 Q. You also said that decisions on spending, that is on
21 the \$6 million/\$7 million budget was taken by the
22 ministry of tourism, yes?

23 A. Are you talking about the marketing campaign?

24 Q. Well --

25 A. You said \$6 million/7 million. 7 million is associated

1 with a new marketing campaign.

2 Q. Yes, that would be the new marketing campaign?

3 A. Yes, the ministry of tourism.

4 Q. By which we mean whom?

5 A. The Premier's office.

6 Q. Again it is the Premier who is making these decisions?

7 A. The ministry of tourism, yes.

8 Q. Were you dealing with anybody else within the ministry

9 of tourism or just the Premier?

10 A. I was not dealing directly with the Premier.

11 Mr Ralph Higgs would have more say to the Premier with

12 regards to the marketing past April 1st 2007 going

13 forward. It was not me dealing directly with the

14 ministry, pertaining to the new marketing campaign.

15 MR MILNE: Thank you. Sir, I have no further questions.

16 Further cross-examination by MR FITZGERALD

17 MR FITZGERALD: Sir, since a new point has come up in answer

18 to my learned friend Mr Oliver Smith's questions, can

19 I just clarify that?

20 SIR ROBIN AULD: Yes, of course.

21 MR FITZGERALD: First of all, you said what put us over was

22 the ministerial directive to advertise in magazines?

23 A. That was for the 2006/2007 financial year. The 2007,

24 2008, 2009, 2010 financial year, marketing was not part

25 of tourist board budget. It was treated as a project.

1 Q. I see. You are saying that the Premier gave
2 the directive to advertise in magazines in 2006?
3 A. 6/7, yes.
4 Q. And that that was responsible for the overspend?
5 A. I have correspondence present that I sent to
6 Mr Gloyd Lewis, the Permanent Secretary, asking him to
7 ensure that we get reimbursed for these magazines in
8 which we were advertising and it was not in our budget.
9 I have correspondence right here.
10 Q. Just two things. I have to put it to you that it was
11 not the Premier who was saying you have to advertise in
12 magazines during 2006/2007?
13 A. Well, the thing about it is this: the Premier has been
14 in tourism for quite some time back in the early 1990s.
15 He has met a lot of folks. He has quite a bit of
16 knowledge about tourism and tourism marketing. If he
17 suggests that tourist board and TC Invest should spend
18 outside their budget to advertise in Forbes, whatever,
19 magazine and what not, I myself would look at it to see
20 the target audience are persons who we really want to
21 come to Turks & Caicos. So I certainly, when I saw
22 the opportunity I support it, knowing that we will get
23 reimbursed some day.
24 Q. Was there a ministerial directive or not?
25 A. To be honest with you, most folks came to me and they

1 said they saw the Premier and they were going to see
2 Conrad Higgs. I have never seen a contract except for
3 one which is the independent, but they came and they
4 said: I spoke with the Premier and he want tourist board
5 and TC Invest to do a joint advertorial, where there is
6 Forbes, where there is Panorama, where there is Newsweek
7 magazine.

8 Q. So there is no document, the ministerial directive --

9 A. I didn't see anything from the Premier. I just saw
10 them. They approached me. That is the case there.
11 When I send the correspondence to Mr Lewis, he
12 acknowledged that yes, the ministry will support these
13 overspend items.

14 Q. Very briefly, the 6 million to 7 million that was
15 committed in June 2007, that was committed as a special
16 project?

17 A. Yes.

18 Q. And it was not the ministry of tourism, it was a special
19 project that was being committed with the ministry of
20 finance underwriting it?

21 A. Well, the ministry of finance was managing the budget.
22 The ministry of tourism had the \$7 million in its budget
23 as a project, just like it had tourist board budget in
24 its overall budget as a project.

25 Q. I have to put it to you that that is incorrect; it was

1 simply a special project funded by the ministry of
2 finance?
3 A. Yes.
4 MR FITZGERALD: No further questions.
5 SIR ROBIN AULD: As I understand your evidence, the budget
6 for it was determined by the ministry of tourism?
7 A. Yes.
8 MR SMITH: Can I just ask one question?
9 Further cross-examination by MR SMITH
10 SIR ROBIN AULD: Arising out of?
11 MR SMITH: Mr Fitzgerald's question. Just one.
12 SIR ROBIN AULD: What's it about?
13 MR SMITH: I am just trying to ascertain from him that all
14 expenditures have to be sanctioned by the ministry of
15 finance.
16 SIR ROBIN AULD: Yes.
17 A. Yes.
18 SIR ROBIN AULD: Thank you. Mr Musgrove, I think it is
19 common ground from your evidence and also from the audit
20 report and the accounts committee questioning in
21 December 2007, that you were over budget and
22 significantly over budget for that year.
23 A. 2006/2007?
24 SIR ROBIN AULD: 2006/2007.
25 A. Yes.

1 SIR ROBIN AULD: It is also apparent from the report and
2 the accounts committee meeting that you had at the end
3 of the year, 1.3 million expenditure, liabilities
4 unpaid, thereabouts, over 1 million?

5 A. I believe that, sir.

6 SIR ROBIN AULD: You also had at the end of that year,
7 2006/2007, half a million by way of overdraft?

8 A. Yes.

9 SIR ROBIN AULD: Well, now, the meeting about which I asked
10 Mr Garland, I won't go through it again, but it was
11 a highly critical meeting in its examination of you and
12 Ms Pauline Saunders, is that right?

13 A. Yes.

14 SIR ROBIN AULD: Part of the account that you gave was to
15 say it was not your responsibility, she was to blame.

16 A. No, I -- she was the accountant. She was keeping
17 the records and I can recall there was about 10 to 15
18 recommendations and most of them pertaining to
19 accounting and how their records were kept.

20 SIR ROBIN AULD: You were making that point in the course of
21 your answers to the committee, weren't you, that it was
22 an accountancy problem, not really something for which
23 you were directly responsible.

24 A. Yes, I will say that because there were some questions,
25 some recommendations in the audit report that dealt with

1 advertising value for money et cetera. I answered
2 those, and the others pertaining to accounts and what
3 not, I gave that to Ms Saunders to answer. I reviewed
4 it and we sent it to the Chief Auditor.

5 SIR ROBIN AULD: She for her part was saying she was wholly
6 overworked and there was not sufficient supporting
7 accounting staff.

8 A. I agree. She was the only person in the accounts
9 department, and following that we hired an assistant who
10 stayed for a short-term period and left.

11 SIR ROBIN AULD: The questioning at times was so rigorous
12 that Ms Saunders was in tears, wasn't she, in the course
13 of the meeting?

14 A. I don't recall. I know she is a strong woman. I don't
15 recall tears.

16 SIR ROBIN AULD: Does the tourist board among its committees
17 have a finance committee?

18 A. Yes.

19 SIR ROBIN AULD: After the meeting, did you report to
20 Mr Wayne Garland the nature of the criticisms made?

21 A. Yes, I spoke to him.

22 SIR ROBIN AULD: You spoke to him, you didn't prepare
23 a written report or summary of them for him?

24 A. No, I did not, because whatever was discussed in the
25 meeting was the audit report for that period, and he and

1 other board members would have received copies of it,
2 before we appeared before the public accounts committee.

3 SIR ROBIN AULD: So you didn't report to him with
4 recommendations of the issues that had to be addressed
5 and addressed urgently as a result of the audit report
6 and the accounts committee questioning?

7 A. Yes, the recommendations clearly spell out in the audit
8 report and the board members had copies of it. So all
9 that was discussed at the public accounts committee was
10 the recommendation and how we are going to go about
11 addressing that. I must say that when I responded to
12 the auditor's recommendation, I also gave a management
13 response to say how we are or about to remedy
14 the situations.

15 For instance, there was one you mentioned about
16 vacation and misuse. That resulted in the fact that our
17 policy allow us to accumulate up to three years'
18 vacation. The board since has corrected that, that you
19 can only accumulate up only a calendar year of vacation.
20 That was one thing that was done.

21 SIR ROBIN AULD: I am talking at the moment and requesting
22 you about the extent to which you responded at the time.
23 You didn't prepare a written report for your Chairman.
24 Did you prepare a report of some sort for the next
25 meeting of your finance committee?

1 A. I think I did.

2 SIR ROBIN AULD: That would be part of the records of that
3 meeting, wouldn't it?

4 A. I would think so.

5 SIR ROBIN AULD: Would you be able to produce that?

6 A. I will try. As I say, I think I did. I cannot say --

7 SIR ROBIN AULD: You would know what happens normally after
8 such meetings --

9 A. Maybe I did not, but I cannot say.

10 SIR ROBIN AULD: Did you convene a special meeting, say, of
11 the finance committee to consider all the criticisms
12 made and how to address them?

13 A. No, I did not. If you allow me, sir, the audit reports
14 spell out all the recommendations and criticisms.
15 The board members have copies of the audit report. They
16 have seen it and for me to just present a report to them
17 again is just repeating what they have seen already,
18 because the public accounts committee is only going to
19 review what is in the audit report, and they review each
20 of the recommendations made by the Chief Auditor.

21 SIR ROBIN AULD: Who in your board is going to do anything
22 about it? The finance committee presumably is the first
23 port of call, isn't it?

24 A. Yes.

25 SIR ROBIN AULD: Well, why didn't you prepare a report and

1 convene a meeting of the finance committee to consider
2 and take steps to remedy the very serious criticisms
3 made?

4 A. I did not call or arrange a meeting with the finance
5 committee, but what I did was I discussed an audit
6 report to all the board members, the board members of
7 the finance committee. So they were aware of what was
8 in the audit report for the 2006/2007 financial year.
9 They were aware of it because it was in the audit
10 report.

11 SIR ROBIN AULD: But you could not just leave it sitting
12 there like a pudding. Something had to be done about
13 it. People had to be informed. They had to discuss and
14 consult and decide how to deal with these matters.

15 A. It was presented to them -- they have seen it before,
16 but as far as them dealing with it right then and there,
17 they decide over a period of time to address the
18 matters. As I mentioned earlier, what we did in
19 the case of vacation, the board made a decision on that
20 and they made a decision on other shortcomings as well
21 as how we are going to address them.

22 SIR ROBIN AULD: Did you prepare a report for the staff,
23 the accounting staff in particular, as to how they
24 should go about remedying the deficiencies?
25 Ms Saunders, for example?

1 A. Ms Saunders and I put in new systems following --
2 SIR ROBIN AULD: Did you prepare a report?
3 A. No, I did not prepare a report.
4 SIR ROBIN AULD: Will we find anywhere in the tourist
5 board's records for the ensuing year any document which
6 shows that you went about in a systematic way to deal
7 with the serious criticisms that had been made by
8 the auditors and the public accounts committee in their
9 questioning of you?
10 A. The only thing you will see is our response to the audit
11 report. We spell out --
12 SIR ROBIN AULD: The answer is yes or no, did you?
13 A. Yes, we did.
14 SIR ROBIN AULD: Where will we find it?
15 A. You will find it in our response to the Chief Auditor
16 recommendation.
17 SIR ROBIN AULD: That is it, is it?
18 A. Yes.
19 SIR ROBIN AULD: Thank you. Any questions arising out of
20 mine?
21 Mr Musgrove, thank you for attending to give
22 evidence.
23 MR MILNE: Sir the next witness is Mr Ralph Higgs.
24 (4.00 pm)
25

1 MR RALPH HIGGS (sworn)

2 Direct-examination by MR MILNE

3 MR MILNE: Good afternoon, Mr Higgs. You have been sitting
4 in today while the evidence has been given by the last
5 two witnesses, is that right?

6 A. That is correct.

7 Q. Therefore hopefully we can take matters relatively
8 shortly.

9 You have been described at one stage as a deputy
10 director. Is your formal title in fact director of
11 marketing of the TCI tourist board?

12 A. Yes. In March 31st 2007, I was promoted and carried
13 the title of director of tourism with marketing
14 responsibilities.

15 Q. Prior to that had you been with the tourist board
16 though?

17 A. I joined the tourist board in July 1st 1996 and have
18 been there pretty much ever since with the exception of
19 about 17 months.

20 Q. We have heard evidence concerning the offices of the
21 tourist board. I think there is one in Providenciales.
22 Is that where you work?

23 A. I am based in Providenciales, correct.

24 Q. We understand Mr Musgrove works from Grand Turk?

25 A. Mr Musgrove is based in Grand Turk.

1 Q. Your knowledge of the Toronto office which we touched on
2 with the Honourable Wayne Garland, would you agree that
3 the problems there have been sorted out?

4 A. I think we have been able to stay the problems for
5 perhaps a month or so. But I don't think they have been
6 resolved conclusively, no.

7 SIR ROBIN AULD: What remains to be resolved?

8 A. I think it is a financial matter. We were able to
9 pay -- we got an eviction notice as the evidence
10 indicated earlier. We were able to pay this month's
11 rent. So I suspect unless we are able to pay
12 the ensuing month's rent, we will have that problem. It
13 will recur.

14 SIR ROBIN AULD: The problem is you may not be able to pay
15 your rents for the offices there?

16 A. Correct.

17 MR MILNE: The tourist board has obviously had some
18 budgetary problems. I think that much is common ground
19 now.

20 A. Correct.

21 Q. If I can take you, please, to the Kerwin Communications
22 contract, which is in the small bundle in front of you.

23 The first page within that, thank you.

24 This document is dated 10th March 2007, signed on
25 the final page by apparently Wayne Garland and

1 James Kerwin, although Mr Garland has told us he has no
2 recollection of signing it.

3 Q. Have you seen that document before?

4 A. I think I have seen this document before.

5 Q. In the office presumably?

6 A. The document was in the office.

7 Q. Are you able to cast any light on how it came into
8 being?

9 A. I would imagine, based on conversations with Mr Kerwin,
10 this document came about.

11 Q. Let's try to take it then, if we can, in chronological
12 order. We have been told by Mr Musgrove that there was
13 a meeting in late 2006 with Mr Kerwin which took place
14 when I was present. Do you recall whether you were
15 party to that meeting at all?

16 A. I was party to a meeting with Mr Kerwin. The meeting
17 I think Mr Musgrove was referring to would have taken
18 place in early 2007, but prior to that, I had met
19 Mr Kerwin.

20 Q. Were you alone at the time or with others?

21 A. It was late 2006, I met Mr Kerwin on a Friday evening at
22 the request and invitation of the then Chairman
23 Mr Don Gardiner.

24 Q. Where was it that you met him, please?

25 A. From my certain recollection it was at Point Grace.

1 Q. Obviously in the TCI?

2 A. In the TCI, yes.

3 Q. What was discussed at that stage?

4 A. Mr Kerwin presented an advertising proposal.

5 Q. What did that consist of?

6 A. It was a proposal that he said he had previously

7 discussed with the Premier and it evolved around --

8 I say that with the greatest amount of respect --

9 the First Lady being the face of a campaign.

10 Q. Were you given any indication at that stage of the

11 likely price of running this campaign?

12 A. Yes, he did a good presentation and at that stage

13 I think the price tag was in the vicinity of about

14 \$7 million.

15 Q. Was that within your budget?

16 A. No, it was not within our recurrent budget, but I think

17 there were discussions about there being a special

18 budget set aside for promotions of some \$7 million over

19 two years.

20 Q. Who was it who first raised the idea of special budget?

21 Was it at this meeting?

22 A. It was not at that meeting that that number came up.

23 But I think it was discussed and certainly that number

24 was thrown around. I don't know the origins of it but

25 I know it was thrown around, \$7 million for two years'

1 worth of promotions.

2 SIR ROBIN AULD: But was there discussion at that meeting at

3 Point Grace about there being a special budget of some

4 sort for this?

5 A. Yes, there was.

6 MR MILNE: Can you recall now who it was who raised that as

7 a possibility?

8 A. I want to say it could have been Mr Kerwin or the

9 Chairman, but I was not aware of any approval of

10 \$7 million at that stage.

11 Q. Absent any special arrangement, would this sort of

12 budget, this sort of figure that is being discussed,

13 7 million, would that have been within your tourist

14 board budget at that stage?

15 A. No, as I said, it would have been the tail end of 2006

16 and we would have been well within that fiscal year.

17 Any provisions for \$7 million would have to come via

18 a supplementary, or allocations made in the next fiscal

19 year. So it wouldn't have been available for us to

20 spend at that stage.

21 Q. Following that meeting, to the best of that your

22 knowledge was any agreement entered into?

23 A. No agreement was entered into. The then Chairman and

24 I sat through the proposal, and following the proposal

25 we all commented that it was quite a nice proposal, well

1 presented, but we were -- naturally I would be concerned

2 about the cost.

3 Q. Following on from that meeting, did there come a later

4 stage when you saw Mr Kerwin again, had any more dealing

5 with him?

6 A. I think it was early 2007 when we travelled to Atlanta.

7 It was the then Chairman Mr Gardiner, Mr Musgrove and I,

8 we travelled to Atlanta to attend a film festival

9 launch. I think it would have been somewhere around

10 April.

11 Q. Would anybody else have been there at the time, just

12 the group you described?

13 A. We travelled together, the three of us. During that

14 period in Atlanta, I was invited to join a meeting,

15 the director, Mr Musgrove, invited me to join a meeting

16 with the Premier and Jim Kerwin at the Premier's suite.

17 Q. Had the Premier travelled with you to this meeting? To

18 this film festival?

19 A. We didn't travel together but he was at the event as

20 I recall.

21 Q. Did that meeting take place?

22 A. The meeting that I was invited to by Mr Musgrove took

23 place.

24 Q. In the Premier's suite?

25 A. In the Premier's suite.

1 Q. Presumably with Mr Kerwin present?

2 A. We met Mr Kerwin there.

3 Q. On that occasion was there any discussion about

4 the proposal that you had seen on a previous occasion,

5 the proposed campaign?

6 A. I think reference was given to it and from my certain

7 recollection he went on to present it again with

8 a slightly revised and reduced amount.

9 Q. Had your budget changed since the previous year?

10 A. No, our budget hadn't changed. It was, as far as

11 I understood, it was still to be \$7 million over two

12 years.

13 SIR ROBIN AULD: You were starting over 1 million down on

14 the over budget on the previous year, weren't you?

15 A. We were starting \$1 million down, yes. But it

16 probably -- on recurrent items, not only for marketing.

17 Q. This was April 2007?

18 A. As I recall, yes.

19 Q. So you were in the post that you presently occupy which

20 was director of marketing?

21 A. I think I would have been in that post by then, yes.

22 Q. So for proposals such as this, proposals such as

23 Mr Kerwin's, does that fall within your remit, is that

24 within your job description to handle matters of this

25 sort?

1 A. I would not say it falls within my remit. If the board
2 says we have \$7 million to spend on advertising, I will
3 do my best to make sure the government gets value for
4 money.

5 Q. Following the discussion, the proposal that you seem to
6 make then in April 2007, what was the outcome?

7 A. The proposal that was made in 2007?

8 Q. The meeting in the Premier's room at the film festival
9 with Mr Kerwin?

10 A. We left that meeting and nothing was signed on. Again,
11 I think we left saying it was still a little too
12 expensive, and we wanted to get it down within that
13 number of about \$3.5 million. That is what I would have
14 felt comfortable with, and I thought that was what was
15 approved at that stage.

16 Q. Sorry, you thought that was approved by whom?

17 A. It was talked about that there would have been
18 \$7 million for advertising over two years. I think by
19 the time we met in Atlanta, it would have been the start
20 of the physical year. April 1st is the start of our
21 physical year. If that number was not debated already
22 in the House, it was fairly widely known that there
23 would have been \$7 million over two years for
24 advertising.

25 Q. Of course, this \$7 million over two years, if that was

1 your budget and that was the proposal, would have
2 consumed pretty well all of the budgeted spend, would it
3 not?

4 A. Well, I am not quite sure I get that. Do you want to
5 repeat for me please?

6 Q. Kerwin Communications are proposing a project which
7 would be \$6 million to \$7 million over two years?

8 A. I think the concern was they were proposing that in the
9 first year and that was what was, I think, ultimately
10 signed.

11 (4.15 pm)

12 Q. Were you present when any signature was put to
13 a document?

14 A. I was party to a meeting in New York later that year, in
15 June, and I was party to a signing.

16 Q. We believe that that was the signing of what is
17 essentially a schedule, an addendum to a contract. You
18 have a document in front of you which appears to be a
19 copy of that dated in June, although we have been also
20 shown August variations on it. Would you recognise
21 the document in front of you now?

22 A. Yes, this appears to be the document.

23 Q. This is not a contract though. It is simply a schedule
24 attached to a contract. Were you aware at that stage
25 that there must have been a contract in order for there

1 to be a schedule to it?

2 A. I was aware that I think it was widely accepted at that
3 stage that Kerwin would have been our ad agency, and
4 this was just based on tradition, when we have
5 an ad agency, we will agree to the general terms and
6 then the schedule, the purchasing of media would be --
7 this is all that was. This was just the purchasing of
8 the media so it was a subset of an overall contract that
9 should have existed.

10 Q. Did you understand the contract bound the tourist board
11 or some other part of the Turks & Caicos Islands'
12 government?

13 A. This particular document?

14 Q. Yes.

15 A. I understood that fully.

16 Q. You understood it was the tourist board that was being
17 bound by this?

18 A. I did, yes.

19 SIR ROBIN AULD: You say you understood. That is because
20 you had seen the document around in the office at some
21 time?

22 A. I hadn't seen this particular --

23 SIR ROBIN AULD: I am so sorry, not that one, but
24 the earlier one.

25 A. I knew this document came. From my certain

1 recollection, it would have come perhaps via the
2 Premier's office to our office, and then it went down to
3 Saunders & Co to be vetted. I remember there was
4 a clause in the document that says if there was any
5 dispute or litigation, any fall-out as a result of it,
6 that the Commonwealth of New Jersey's law would have
7 been the law that it would have been litigated under.
8 I remember this document.

9 SIR ROBIN AULD: Is it because you remembered it that you
10 have just answered Mr Milne's question that you
11 understood that the tourist board would be liable for
12 any contractual issues arising?

13 A. I was not relying entirely on this. I was relying on
14 the fact that if the tourist board or any one
15 representing the tourist board contracts on behalf or
16 signing agreement that is on behalf or purports to be on
17 behalf of the tourist board, that the tourist board is
18 liable.

19 SIR ROBIN AULD: That is what you understood had happened.

20 A. I understood that clearly.

21 MR MILNE: Is there any reason why Mr Musgrove wouldn't be
22 aware of this document as well?

23 A. I know he was aware of the document that was signed in
24 New York. I don't know if he was aware of where
25 ultimately the liability would be placed. I don't know

1 if he was aware.

2 Q. The copy of the contract that we see headed

3 "Kerwin Communications", presumably that would have been

4 available in the office for anybody who wished to see it

5 if you saw it there?

6 A. I would not say would have been available, because you

7 send things to Saunders & Co and with all due respect to

8 them, sometimes it takes forever to get back. I think

9 sometime somewhere between them receiving this document,

10 and this document being signed, I think there was

11 a substantial period of waiting, from my recollection.

12 Q. This had come from the Premier's office into your

13 office, though?

14 A. I think I recall that because quite a few proposals came

15 that way, via the Premier's office and maybe sent to our

16 office for execution, presumably for us to vet or to

17 have our lawyers look at before they are signed.

18 Q. With the addendum to it, the schedule, that is signed,

19 we are told, by the Honourable Wayne Garland. That is

20 the schedule --

21 A. This was signed by the Honourable Garland, correct.

22 Q. Were you present when he signed it?

23 A. I was present when he signed it.

24 SIR ROBIN AULD: Which document are we looking at?

25 MR MILNE: It is the one that has the signature on it from

1 June.

2 SIR ROBIN AULD: We are looking at the June document?

3 MR MILNE: Yes. Was there any discussion about who should

4 sign that?

5 A. Yes, I recall Mr Kerwin presented the schedule and then

6 he asked who will sign it. Honourable Garland suggested

7 that I sign it.

8 Q. Would you have been authorised to signed it on behalf of

9 the Premier's office?

10 A. I would not have been authorised to sign it on behalf of

11 the Premier's office. I might have been authorised to

12 sign it on behalf of the tourist board if it had fallen

13 within all the rules and regulations in budgetary

14 matters, yes.

15 Q. In order for you to be authorised, what would have had

16 to have happened first?

17 A. It would have had to have been presented to the board,

18 debated at the board and ratified by the board, and I am

19 given authority then to sign it on behalf of the board.

20 Q. As matters stood when you were first shown this

21 document, had there been any debate about it at all on

22 the tourist board?

23 A. Not to my recollection, no.

24 Q. So what was your attitude to signing it?

25 A. He asked me to sign it and I said: with due respect,

1 Honourable Garland, I can't sign that document.

2 Q. Is that simply because you felt you had no authority to
3 do so?

4 A. I knew that -- as I said I knew the board was given a --
5 there was a \$7 million budget and this amount was
6 7 million over two years, and this amount was 7 million
7 in the first year. So I thought I could not sign that.

8 Q. We can see from that that apparently he then did sign
9 it?

10 A. Yes, he took it and he signed it.

11 Q. As far as you knew, on whose behalf was he signing?

12 A. I think it was very clear that it was being signed on
13 behalf of the tourist board. But with the authority, if
14 I may, and foreknowledge of the ministry of tourism who
15 was supposed to supply the funds.

16 Q. So with the authority of the Premier?

17 A. Well, I can't say the Premier single-handedly because
18 I think at that stage it may have been discussed and
19 approved in Parliament that there would be a \$7 million
20 over two years budget. So I would not say
21 unilaterally --

22 SIR ROBIN AULD: You say it may have been or it was?

23 A. It probably would have because it would have been after
24 the start of the fiscal year.

25 SIR ROBIN AULD: You mean it should have been.

1 A. It should have been, yes.

2 SIR ROBIN AULD: But you don't know whether it was.

3 A. I don't know if it was, it had been debated and passed
4 in Parliament at that point.

5 MR MILNE: Did you at any stage after that have any
6 conversation with the Premier about this particular
7 document?

8 A. Not directly, no.

9 Q. When you say not directly, what did you hear indirectly?

10 A. I recall receiving -- it may have even been prior to
11 this. There was a number of backwards and forwards on
12 the amounts to be spent and when they were to be spent.
13 I was always directing them to the amounts that were
14 approved by the budget and was using that as
15 the guideline.

16 So every time they will spend and increase that
17 initial \$3 million for the fiscal year, I will refer
18 them to the amount that was approved by Parliament and
19 ask them to be guided by that.

20 I think following one of those e-mails, I got
21 an email from the Premier asking how, in essence, it
22 didn't say precisely this, but in essence saying, you
23 know, these funds have been approved, they will be
24 funded from the office of the Premier; and he doesn't
25 wish me to question any further or make any changes to

1 the amounts that were approved to be spent.

2 Q. To the best of your knowledge, when that document had
3 been signed, were these funds coming from the office of
4 the Premier or from the tourist board?

5 A. Those funds were supposed to be supplied by the office
6 of the Premier, albeit via the finance department.

7 SIR ROBIN AULD: Could you pause there, please.

8 You had been making representations to whom by
9 e-mail about the importance of keeping to the budget?

10 The approved budget?

11 A. I was making those recommendations to
12 Kerwin Communications.

13 SIR ROBIN AULD: To Kerwin?

14 A. Yes.

15 SIR ROBIN AULD: To anybody else within the tourist board?

16 A. I would have copied Mr Musgrove, Honourable Garland and
17 some of my other marketing colleagues on these e-mails,
18 asking them to be guided by the amounts that were
19 approved.

20 SIR ROBIN AULD: Then you had an email from the Premier's
21 office in the terms you have just described; can you put
22 a date to that, roughly?

23 A. I think that would have been between, if my memory
24 serves me right it would have been between a meeting in
25 Atlanta and the signing of this document in June, if my

1 memory serves me right.

2 SIR ROBIN AULD: So that is between April and June.

3 A. Could have been, yes.

4 SIR ROBIN AULD: 2007?

5 A. Could have been. It might have been even a little

6 earlier, because we had the initial discussions with Jim

7 Kerwin in late 2006 and we said we could not afford

8 the \$7 million and then they were backwards and

9 forwards, us trying to get them to get this number down

10 to about 3.5 in that fiscal year.

11 SIR ROBIN AULD: So you had not copied your e-mail

12 representations in that form to the Premier's office but

13 somebody must have done to prompt his office's e-mail to

14 you?

15 A. Well, from my recollection of the e-mail I got from

16 the Premier, he said he had met with

17 Kerwin Communications and that I should not question or

18 alter or change any of the commitments that he had made

19 with Kerwin.

20 SIR ROBIN AULD: You say he had -- you got it from him, are

21 you saying this was a personal e-mail from him or from

22 his office?

23 A. This was an email from the -- it came from an email

24 address called --

25 SIR ROBIN AULD: Who did it purport to be from? Did it

1 purport to be the Premier writing or somebody on his
2 behalf?
3 A. It came from an e-mail that says Manuel Gonzales.
4 I remember quite vividly the e-mail address was
5 dasheike. When I read to the bottom of it, I think it
6 says Premier.
7 SIR ROBIN AULD: Was Manuel Gonzales someone connected with
8 the Premier's office?
9 A. Not to my knowledge.
10 SIR ROBIN AULD: But it said Premier at the bottom, did it?
11 A. It did say Premier.
12 MR MILNE: Could we turn to page 11 -- page 9 of the small
13 bundle that is in front of you.
14 We have there an internal memo on what appears to be
15 Turks & Caicos Islands tourist board headed paper from
16 Ms Andrews to yourself, dated 26th January.
17 A. I don't see that. Which page 9?
18 Q. Page 9 in the little bundle.
19 SIR ROBIN AULD: Internal memorandum of 26th January of this
20 year.
21 A. My page 9 says RDA advertising. (Pause)
22 Q. That is an internal memorandum. Do you recognise that
23 document?
24 A. Yes, I do.
25 Q. It is to yourself from Ms Andrews. Is Ms Andrews a

1 financial controller, she describes herself?

2 A. Yes. Ms Andrews became the financial controller in late
3 2008.

4 SIR ROBIN AULD: Of the board?

5 A. Of the board, yes.

6 MR MILNE: We understand the documents attached to that,
7 there are two documents. In fact they are the
8 proceeding papers, 7 and 8 in that little bundle, which
9 appear to be aged debt summaries. Page 7 perhaps first
10 of all. \$5.5 million. Are these all creditors of the
11 Turks & Caicos Islands government?

12 A. As far as I know, sir.

13 Q. More specifically, are they creditors of the
14 Turks & Caicos tourist board?

15 A. As far as I know, sir.

16 Q. Over the page, I think a series of specific transactions
17 totalling \$580,000. Again, these are outstandings,
18 I think, due from the board?

19 A. Outstandings due from -- yes.

20 (4.30 pm)

21 Q. Are many of these that we see, particularly in page 7,
22 are these expenditure bills that have been run up by
23 the Kerwin Media account?

24 A. I would say by and large sir yes.

25 Q. Of course Kerwin Media themselves are featured in that,

1 and they have \$1 million outstanding from the TCIG?

2 A. That is correct, sir.

3 Q. Is this essentially the product of a contract that we

4 have seen?

5 A. I would say so, yes. There may have been some slight

6 additions to this -- to the agreement that was initially

7 signed by Mr Musgrove. As I am sure you can appreciate,

8 it is a dynamic industry and things change from time to

9 time, but it seems by and large to be an extract of

10 the outstandings owed to (inaudible).

11 SIR ROBIN AULD: You are referring not now to the contract

12 of March 2007, but to the marketing schedule of June,

13 are you?

14 A. Yes.

15 SIR ROBIN AULD: Which you said signed by Mr Musgrove.

16 A. By Mr Garland.

17 SIR ROBIN AULD: Are you referring there to the documents

18 signed by Mr Garland or by Mr Musgrove?

19 A. I don't recall Mr Musgrove signing --

20 SIR ROBIN AULD: That why I asked you which document you

21 were referring to.

22 A. I was referring to this one signed by Mr Garland in

23 June. That is the marketing schedule.

24 MR MILNE: Am I right in thinking that a number of these

25 organisations are starting or at least threatening

1 litigation in the USA?

2 A. That is correct.

3 Q. Again whom are they threatening litigation, against
4 the Premier's office or against the tourist board?

5 A. It has named certain individuals in the tourist board
6 but I think it is widely understood that it is against
7 the tourist board. For example, I am addressed in some
8 of these litigations, so is my colleague in New York.
9 Her name appears.

10 Q. Is there any reason you know of that these debts have
11 not been met?

12 A. I think they have not been met simply because -- it is
13 probably a result of the economic climate, I would like
14 to think.

15 Q. Has there been any discussion of this position, the fact
16 that bills are not being paid within the tourist board
17 itself?

18 A. These bills have been brought before the board on
19 a number of occasions, and I should probably point out
20 that some of these bills date back to 2007. So 2007,
21 2008, we have been discussing some of these outstanding
22 bills.

23 SIR ROBIN AULD: But they are nothing to do with the board,
24 as I understood the case. What are you saying: we can't
25 pay or it is not for us to pay, please address this

1 claim to the Premier's office?

2 A. Well, the bills will come to the tourist board.

3 SIR ROBIN AULD: Yes.

4 A. When they came, recently when they came and they were

5 quite strong, we would forward them directly to the

6 finance people, Mr Jones, and certainly the Premier's

7 office were fully aware of the extent of the

8 indebtedness.

9 SIR ROBIN AULD: So you were forwarding them to the finance

10 ministry and the Premier's office?

11 A. Yes, but they were discussed on a number of occasions at

12 the board.

13 SIR ROBIN AULD: But have they been discussed with the

14 Premier's office or with the finance ministry's office?

15 A. They have been discussed with the Premier's office.

16 SIR ROBIN AULD: I think you had better tell us about that

17 in a minute or two but we will have a break for five to

18 ten minutes. I'm sorry to keep you, I hope it's

19 convenient for you to wait because we would like to try

20 and finish this evidence today if we can.

21 (4.33 pm)

22 (A short break)

23 (4.43 pm)

24 SIR ROBIN AULD: Ladies and gentlemen, we are going to

25 resume in the hope that we can finish the evidence of

1 Mr Higgs this evening, and in the further hope that we
2 may be able to hear a short speech, because that will be
3 the start of the speeches and the end of the evidence in
4 those oral hearings, from Mr Carlos Simons but it may be
5 that it will be too much for the court reporters to see
6 us through to the end and if so, we will have to break
7 off but we are going to see how we go.

8 Mr Milne.

9 MR MILNE: I see Mr Fitzgerald is on his feet. I have a few
10 more points, just a few questions.

11 Mr Higgs, I hope that I won't detain you too long.
12 Before the break you were being asked by Sir Robin about
13 the issue of correspondence. Clearly you are receiving
14 correspondence as the tourist board in the name of the
15 tourist board, which is demanding money, put bluntly,
16 that these are demands for payments on contracts coming
17 in. Have you communicated these to the Premier as
18 office or indeed to the ministry of finance at all?

19 A. We have communicated that to the Premier's office and to
20 the finance people, yes.

21 Q. What is the response that you are getting?

22 A. The last meeting I think we had with the Premier as
23 office and the finance people was that they were going
24 to sit down and try to work out a payment schedule with
25 the creditors and pay them off over time.

1 Q. Has that stopped the threats of litigation arriving?

2 A. No, it has not.

3 Q. As far as you can tell, are they in direct

4 correspondence with these potential litigators?

5 A. They being the Premier's office?

6 Q. The Premier's office or indeed the ministry of finance

7 talking with these people direct, or is it being left up

8 to you?

9 A. The bulk of it is channelled through our office. In

10 fact I have asked on a number of occasions, one of our

11 assistant financial person to correspond with

12 the creditors, essentially to reassure them that we

13 would not walk away from the debt. We intend fully to

14 honour the debt. As far as I know there is no

15 communications between the other two entities.

16 SIR ROBIN AULD: You mean no direct communications, as far

17 as you know, between the ministry of finance or

18 the Premier's office and the various creditors?

19 A. I am not aware of any, sir.

20 MR MILNE: To the best of your understanding now, leaving

21 aside the money that we have seen here, how much

22 overspent is the tourist board at present on its own

23 budget.

24 A. On its recurrent budget?

25 Q. On its recurrent budget.

1 A. I have a document that could refresh my memory but

2 I want to say it is somewhere in the vicinity of about

3 2 million. Somewhere in that vicinity, just slightly

4 under. I may be a little off on that.

5 Q. But as far as the special budget, if I may call it that,

6 the marketing campaign is concerned, is that spent up to

7 the \$6 million level?

8 A. We have paid down some of it. I think it remains

9 somewhere in the vicinity of about, could be just short

10 of 6 million or slightly over 6 million. I think

11 the total indebtedness of the board at the moment is --

12 I stand corrected if it is otherwise -- just under

13 8 million or slightly over.

14 SIR ROBIN AULD: I don't want any confusion here. You are

15 talking about two different things. The special project

16 budget, you have not at the moment gone out over that

17 budget because you have not got any money to pay within

18 the budget, as I understand it. Or very little. It is

19 a question of what you owe, whether or not it is within

20 budget.

21 A. Yes. What I am saying is that the total indebtedness of

22 the board at the moment is somewhere in the vicinity of

23 about \$8 million.

24 SIR ROBIN AULD: As between your recurrent budget and

25 the special budget?

1 A. Between the recurrent budget and the special budget.

2 MR MILNE: We heard from Mr Musgrove that there were

3 overspends in 2006 and 2007, quite apart from

4 the marketing campaign. Would you agree that that was

5 correct?

6 A. I would agree, yes.

7 Q. He attributed that to ministerial spending? Is that

8 an accurate description of it?

9 A. I don't know if it is ministerial spending. I think

10 what he meant was in addition to that there was some

11 ministerial directives given either verbally or by way

12 of signed contracts.

13 Q. Signed contracts that came via the tourist board or

14 missed out the tourist board?

15 A. Came via the tourist board.

16 Q. Signed by whom?

17 A. I have seen contracts and I say this with due respect,

18 with the Premier's signature on it to publications.

19 Q. Is it the case that the Premier is signing contracts

20 without reference to the board before he does so?

21 A. I don't want to say it is the case; I have seen it on

22 occasions, yes.

23 Q. One other point you may be able to assist us with:

24 within the little bundle that you have there, towards

25 the very back, page 11 of the bundle, it is the very

1 last page, we have an extract from the minutes of the

2 tourist board dated 27th June 2007.

3 A. It has Honourable Garland's signature on there?

4 Q. It is a different document. It is the bundle with

5 the cover sheet on and the very last page of that bundle

6 is an extract from minutes of the tourist board meeting.

7 27th June. We read these ones before. I shan't

8 read them all again. They make reference to the Deputy

9 Director which is indicated on the previous page as

10 being yourself.

11 You had said to the meeting that the campaign

12 appeared to be successful. It was certainly aggressive.

13 Your concern was associated with the cost which you

14 described as incredibly expensive. Do you recall that?

15 A. Correct.

16 Q. You pointed out the amount budgeted for is 3.5 million,

17 and the amount agreed to since the campaign started was

18 6.5 million. So in this discussion were you talking

19 about the ordinary tourist board budget or about

20 the special project budget?

21 A. I was talking about the funds available in the special

22 project budget.

23 Q. It is then that the Chairman, presumably by this stage

24 the Honourable Wayne Garland, steps in and says that all

25 the funds for this campaign come directly from

1 the office of the Premier via the ministry of finance.

2 So you were already aware by this stage, by
3 27th June, that the money would be coming from
4 the office of the Premier via the ministry of finance,
5 is that correct?

6 A. Yes, if I recall correctly, it may have already been
7 debated in Parliament and approved, the sum of some
8 \$7 million over two years.

9 Q. You say it may have been approved in Parliament. Are
10 you aware of when that was done, if at all?

11 A. I say it may because I don't remember the exact dates,
12 but I think it was before June that Parliament debated
13 the matter and approved the budget.

14 Q. Finally this, to the best of your knowledge, has
15 the Premier been made aware and kept aware of the state
16 of finances of the tourist board?

17 A. I will say so, yes, on a number of occasions.

18 Q. Have you had meetings where he has been present for that
19 purpose?

20 A. Yes, I could recall quite vividly, it was the start of
21 last year's fiscal year, 2007/2008, at a meeting of the
22 Premier's office at which he was in attendance and we
23 discussed the indebtedness of the tourist board and it
24 was agreed at that meeting that some \$500,000 would have
25 been made available per month to pay down that debt.

1 That would have been I think early 2007.

2 Q. Early 2007?

3 A. Yes, early -- it could have been 2008.

4 Q. So in early 2008 payment plan being put in place, half

5 a million dollars a month. Was that paid?

6 A. I think we received that maybe on one -- maybe two

7 occasions we received half a million dollars.

8 SIR ROBIN AULD: From?

9 A. From the ministry of finance. Ultimately from the

10 ministry of finance but it might have come via

11 the Premier's office.

12 MR MILNE: Only on a couple of occasions?

13 A. Only on probably two occasions max.

14 Q. Since then anything?

15 A. Not of that commitment for half a million dollars. We

16 may have gotten some pieces here and there to pay

17 down -- help pay down the debt.

18 SIR ROBIN AULD: You have used it for that purpose, have

19 you?

20 A. Certainly, most definitely.

21 MR MILNE: Sir I have no further questions.

22 Cross-examination by MR FITZGERALD

23 MR FITZGERALD: Just help us on this, Mr Higgs, the end of

24 2006, you have a meeting with Mr Kerwin here in Provo,

25 is that right?

1 A. That is correct.

2 Q. Is this right, that is about the Kerwin advertising
3 proposal?

4 A. It was a presentation given by Mr Kerwin.

5 Q. You said it was to do with the First Lady, the proposal
6 being that she should be the face of --

7 A. Yes. There were mock-ups using other faces, obviously
8 because the campaign had not begun at that stage, but it
9 was --

10 Q. The campaign started quite soon after that in early
11 2007, is that right?

12 A. The campaign got underway as I recall in 2007.

13 Q. You gave the go-ahead for that campaign to Mr Kerwin at
14 the end of 2006?

15 A. That could never be further from the truth, sir.

16 Q. Did you arrange the photoshoots yourself?

17 A. I arranged the photoshoots on express consent and
18 permission of the ministry -- of the tourist board and
19 pursuant to the agreements that were signed.

20 Q. When was that, early 2007?

21 A. That would have been -- I want to say -- it could have
22 been late 2006, early 2007.

23 Q. I am not suggesting you personally, but the tourist
24 board approved the idea of having this campaign, didn't
25 it?

1 A. Yes. It was a tourist board campaign.

2 Q. The tourist board approved the idea of having

3 the First Lady as the face of the TCI?

4 A. No, no, no.

5 Q. Well, Kerwin was saying: this is what I want to do.

6 A. Yes.

7 Q. You agreed -- the tourist board agreed that that should

8 be done?

9 A. Let me tell you if I may. At the meeting at

10 Point Grace, it was the then Chairman Don Gardiner and

11 myself. Jim Kerwin presented a presentation which he

12 said he had discussed with the Premier and that we were

13 going to be embarking on a campaign in which the

14 First Lady would be the face of the destination.

15 Q. Did the tourist board agree?

16 A. I am sure you can say by extension it agreed.

17 Q. You then said that the tourist board gave you

18 instructions to arrange a photoshoot, is that right?

19 A. The tourist board -- when we met in New York, a whole

20 schedule --

21 Q. I see --

22 A. Let me put it in order for you if I may, sir. When we

23 met in New York, a whole schedule was presented -- no,

24 it was in Atlanta.

25 When we met in Atlanta, a whole schedule was

1 presented to Mr Musgrove, Mr Gardiner and myself. At
2 that stage it included the photographer who would have
3 been the photographer behind the event, who would have
4 been the hair, make-up persons, who would have been
5 the clothing people, who would have been all of the
6 technical people. That was presented to us, as
7 I recall, in Atlanta.

8 Q. I am just testing your recollection. The campaign got
9 underway in early 2007, do you accept that?

10 A. The campaign got underway in early 2007.

11 Q. That involved photoshoots with the First Lady?

12 A. It involved photoshoots yes.

13 Q. By early 2007 were you helping to set up those
14 photoshoots?

15 A. I was helping to the extent that it was agreed upon that
16 this was the photographer, this was the hair and make-up
17 people, these were the locations that we would be using.
18 At that stage it was fait accompli that the shoot was
19 going ahead. So I, being the person, responsible was
20 facilitating those instructions.

21 Q. That was before the meeting in Atlanta?

22 A. No, the photoshoot as I recall and the sequence --

23 Q. Is this right, you chose the photographer yourself?

24 A. Well, I will shed some light on that too. The budget
25 that was presented in Atlanta had a photographer --

1 a line item of \$750,000 for a photographer. In
2 the presence of Mr Gardiner and Mr Musgrove, I said: my
3 friends, over the years we have worked with
4 photographers who have done photoshoots for us and
5 I think \$750,000 is too much money, and we should have
6 at least those persons we have worked with give us
7 an estimate on this photography work.

8 Q. Is that what happened?

9 A. Yes, we threw out a few names. We threw out Daryl Jones
10 who we had worked with who had done a lot of work for
11 the Destination and Islands magazine. His name came up.
12 Tropical Imaging which is a local company here. We had
13 done a lot of work with them. Their name came up.
14 I want to say Provo Photos. But we have a relationship,
15 and if you go on our website, even to date -- we have a
16 relationship with a number of photographers that we have
17 worked with over the years, and I suggest that at least
18 we should give them a chance to do this work for us.

19 Q. Is that somebody from Daryl Jones Partners, is that
20 right?

21 A. Pardon me?

22 Q. Who was the person who was selected?

23 A. The person who was ultimately selected was Daryl Jones.

24 Q. Someone with whom you have an association?

25 A. I have come to have an association with Daryl Jones last

1 year.

2 Q. You are a partner with him, is that right?

3 A. I have come to have a association with Daryl Jones. If

4 you want me to be exact, Daryl Jones introduced me to

5 a company called Consolidated Water which is the biggest

6 water supplier in the Cayman Islands. The government

7 water operations in Grand Turk, South Caicos, Salt Cay,

8 North Caicos was going up for tender. Last year

9 Daryl Jones introduced me to Consolidated Water last

10 year and we formed a company, we made a bid on the water

11 for Grand Turk, South Caicos, Salt Cay, and I think we

12 were the successful tender. Prior to that I had no

13 relationship with Daryl Jones and I have known

14 Daryl Jones since 1996.

15 (5.00 pm)

16 Q. Just so we get it clear, the campaign with

17 the First Lady as the face of the TCI was approved by

18 the tourist board?

19 A. Not subsequent to the fact. After the fact.

20 Q. How could that be right if in fact you were arranging --

21 you, on instructions of the tourist board, were

22 arranging the photoshoots for it?

23 A. Let me say it again, sir. When we met with Mr Kerwin in

24 late 2006, the then Chairman and I, the presentation was

25 given which said the First Lady would be the face of

1 a campaign for the tourist board --

2 Q. So that was Kerwin's decision?

3 A. I am not saying it was Kerwin's decision. What I am

4 saying is he said he had presented the same presentation

5 to the Premier and that the First Lady was going to be

6 the face of this campaign.

7 Q. Did you agree that the First Lady should be the face of

8 the campaign?

9 A. That was slightly above my pay grade, sir.

10 Q. Sorry, you are the tourist board. This is a tourist

11 board promotion, did you agree it?

12 A. I could not agree unilaterally on that, sir.

13 Q. Did the tourist board agree it?

14 A. I said after the fact the tourist board agreed.

15 SIR ROBIN AULD: They didn't refuse to do what was asked of

16 them, I think is basically what he is saying, is that

17 right, Mr Higgs?

18 A. That is correct, sir.

19 Q. Can we go on. You have referred to a meeting in

20 Atlanta. Was that in fact in early 2007?

21 A. That would have been -- I think it was early 2007, yes.

22 Q. You are saying that at that meeting, there was

23 a discussion of the cost of the --

24 A. There was some discussion surrounding the cost.

25 The photographer was presented and I think I can find

1 this somewhere in my office. The photographer was
2 presented, the make-up artist or the stylist, and
3 everything was presented at that meeting.

4 Q. You agree, do you, that the Kerwin Communications
5 contract that we have at page 5 of the bundle, that that
6 contract was signed by Mr Garland on behalf of the
7 tourist board?

8 A. If Honourable Garland's signature is attached to it.
9 I don't know when he signed it, but if he is attached to
10 it, as he is the chairman of the tourist board, then one
11 can assume that he was signing it on behalf of the
12 tourist board.

13 Q. The date in the document is March 10th 2007. You see at
14 the very start it says:

15 "This advertising agreement made as of March 10th."

16 A. That could very well be the case, sir.

17 SIR ROBIN AULD: What are you saying, Mr Higgs: if it
18 purports to be signed by him, it must be; or are you
19 saying: looking at his signature, I can recognise it.

20 What are you saying?

21 A. I can certainly recognise his signature.

22 MR FITZGERALD: So that is his genuine signature on behalf
23 of the tourist board in March of 2007?

24 A. Yes.

25 Q. I think you said that you had seen copies of this

1 contract, is that right?

2 A. I recall quite vividly the contract came to the office.

3 Obviously you have the dates but the date that was

4 actually signed isn't indicated here. But this contract

5 came to the office, as did a number of other contracts.

6 Q. Was it signed when you saw it?

7 A. It was not signed, sir. It went down to

8 Saunders & Co to be vetted.

9 Q. I have to put it to you it didn't come via the Premier's

10 office, however it did come. It came -- this contract

11 was signed by the tourist board and agreed to by

12 the tourist board without any dictation from

13 the Premier?

14 A. Well, I don't know what input the Premier had in it but

15 I can recall quite vividly a number of contracts around

16 that time including the film festival, the music

17 festival. Most of these things were negotiated either

18 in the presence of the Premier or with the full

19 knowledge of the Premier. They would come to the

20 tourist board. We would then review them, send them on

21 to be vetted by the lawyer, if that was the course of

22 action to be taken, but they would come through

23 the tourist board.

24 Q. You accept it would be reviewed by the tourist board,

25 sent to the lawyers for the tourist board and it was in

1 fact signed by the tourist board?

2 A. Sir, when it came to us, I was not a lawyer at all.

3 I would read it, I would scan it and then send it for

4 legal opinion.

5 Q. Are you aware that in the meantime Parliament authorised

6 in April a special budget for promotions?

7 A. I was aware that a special budget was approved by

8 Parliament.

9 SIR ROBIN AULD: Can you give me the date for that? Is

10 there a Hansard here?

11 MR FITZGERALD: I simply understand from the Premier.

12 SIR ROBIN AULD: In what form was it? Was it in

13 a resolution of the House?

14 MR FITZGERALD: It was part of the budget.

15 SIR ROBIN AULD: So if we look at the budget approved by

16 Parliament for the period, we will see it there, will

17 we?

18 MR FITZGERALD: It was a project within the budget.

19 SIR ROBIN AULD: Identified as such?

20 MR FITZGERALD: As a special project. Now, this is right,

21 is it, that the schedule, by the time the schedule came

22 to be made that we have in June 2007, it was understood

23 that there was a budget available of some \$7 million.

24 A. That was my understanding.

25 Q. To be spread over two years?

1 A. Correct.

2 Q. The tourist board were arranging to manage that and they
3 agreed to the schedule?

4 A. My understanding was that \$7 million ought to be spent
5 over two years. For our contract with Jim Kerwin we
6 were supposed to say the frequency, the locations and
7 all of the specifications of the publications, that was
8 my understanding.

9 Q. So your understanding is that the money had been made
10 available but the tourist board were going to agree on
11 the actual publications that it was going -- that were
12 going to be used?

13 A. It was my understanding that the funds were available
14 and that we were going to select the publications. We
15 were going to select the cities, the tourist board and
16 we would have Jim Kerwin place those adverts for us.

17 Q. That was what was done?

18 A. Not entirely because there were many, many deviations
19 from what was originally agreed to.

20 SIR ROBIN AULD: Many deviations from the schedule?

21 A. Yes.

22 SIR ROBIN AULD: Instigated by whom?

23 A. I don't know who instigated it but I think the genesis
24 of the letter that I received from the Premier might
25 have been, as a result of me asking them to stay within

1 budget, to stay within the publications, and if we were
2 going to deviate from the publications or the budget
3 that was approved, that we -- if the budget was to be
4 increased, that we look at some publications with a view
5 to eliminating them altogether or reducing the frequency
6 in some of them in order that we can stay within budget.

7 Q. Is this right, one sees the liabilities of 5.5 million,
8 is this right that the budget was stuck to?

9 A. Pardon me?

10 Q. The budget was stuck to?

11 A. Well, we -- it was stuck to in as much as we didn't
12 exceed \$7 million, but it wasn't stuck to in the sense
13 of \$7 million was spent in one year when it was supposed
14 to be a two-year project.

15 Q. I don't think -- you can't tell from this when those
16 publications --

17 SIR ROBIN AULD: What are you holding up, Mr Fitzgerald?

18 MR FITZGERALD: I am looking at page 7, the summary of --

19 SIR ROBIN AULD: You are looking at the AP aging summary.

20 MR FITZGERALD: You can't tell from that summary exactly
21 when those monies were spent, can you?

22 A. I can, sir, if I may?

23 Q. Well, could you just assist us on this matter --

24 SIR ROBIN AULD: Well, let him answer your question. You
25 put to him he can't tell and he is about to tell you he

1 can.

2 MR FITZGERALD: I will, sir.

3 A. A case in point, if we look at American Airlines,
4 American Way Publication, that is American Airlines'
5 in-flight magazine. We were going to do a full colour
6 four page advert in it. I can't see the number. It
7 looks like 19,062 and something cents.

8 The closing of that issue was on -- it could have
9 been -- I take it it would have been American standard,
10 it could have been 7th February. We were to get --
11 I may be reading it slightly backward. If you look you
12 will see the closing date. You would see when we need
13 to have the stuff in by the issue date. If you were to
14 look at the whole period of it --

15 MR FITZGERALD: That is the question; is this spread out
16 over two years?

17 A. It was not spread out over two years.

18 Q. What period does it cover?

19 A. It went from -- I remember quite vividly that was one of
20 the basis for me refusing to sign the agreement in
21 New York because the \$7 million was being spent in
22 the first year. So I refused to sign it on that basis.
23 I said I am aware that Parliament had approved \$7
24 million over two years and I am not able to sign it --
25 it was 6 or 5, whatever the number was -- if that was

1 being spent in the first year.

2 If it was spread over two years, sir, I would have

3 been within my authority to sign it.

4 Q. Mr Higgs, you are the first witness who said it was not

5 spread over a two year period.

6 A. I think everybody said that it was intended to be over

7 a two year period. But it was spent -- if you look at

8 it, last year, January, and I can show you e-mails to

9 this effect, we asked Kerwin to freeze all spending.

10 Don't make any further spending on our marketing

11 budget because we had already committed those amounts of

12 money up to January of last year. The fiscal year would

13 not have started until April of that year. So if it had

14 been over two years we would still be within that fiscal

15 period for which those funds were approved.

16 Q. Just help us, those particular creditors, are they

17 referring to a period of more than one year or are you

18 saying this is all in the period of the first year?

19 A. Most of them are within the period of a first year.

20 Q. What has happened in the second year, nothing?

21 A. Nothing.

22 Q. It has just stopped?

23 A. Nothing. It just stopped as of about January of last

24 year.

25 Q. That of course would be a matter for the tourist board

1 to say: look, our budget approved by parliament is 3.5

2 million, you can't exceed it?

3 A. I sent correspondence to that effect and our budget was

4 3.5 million per year, not to exceed 7 million over two

5 years and if we were going to -- any changes from that,

6 we had to look at the budget or look at the publications

7 or look at the media schedule with a view to eliminating

8 some publications altogether or reducing some

9 frequencies in some publication, in order for us to stay

10 within the monies that were approved by Parliament.

11 SIR ROBIN AULD: Pause there, please. To whom did you

12 communicate that?

13 A. I communicated that with Kerwin Communications, I think

14 the account representative at Kerwin Communications is

15 a lady by the name of Ursula Omisys(?), something like

16 that. That was communicated directly to

17 Kerwin Communications.

18 SIR ROBIN AULD: How did you communicate it within

19 the government or the government's ambit?

20 A. I would copy the Chairman, Honourable Garland, I would

21 copy Mr Musgrove, the director and I would have copied

22 some of my marketing executives, Onika Simons(?).

23 I think Ms Pauline Saunders, who was the accounting at

24 that time was also copied in on the mail saying we need

25 to adhere to the budget.

1 SIR ROBIN AULD: It was this communication or others like it
2 that you say must have reached its way somehow or other
3 to the Premier to prompt his e-mail to you that you have
4 described?

5 A. Yes, if I have the e-mail somewhere, sir. I will be
6 happy to --

7 SIR ROBIN AULD: I think it would be useful for you to
8 produce that.

9 A. I will be happy to provide it but it was a number of
10 communications backwards and forwards between
11 Kerwin Communications and us about the budget and I was
12 resisting because they wanted to overspend the budget
13 and I was saying we have to stay within the budget.

14 MR FITZGERALD: Just two matters. So this is right, your
15 clear understanding was it was for the tourist board to
16 manage this budget?

17 SIR ROBIN AULD: Mr Fitzgerald we have been round this
18 course so many times. He has made perfectly plain what
19 the system was; others ordained and he delivered.

20 MR FITZGERALD: Sir, that is the inference that you draw.

21 SIR ROBIN AULD: That is what he said but if you want to go
22 round it again do, but I don't think it's helping
23 anyone.

24 MR FITZGERALD: Sir, with great respect, I think I must be
25 entitled to test this point.

1 SIR ROBIN AULD: All right.

2 MR FITZGERALD: Are you saying that at any stage the Premier

3 said to you: let them spend more than 3.5 million

4 a year?

5 A. I will show you a document, sir, that the Premier sent

6 to me that I should not question, I shall not alter,

7 I should not change the spending or the budget that

8 he -- that was approved and that he -- I think and

9 I have it, I will be happy to provide it, sir.

10 (5.15 pm)

11 MR FITZGERALD: You would not disagree with that, would you,

12 if there is a budget approved by Parliament of

13 3.5 million a year, as long as you keep within that,

14 that is all right?

15 A. The point I am trying to make, sir, is the spending that

16 they were proposing was taking us over the budget and

17 I was referring them to the budget and on a number of

18 occasions they would say that, you know, it was approved

19 by the Premier, it was approved by the Premier.

20 SIR ROBIN AULD: I think it is very important that you let

21 us have all the relevant correspondence on that,

22 Mr Higgs.

23 A. I would be happy to.

24 SIR ROBIN AULD: How soon do you think you would be able to

25 do that?

1 A. I may be able to do that as early as tomorrow, sir.

2 SIR ROBIN AULD: Thank you. Of course we will provide

3 copies to Mr Fitzgerald.

4 MR FITZGERALD: So I put it quite clearly on instructions,

5 the Premier never interfered to encourage you to spend

6 more than there was budgeted for?

7 A. I will take a totally opposite view, sir. I will show

8 you correspondence where it says the Premier says to

9 spend this, the Premier says to spend that and I will

10 show you contracts where the Premier actually signed.

11 Q. These are separate contracts from this Kerwin Media

12 contract?

13 A. Some of them are -- some of them are separate, yes.

14 Q. So what I am saying is, in the dealings with

15 Kerwin Media the Premier never interfered and said spend

16 more than the agreed budget?

17 A. I am saying, sir, you will be able to deduce or you will

18 be able to see in the communications that authority was

19 given by the Premier to Kerwin Communications and some

20 of the other publications, including Elite Traveller.

21 That is one that jumped to mind and billboards. It

22 was approved by the Premier to place billboards in

23 certain places --

24 Q. Are we now going back to the earlier period?

25 A. This was all part of that marketing campaign.

1 The marketing campaign involved print advertising, it
2 was supposed to involve television advertising, it was
3 supposed to involve online advertising, it was supposed
4 to involve billboard advertising.

5 Q. Can you just help us on this final matter, is this
6 right, that the target was, as it were, high-end
7 tourism?

8 A. Well, we are a high-end destination so we like to say we
9 are.

10 Q. And that was what was being targeted in these particular
11 publications, Forbes?

12 A. I am not disputing that. What I am saying, sir, is what
13 I was concerned about was not the publications,
14 the publications were clearly adequate publications
15 geared towards our target market, it was the cost, that
16 is what I was concerned about.

17 MR FITZGERALD: Sir, I am not going to take it any further.
18 It may be that the best way forward -- because this has
19 come up without any prior notice -- is that the Premier
20 deals with this in a further statement.

21 SIR ROBIN AULD: Yes, I think you will need to take some
22 instructions and the Premier is welcome to make
23 a further written statement to the Commission and you
24 will have the advantage, I hope tomorrow morning, of the
25 correspondence to which Mr Higgs has referred and that

1 can inform the Premier's further submission.

2 MR FITZGERALD: And you have indicated that in relation to
3 certain matters it will be permissible to take two weeks
4 to put the final submission.

5 SIR ROBIN AULD: I have said it before and I will say it
6 again, when we conclude the oral hearings here, we will
7 take a two week period from there for any further
8 submissions which anybody wishes to make in writing to
9 be submitted to the Commission.

10 MR FITZGERALD: Sir, rather than lengthening
11 the cross-examination, I think we will deal with it in
12 that way.

13 SIR ROBIN AULD: We have probably reached the time of day
14 when it would be quite unfair to continue. (Pause)

15 Cross-examination by MR SMITH

16 MR SMITH: Mr Higgs, you would agree with me that you take
17 your duty to the board very seriously, the tourist
18 board?

19 A. Not only to the board but to this country, sir.

20 Q. You would also agree with me that you, from the outset,
21 when you first had a meeting with Mr Kerwin, it was your
22 impression that this was an expensive campaign?

23 A. It was. As it was presented to us at the very first
24 meeting I thought it was an expensive campaign,
25 considering what we were spending at that time.

1 Q. The answer is yes?

2 A. Yes.

3 Q. At some point in time you saw this document before it
4 was actually signed, is that correct?

5 A. Yes.

6 Q. Taking your duties very seriously I am sure that you
7 approached the board in one of its meetings before it
8 was signed and indicated to them that we shouldn't sign
9 this?

10 A. I don't know if I said we should not sign it because, as
11 I said, in the initial meeting it was said to us that
12 this presentation was shown to the Premier, it was
13 agreed that Lisa-Raye would be the face of the campaign
14 moving forward. Then at our meeting in Atlanta, as
15 I said, the whole layout was presented, the stylist,
16 the photographer, the make-up people, so all through --
17 all along the stages it was accepted that that is -- it
18 was a campaign --

19 Q. To answer my question, you take your duties to the
20 country and the tourist board very seriously, at any
21 time prior to it being signed -- it's a simple question,
22 yes or no -- did you go to the tourist board while it's
23 meeting and say: listen, we have this document, it is
24 going to take us over budget, did you do that, sir? Yes
25 or no?

1 A. Not in so many words or not in those exact words.

2 Q. Did you in any words?

3 A. On many occasions I have said that it doesn't make sense

4 for us to do this campaign, not at these amounts.

5 Q. I just need to ascertain from you at what meeting prior

6 to it being signed -- because you keep minutes of these

7 meetings, is that correct?

8 A. Minutes are kept of every meeting.

9 Q. I am asking at what meeting prior to it being signed did

10 you voice opposition to this document?

11 A. I couldn't tell you the precise dates, sir, but I would

12 imagine if we were to look at the minutes, you will see

13 where I said that it is a campaign that, while having

14 the First Lady as the face of the country may be a good

15 idea, the cost is cause for concern.

16 Q. Why (inaudible) put the exact date? You have access to

17 these minutes, is that correct?

18 A. I should have access to them, certainly our secretary

19 has access to them.

20 Q. You have an idea of when this was signed, am I correct?

21 A. I think it was signed in June at our meeting of the

22 Caribbean events in New York.

23 Q. You would agree it would be a fairly easy exercise for

24 you to go back from this date and find the minutes of

25 the meetings where you voice an objection to that?

1 A. It wouldn't be an easy exercise for me personally
2 because all of the minutes are not kept in my office in
3 any order. I hope if we were to check the archives of
4 the board, which is in Grand Turk, where they are all
5 kept, that you can -- you will see where discussions of
6 this campaign was had and that I voiced concern about
7 the costs associated with the campaign.

8 SIR ROBIN AULD: Are these meetings we are talking about all
9 over the same period when you were writing the various
10 communications which you are going to produce for us
11 tomorrow?

12 A. I would say that it would have been taking place over
13 that period.

14 MR SMITH: So I am just trying to narrow the time. You
15 first saw this document when before of it was signed?

16 A. I think this schedule was presented to us roughly in
17 Atlanta.

18 Q. What month, sir?

19 A. Early in 2007. This is just an extract of the media
20 schedule per se that was presented to us.

21 Q. So we are asking you basically to look between January
22 and June.

23 SIR ROBIN AULD: To what issue does this go Mr Smith,
24 the precise date? If goes to an issue, of course.

25 MR SMITH: It goes to an issue because Mr Higgs is

1 testifying that he objects to this document.

2 A. No, I never testified that I object to this document.

3 SIR ROBIN AULD: He has not said that. He has said two

4 things. First, he has said he, over a period, began

5 successively to write letters which seemed to have

6 reached or some of them seemed to have reached

7 the Premier in which he voiced concern about

8 the acceleration of the use of this budget's sum.

9 Secondly, in answer to questions put by you, he said

10 he also expressed the same concerns at minutes of

11 whatever committee it was in the board and they will be

12 minuted. If the minutes can be found, no doubt, he can

13 arrange to have them produced.

14 MR SMITH: I understand that. My understanding from his

15 testimony in response to questions by Mr Milne is that

16 he expressed a definitive objection to this document

17 being signed at the time immediately prior to Mr Garland

18 signing it. I think that is what he said.

19 SIR ROBIN AULD: If he did express it, it escaped me. What

20 do you say about that Mr Higgs?

21 A. What I recall about this particular document being

22 signed, we were in New York attending Caribbean Week,

23 Jim Kerwin met with myself, Honourable Garland,

24 Kingsley Been, Mr Lindsay Musgrove. There were

25 obviously prior discussions about this agreement, about

1 the frequency in the budget. We had had the discussion
2 in Atlanta, we had had it previous to that in
3 Point Grace and this -- he asked, who will sign this
4 agreement? Honourable Garland said Mr Higgs will sign
5 it and I said, with due respect Honourable Garland,
6 I cannot sign that document because I am aware that
7 \$7 million was approved to be spent over two years and
8 this agreement was essentially spending \$7 million in
9 one year. I said I cannot sign that with due respect,
10 sir.

11 Q. I will move on. You try to keep yourself from any
12 prevention of conflict of interest, would you agree with
13 me?

14 A. I will say I try to be upright, yes.

15 Q. You haven't any particular training in water
16 purification or dealing with water, is that correct?

17 A. Pardon me?

18 Q. You have no particular training or expertise in dealing
19 with water purification or the business that you are in
20 with Mr Jones, is that correct?

21 A. Let me say it this way, sir, I personally don't. I was
22 introduced, if you are going to the --

23 Q. Your answer is no?

24 A. Well, me not personally no.

25 Q. That is all I am asking, you personally. Mr Jones is

1 a photographer?

2 A. Mr Jones is a photographer.

3 Q. He has no training in that as well?

4 A. He has other businesses, sir.

5 Q. I didn't ask about his businesses, sir. I'm asking

6 you --

7 A. I don't know --

8 SIR ROBIN AULD: Please speak slowly, Mr Smith. Have pity

9 on the court reporters.

10 MR SMITH: Very well. I didn't ask about his businesses,

11 sir. The question I am asking is very simple, if you

12 don't understand it let me know and I'll rephrase it.

13 Mr Jones is a photographer, am I correct?

14 A. I know he is a photographer.

15 Q. Mr Jones has no particular training in dealing with

16 water business?

17 A. I cannot speak to that, sir.

18 Q. Suffice to say that this was an individual that the

19 tourist board does business with?

20 A. The tourist board has done business with Mr Jones on

21 occasions since 1996.

22 Q. You don't see that as a conflict of interest in entering

23 into a business relationship with a person that

24 the tourist board does business with?

25 A. Not if it doesn't infringe directly on the business that

1 the tourist board conducts. It is like asking me,
2 saying I cannot start a fishing company with someone who
3 fishes commercially. It totally, totally didn't have
4 any bearing on the official task that I perform for
5 the tourist board.

6 Q. With due respect I disagree with you, it is the fact
7 that this person takes photographs on behalf of the
8 tourist board.

9 A. He doesn't take photographs --

10 SIR ROBIN AULD: I think these are submissions you can make
11 to me, Mr Smith. The facts have seemingly been
12 established to enable you to deal with it.

13 MR SMITH: Am I also correct that none of these meetings
14 that you had with Mr Kerwin in relation to the costing
15 of these contracts, the ministry or minister of finance
16 was not a party to any of these meetings, is that
17 correct?

18 A. No, he was not.

19 (5.30 pm)

20 Q. These debts, the minister of finance was not a signatory
21 to any of these contracts between the tourist board and
22 Kerwin, is that correct?

23 A. Not directly. I think you can say by extension of
24 the fact that it was approved by Parliament,
25 the authority was given to the ministry of finance to

1 make those funds available. But I know the minister was
2 not a direct signatory to that contract.

3 Q. All the minister of finance's responsibility is in
4 relation to these things that you spoke about is that
5 the ministry of finance funds these projects.

6 A. The minister of finance is to make the funds available
7 for those projects.

8 MR SMITH: I have nothing else.

9 SIR ROBIN AULD: Presumably the ministry of finance is
10 responsible for the inclusion of those sums in
11 the budget, which is put to Parliament?

12 A. Correct.

13 SIR ROBIN AULD: Mr Milne.

14 MR MILNE: I have no further questions, Thank you, sir.

15 SIR ROBIN AULD: Thank you very much, Mr Higgs. We look
16 forward to seeing the exchange of communications to
17 which you have referred tomorrow, if that is possible.

18 A. I will do my best.

19 SIR ROBIN AULD: If Mr Smith wishes it and arrangements can
20 be made for you to have the relevant minutes to which he
21 has referred pulled out by somebody, would you try to do
22 that as well?

23 A. I will do that as much as I can, sir. It may not be
24 tomorrow. It may be helpful to understand that
25 the secretary to the board changes almost every year.

1 So at the end of year period that the debts -- that the
2 serving secretary will have the bundle of minutes.
3 I will have obviously when I attend the meetings but
4 I can't say I file them in a system that I can put my
5 hands right on.

6 SIR ROBIN AULD: What shall I say, best endeavours within 2
7 weeks or 1 week for Mr Smith?

8 A. I will say 2 weeks will be fair. I will seek out
9 Director Musgrove's assistance because the archives are
10 kept in Grand Turk.

11 SIR ROBIN AULD: There is just one matter I would like to
12 ask you about. I hope it is short.

13 After the public accounts examination of Mr Musgrove
14 and Ms Saunders in December 2007, did Mr Musgrove report
15 to you or any other members of the senior executives
16 within the board on the content of the meeting and
17 invite proposals as to how you should deal with
18 the various criticisms made?

19 A. Not to my recollection sir.

20 SIR ROBIN AULD: Were the minutes of the board made
21 available to you, the public accounts committee?

22 A. No, sir.

23 SIR ROBIN AULD: Was any information circulated to you to
24 indicate the general tenor of the criticisms made at
25 that meeting?

1 A. Not in any formal setting. I know from time to time we
2 will have conversations with their accountant,
3 Mr Saunders, and she will say: well, you know, we didn't
4 didn't get a good review. But I have never seen,
5 perhaps except for one or two occasions, minutes of
6 audits. I have never seen audit reports or any minutes
7 of the PAC. I have never seen that, sir.

8 SIR ROBIN AULD: Are you aware of any comprehensive attempt
9 within the tourist board to address all the significant
10 issues referred to by -- or any of the significant
11 issues referred to by the public accounts committee?

12 A. I don't know what the significant issues are because
13 I had never seen the document or never been advised of
14 them formerly.

15 SIR ROBIN AULD: You are conscious of there being an attempt
16 within the tourist board to address the issues raised?

17 A. I am aware that recently a CPA was hired and
18 an assistant was hired with a view to obviously
19 streamlining the accounting department in the tourist
20 board.

21 SIR ROBIN AULD: Thank you. Any questions arising out of
22 mine? Thank you Mr Higgs for your attendance to give
23 evidence.

24 Mr Simons, if we have a 5-10 minute break for the
25 Commission reporters, would you then still feel man

1 enough to make your submissions before the day is out?

2 MR SIMONS: That would help, the time will also give me

3 an opportunity to get my client here actually.

4 SIR ROBIN AULD: All right. 5 to 10 minutes then.

5 (5.35 pm)

6 (A short break)

7 (5.40 pm)

8 Closing submissions by MR CARLOS SIMONS

9 SIR ROBIN AULD: Ladies and gentlemen, those of few loyal

10 adherence remaining, but I say it for the record, that

11 now concludes the oral evidence that the Commission will

12 take in the course of this Inquiry and we now move to

13 the remaining stage of the oral hearings, which is to

14 take submissions from counsel on behalf of some of the

15 parties who have given evidence.

16 The first submission is from Mr Carlos Simons QC on

17 behalf of the Honourable Galmo Williams.

18 MR SIMONS: Thank you very much, sir. The Honourable

19 Williams is actually on his way.

20 SIR ROBIN AULD: Would you prefer to wait for him?

21 MR SIMONS: He ought to be here within minutes.

22 SIR ROBIN AULD: Then I have been too quick off the mark.

23 We will wait.

24 MR SIMONS: I am grateful. (Pause).

25 SIR ROBIN AULD: Mr Carlos Simons, I have just seen that you

1 have prepared a written document, which is either by way
2 of skeleton or speaking notes headed, "Final submissions
3 a behalf of the Honourable Galmo Williams", for which
4 I am very grateful.

5 MR SIMONS: I thought that might be helpful.

6 SIR ROBIN AULD: Yes, it is. I am going to ask one more
7 favour from you. Perhaps you could let the Commission
8 have an electronic copy of this subsequently, maybe
9 tomorrow if that is convenient?

10 MR SIMONS: Sure. I will send (inaudible).

11 SIR ROBIN AULD: The Honourable Galmo Williams is now here,
12 is he?

13 MR SIMONS: Yes.

14 SIR ROBIN AULD: Yes, Mr Simons.

15 MR SIMONS: First of all, sir, let me say thank you to your
16 staff for the courtesies that they have extended to us
17 over these past months in dealing with this matter on
18 behalf of Honourable Williams.

19 Also thank you for the opportunity to make these
20 submissions on Honourable Williams' behalf, even though
21 he wasn't called to give testimony.

22 To get right to it, you were appointed to inquire
23 into whether there is information that corruption or
24 other serious dishonesty, in relation to past and
25 present elected members of the House of Assembly, may

1 have taken place in recent years.

2 You are required to report your findings to
3 the Governor with recommendations.

4 The other aspects of your terms of reference are not
5 really relevant to what I have to say in regard
6 Honourable Williams.

7 He has been a member of the House of Assembly since
8 the 2003 general election. He is also a Cabinet
9 Minister and he falls therefore within the class of
10 persons that you would be investigating.

11 His response to the Commission has, I would submit,
12 been nothing other than co-operative and complete. He
13 has made disclosures to you comprising hundreds of pages
14 of documents that relate to his personal and business
15 affairs. He did that in order to show the Commission
16 his sources of income and to satisfy you concerning
17 the legitimacy of those sources and his expenditures.
18 He did so in order to assist the Commission in its work.

19 In doing so he was willing to set aside the time
20 necessary and also to assign at his own expense senior
21 members of his staff in order to assist in
22 the compilation and organisation of the documents that
23 were submitted. The result was that by mid-December,
24 when the Commission issued a summons to Honourable
25 Williams, the only remaining matters upon which you

1 required to be satisfied had to do with his compliance
2 with the Registration of Interests Ordinance and
3 the Ministerial Code of Conduct in certain respects.

4 In response to that summons, Honourable Williams
5 again took the time and made the effort to add to his
6 disclosures, with the result that by 25 January
7 the Commission was sufficiently satisfied to, in effect,
8 withdraw the summons and it was confirmed to me that
9 Honourable Williams would no longer be required to
10 attend to give evidence.

11 Honourable Williams has been a successful
12 businessman in the Providenciales community for some
13 time. His principal company, his principal business is
14 Discount Liquors Limited.

15 You will see from the disclosures that he has made
16 what this company's business involves. He has built it
17 from a three employee operation in 1989 to a staff of 25
18 persons and annual sales approaching \$18 million.

19 In addition, he has a number of other successful
20 trading companies and I have listed some of those in my
21 written submissions. For the assistance of the court
22 reporters I might just mention a couple of them:

23 Turquoise Duty Free Limited, Gilly's Cafe Limited, Gilly
24 at Leeward Limited, Cactus Beverage Holdings Limited.

25 Mrs Williams herself, of course she comes into it

1 being the wife of Honourable Williams and having regard
2 to your terms of reference, she has been the owner and
3 operator of a well known and successful travel agency
4 again since the late 1980s.

5 I make those points to say that Honourable Williams
6 has been a successful businessman before he was
7 a minister and that is important. I don't make
8 the point to distinguish him from anyone else but to
9 demonstrate that there is absolutely nothing in his
10 portfolio, if you like, that came by way of his
11 membership of the House of Assembly or his appointment
12 as a minister of government.

13 In my submission, there is no basis upon which it
14 can be said of Honourable Williams that he is guilty of
15 any impropriety approaching the standards of corruption
16 serious dishonesty which you are investigating.

17 I would invite you to say that in your report.
18 I think Honourable Williams deserves that. I think
19 justice requires that.

20 Now, it is fair to say that your staff has notified
21 me that Honourable Williams remains at risk of being
22 criticised in two respects: (1) his compliance with
23 the Ministerial Code of Conduct and (2) The adequacy of
24 his annual returns to the Registrar under
25 the Registration of Interests Ordinance.

1 SIR ROBIN AULD: I should say that those of course are
2 essentially a means to a more important end, along with
3 other material which may or may not be there. In
4 themselves they may amount to nothing but with other
5 matters they may amount to very much more.

6 The concern of the Commission thus far has been in
7 the incompleteness of his returns.

8 MR SIMONS: We accept that and what I am going to say, when
9 I come to it, is that it amounts to nothing. Certainly
10 amounts to nothing on the basis of the documents that we
11 were given in relation to Honourable Williams.

12 I will take first the Ministerial Code of Conduct.
13 He acknowledges the existence of the code. He
14 acknowledges that it is intended to govern the conduct
15 of ministers in the discharge of their public functions.

16 And whilst it is true that it has never formally
17 been signed off by the Premier, Honourable Williams has
18 said in terms, in his statement to you a week or two ago
19 that he does not consider that that justifies any
20 argument that ministers are free to disregard it. So he
21 holds himself to that standard.

22 Now, in relation to his compliance with this code,
23 we have been provided of course with a bundle of
24 documents specific to Honourable Williams. Going
25 through those documents, there are but two instances, in

1 my submission, where it might be said that he fell short
2 of that standard. If we look at the code and in
3 the interests of time I am just going direct you to
4 those provisions that I think are relevant.

5 The first is paragraph 1.2, where it says:

6 "The ministerial code should be read against
7 the background of the overarching duty on ministers to
8 comply with the law ..."

9 Then it goes on to say:

10 "... and to uphold the administration of justice and
11 to protect the integrity of public life."

12 Then these words:

13 "They are expected to observe the seven principles
14 of public life set out at annex A."

15 Just before we get to annex A, I would just like to
16 direct you again to paragraph 7.1, which reads:

17 "Ministers must ensure that no conflict arises or
18 could reasonably be perceived to arise between their
19 public duties and their private interests, financial or
20 otherwise."

21 Then we come to the principles.

22 SIR ROBIN AULD: I am reasonably familiar with those.

23 MR SIMONS: Very well. What I say is that it is the first
24 principle and the sixth principle, I believe, which
25 apply.

1 SIR ROBIN AULD: Yes.

2 MR SIMONS: Now, in relation to both those principles and
3 the two paragraphs that I referred you to, the fact is
4 that in March of 2006 -- and these arise from
5 the documents that you have been provided with --
6 freehold title to a parcel of Crown land in East Cays
7 Providenciales was granted to Honourable Williams. He
8 was then a minister.

9 In August of 2006 again freehold title to a parcel
10 of Crown land was granted to a company that is owned and
11 controlled by Honourable Williams and Mrs Williams. He
12 was then a minister.

13 (6.00 pm)

14 I have not been able to locate the Executive Council
15 minute or the Cabinet minute that dealt with
16 the East Cay's parcel but in relation to
17 the North Caicos parcel, the minute is at page 66 of
18 Honourable William's bundle. I don't think I need to
19 take you. If you have it, you might wish to look at it.

20 SIR ROBIN AULD: Yes, thank you.

21 MR SIMONS: It is a very brief minute. It simply records
22 the approval of the grant of freehold title to
23 Honourable Galmo Williams and Mrs Williams for this
24 parcel of land in Bottle Creek, North Caicos.

25 There is no indication from the minute that

1 Honourable Williams declared any interest or excused
2 himself as would normally be the case.

3 To the extent that there isn't any such indication
4 from the minute, we accept that you are entitled to draw
5 the inference that he didn't. One would think that
6 this, being a matter of importance, if it had happened,
7 it would have been recorded.

8 If he didn't withdraw, of course we accept that he
9 was in breach of the code and we accept the criticism
10 that that would attract.

11 The point however is that both parcels of land were
12 financed by legitimate loans from well established
13 lending institutions, those loans are being serviced in
14 accordance with their terms and the evidence of it is
15 contained in Honourable William's bundle provided by him
16 to the Commission. Besides, both parcels remain in
17 the possession of Honourable Williams and Mrs Williams
18 and there is no present intention to dispose of them.

19 In addition, Honourable Williams and Mrs Williams
20 qualified on every relevant ground in accordance with
21 the Crown land policy as it then stood and it would be
22 idle, in my submission, to suppose that had he not been
23 a minister these grants would not have been made.

24 Sir, in my submission, those breaches were
25 technical, they amounted to nothing.

1 Again, whilst accepting the risk of criticism
2 I would ask that you note that in your report. Again,
3 in my submission, Honourable Williams deserves it and
4 justice requires it.

5 As regards the registration of interests, again,
6 Honourable Williams accepts that he never strictly
7 complied with his obligations under that ordinance.

8 I was hoping to be able to go into this in a bit more
9 detail, however, I have only this afternoon received --
10 and not through any fault of your staff -- the returns
11 that the Commission has received in relation to
12 Honourable Williams.

13 Putting a gloss on it, what I can say is this, that
14 when one looks at the returns that were made, there is
15 not a great deal of difference between -- I should put
16 it this way: in those years when the work completed, if
17 you take the most complete return and I think it was for
18 2007 or 2006, there is not a great deal of difference
19 between that and the disclosures made by Honourable
20 Williams to the Commission, except of course the volume
21 of the detail.

22 He took the view, for example, he now accepts, that
23 it was an erroneous view, that he was required to
24 declare companies in which he was the shareholder of
25 record but not necessarily companies in which he had

1 a beneficial interests but was not the shareholder of
2 record.

3 Although the returns were by and large -- certainly
4 the last two I think -- completed by his accounting
5 staff at Discount Liquors, they were completed under his
6 direction and supervision, he signed off on them and he
7 accepts full responsibility for them.

8 The point about the returns, however, is that, to
9 the extent that they were, shall we say, incomplete,
10 then there was nothing sinister in it, there was no
11 intention to hide, conceal, mislead people who had
12 an interest in looking at the register.

13 So in both the case of the Ministerial Code of
14 Conduct and the Registration of Interests Ordinance, in
15 my submission, Honourable Williams cannot be criticised
16 for anything more than inconsequential technical
17 breaches committed inadvertently and that did not
18 result -- which is that did not result in any subversion
19 of basic principles of conduct in public life.

20 These lapses certainly do not rise to the level and
21 come nowhere close to corruption or serious dishonesty.

22 SIR ROBIN AULD: Is there anything you would like to add to
23 your written submissions to which you have spoken in
24 the last few minutes, Mr Simons?

25 MR SIMONS: Those are my submissions unless you have --

1 SIR ROBIN AULD: They are most helpful and we are grateful
2 to you for them and not least for the elegance of their
3 expression.

4 MR SIMONS: Thank you very much. Thank you.

5 SIR ROBIN AULD: Well, that concludes the work of the
6 Commission for today. We will resume tomorrow at 10.30.

7 MR FITZGERALD: Sir, my learned friend Oliver Smith has very
8 kindly indicated that I can go first in the morning with
9 the Commission's permission. We have a bundle of
10 authorities, not that I think I will be referring to
11 many of them but just in case.

12 SIR ROBIN AULD: Thank you. I should record that you have
13 already provided me with your speaking notes, which you
14 have headed "Closing Submissions of the Premier".

15 MR FITZGERALD: Yes.

16 SIR ROBIN AULD: I anticipate that you will be an hour and
17 a half to an hour and three-quarters?

18 MR FITZGERALD: Yes, I will keep within an hour and
19 three-quarters at the maximum.

20 SIR ROBIN AULD: 10.30 tomorrow.
21 (6.10 pm)
22 (The court adjourned until 10.30 am
23 on Tuesday, 10th February 2009)
24
25

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