

1 Wednesday, 11th February 2009

2 (10.30 am)

3 Closing submissions by MR MISICK (continued)

4 SIR ROBIN AULD: Yes, Mr Misick.

5 MR MISICK: Thank you, sir.

6 On the issue of the Companies Ordinance that we
7 touched on yesterday, I did have a quick look and I did
8 copy the relevant section. I somehow forgot to bring
9 it. But there is a provision in the Companies Ordinance
10 which allows a company, that provides for the directors
11 of the company that have been involved in fraudulent
12 trading to be prosecuted, but that is only in the case
13 where the company is actually in liquidation.

14 SIR ROBIN AULD: Yes, that was the history too in the UK
15 Companies Act but it is there anyway.

16 MR MISICK: It is there.

17 SIR ROBIN AULD: It has not been amended so as to remove
18 the qualification that it must be in liquidation.

19 MR MISICK: That qualification is still there.

20 SIR ROBIN AULD: I think we have changed that in England but
21 I am not sure. Thank you for checking on that.

22 MR MISICK: Today, sir, I am dealing with the Honourable
23 Jeffrey Hall, and as I indicated to you yesterday, I am
24 dealing only with what I consider to be the main issue
25 and that is the matter of his involvement in

1 the transaction whereby 20 acres of land was transferred
2 from the government to Urban Development Limited.

3 Now, that is a serious matter because
4 Urban Development Limited acquired the 20 acres at
5 a time when it was not a Belonger company,
6 Belonger-owned company and in fact it is still the case
7 that it is not a Belonger-owned company.

8 The fact of that transaction is that the government
9 has effectively been deprived of the US\$1.5 million.

10 I think it would be fair to say that that deprivation
11 must have been on the basis that -- of a representation
12 that UDL were the Belonger-owned company.

13 If the Crown was defrauded or was deceived, perhaps,
14 I should say, into parting with the land on that
15 premise, it may give rise to the following offences, or
16 at least in considering whether a crime of dishonesty
17 was committed, the following offences may be called into
18 question; and that is UDL obtaining the land itself by
19 deception; UDL obtaining a pecuniary advantage by
20 deception and that would be the \$1.5 million which
21 the government didn't get.

22 Although this may be duplicative, there is also the
23 offence of evading a liability by deception. More
24 importantly, as far as Mr Hall is concerned, there would
25 be the question of whether or not there was a conspiracy

1 to defraud on the part of those involved in structuring
2 the transaction.

3 As you would know, sir, the essence of this type of
4 fraud is that it is to induce someone to act to their
5 detriment, and in the case of the public, to induce
6 a public official to act contrary to his duty such that
7 he would not have acted in that way if he had known
8 the true facts, is to expose the state to the risk of
9 injury and that would amount to an intent to defraud.

10 I am sure you don't need authority for that, but if
11 you did, there is the well known case of *Welham v DPP*.

12 SIR ROBIN AULD: That is an old friend, isn't it?

13 MR MISICK: Yes. So that is the legal regime and as far as
14 Mr Hall is concerned, to impose any criminal liability
15 on him, it would have to be shown -- I think there are
16 four ingredients that would have to be established.

17 The first is that UDL was not a Belonger-owned
18 company at the date of the transfer, and I think there
19 would be no doubt about that.

20 That the transfer to UDL was made on the basis that
21 it was a Belonger-owned company and again I think there
22 can be no doubt about that.

23 The transfer would not have taken place at the price
24 that the land was sold for if it was known that UDL was
25 not a Belonger company, owned by those in government

1 responsible for the execution of the transfer and its
2 registration.

3 That would be obviously the Governor who signed
4 the transfer and the Land Registry that would have given
5 effect to the registration; that is the registration
6 would have effectively made UDL the owner.

7 Again, certainly for the purposes of your inquiry,
8 I think we can assume that that was the case. So really
9 what it comes down to is the next matter, is whether or
10 not Mr Hall was party to an agreement or to
11 the agreement to effect the transaction in that manner.

12 It is my submission on behalf of Mr Hall that all
13 the evidence points against him being a party to any
14 such agreement.

15 SIR ROBIN AULD: You are saying not just no evidence that;
16 you are saying all the evidence is against it?

17 MR MISICK: Yes. In fact it will be my submission that,
18 apart from Mr Hall being party to any conspiracy,
19 Mr Hall was himself a victim and when I say Mr Hall,
20 I mean the other Belongers as well, I am not suggesting
21 that they were party to it. Mr Hall and the other
22 Belongers were party -- were victims and I would ask you
23 to look at my submissions and I develop this theme.

24 At paragraph 8 on page 3, I set out the beginning of
25 the transaction whereby Mr Hall acquired the offer in

1 2004 for his five acres. At that time, and I think
2 the evidence supports this, he did have a genuine
3 intention to develop the parcel. There were no
4 pre-arranged plans to sell the land to anyone until
5 Mr Wex came along.

6 At paragraph 9 I deal with the offer that he
7 received from Mr Wex via his attorney Mr Melbourne and
8 Mr Smith.

9 The important point I wish to emphasise is that what
10 Mr Hall and indeed the other Belongers were offered was
11 a net price of US\$1 million.

12 From the very outset they were expected to receive
13 \$1 million net. Just so as not to minimise or to set
14 aside any matters by which the transaction came about,
15 I set out in paragraph 12 the fact that the sale of the
16 land occurred -- the agreement for the sale of the land
17 occurred first before the offer of the freehold, that is
18 paragraph 12 down to 14. So what happened in this case
19 was that shortly after Mr Wex, or some time after Mr Wex
20 made the offer, the agreement for sale was made and that
21 was later followed by the offer of the freehold.
22 Clearly in that respect Mr Hall is culpable in terms of
23 not giving effect to the policy.

24 But that is a separate matter from his involvement
25 in any conspiracy and I come to deal with that later on.

1 The real history begins with the setting up of
2 Urban Development Limited and I deal with that at
3 paragraph 15.

4 The evidence there was that it was Mr Wilson's idea
5 to set up Urban Development Limited and not that of
6 Mr Hall or any of the Belongers.

7 In fact, Mr Hall was not a lawyer, he had no
8 knowledge or experience in working with corporate
9 entities and in fact had never used a company before to
10 hold any of his assets.

11 Then I set out parts of Mr Wilson's own evidence
12 before you in his written statements where he says that
13 he was the one who advised the Belonger group to
14 incorporate a company and did not even provide them with
15 copies of the documents.

16 So in terms of the actual setting-up, that was done
17 by him and Temple Trust, which was a company that his
18 firm used for those types of transaction. Then in
19 paragraph 17 and 18 I deal with the development
20 agreement which you have heard evidence that this was
21 central to the transaction. This was a requirement of
22 Mr Wex. As I point out in paragraph 18, the development
23 agreement was negotiated in the name of
24 Urban Development and that would suggest that Mr Wex had
25 an intention of acquiring Wex -- presumably at a early

1 stage and not towards the end.

2 (10.45 am)

3 Then in paragraph 19 I deal with the actual transfer
4 of the shares and documentation relating to it. You
5 will recall from the evidence that that took place on
6 13th April 2006 and we know at this stage from looking
7 at the documentation that at least Mr O'Neill was
8 involved at this stage, because that was the date when
9 the shares were transferred to Blue Resort. We know
10 Mr O'Neill said he set that company up for Mr Wex and we
11 also know the indemnity in favour of Blue Resort and
12 Urban Development Limited was executed in April 2006 and
13 it was addressed to those companies in care of
14 Mr O'Neill.

15 An important point in that regard is that when
16 the shares were transferred, Mr Hall and the other
17 Belongers had in fact lost their interest in
18 Urban Development Limited and had not yet received
19 the \$1 million, because the payment was not made until
20 May. So Mr Wex became the owner of
21 Urban Development Limited and at that stage he was
22 already -- the Belonger group had already been exposed
23 to the risk of non-payment, although I suspect that that
24 risk was a very low one.

25 Now, in paragraph 21 I submit that Mr Hall was

1 never, and when I say Mr Hall, I am talking about all of
2 the other Belongers as well, they were never parties to
3 any of these negotiations. We know he was not giving
4 any documentation in relation to
5 Urban Development Limited, and he simply signed
6 the document that was put before him, and particularly
7 telling were the two indemnities that he was asked to
8 sign without any explanation by Mr Wilson as to their
9 content or meaning.

10 In that respect, it is these two indemnities which
11 I submit indicates that Mr Hall may have been the victim
12 of the structuring of the transaction.

13 SIR ROBIN AULD: Well, he was a contingent victim but not in
14 the event.

15 MR MISICK: Not in the event, no.

16 The risk was that -- I think the contingency, just
17 to be clear about it, is probably doubtful in how,
18 because I think it is very questionable whether those
19 indemnities would have been effective in any way, given
20 the circumstances under which they were executed.

21 SIR ROBIN AULD: They might have been tainted with
22 illegality, mightn't they?

23 MR MISICK: Yes.

24 SIR ROBIN AULD: What is puzzling me about this --
25 this fourth constituent of the offence which essentially

1 goes to knowledge and with knowledge participation.

2 The general theme of your submissions, on the basis
3 of the evidence put to the Commission was that Mr Hall
4 and his three colleagues just didn't know what was going
5 on, but they were content to let it all end up with them
6 each getting 1 million and never to ask the reason why.
7 Well, I don't know about the others, but he is
8 a Minister of State and he ought to be a man of the
9 world and at least have his eyes alight to
10 the possibilities of something funny going on here; what
11 am I to do with that, if that is a correct appraisal of
12 it?

13 MR MISICK: That certainly is a question that you should
14 ask. What I would say about that is this, first of all,
15 they all -- him and certainly they all relied heavily on
16 Mr Wilson and the evidence is that -- his evidence was
17 that he trusted Mr Wilson who was not only his lawyer
18 but a long-time friend to protect his interest. So it
19 was not a case where Mr Wilson was communicating with
20 him and telling him details of the transaction and he
21 simply turned a blind eye to the nature of the
22 transaction.

23 SIR ROBIN AULD: Turning a blind eye falls short of
24 conspiracy is your submission, I suppose, is it? It
25 must be.

1 MR MISICK: Yes. Two things, (a) if -- turning a blind eye
2 falls short of conspiracy but also because he didn't
3 have knowledge of the details, it was not a question of
4 turning a blind eye. You can't turn a blind eye to
5 something you are not aware of. There must be something
6 to indicate to you that something might be going wrong
7 or might be amiss.

8 The other point I would say about that is, and
9 Mr Hall did give evidence of this, is that -- although
10 he was wrong about the question of ownership, there was
11 certainly the suggestion that because of Mr O'Neill's
12 involvement, that UDL was in fact a Belonger company.
13 That is a technicality which I believe was one that
14 those who were involved in the structuring of the
15 transaction was -- had taken.

16 But I submit that it was not a matter on which
17 Mr Hall had any knowledge.

18 Taking that point, that is the question of ownership
19 or control, I deal with that at paragraph 22. You will
20 recall that the transfer of land, we can have a look at
21 it if you wish, but -- I am not sure, and it is not
22 clear on the evidence, who actually drafted
23 the transfer.

24 But clearly Mr O'Neill was relying on the expression
25 "owned or controlled". He disregarded the ownership and

1 placed emphasis on the control. In his letter to
2 the Commission he still maintains that UDL is a Belonger
3 company by virtue of his control of that company, he
4 being a Belonger himself.

5 Now that, I submit, is a legal nicety which Mr Hall
6 knew nothing about and I for one would not have made
7 that distinction or would not have relied on the use of
8 that word, because clearly both the policy and the law
9 in my submission was against that interpretation.

10 Although Mr O'Neill might have been nominally
11 director or had nominal control, it is clear that he was
12 taking instructions from Mr Wex and the person who had
13 real control was not him but Mr Wex and Mr Wex was not
14 a Belonger. Obviously that is a matter obviously which
15 Mr O'Neill might feel free to raise in any proceedings,
16 but for the purposes of these proceedings, I would
17 suggest that you could proceed on the basis that UDL was
18 not a Belonger company. Whether or not that stands up
19 in any other proceedings is another matter.

20 So that is really the evidence and what it amounts
21 to is that -- before I move on to that, clearly this
22 transfer from the Crown directly to Urban, the main
23 beneficiary of that was Mr Wex and that is for two
24 reasons. First of all, he would avoid any liability for
25 stamp duty on the transfer of the land. I would be

1 happy to explain that, if you wish me to, how that

2 avoidance would come about.

3 SIR ROBIN AULD: Yes.

4 MR MISICK: In a sale of land there is a stamp duty on the

5 transfer of land. In the sale -- that duty is 9.75

6 per cent.

7 The stamp duty on the sale of shares in a company is

8 only nominal unless the company is a land holding

9 company. Now, at the date of the transfer, that

10 is 13th April 2006, UDL was not a land holding company

11 because it didn't own the land.

12 Therefore any stamp duty on the transfer of

13 the shares from the Belonger group to Mr Wex's company,

14 Blue Resort, would be nominal, probably no more than

15 \$10. But had they waited until the land was transferred

16 to UDL and then transfer the shares from the Belongers

17 to Mr Wex's company, Blue Resort, at that stage UDL

18 would be a land holding company and the duty on

19 the transfer would be at the rate of 8 per cent of

20 the value of the consideration. So there was

21 a substantial savings to Mr Wex in having

22 the transaction structured in that way.

23 The second method and what was the first attempt

24 was -- the first feature of the benefit is perfectly

25 legal. The second, which also benefited Mr Wex, is that

1 instead of paying the Crown \$3 million, he was only
2 paying the Crown 1.5 million and of course that is
3 the gravamen of the matter.

4 So we arrive at a situation where in my submission
5 the evidence shows that the persons who were involved in
6 the transactions were the two lawyers --

7 SIR ROBIN AULD: Which two lawyers?

8 MR MISICK: Mr Wilson and Mr O'Neill.

9 SIR ROBIN AULD: You are going to acknowledge this in your
10 submissions on behalf of him in due course?

11 MR MISICK: Yes, Mr Wilson and Mr O'Neill, and it would seem
12 also Mr Wex and Mr Smith.

13 SIR ROBIN AULD: So were they conspirators to defraud?

14 MR MISICK: I am not going to say that they were
15 conspirators to defraud, because that would be a matter
16 for a criminal court, but I think the evidence points
17 that this was a scheme and they were simply the
18 participants in that scheme.

19 Again, I think in the end what it might well turn on
20 is whether Mr O'Neill is correct in his interpretation
21 that the word "control" meant that he could nominally
22 insert himself between Mr Wex or nominally insert
23 himself as a director or directors of Mr Wex's company,
24 and thereby transform UDL from being a non-Belonger
25 company to a Belonger company.

1 (11.00 am)

2 In my submission, I think unless that argument were
3 to succeed, I think there is certainly -- it would
4 certainly be a sufficient basis for an investigation as
5 to what motivated the transaction or the process by
6 which the land was transferred from the Crown directly
7 to UDL on the basis that it was a Belonger-owned
8 company.

9 SIR ROBIN AULD: The line is what? It is between lawful
10 avoidance and unlawful evasion?

11 MR MISICK: Yes. Avoidance is proper, evasion is not.

12 That is why I said in the case of the transfer of
13 the shares prior to the UDL becoming a land holding
14 company, that is avoidance. Making any kind of
15 representation, whether it is to the Companies Registry
16 or to the Land Registry or to the Crown, to suggest that
17 UDL was a Belonger-controlled company, if in fact it was
18 not, that is not avoidance, that would be evasion.

19 SIR ROBIN AULD: Unless you believed it was on your
20 interpretation.

21 MR MISICK: Of course. Unless the person putting forward
22 that interpretation had the genuine belief that it was.

23 In that respect obviously I would suggest that
24 the indemnities, the form of indemnities is a factor to
25 consider, although I would not say that it is

1 a determinative factor. In transaction tax indemnities
2 are not abnormal requirements or abnormal features.
3 SIR ROBIN AULD: Yes.
4 MR MISICK: Then just to wrap this up, at paragraph 26
5 I point to the fact that no reliance can be placed on
6 Mr Hall's declaration of interests in which he indicated
7 that he was a director of Urban Development Limited and
8 Alliance Realty Limited. I think the document now
9 clearly shows that he never was.
10 His statement in his declaration that he was was
11 clearly a mistake.
12 He was a shareholder and I suggest he was probably
13 not distinguishing between directorships and
14 shareholdings.
15 Then again this goes to the question of Mr Hall's
16 knowledge, 28. He never made any representation as to
17 his ownership of Urban Development Limited to induce
18 the Crown to transfer the land to Urban Development. At
19 the date of the transfer he had no interest in
20 Urban Development Limited and was not a director.
21 In fact the documentation that would have gone to
22 the Land Registry or that was available would not --
23 would show clearly that the shares did not belong to
24 Mr Hall and the others.
25 So the representation was not that he and others

1 owned the company; the representation was that it was
2 a Belonger company by virtue of Mr O'Neill's
3 directorship. That is the representation that was made
4 and Mr Hall and the other Belongers were not party to
5 that representation.

6 Then in paragraph 30 I repeat what Mr Hall told you
7 in his evidence, is that he accepts that as a minister,
8 having acquired an interest in land for development
9 under a policy to empower Belongers, he should not have
10 re-sold that land. That was not the purpose of the
11 policy and in this respect he didn't lead by example.

12 But as I indicate, failing to lead by example is not
13 criminal.

14 So in conclusion I would suggest that the evidence
15 strongly points against Mr Hall being a participant in
16 any scheme to defraud, and that he was at least, as you
17 have qualified it, contingently a victim of a fraud.

18 Finally at paragraph 32, I did discuss this with him
19 this morning as well, he feels under some moral
20 obligation to help to restore to the Crown the monies
21 that were never paid and he feels that way not because
22 he is under any -- feels he is under any legal liability
23 but because he thinks that is the right thing to do and
24 that is --

25 SIR ROBIN AULD: If it is money that was paid, which as

1 a matter of law on the facts as we know them now was not
2 due to be paid, then it is reclaimable whether he was
3 guilty or not of any criminal offence, isn't it?
4 MR MISICK: The monies with him?
5 SIR ROBIN AULD: Yes. These monies, presumably the whole
6 transaction on the basis of the --
7 MR MISICK: Yes, well, the monies are due to the Crown.
8 They are not necessarily due by him. Urban Development
9 is certainly under no obligation to restore them, is my
10 submission.
11 SIR ROBIN AULD: Yes, but the civil liability too falls
12 solely on Urban Development.
13 MR MISICK: Correct, yes. Obviously that may involve
14 obviously proceedings, in order -- it would mean that
15 the Crown would have to institute civil proceedings and
16 so forth. What he is saying is that: I feel under a
17 moral obligation now -- not to unwind the transaction
18 but to ensure that the Crown receives the \$1.5 million
19 that it --
20 SIR ROBIN AULD: But presumably there could be civil
21 proceedings to rescind the transaction, to unwind it, as
22 you put it, for return of the monies wherever they went.
23 MR MISICK: Yes, certainly, sir.
24 SIR ROBIN AULD: To which he might be a third party in any
25 civil proceedings.

1 MR MISICK: He might be a third party based on the
2 indemnities, yes. As we have just discussed, there
3 would certainly be legal argument as to whether those
4 indemnities are enforceable but that is another matter.

5 SIR ROBIN AULD: Even without the indemnity, the monies
6 would be traceable, wouldn't they? Arguably at any
7 rate?

8 MR MISICK: The monies would be -- no, the monies would not
9 be traceable because what Urban Development got is
10 the land. The asset that belonged to the Crown is
11 the land, not the money.

12 SIR ROBIN AULD: But the land transaction might have to be
13 disturbed, mightn't it?

14 MR MISICK: Yes, if the land transaction was disturbed and
15 say the land revert back to the Crown, the person, his
16 liability would be not to the Crown but would be to
17 Mr Wex who would have had -- gotten no consideration for
18 his money.

19 SIR ROBIN AULD: That is right. So one way or another,
20 the funds would be potentially traceable in civil
21 proceedings.

22 MR MISICK: Yes, that is certainly a possibility that those
23 kinds of proceedings could and might be issued, yes.

24 SIR ROBIN AULD: You say, Mr Misick, that he has undertaken
25 to make good in paragraph 32. Actually he has not

1 undertaken to do that. He has undertaken to make

2 efforts to restore that document.

3 MR MISICK: As I said, I just discussed this again with him

4 this morning. What he said he will do is to contact all

5 of the persons involved who benefited from

6 the transaction to see if there was -- there can be

7 an agreement to make good and what he said to me this

8 morning is that in any event, whether or not the others

9 agreed, he will certainly pay his portion of the

10 \$1.5 million which was never paid to the Crown.

11 SIR ROBIN AULD: So this is an undertaking given to you in

12 consultation?

13 MR MISICK: Yes.

14 SIR ROBIN AULD: But not given to the government or anybody

15 else?

16 MR MISICK: Well --

17 SIR ROBIN AULD: Maybe through what you are saying now it

18 amounts to such.

19 MR MISICK: Yes. It has not been formally communicated but

20 certainly he has assured me that he is willing to -- if

21 he is unable to get the whole of the monies repaid

22 involving all of the others who may be potentially

23 liable --

24 SIR ROBIN AULD: When you say the whole of the monies, are

25 you talking about anything more than the discount?

1 MR MISICK: I am talking about the 1.5 million that the
2 Crown lost.

3 SIR ROBIN AULD: Nothing else?

4 MR MISICK: As far as I know, that is the amount that is --
5 I don't know if you had in mind interest but as
6 I understand it, that is the amount that would have been
7 due.

8 SIR ROBIN AULD: There is no reason why he should not repay
9 his proportion of the discounted value lost
10 straightaway, is there?

11 MR MISICK: Assuming he has the money to do so.

12 SIR ROBIN AULD: To encourage the others.

13 MR MISICK: Certainly. There is certainly no reason why he
14 should not do that.

15 SIR ROBIN AULD: Is there any difficulty in him doing that
16 now?

17 MR MISICK: I don't know. I would imagine that he may have
18 to go to a bank and raise money to do so but certainly
19 when I say -- when you say now, obviously not perhaps
20 today but within a short period.

21 SIR ROBIN AULD: Anyway, he has given that undertaking which
22 is an important one and I hope it will lead to some
23 return soon. Thank you.

24 MR MISICK: Unless I can help you further, that is my
25 submission on his behalf.

1 I will deal with the other issues raised in relation
2 to him by way of written submissions. I think that is
3 it from me unless I can help you further.

4 SIR ROBIN AULD: I am going to ask you the question I asked
5 the other attorneys following Mr Fitzgerald's
6 submissions: even if I were of the view that there was
7 information before the Inquiry meriting at least
8 investigation with a view to prosecution, the whole
9 exercise would be pointless, submitted Mr Fitzgerald,
10 because there could not possibly be a fair trial in any
11 such prosecution. Is there anything you would like to
12 say about that?

13 MR MISICK: I think there is considerable force in that
14 argument. The amount of publicity that the Inquiry has
15 generated and the allegations that have been put out,
16 some substantiated, some totally -- some -- when I say
17 substantiated, some in which there may be some evidence,
18 others in which there are none whatsoever.

19 There is also the method by which the reporting --
20 some of the reporting was done. I don't know if you
21 have seen some of the television reports or even some of
22 the newspaper reports. Some of the reporting had no
23 semblance of what the actual proceedings -- or what came
24 out in the actual proceedings. So I think there is
25 a real risk of not -- there not being a -- any chance of

1 a fair trial.

2 (11.15 am)

3 What I would also like to say is that if you were to
4 recommend criminal proceedings and let's say
5 the prosecuting authorities decided of their own steam,
6 of their own volition that the risk of a fair trial,
7 because there is not likely to be a fair trial and they
8 decided not to proceed, I think that would -- may well
9 have its own repercussions because I think there would
10 be certainly a segment of the population who would say:
11 well, if a senior judicial figure found evidence and
12 recommended prosecution, why are you not doing it. And
13 then there might be allegations of cover-up and things
14 being swept under the table.

15 So it is a very difficult issue, I understand, but
16 that is certainly a matter, I believe, would be very
17 difficult for a prosecuting authority, having been told
18 that there is sufficient evidence to -- in which to
19 mount a prosecution by a senior and revered figure like
20 yourself, to come to some conclusion that criminal
21 proceedings are not to be carried out.

22 SIR ROBIN AULD: So how should this affect my approach?

23 Just take a hypothetical example, in the case of person
24 A, say, I find that there is not just a possibility of
25 investigation justifying prosecution for crime but there

1 is a strong probability, there is a very strong case
2 even at this stage. How am I to deal with that? Do
3 I take a sort of pre-emptive view and say: well, this
4 case is very strong, but look at all the publicity, it
5 is all going to come to nought when it gets to trial
6 because either the prosecutor won't prosecute because he
7 thinks the matter may have resulted in no possibility of
8 a fair trial or a judge may strike it down as an abuse
9 of process on that account.

10 Am I to anticipate those things or am I to recommend
11 regardless? Mr Fitzgerald said the former, that
12 I should recognise reality and not recommend what won't
13 happen.

14 MR MISICK: The reason why I support Mr Fitzgerald is
15 because of the latter statement or the latter submission
16 I just made, is that if you were to make such
17 a recommendation, I think it would be virtually -- very
18 difficult for any prosecuting authorities not to
19 proceed, even if they have come to the view that on
20 the constitutional motion, that motion is bound to
21 succeed.

22 The other point I would make is that, obviously,
23 this is an Inquiry and the substance or the main point
24 in an Inquiry is bringing daylight to the facts or
25 exposing facts, and therefore if you find that a crime

1 has -- not only is there evidence but there is also
2 a strong probability that a crime has been committed,
3 I think you have to say that. Because that is
4 the purpose of the Inquiry. The purpose of the Inquiry
5 is not to -- it is not a pre-run for criminal
6 proceedings, but to ascertain facts and the facts would
7 speak for themselves. I believe there is one -- I can't
8 remember, there is one case, involving a Inquiry in
9 which that point was actually made; that while
10 prosecuting, the prosecution may or may not follow, that
11 really ought not to be the concern of those carrying out
12 the investigation, except in this case you are
13 specifically directed to do so. That is the dilemma.

14 I was considering that and I think because of
15 the nature of your engagement in which you are
16 specifically directed to make recommendation, I think
17 that is the other end of it.

18 I think it would be very difficult for you to ignore
19 that and say -- and not to say something about it, even
20 if you say that the prosecuting authority ought to
21 consider whether it would be right.

22 I think that is perhaps the best you can do is to
23 put it forward, raise the prospect of a fair trial and
24 leave that decision for the prosecuting authorities.

25 Given your terms of reference. I do not think you

1 could ignore it.

2 SIR ROBIN AULD: That is very helpful, thank you, Mr Misick.

3 Counsel to the Inquiry, Mr Milne, I have scheduled
4 to begin his closing submissions at 2.00 pm. I hope
5 that doesn't cause inconvenience to those of you who are
6 here this morning, possibly expecting him to follow
7 straight on from you. That is the programme for today.
8 He has had quite a lot to prepare as you can imagine and
9 also is having to take into account all the very good
10 submissions of the last couple of days. So not before
11 2.00 or 2 o'clock, I should say. Thank you.

12 (11.21 am)

13 (A short break)

14

15 (2.00 pm)

16 SIR ROBIN AULD: Good afternoon, ladies and gentlemen. Now
17 we have reached the final submissions in the oral
18 hearings. Mr Milne is now going to give it to us.

19 MR MAURICE GLINTON: Sir Robin, if I may, just a very minor
20 housekeeping matter, yesterday in his closing
21 submissions Edward Fitzgerald made references to two
22 document, actually one a case and one was a reported
23 article in the newspaper, and I would wish to lay them
24 over to you. It is the case of Rees v Crane and
25 the article appears in the Free Press of 30th January.

1 SIR ROBIN AULD: Thank you very much indeed. Thank you,

2 Mr Glinton. Now, Mr Milne are you ready?

3 MR MILNE: Yes, sir. Thank you.

4 Closing submissions by MR MILNE

5 May it please you, sir. Sir, the Commission of

6 Inquiry has now been sitting since Tuesday, 13th

7 January 2009. Today is the 22nd and final day of the

8 oral hearings to be held in the Turks & Caicos Islands.

9 Sir, before I begin my final comments upon

10 the evidence presented, I want to take this opportunity

11 to express the thanks of myself and my colleagues for

12 the assistance and the hospitality that has been

13 extended to the Commission in the past weeks.

14 We are deeply grateful to the Governor and to his

15 staff for their co-operation and their support at all

16 stages.

17 We also acknowledge a debt of gratitude to the many

18 people and organisations who have made these hearings

19 possible; to the many government departments of the TCIG

20 and their staff; to the Permanent Secretaries of those

21 departments and indeed the staff at all levels who have

22 rendered information and explanations to the Commission.

23 We would like to thank the police service and

24 the individual officers who have diligently assisted us

25 throughout our time here; and also the management and

1 staff of the Regent Palms who have been patient, kind
2 and accommodating throughout our entire stay.

3 Finally, might I thank the ancillary staff who have
4 made these proceedings run remarkably smoothly
5 throughout. I include the technical support staff and
6 especially the transcription staff from Merrill Legal
7 who have been the vital link in passing the transcripts
8 of hearings on to the world outside these four walls.

9 Finally, I wish to thank the good people of the TCI
10 who have provided the information and the evidence to
11 the Commission and have encouraged us throughout in
12 the search for the facts.

13 Sir, we recognise the tensions and the conflicts
14 which are inherent in us arriving as strangers and
15 outsiders. We understand the concerns of those who view
16 our intervention as humiliating and intrusive. It has
17 not been our intention to embarrass or to ridicule
18 anyone.

19 The United Kingdom values its links with the Turks &
20 Caicos Islands and with its inhabitants. The UK wishes
21 to maintain the long relationship of friendship and
22 co-operation that has been nurtured over many years. It
23 recognises, however, that the basis of a true friendship
24 requires one on occasions to speak the truth to one's
25 friend, no matter how painful that may be. That is what

1 we have endeavoured to do.
2 From the outset of the Commission's work, it
3 received documents and approaches from many parties.
4 Some of those have been very helpful, others less so.
5 The establishment of the Commission clearly came at
6 a time when many people had concerns about a wide
7 variety of aspects of life on the islands. The terms of
8 reference for the Commission coincided with some but not
9 all of those concerns and we understand that we will
10 have failed to address many issues that others may think
11 important.

12 Whilst we might sympathise with the plight of
13 individuals who have private disputes or individual
14 grievances, the Commission could not realistically
15 address all of those concerns. Some of them fell
16 outside the terms of reference, others were already
17 the subject of litigation elsewhere, and some had only
18 limited relevance to our terms of reference.

19 Even within the terms of reference, we have on
20 occasions been forced to be selective on the subjects
21 upon which we have invited oral evidence. Our choice
22 will not have coincided with the choice of others.
23 The fact that questions may not have been put or that
24 a subject has not featured in the transcripts does not
25 mean, however, that it has been disregarded or ignored

1 by the Commission. My closing remarks will per force be
2 selective. The Inquiry is wider than simply these
3 hearings.

4 The Commission has very specific objectives which
5 are spelt out in the terms of reference and throughout
6 the hearings, we have had to remind ourselves of those
7 terms because the questions raised have led off in many
8 directions, and to explore every side issue would have
9 been quite impossible.

10 The Commission is only required by its first term of
11 reference to inquire into whether there is information
12 that corruption or other serious dishonesty in relation
13 to past and present elected members in the House of
14 Assembly, previously known as the Legislative Council,
15 may have taken place in recent years.

16 At its most basic, this is a question capable of
17 a yes or no answer, although the Commission has sought
18 to investigate as fully and as carefully as it
19 reasonably could, given limited time and facilities.

20 Depending upon the final determination in the report
21 or reports which may follow, a fuller investigation may
22 yet need to be carried out, as is anticipated in the
23 terms of reference concerning possible police
24 investigation.

25 The second limb of the terms of reference makes

1 clear that the Commission must take a view of the bigger
2 picture and consider positive and proactive suggestions
3 which might strengthen and assist democratic processes
4 within the Territory.

5 In short, sir, the Commission is not in itself
6 a police inquiry. These hearings were not a trial.
7 Whilst it might be trenchant in its views and firm in
8 its conclusions, it is not for the Commission to decide
9 what happens to individuals or even indeed the Territory
10 as a whole. This will disappoint many people who will
11 wish it were otherwise. Those tasks, however, will fall
12 to those who come after us.

13 Sir, I turn now to the evidence that has been heard.

14 I deal first with the question of declarations of
15 interest.

16 Under the Registration of Interests Ordinance of
17 1993, there has been for many years a legal requirement
18 that elected officials make formal declaration of their
19 financial and personal commitments, including their
20 employment and trade or profession (over and above their
21 elected position); their shareholdings, remunerated
22 directorships and financial liabilities; and in
23 addition, they have been required to declare any land or
24 property owned, any overseas visits undertaken and any
25 financial sponsorship or gifts received.

1 The ordinance states that the register kept should
2 be open to inspection by the public. It also provides
3 that the Registrar may report any defaulting member to
4 the Legislative Council (now the House of Assembly)
5 which may in turn discipline the member by fines or
6 suspension. The Commission has seen no evidence of such
7 a report ever having been made or of the exercise of the
8 disciplinary powers at any time since the inception of
9 the ordinance.

10 As part of its initial enquiries the Commission
11 sought the records of declarations made over the recent
12 years. In respect of the current administration, these
13 were limited to the years since 2003, although some
14 members had served before that time and had made
15 declarations which were earlier still.

16 The Registration of Interests Ordinance is couched
17 in straightforward terms and is capable of being
18 understood by any literate adult person. It doesn't use
19 technical or overly legal phrases. The Registrar of
20 Interests, we are told, was available for consultation
21 by any of the elected members in the event that they had
22 doubts or uncertainties about the declarations required.

23 Sir, the reasons behind the ordinance were, in my
24 submission, obvious to anybody involved in politics.
25 They were to ensure there was openness in dealings and

1 accountability; to ensure that any connection,
2 obligation or commitment between a member and an outside
3 third party would be readily apparent, in the event that
4 ministerial or Cabinet decisions impacted upon or were
5 impacted by that third party. The picture which emerged
6 from these declarations is of a wholesale and widespread
7 disregard for the requirements of the ordinance.

8 Each elected member of the Cabinet who gave evidence
9 before the Commission had failed in their duties and
10 admitted as much. We were offered a series of apologies
11 and admissions of error, coupled with excuses.

12 The Premier, who was the first witness, described
13 his failure in this fashion:

14 "It has been a cross-party culture to report in
15 the manner in which I did. Particularly in relation to
16 gifts and party political donation, there has been no
17 one who has ever declared, probably with the exception
18 of one new member who probably declared a small amount
19 and this is primarily because, particularly the small
20 nature of our Territory, persons giving political
21 contribution would have preferred to be not named."

22 The Deputy Premier was also asked about this. He
23 had made rather fuller but still far from complete
24 declarations. He said, when he was asked about the
25 section dealing with financial gifts and sponsorship

1 that:

2 "No one filled out that section. I guess it was
3 a case of group thinking, in my respect and that section
4 wasn't filled out. Except for that section, every other
5 section of the declaration was filled out by me."

6 Sir, not every minister subscribed to the
7 cross-party culture or the group thinking theories.

8 The Honourable Jeffrey Hall denied that there was any
9 group mentality or that he was in any way influenced by
10 others in his completion of his form. He seems to have
11 failed dismally but he did so on his own initiative.

12 The Honourable Jeffrey Hall deserves particular
13 recognition for the quality of his returns to
14 the Registrar. The content of those returns was
15 lamentable in the extreme. Having acquired forms, he
16 either left whole sections blank or he wrote in "nothing
17 to declare" when there was a considerable amount to
18 declare.

19 His response to each of these failures was to call
20 it an error or carelessness. These errors must have
21 consisted in each case of failing to read the few words
22 on the form that he was completing, of failing to check
23 with the simple wording of the ordinance and then
24 completely forgetting about the property he owned, some
25 of which was earning him rental income. This was

1 an error repeated year after year. The majority of his

2 property was missed in this fashion.

3 (2.15 pm)

4 Those errors also involved the declaration, two
5 years running, of a directorship in a company which he
6 now disavows. That company was Alliance Realty Limited.

7 The company records show he was never a director of
8 it, but he clearly believed at the time that he was. He
9 failed to mention at all (even in live evidence) his
10 directorship of three other companies, where he was
11 a director, each of those with the word "Alliance" in
12 the title. Mr Melbourne Wilson who filled in his form
13 appears to have volunteered one of those companies,
14 called Alliance Directors Limited, in a letter of
15 17th November 2008 to the Commission and omitted to
16 mention the other two. As the three companies were
17 created and operated in tandem with one another, this
18 omission, sir, seems peculiar.

19 Sir, the Honourable Floyd Hall was of course
20 absolutely correct in his assessment in that none of the
21 elected members ever filled in the section listing gifts
22 and sponsorship.

23 Both the Premier and the Deputy Premier appeared to
24 take the position that their repeated violation of the
25 law should be excused on the ground that others did it

1 as well and that the prevailing culture was that the
2 declarations were of no great importance.

3 The sanguine and casual approach that has apparently
4 been taken to the application of the law would be
5 a matter of concern if and even if the Commission was
6 simply considering middle or low level executive
7 positions.

8 We are, however, considering the highest elected
9 officials in the Territory, who are ultimately
10 responsible for the passing and implementation of
11 legislation.

12 Quite apart from their duties as ministers, one
13 might have hoped that they would have felt under a duty
14 to set a high standard for others.

15 In the end they have, by their attitude, sent out
16 quite the opposite signal: that the law is there to be
17 ignored and that they regard themselves as being above
18 it any event.

19 The responses of most ministers, even whilst
20 evincing regret for their slapdash approach, has been:
21 it is no big issue.

22 It should not have taken a Commission of Inquiry to
23 correct this view, but since the Commission exists,
24 the message it can deliver to these ministers is simply
25 this: "You are wrong. It is a big issue. It is a very

1 big issue indeed".

2 The failure of ministers in their declarations was
3 also reflected in a failure at crucial times to declare
4 interests in particular items on the Cabinet agenda or
5 to declare connections with parties who would benefit
6 from government spending. I will return later on to
7 the issue of individual and collective examples of
8 conflict of interest.

9 Sir, I turn now to the Ministerial Code of Conduct
10 because the Commission had noted that, at the time of
11 its establishment, the Governor of the day had stated at
12 the press conference held on 10th July 2008 that
13 the ministerial code was one of the tools which had been
14 put in place to prevent possible corruption.

15 A few days later, on 14th July 2008, the Premier
16 made a widely reported speech in response to
17 the establishment of the Commission in which he spoke of
18 having introduced and passed a Ministerial Code of
19 Conduct.

20 Despite these two references the Commission had some
21 considerable difficulties in locating the code, which
22 did not seem to be a published document. When a copy
23 was finally obtained, it proved to be somewhat
24 confusing. It bore the title and crest of the Turks &
25 Caicos Islands and it was headed up as a code of conduct

1 for ministers.

2 However, within the text it contained references to
3 "Parliament" and to the "House of Commons", which
4 clearly betrayed its origins as being a UK code, but at
5 the same time it contained references to "the Premier",
6 indicating that the document was at least being adapted
7 for use in the TCI.

8 It may be that the document provided to us was
9 a draft which later underwent or was due to undergo
10 further amendment.

11 The existence of a code had been referred to in
12 Cabinet, and in a Cabinet minute of 7th March 2007,
13 concerning circulation of Cabinet minutes, it was
14 recorded that:

15 "The Premier raised this matter with reference to
16 the code of conduct for UK ministers which he had
17 circulated to all Cabinet ministers. He hoped to be
18 able in the new term to review the code with a view to
19 Cabinet ministers adapting those provisions applicable
20 to the TCI."

21 Then in a further Cabinet minute of 6th February
22 2008, the issue of a Ministerial Code of Conduct arose
23 again. That minute said:

24 "The Premier introduced this paper. Cabinet advised
25 that: it accepted the Ministerial Code of Conduct

1 subject to the amendments as discussed and agreed at the
2 meeting and noted by the Cabinet Secretary being
3 incorporated into the said document ... It authorised
4 the Premier to sign and have distributed to
5 the ministers the final document."

6 The Commission might have assumed from that state of
7 affairs that the code was complete, apart from
8 the mechanical aspect of having to be retyped with
9 the agreed amendments, signed and distributed. It was,
10 at least in its draft form, a slim document, some
11 13 pages, which could be read in a matter of a few
12 minutes.

13 The simple finishing work, which was directed by
14 Cabinet, we were to learn, was never done.

15 The Premier, when questioned on Day 2 about
16 the existence of the code, asserted that it did not
17 exist. When he was pressed about this he said:

18 "I had asked the clerk to the House of Assembly to
19 get a copy of the code of conduct from the UK.

20 The Cabinet had -- the plenary went through it. As you
21 rightly stated, it was never adopted. She was supposed
22 to have tidied it up -- make it relevant to our
23 situation here in the Turks & Caicos and bring it back
24 to the Cabinet for further consideration. That never
25 happened. And so the fact is that there is no

1 Ministerial Code of Conduct that presently exists here
2 in the Turks & Caicos."

3 He went on to state baldly:

4 "It was never adopted and never enforced."

5 This statement was, I would submit, clearly untrue
6 given the existence of the evidence of the earlier
7 Cabinet minute. The Commission identified that Cabinet
8 minute and put this to the Premier on Day 3 of the
9 hearings.

10 When this was done, the Premier abandoned his
11 earlier assertion that it was never adopted and he
12 sought to blame the Cabinet Secretary for never having
13 tidied up the document or presented it to him for
14 signature. It would appear from his answers there was
15 no system of ensuring that earlier decisions of Cabinet
16 were carried through or completed, but this did not
17 appear to cause him any concern.

18 The code of conduct was also raised with the
19 Deputy Premier who admitted that he would regard
20 the contents of the code as being a guide to proper
21 behaviour and that he felt he was bound by its
22 principles. The Honourable McAllister Hanchell was more
23 evasive on this point when he was asked the same
24 question, and he seemed anxious to stress the fact that
25 the code had not been introduced.

1 Since, sir, the assertion in the speech made by
2 the Premier on 14th July 2008, to the effect that
3 the party had brought into effect a Ministerial Code of
4 Conduct and an Integrity in Public Office Ordinance,
5 which is now on the books, rang hollow, not merely
6 because his office had failed to sign and distribute
7 the ministerial code; not merely because he and his
8 ministers refused to accept that the standards in that
9 code were of possible relevance to their behaviour, but
10 because the drafting of a new ordinance, when
11 the predecessor ordinance had been routinely ignored,
12 made any new legislation pointless.

13 One may suspect that left unchallenged, that too
14 would have been disregarded. To boast of a code when it
15 suited him and to deny its effect when his behaviour was
16 held to its standards, I would submit, sir, is the
17 plainest form of hypocrisy.

18 Sir, I turn now to the issue of political parties
19 and I will in a moment deal with the question of money
20 in that context.

21 Before I move on to that, I must address shortly
22 a complaint made by one or two of the witnesses and/or
23 their counsel concerning the approach of this Commission
24 to the political parties in the TCI. Complaint is made
25 by some that it is some form of witch hunt against

1 the governing party, the PNP, that is being carried out.

2 In fact, sir, this Commission simply goes where
3 the evidence leads. But it would be artificial to
4 pretend that some form of balance can be imposed between
5 political parties. The PNP has been the governing party
6 for all of the last six years. The PNP presently
7 dominates the House of Assembly and provides all of the
8 elected Cabinet members. They have, bluntly, got their
9 hands firmly on the rudder of the state and they control
10 all of the major elements of state governance. It is
11 the use and misuse of that control which gives rise to
12 the vast majority of complaints and evidence and it is
13 those that the Commission is considering.

14 I deal now with political donations, because
15 a common theme running throughout the evidence has been
16 the provision of political donations both through
17 political parties and to individuals directly.

18 Political parties in every democracy rely upon
19 funding from supporters and donors to a greater or
20 lesser extent. In politics one needs funding for
21 leaflets, posters, campaign rallies, and advertising.
22 Candidates must travel and they need the whole expensive
23 support and subsistence structure that goes along with
24 that. Campaigning on an archipelago such as the TCI
25 must involve more expenditure on travel than would be

1 the case on a single island state.

2 The Commission was to learn, however, that campaign
3 finance was applied in more direct ways. Some witnesses
4 have sought to educate the Commission in the ways of TCI
5 politics and an early explanation came from
6 the Deputy Premier which deserves repeating in full.

7 What the Deputy Premier said was this:

8 "The nature of our politics is such that funds that
9 can come in for political purposes can be utilised in
10 various fashions from either paying for campaign rallies
11 in your constituency, providing funds to help
12 the elderly or those in need in your constituency and
13 outright making loans to persons in the constituency or
14 throughout the country that end up being outright gifts
15 because you know you are not getting it back.
16 Unfortunately, that is the nature of our politics but it
17 is quite common for persons in our country to approach
18 politicians and ask for loans and at the end of the day
19 you never get those payments back. So all of that would
20 contribute to political activity."

21 He was asked:

22 "Question: So you regard it as reasonable and
23 indeed common practice to give financial gifts to
24 the electors?"

25 His answer was:

1 "Answer: Obviously not at the time of elections,
2 but certainly during the course of governance, it is
3 quite common, if you can check with any individual
4 throughout this country, for persons to come and ask
5 politicians, regardless of which side of the aisle that
6 they are on, to assist them.

7 "Question: You say obviously not at the time of
8 elections. Why not at the time of elections?

9 "Answer: Because it would be inappropriate to do so
10 during the time of the elections.

11 "Question: So when is the cut-off point when it
12 ceases to be inappropriate?

13 "Answer: I would say after one is elected. But
14 obviously if it is ten days before elections, you
15 certainly don't want to be in the habit of giving
16 someone a loan because it could be construed as
17 an incentive to buy a vote."

18 Sir, this was a candid description on his part and
19 the scenario depicted was later to be echoed by other
20 witnesses. The image is that of the elected politician
21 being a respected elder of his or her community and
22 seeking to provide, on a small scale, a form of
23 microcredit within the community or even a form of
24 makeshift social security. It was also observed by
25 witnesses that this was not unique to the TCI but could

1 be found around the Caribbean in other territories and
2 countries.

3 The sanguine approach to such use of money which
4 says, that is just the way it is, would lead one to
5 ignore the fact that competition between political
6 parties will inevitably spill over into the provision of
7 such loans or gifts.

8 The voter may not believe that he or she is being
9 bribed; the politician may not say "remember to vote for
10 me", but in any environment where poor people have to
11 turn to elected officials for basic financial help, one
12 would have to be profoundly obtuse not to see that the
13 voter will vote for the most generous benefactor.

14 The separation of a few days or a few weeks before
15 the election will make little or no difference. This is
16 the thin end of the wedge. It also has implications for
17 the wider political scene.

18 The remarkable aspect to funding in the TCI is
19 the sheer volume of money that appears to wash through
20 the system, given that the total population of the
21 islands is an estimated 36,000 persons, with a total
22 electorate, as of 2007, totalling only 6,987 souls
23 across 15 constituencies.

24 An example of this, seen in the papers disclosed by
25 the PNP, is that in the last three months of 2006,

1 nearly \$1 million was received into the party's main

2 bank account.

3 (2.30 pm)

4 A further \$2.9 million arrived in the following
5 first three months of 2007. Those sums alone amount to
6 more than \$550 for every registered voter in
7 the Territory.

8 The startling evidence of Don-Hue Gardiner, the
9 Honourable Don-Hue Gardiner who is now the Chairman of
10 the PNP, which has been the ruling party in the TCI for
11 approaching six years, was that even as Chairman, he
12 could not tell us how many members his party had,
13 although he thought it was only about 200. He could not
14 tell us what the membership fee was, although he
15 admitted it was a nominal sum, and he accepted that the
16 party didn't run on membership fees and that effectively
17 it relied almost entirely upon donations.

18 The Treasurer of the PNP, the Honourable Floyd Hall,
19 is also the finance minister apart from being
20 Deputy Premier. The Honourable Don-Hue Gardiner
21 referred to a deputy leader of the party which we have
22 taken to mean the Honourable Floyd Hall, although he did
23 not use that term to describe himself.

24 The Deputy Premier's evidence, although it was
25 delivered in an urbane and low-key fashion, was also

1 quite startling because from him it emerged that there
2 was seemingly no system of control or record kept as to
3 the disposition of party funds.

4 The party operated an account with
5 the First Caribbean International Bank, the FCIB. In
6 respect of that account, the Treasurer maintained
7 a ledger, which he disclosed to the Commission. I shall
8 pass over the attempts of the party to seek to keep
9 those accounts secret and the belated attempts to
10 retrieve them from the Commission once they had been
11 voluntarily disclosed by the Treasurer. The reasons why
12 the party would not wish the accounts to see the light
13 of day rapidly became clear, although it does seem to
14 have come as something of a surprise to senior members
15 of the party that the Treasurer in fact kept accounts at
16 all.

17 The funds that were donated to the party seem to
18 have been placed into the consolidated fund represented
19 by the FCIB account. Payments out were made, we are
20 told, by the Treasurer, frequently in cheques which
21 required two signatures, from amongst a group of three
22 signatories, three persons. He told us that those three
23 were himself, the Premier and a lady
24 named Arabella Smith.

25 It was abundantly clear from the ledger provided

1 that there was an irregular flow of large and small sums
2 into the party coffers, both from individuals and from
3 companies.

4 On occasions when large lump sums were paid in, it
5 may well be the case that they were combinations of
6 a number of different donors.

7 The ledger named some donors but not all of them,
8 and when questioned about this, the Honourable
9 Floyd Hall as Treasurer said that in some cases
10 the names of payees were not passed on to the party and
11 even when he contacted the bank to get them, he could
12 not.

13 He accepted that cheques would be paid into the bank
14 either by himself or the Premier, and usually it would
15 be one of the two of them who would know first when
16 a big contribution arrived. He did not seem unduly
17 concerned that large donors might never receive
18 an acknowledgment or proper thanks for their largesse.
19 This assertion, coming from a politician, seems somewhat
20 hard to accept at face value.

21 The outflow of money from that account was in some
22 cases to obviously party-related activities but much of
23 it appeared to be unspecified payments to individuals
24 for unstated reasons. There was no evidence within
25 the ledger of any systematic attempt to match receipts

1 to expenditure. Even if there had been this would have
2 collapsed altogether in relation to all of the senior
3 elected members of the party, mainly ministers, who were
4 granted large round sums for what was known as
5 candidate's stipend.

6 These stipends were evidently for them to disburse
7 as they saw fit for political purposes. It perhaps goes
8 without saying there was no mention made of any budget,
9 and it is impossible to see how any budgetary control
10 could possibly have been imposed. Income was irregular
11 and erratic throughout. Expenditure was seemingly
12 uncontrolled. No clear system was in place for
13 allocation or planned distribution of funds, at least
14 none that was evident.

15 No accounts from the members were ever sought or
16 indeed offered as to how the money was expended. So
17 the entire party in that sense ran on trust alone,
18 without any form of accounting checks being applied.

19 Even in terms of direct expenditure, it was
20 apparently accepted that payments would be made on
21 behalf of elected officials that would be wholly
22 unrelated to political expenditure on the basis that
23 they had at some stage spent their own money on some
24 unstated political aim and therefore were entitled to
25 vague and approximate reimbursement. So a simple

1 example of this would be the party covering credit card
2 bills for the Deputy Premier in large round sums when
3 the card expenditure for that month was self-evidently
4 not for political items.

5 In this regard, the party appears to have been run
6 largely for the benefit of its elected officials.
7 Lacking any substantial membership or any proper system
8 of accounting to its members, the system would not need
9 to fear challenge or question and the lack of financial
10 control we see in the PNP would have shamed a roadside
11 conch shack.

12 I move on, sir, to deal with the PNP secondary
13 account, the Belize Bank accounts.

14 When he was first questioned about the party
15 accounts, the Honourable Floyd Hall volunteered that
16 there was one account for the PNP with
17 the First Caribbean International Bank and a loan
18 account as he described it with the Belize Bank.

19 A more precise explanation was in fact that there
20 was a current account with the Belize Bank, which had
21 benefited from an input of cash from a second loan
22 account in the same bank.

23 The current account had been operated since before
24 January 2004. It had been the recipient of many large
25 donations in addition to the funds placed directly into

1 the FCIB. The Treasurer stated that in some cases funds
2 were received into the Belize Bank account and then
3 transferred to the FCIB. Sir, a quick review of the
4 same six months we referred to earlier, that is
5 the period in late 2006 and early 2007, shows that
6 the Belize Bank, over that period, received donations of
7 about \$3.18 million. Of that money a little over
8 \$1 million appears to be debited and then similar sums
9 appear in the FCIB account. So that money will be
10 double-counted. Nonetheless, the combined income of the
11 two accounts is in excess of \$6 million in six months.

12 The current account of the Belize Bank expended all
13 of the funds placed in it and it was subsequently
14 overspent to the tune of \$1.5 million before a loan of
15 that sum, of that amount was credited to the account by
16 the bank.

17 The current account appears to have operated with
18 the same three signatories as the FCIB account. But
19 the Treasurer revealed that the new loan account was in
20 fact in the name of himself, the Honourable Floyd Hall,
21 the Premier and the Honourable Jeffrey Hall.

22 That loan account was secured on a parcel of land
23 held on North Caicos apparently by the Honourable
24 Royal Robinson, an elected
25 Member of the House of Assembly. The Honourable

1 Floyd Hall went on to inform the Commission that whilst
2 a ledger for the FCIB account was maintained,
3 the document we saw, no such record had been constructed
4 for the Belize Bank account. When he was asked why, he
5 initially said:

6 "It wasn't supposed to be a primary operating
7 account; it was supposed to be simply an account that
8 facilitated the transfers from Belize Bank to the
9 First Caribbean Bank account."

10 He later went on to say that he and the Premier
11 operated the account but that he did not have access to
12 all of the information to create a ledger for it and he
13 added that:

14 "Sometimes the chequebook was in my possession but
15 most times it was not ... most times it was held by
16 the Premier for the Belize Bank account."

17 He later added about the chequebooks and the Premier
18 that:

19 "He had them most of the time ... Because I think he
20 is more aware of the activity on the Belize Bank account
21 than I was at the time."

22 The Honourable Floyd Hall admitted quite openly that
23 he did not keep a proper record of the account and
24 neither did anyone else and he believed that quite a lot
25 of money was transferred from the Belize Bank into

1 the FCIB but of course the lack of reconciliation
2 between the two made this assertion hard to demonstrate
3 or indeed to disprove.

4 When he was asked why he appeared to be out of
5 control of the account, he replied:

6 "I deferred to the Premier on many matters as it
7 related to that account... He is the leader of our party
8 and he was the main fundraiser for the party so I felt
9 obliged to give him the latitude."

10 He agreed that this involved him disregarding his
11 own professional instinct and training.

12 There is a clear conflict of evidence there between
13 the two men. The Premier insists through statements
14 made that he did not retain the chequebooks or write any
15 cheques without the full knowledge and consent of the
16 Deputy Premier acting as party treasurer.

17 The Honourable Floyd Hall, on the other hand, has made
18 clear that he did not have control of the account. Each
19 accuses the other of lying. One of them probably is.
20 They certainly can't both be right.

21 It was noted by the Commission that the expenditure
22 of funds from the Belize Bank account included large
23 sums which can only have been for the personal benefit
24 of the Premier. A transfer of \$100,000 paid on
25 14th November 2006 went to Caretti Turner Associates.

1 That is evidenced by debit advice, which accompanied
2 the bank statements. This Miami-based design firm was
3 responsible at that time for the decoration and fitting
4 out of the Premier's new home. In addition there was
5 a transfer of \$25,000 to Youlanda Scott on
6 1st November 2006. Ms Scott, we learned, was a
7 California-based stylist for both the Premier and his
8 wife, and other debits from the PNP account between
9 August 2006 and January 2007 reflected additional
10 payments to her of over \$112,000 from the same account.

11 The Honourable Floyd Hall said he was not aware of
12 the payments and that he would not regard them as being
13 normal practice in the disposition of party funds. It
14 has to be said, sir, the debit slips which indicated
15 those payments to Youlanda Scott and Caretti Turner
16 Associates were provided to the Commission either by him
17 or at his request and therefore they were presumably
18 available for him to have considered, had he so wished.

19 The Premier's comments on the Youlanda Scott
20 payments which were made in his statement at the
21 commencement of these hearings were that "there are
22 a number of possible explanations". I pause here only
23 to point out that the Premier never committed himself as
24 to which of these explanations was actually the correct
25 one. But he went on to say:

1 "There may have been a contribution to the PNP on
2 the understanding that the money was by way of
3 an wedding gift to me; or the PNP may have been meeting
4 a cost incurred by me just as I incurred costs on their
5 behalf personally, as with the Victory Store purchases."

6 The party Treasurer was evidently unaware of any
7 such wedding gift, several months after the Premier's
8 April 2006 wedding, and he seems equally unaware of any
9 arrangements to reimburse in this fashion.

10 The Premier was not alone in claiming that payments
11 were reimbursements for undocumented outlays.

12 Honourable Floyd Hall also revealed that the funds were
13 spent on occasions to settle his credit card bills in
14 large round sums. These had come both from the FCIB
15 account and the Belize Bank account. These sums he
16 characterised as reimbursements to him for monies
17 expended on behalf of the party.

18 When he was asked about any records he had kept of
19 his own drawings from the Belize Bank account, his
20 answer, with respect, was somewhat confused and failed
21 to make clear what record, if any, he would or should
22 have kept. But he appeared to accept that it was
23 a loose and insufficient set-up and it was impossible to
24 derive from it any proper reconciliation.

25 He was asked why two accounts were used and he said

1 that the Belize Bank did not handle cash while the FCIB
2 did and that some donors "have preference with respect
3 to confidentiality".

4 When he was asked whether the donors had links with
5 the Belize Bank, his response was:

6 "I am not -- in some cases -- I am not sure. Most
7 of our donors -- I cannot say that an affiliate of
8 Belize Bank would not have made a contribution to our
9 party and in that case it would be one of the
10 individuals."

11 Which affiliate of the Belize Bank it was that may
12 have donated to PNP funds remains unclear; if they did
13 so, they were granted the highest category of PNP
14 confidentiality and they have not been revealed to this
15 Commission.

16 Sir, I turn briefly also to the question of
17 salaries, because there is another dispute between
18 the Premier and his deputy as to whether the Premier was
19 receiving a salary from the party or simply large
20 amounts of irregular cash.

21 The Premier first mentioned receiving a PNP salary
22 when his statement was entered at the beginning of these
23 hearings. He had made no prior of this to the Registrar
24 or to the Commission. He said:

25 "When I became the leader of the PNP in 2002, it was

1 agreed that as the leader of the PNP that I would

2 receive a salary."

3 (2.45 pm)

4 He conceded that he had no contract of employment

5 and that his salary was paid now and then, as one would

6 in a small business. He said the salary was agreed upon

7 by the party and that the Chairman of the party was also

8 paid a salary, although he did not believe the Treasurer

9 was. The Honourable Don-Hue Gardiner, the current

10 Chairman of the party, told the Commission in blunt

11 terms that he did not receive any salary or income from

12 it, although he agreed that the party's national

13 executive committee had approved salaries for the

14 leader, deputy leader and Secretary General. He told us

15 that approval was given for the Chairman to draw

16 a salary but he chose not to do so.

17 The Deputy Premier said to the Commission that

18 whilst there had been a salary paid to the Premier

19 before the 2003 election, he did not regard it as

20 a salary after the election. He said:

21 "My impression of the salary was that it was not to

22 continue after the elections of 2003, if we had

23 succeeded in obtaining the office of government, which

24 we did. So it was not my understanding that he would

25 continue to get a salary."

1 The Deputy Premier said he did not receive a salary
2 from the PNP. One might expect the Treasurer of the
3 party would know to whom salaries were being paid and
4 whether one was being paid to the party leader,
5 particularly when he had worked side by side with that
6 leader for over five years.

7 Whether the funds provided to the leader of the
8 party were characterised as a salary or not is probably
9 no more than a matter of semantics because everybody
10 agrees he received large, irregular sums of money for
11 disbursement as he wished. It should be noted that no
12 evidence emerges from the Premier's declared bank
13 accounts to suggest a regular and steady payment from a
14 named source, which is the usual indication of a salary.
15 In addition no pay slips have been presented either by
16 him or the party. No contract, he told us about, and no
17 evidence has emerged of NIS payments which are,
18 I understand, a legal requirement for a salary even if
19 one is the Premier. His claims on that point appear to
20 be without foundation.

21 Sir, in relation to the PNP money I turn to the
22 Treasurer's report because the papers which were handed
23 to the Commission by the Deputy Premier included
24 a Treasurer's report to the PNP presented at an annual
25 conference in 2006. This was a curious document because

1 it purported to be a report to the party reflecting
2 a financial period between January 2001 and
3 September 2006, so a little over five and a half years,
4 which is somewhat unconventional as an accounting
5 period.

6 His evidence was that although he was the Treasurer
7 of the party since around 1998 or 1999, he had not
8 presented annual Treasurer's reports. Although the
9 party had tried to have annual meetings, he thought his
10 last Treasurer's report would have been in 1999 or
11 the year 2000.

12 It was pointed out to him that the report reflected
13 only the workings of one account and that was the FCIB
14 account, since there was no ledger or reconciliation on
15 the second Belize Bank account.

16 He accepted that the report, in not mentioning
17 the second account, was improper and it gave
18 a potentially misleading view of the party finances
19 because it failed to make any reference to a large
20 liability, which in September 2006 was an overdraft of
21 \$389,000. He then said that the second account,
22 the Belize Bank account, had not been revealed to the
23 party members because a group consisting of the Chairman
24 of the party at the time, the Premier and some of the
25 other trustees had decided not to reveal it. He said:

1 "I wanted it to be reflected in the report but it
2 was decided that at that time that it should not be
3 reflected."

4 That group made that decision and that group
5 included himself, the Treasurer. He appears to have
6 been prepared to let the misleading report go forward on
7 his behalf as Treasurer.

8 There is an interesting counterpoint to this in the
9 evidence of the Honourable Don-Hue Gardiner which was
10 given later. The Honourable Don-Hue Gardiner at the
11 time was Secretary General. He is now Chairman of the
12 party. He had been Secretary General since the year
13 2000. He told us he was unaware of the second account
14 even after his appointment as party Chairman in
15 August 2008 and remained unaware until November or
16 December of 2008 when he was told of it by
17 the Honourable Royal Robinson. He professed to being
18 unaware of the overdraft on the account and seemed
19 reluctant to admit to any concern that his party was
20 carrying such a huge liability, now \$1.5 million, that
21 had remained hidden even from him.

22 Sir, with respect, it is bizarre in my submission
23 and indeed bizarre in the extreme that a trained and
24 qualified accountant, the Treasurer of his party and who
25 is the Deputy Premier of this Territory should feel able

1 to lend himself to knowingly producing and endorsing
2 a Treasurer's report to his own party which provides
3 a seriously distorted picture of the party accounts, and
4 that he should then effectively conspire with other
5 senior officials, including the Premier, to keep
6 the existence of an heavily overdrawn account from
7 the party members and even from, if Don-Hue Gardiner is
8 correct, the incoming party Chairman.

9 This amounts in my submission to an admission of
10 serious collective dishonesty on the part of all
11 concerned and it gives one great concern as to what
12 other matters have been concealed or misrepresented by
13 these same individuals.

14 It is rightly pointed out on behalf of witnesses
15 that there is no legislation controlling party funding
16 on these islands.

17 No law is breached by failing to keep proper
18 accounts. The argument has been advanced that private
19 individuals in many countries, such as the US, fund
20 parties and individuals with large sums of cash and this
21 is true.

22 That argument fails to take into account, however,
23 that the laws in the US require disclosure and
24 publication of the sources of funds and those laws are
25 vigorously enforced.

1 In the Turks & Caicos Islands the one law that
2 required disclosure,
3 the Registration of Interests Ordinance, was routinely
4 disregarded by the Cabinet.

5 It is also suggested on behalf of witnesses that
6 this Commission has strayed outside of its terms of
7 reference by even considering the party, and questioning
8 its methods. This argument, sir, in my submission is
9 wholly disingenuous.

10 I have spent some considerable time dealing with the
11 party and I do so for this reason: the PNP is no private
12 enterprise. It cannot demand privacy to be eccentric in
13 its own private way.

14 This is the party machinery behind a majority
15 government, which has helped to fund and promote
16 the current TCI government and to ensure its recent
17 re-election in 2007. It is also a multimillion-dollar
18 enterprise, bought and paid for by a small number of
19 rich individuals, many if not most of whom appear to
20 have prospered under the current government. It acts,
21 in my submission, in effect if not by design as
22 a conduit for large amounts of unregulated and
23 undeclared cash from individuals to politicians.

24 The assertion by the Honourable Floyd Hall that some
25 donors wish to remain confidential, I would submit is

1 misleading. All of the donors to the PNP probably
2 expect that their donations would be kept secret. They
3 were not required to disclose them in tax returns, nor
4 is there any public register for making donations.

5 The party could be relied upon to be tight-lipped
6 about its funders. Since the ledger prepared by
7 the Treasurer was never intended for public
8 consideration, one can only speculate as to why he would
9 not even enter the names of some individuals on his own
10 private records. He may have missed some names in
11 error, but one would have expected him to have known who
12 all the generous and large donors were.

13 Sir, I turn now to the question of personal
14 donations, and quite apart from the provision of funds
15 via the party, there is a clear pattern of political
16 donations being given directly to individual
17 politicians, or indeed to the attorney of the individual
18 politician.

19 The justification given for this is that the donor
20 wishes to advance the political career of the
21 individual. The Premier in his evidence sought to
22 explain the preference for anonymity amongst donors when
23 he said:

24 "This is primarily because, particularly the small
25 nature of our Territory, persons giving political

1 contributions would have preferred to be not named."

2 He went on to say of the receipt of payments
3 received individually:

4 "I received contribution from political supporters
5 to further -- in relation to political support and also
6 in relation to some personal political support.

7 The culture of -- again of the political, and I think
8 you have to put it in the context of islands where
9 politicians are not only help their party to win
10 an election but also we are expected to help our
11 constituents when they have problems."

12 Sir, this is essentially the same argument that was
13 raised by the Honourable Floyd Hall, to the effect that
14 party politicians must dispense money to constituents as
15 well as pay for the usual party political expenses.

16 What constituted individual political contributions,
17 however, proved to be rather elusive. The Premier had
18 made no mention of any political contributions in his
19 submissions to the Commission prior to the start of
20 these hearings, despite a volume of correspondence
21 exchanged between the Commission and his attorneys in
22 the last four months.

23 In the statement at the outset of the hearings, he
24 acknowledged for the first time the receipt of
25 individual political contributions. He said of them

1 that:

2 "Some donations were paid directly to me whilst on
3 at least one occasion the PNP passed on to me donations
4 of a political nature. Donations sometimes took
5 the form of personal contributions to me to use as I see
6 fit, rather than political contributions in the normal
7 sense understood by a UK observer. The money given to
8 me in this way could be used to help out the people in
9 the islands, or to reimburse me for money that I spent
10 to help islanders. And there is another aspect to this.
11 I often spent my own money on PNP activities and I often
12 did not claim the sums back."

13 He went on to add in evidence that:

14 "The purpose of a political donation in the
15 Turks & Caicos is to assist the person receiving it with
16 his or her political ambitions but also in most cases
17 when donations are given to individuals, it is to use at
18 your discretion, because you use your personal money to
19 advance your political ambition, and so donations is
20 sort of help to supplement that."

21 The Premier didn't, of course, provide any specifics
22 as to the monies spent on islanders or indeed specifics
23 as to the money spent on PNP activities. Whilst
24 the Commission does not doubt that this must be correct
25 to some extent, no evidence has been presented of the

1 actual sums expended nor any attempt made to correlate
2 the sums received to that expenditure.

3 When the Premier gave evidence, he presented with
4 his statement a schedule termed appendix 5, and in that
5 two payments which he described as funds from the PNP.

6 These were payments into his account of \$18,000 on
7 17th May 2004 and of \$100,000 on 25th February 2005.

8 In fact, of course, the PNP accounts presented by
9 the Honourable Floyd Hall disclosed that the payments to
10 the Premier, over the period from 2004 to 2008, totalled
11 some \$900,000. And he had still not, at that stage,
12 revealed any personal donations.

13 SIR ROBIN AULD: When you say at that stage, you mean when
14 he presented his statement at the outset of the oral
15 hearing?

16 MR MILNE: That is correct, sir. Even at the time that we
17 received this, we had not had full disclosure of the
18 personal donations. That came later when Mr Chal Misick
19 gave further evidence.

20 That evidence, sir, came when Chal Misick went both
21 the witness box and disclosed for the first time
22 a number of donations which he had received on behalf of
23 his brother.

24 He disclosed, after being ordered to do so by
25 the Commission, the identities of five contributors who

1 had chosen to make donations to the Premier via his
2 office, and these were for a further \$1,030,000 in five
3 sums.

4 The largest of these was for half a million dollars,
5 coming from Cem Kinay, the developer of Dellis Cay, and
6 the proposed developer of Joe Grant's Cay. The Premier,
7 in yet a further statement to the Commission, was to say
8 that he had omitted to mention the sums because he had
9 been concentrating on his own accounts and he offered no
10 apology for that failure.

11 The Deputy Premier similarly had failed to disclose
12 any personal political donation or indeed any donations
13 received via the PNP machinery until after he had
14 started giving his evidence to the Commission. Although
15 he had disclosed bank statements, it was only during
16 the course of his evidence, when he was questioned about
17 a series of unexplained credits to his account, that he
18 said for the first time that they included personal
19 political contributions; one of these being a sum of
20 \$150,000 which he received on 8th February 2007 from
21 a gentleman called Jak Civre, the developer of the
22 Seven Stars resort in TCI.

23 He also said that a sum of \$25,000 was received on
24 25th May 2005 and another \$10,000 received on
25 1st June 2007, both being donations of this kind.

1 The PNP stipends received by the Honourable
2 Floyd Hall from the PNP ran to \$355,500 over a period of
3 slightly more than three years.

4 In addition he accepts that he had unspecified
5 amounts of advances from the Belize Bank account to
6 which he was signatory, but there is no detailed record
7 of this because he kept none.

8 (3.00 pm)

9 The Honourable Lillian Boyce was another minister
10 who made no mention of the funds received from the PNP.
11 She had received \$72,500. The Honourable Galmo
12 Williams, although not called as a witness before
13 the Inquiry, had similarly failed to declare receipts
14 from the party. He had received \$63,500.

15 The Honourable McAllister Hanchell had received over
16 90,000 in the PNP stipends over much the same period.
17 He failed to mention them. In addition he had
18 a separate South Caicos campaign fund which was entitled
19 the South Caicos PNP campaign fund. Although one
20 document in his early disclosure made passing reference
21 to it, it was only when the bank statement was disclosed
22 in full during the course of the hearings that the size
23 of the donations became clear. A further \$389,000 had
24 been donated to that campaign over a period from late
25 November 2006 through to April 2007.

1 In fact, sir, of that money, \$316,000 had come from
2 one man called Arlington Musgrove, made over a period of
3 six to seven weeks. Mr Musgrove is a friend of several
4 members of the Cabinet, including the Premier, and his
5 company, JACA, has received a number of construction
6 contracts from the government.

7 SIR ROBIN AULD: When you say from the government, do you
8 mean direct or on occasion by way of subcontract?

9 MR MILNE: I believe directly, sir, but we are still looking
10 into that at this stage.

11 In one sense, sir, the South Caicos political fund
12 and the ledger for this account was the closest that the
13 Commission has come to seeing proper campaign accounts.
14 Most of the money was used for what sounded like
15 political objectives, if indeed the ledger is
16 an accurate one.

17 One has to bear in mind that there are only 547
18 voters living on the island of South Caicos, so
19 the provision of such large amounts seems to have
20 an element of overkill, particularly since the general
21 party funds would presumably also have been applied
22 there.

23 The explanation from the Honourable McAllister
24 Hanchell was that the funds were used across other
25 islands and that he flew his party workers to Grand Turk

1 for a four-day convention in December 2006. Sir, this
2 explanation would be helpful if the accounts reflected
3 that expenditure, that is travel and accommodation in
4 December. In fact they do not reflect any such travel
5 or accommodation in December. In any event the national
6 congress, to which he is probably referring, took place
7 on 16th to 19th November, some weeks earlier, 2006, as
8 evidenced by the Treasurer's report from that meeting
9 disclosed by the Honourable Floyd Hall.

10 The Honourable Jeffrey Hall had also omitted to tell
11 the Inquiry of the \$153,500 in party contributions he
12 had received between 2004 and 2008.

13 In his initial disclosure to the Commission, he had
14 somewhat coyly referred to a \$10,000 political
15 contribution without mentioning the source. This, of
16 course, had not been disclosed to the Registrar of
17 Interests. The Honourable Jeffrey Hall said it had come
18 from Mr David Wex and it featured as part of a wider
19 issue which I am going to come to shortly.

20 Sir, what is the Commission to make of these
21 matters? Had the PNP financial records not come to
22 light, partial and incomplete though they may be, there
23 is very little evidence to suggest that any of the
24 ministers would have volunteered the information that
25 has now been gathered. In the extreme example, such as

1 the Premier, revelations continued after his evidence
2 was completed in the witness box. It says quite a lot
3 about the system operated that a politician such as
4 the Premier can simply forget over \$1 million that he
5 has received and spent.

6 In his submissions to the Commission on behalf of
7 the PNP, Mr Norman Saunders conceded something that the
8 politicians would not when he said the following words:

9 "Someone makes a donation of \$100,000 to a party,
10 the inference is automatically going to be that that is
11 a bribe."

12 So Mr Saunders of course was seeking to make
13 the point when he said that, that the inference could be
14 challenged and he feared that the justification for
15 payments would not receive the same publicity as
16 the fact of the payment and indeed the amount.

17 Be that as it may, the inference he described we
18 would accept as a reasonable one, absent any proper
19 justification being presented.

20 The Commission has seen evidence of massive sums of
21 money being injected into a small political economy
22 which cannot possibly be justified by the number of
23 voters. The assertion that funds are required to assist
24 islanders with their personal financial problems is
25 simply unsustainable. Were the figures merely a few

1 tens or even hundreds of thousands of dollars, that
2 might just be credible. The \$6 million identified as
3 going through the PNP accounts in just six months is
4 clearly not just for political purposes. I leave out of
5 course, sir, the money received personally by individual
6 politicians.

7 The total lack of control, budgeting, records or
8 accounts point to a readiness on the part of the PNP and
9 of its senior members, I would submit, to hide and to
10 fudge sums of money which are received and spent at will
11 by themselves. The few examples given of personal
12 expenditure for political purposes are outweighed
13 massively by the sums received and there is no procedure
14 in place for claiming and justifying reimbursement from
15 the party. The party accounts appear to operate as
16 a slush fund for the senior members into which they
17 could apparently dip at will.

18 The donors to the accounts were mostly individuals
19 or companies whose connection to the TCI was entirely in
20 the field of business and who had long-term commercial
21 connections with or dependence upon the TCI government.

22 These donations bore all the hallmarks of bribery
23 and/or extortion. The commercial concerns would hope to
24 have a sympathetic ear in government because of their
25 generous and often massive donations. They would have

1 the reassurance of knowing the donations did not
2 ordinarily need to be declared or made public. They
3 would also know that if they did not make donations,
4 then that would be known to the government after
5 the election. Corporations exist only to advance their
6 business interests. The pretence that those
7 corporations are deeply committed to the political aims
8 of a party is precisely that, pretence.

9 The factors that point to many of these payments
10 being bribes are the obvious ones: the parties paying
11 had political links to the government; the sums were
12 disproportionately large to the stated aim; the sums
13 paid were readily applied for the personal enrichment of
14 individuals and that was well known and unchallenged
15 within the party; the sums paid were kept secret on the
16 part of the donor; they were kept secret by the party;
17 and the politicians who were required by law to declare
18 them universally and without exception failed to do so;
19 those same politicians, when faced with the Commission
20 of Inquiry, disclosed a variety of sources of income but
21 almost all withheld the nature and extent of these
22 donations until left with little choice but to admit
23 them.

24 Money has, in my submission, sir, distorted and
25 corroded the political fabric of this Territory. It has

1 undermined the claim of the current administration to
2 any form of legitimacy or respect.

3 Small scale graft and bribery may have existed long
4 before this government took power. Most people would
5 accept that that must have been the case. What has
6 changed is that this has been extrapolated to monstrous
7 proportions by an influx of monies previously not seen
8 in this Territory. Corruption has been accepted and
9 encouraged from the highest level and has become endemic
10 in public life. The road back from this state of
11 affairs will be difficult.

12 SIR ROBIN AULD: Mr Milne would that be a convenient moment
13 to break?

14 MR MILNE: Thank you very much.

15 SIR ROBIN AULD: Five to ten minutes.

16 (3.08 pm)

17 (A short break)

18 (3.18 pm)

19 MR MILNE: Sir, I turn now to the issue of Crown land. This
20 arose in one aspect of the Honourable Jeffrey Hall's
21 financial declarations which turned out to have rather
22 wider implications because it gave an insight into
23 the abuse, we would say, of the Crown land policy by
24 persons throughout the system.

25 The issue arose in relation to a series of parcels

1 of Crown land in the Northwest Point area of
2 Providenciales. The Honourable Jeffrey Hall had clearly
3 applied for a commercial conditional purchase lease,
4 a CCPL, for a parcel in that area back in May 2004.
5 The precise plot was not indicated in the application
6 forms of the time or in the letter of response and in
7 the event he did not take up the offer of the plot.
8 That offer, as such offers do, lapsed naturally.
9 The earlier application was mentioned by witnesses
10 a number of times but it is in my submission largely
11 irrelevant to what followed.

12 Because the following year in 2005 a businessman
13 from Canada, a gentleman named Mr David Wex, expressed
14 an interest in buying land in the TCI with a view to
15 a possible development. He had in mind an area of about
16 20 acres, and at some stage he dealt through a man who
17 is named Tim Smith. Mr Smith formerly worked for TCR
18 Sothebys in the TCI but it doesn't appear that Mr Smith
19 was acting on behalf of his employers in this context.

20 Mr Smith in turn was in contact with
21 Mr Melbourne Wilson who was a local attorney. Mr Wilson
22 at that time was working for a firm called McLeans in
23 which he was one of three partners. He was later to
24 part company from McLeans on unhappy terms, and it is
25 clear that there is recrimination between him and his

1 former partners, not least over this deal. Mr Wilson,
2 who eventually became a witness, was to tell
3 the Commission that he, as he put it, "discovered" that
4 the Honourable Jeffrey Hall had an interest in land at
5 Northwest Point because he, Mr Wilson, had made
6 enquiries at the Land Registry.

7 Now, this seems unlikely, the reason being that
8 the interest that the Honourable Jeffrey Hall had had in
9 applying for a CCPL had never been specific as to
10 a particular plot, and it had never been taken up.

11 The subsequent application for a freehold interest,
12 which came later that year, and this was admitted freely
13 on behalf of the Honourable Jeffrey Hall was made after
14 the approach from Mr Smith. Sir, Mr Wilson was
15 dismissive in his attitude when they -- when he was
16 pressed as to the true order of events.

17 But he suggested that the other three people who
18 were to become involved in the deal had also made
19 applications and had an interest in land in
20 the Northwest Point area.

21 Again, sir, we have seen no documents to suggest
22 that any of them had a CCPL or an application for such,
23 for any parcel in that area. What in my submission
24 makes far more sense is that when the first approach was
25 made on behalf of Mr Wex, these four men decided to

1 apply for four contingent parcels which would make up
2 together the 20 acres which Mr Wex sought.

3 The important aspect, of course, here is that they,
4 as Belongers, could make such an approach. Mr Wex, as
5 a non-Belonger, could not.

6 Mr Wilson clearly took the role of coordinator and
7 he seems to have done most of the arranging and it was,
8 in many respects, his deal. Why he failed to appreciate
9 the looming conflict of interest when he came to
10 represent the Honourable Jeffrey Hall before this
11 Commission remains a mystery, but suffice it to say
12 the point was quickly reached when the Honourable
13 Jeffrey Hall could not be further represented by him and
14 Mr Wilson then became a witness.

15 The deal with Mr Wex progressed apace and in
16 June 2005, an offer to purchase was made to
17 the Honourable Jeffrey Hall and a series of such
18 documents were drawn up. Each of these was in the name
19 of one of the individuals who was to form part of the
20 final deal: those four were the Honourable Jeffrey Hall;
21 Earlson Robinson, the brother of the Honourable
22 Lillian Boyce; Quinton Hall, the brother of the
23 Honourable Floyd Hall; and Samuel Been, the former
24 husband of the Honourable Lillian Boyce.

25 Curiously, despite there being four equal parcels,

1 the sums on offer in those offers to buy were different,
2 although we are told that they total 7 million, which
3 was about the amount that Mr Wex was supposed to
4 eventually pay.

5 Sir, we reach the anomaly at the heart of this
6 project. The Commission is aware that the valuations
7 placed upon Crown land are variable. Values for some
8 areas of the islands, as decided by government, often
9 seem to place a lower, and by that I mean significantly
10 lower value than that which the land will reach on the
11 open market.

12 Belongers evidently know this. Belongers also know
13 that only they can buy Crown land, as the policy is that
14 they should be entitled to hold small parcels for a home
15 or for a business. This is known as empowerment.

16 Belongers even get an additional discount on land
17 they purchase from the Crown, with the proviso that the
18 land should not be passed to non-Belongers within ten
19 years. Non-Belongers by way of contrast cannot buy
20 freehold Crown land direct from the government.

21 Sir, the idea, the principle of land for Belongers
22 for a home or a small business is being subverted by
23 the simple device of Belongers applying for land and
24 then passing it on to non-Belongers for a much higher
25 price. The difference in this case was that

1 the government regarded the market price for
2 the 20 acres as being in the order of about
3 \$2.7 million.

4 By virtue of their Belonger status and as long as
5 they purported to be the developers themselves, the four
6 men could buy it at half that price. Mr Wex was
7 prepared to pay \$7 million for the land. So
8 the straight profit on the deal was to be over
9 \$5.5 million. It would be hard, in my submission, to
10 define this as empowerment. It was certainly
11 enrichment.

12 In order to present themselves as developers,
13 Mr Wilson set up a company called
14 Urban Development Limited in 2006. This company was put
15 before the Cabinet as being the developing company.
16 There was no suggestion that the ultimate developer
17 would be an overseas entity in the discussions that took
18 place in Cabinet. There is also no record of the
19 Honourable Jeffrey Hall withdrawing from the early
20 Cabinet discussions on Urban Development Limited,
21 although at a later stage he did so.

22 He was to tell the Commission the company was set up
23 on his behalf, so he clearly knew of the link and he
24 claims the Cabinet meetings are inaccurate when they say
25 he failed to withdraw.

1 If so, they make the same mistake more than once.

2 Curiously, the Honourable Floyd Hall withdrew on one
3 occasion when Urban Development came up as a topic,
4 citing an interest, Quinton Hall being his brother. But
5 the Honourable Lillian Boyce, who was present, did not
6 regard this as necessary, despite the Belongers
7 including her brother and her former husband.

8 So one sees a very flexible attitude that seems to
9 prevail as to what constitutes an interest or not when
10 matters come before the Cabinet. The concerns of close
11 friends or brothers and sisters sometimes attract
12 disclosure and withdrawal. Sometimes they do not.

13 Having established Urban Development Limited
14 a development agreement in turn was drawn up in the name
15 of that company. The document was signed with
16 the Governor on 7th February 2007. The nominee
17 directors of Urban Development Limited signed for
18 the company. Share certificates were issued to the four
19 Belongers, but these don't seem to have been registered
20 with the Company Registry. The Company Registry had no
21 formal record of the individual shareholders.

22 Whether that development agreement was actually put
23 before Mr Wex for his approval is less than wholly
24 clear. Mr Wilson in his evidence tried to persuade
25 the Commission that the other Belongers, apart from

1 the Honourable Jeffrey Hall, had all wanted to remain
2 involved in the project in some form or fashion.

3 We didn't hear from them, sir but in the event all
4 four sold their shares in Urban Development Limited to
5 a company established by Mr Wex, and that sale took
6 place in April 2006, shortly before the Governor signed
7 the transfer of land on 2nd May 2006 for \$1.367 million.

8 What is now clear is that those funds were
9 transferred by Mr Wex to Mr Wilson at McLeans.
10 Mr Wilson placed those funds with Temple Securities and
11 then directed the payment of several cheques. The three
12 Belongers, apart from the Honourable Jeffrey Hall, each
13 received a straight \$1 million each. Mr Smith,
14 the intermediary, received \$500,000 and approximately
15 \$1.5 million of Mr Wex's money was used to pay for
16 the freehold and the associated duties. \$200,000 had
17 already been paid on account to the McLeans account
18 several months earlier and the remaining \$1.8 million
19 was paid to a company called Alliance Realty Limited,
20 established by Mr Wilson.

21 Both Mr Wilson and the Honourable Jeffrey Hall say
22 to the Commission that \$1 million of that was for
23 the Honourable Jeffrey Hall.

24 (3.30 pm)

25 Alliance Realty Limited again presents something of

1 a quandary. It is the company that the Honourable
2 Jeffrey Hall declared himself as being a director of in
3 two successive returns to the Register of Interests.
4 This is despite the fact that he was never recorded as
5 a director of it on the Company Registry. The latter,
6 as we have seen, is only up to date when declarations
7 are made to it by the responsible officers of companies.

8 The Honourable Hall in his declaration to the
9 Commission said that he had been invited to join
10 Alliance Realty Limited by the principals of the
11 company. The letter that said that was provided by
12 Mr Wilson on his behalf. Maybe Mr Wilson and
13 the Honourable Jeffrey Hall thought the Commission would
14 not delve any deeper, but when checks were made, it
15 became immediately obvious that the only principal of
16 Alliance Realty of any substance was actually Mr Wilson
17 himself. Mr Wilson accepted that it was him, he had
18 invited the Honourable Hall to join the company as
19 a shareholder. Both of them denied that the Honourable
20 Jeffrey Hall ever acted as a director.

21 But it goes further than that. Mr Wilson said he
22 was involved in every aspect of the Northwest Point
23 deal. He tells us that he acted for both sides,
24 effectively the vendor and the purchaser, and that he
25 took a percentage of the deal as a commission.

1 The money he received, his commission was paid into
2 Alliance Realty Limited. The Honourable Jeffrey Hall's
3 money, rather than being paid into the McLeans client
4 account, as one might expect, also went into
5 Alliance Realty Limited's bank account.

6 I digress for a moment because some of the money
7 paid to the Honourable Jeffrey Hall was later used to
8 provide a loan to a man named Rhynie Campbell. This
9 only came to light when the Honourable Hall was asked
10 about unexplained credits made to his credit cards. He
11 told us that he loaned Mr Campbell money and that
12 Mr Campbell returned it by making credit card payments
13 for him. Why this method was adopted was never
14 explained, because the loan made to Mr Campbell is
15 evidenced firstly by a copy of the cheque drawn on
16 Alliance Realty in the sum of \$200,000. It is
17 accompanied by a promissory note. That note is in fact
18 evidence of a loan not from the minister personally but
19 from Alliance Realty Limited. It names
20 Alliance Realty Limited as the lending body.

21 The funds are therefore due to be paid back, not to
22 the Honourable Jeffrey Hall but to
23 Alliance Realty Limited. Indeed Alliance Realty Limited
24 could, if it chose to do so, start to sue -- start legal
25 action on the strength of it. The interest rate on the

1 note was very steep. A total of \$260,000 was to be
2 repaid. That is 30 per cent interest over six months.

3 Oddly, the promissory note which was formally drawn
4 up was then evidently disregarded in favour of
5 an informal process of paying the money not back to
6 Alliance Realty Limited but back to Jeffrey Hall's
7 personal credit card bills in dribs and drabs, irregular
8 payments of round sums. Those sums, we are told, were
9 never recorded, never added up, the interest that he was
10 due to pay was being forgotten about and the minister
11 believed that about \$200,000 was repaid. In his words,
12 "a few dollars here and there don't really matter with
13 friends now, does it?"

14 In my submission, sir, this appears to show that
15 there is an intimate link between the funds in that
16 account, Alliance Realty Limited, and the Honourable
17 Jeffrey Hall. He treats them as his own. Part of them
18 at least certainly was his own money. Mr Wilson denies
19 that the minister has any other claim over the funds but
20 no account has every been produced to show
21 the distribution or the recording of funds.
22 Alliance Realty Limited went on to generate quite a lot
23 more money. Mr Wilson claims he used the company to do
24 deals which didn't involve the minister, although
25 the minister remained a shareholder.

1 Mr Wilson is adamant that no dividends were ever
2 paid, so the value of being a shareholder to the
3 Honourable Jeffrey Hall seems questionable.

4 I leave that, sir, to return briefly to the issue of
5 Urban Development because the shares of
6 Urban Development having been sold, the four Belongers
7 drop out of the picture altogether.

8 By the time the land was transferred to
9 Urban Development, Urban Development in turn had been
10 bought by Mr Wex's company. Mr Wex's actual lawyer by
11 this stage was Mr Hugh O'Neill, who is a practising
12 attorney on the islands. Mr O'Neill sought and obtained
13 an indemnity from the four Belongers so that in the
14 event that the government sought the repayment of the
15 Belonger discount on the sale of the land, he would be
16 covered and they would be responsible for it.

17 As far as the Belonger discount is concerned, to
18 date we believe none has been sought and indeed none has
19 been volunteered.

20 SIR ROBIN AULD: An expression of best endeavours was given
21 by Mr Misick on behalf of Mr Hall this morning. You may
22 not be aware of that.

23 MR MILNE: I was not, sir. I am gratified to hear that,
24 though.

25 The upshot of this deal, put simply, was that four

1 men each received large sums of money, \$1 million each,
2 for the sale of a property that they never actually
3 owned. The ownership of their shares in
4 Urban Development had passed away from them before
5 the land was transferred.

6 At no stage did they ever make any outlay with their
7 own funds. They did not have to put their hands in
8 their pockets.

9 They took effectively no risk and they profiteered
10 at the expense of the islands. Of course the government
11 could have valued the land rather closer to the true
12 market value, and it was a failure in this regard which
13 led to the big margin being available to be exploited.

14 Also, it can be said that the mechanism for recovery of
15 Belonger discounts is seriously inefficient, but
16 particularly, sir, when the ownership of land is muffled
17 behind a company that did not actually notify
18 the Company Registry of its share issue.

19 It may be a coincidence that the four men were all
20 intimately connected to the Cabinet, indeed one of them
21 in the Cabinet, two of them the brothers of serving
22 ministers, one the ex-husband of a minister. It may be
23 a coincidence that the Premier seemed to know a great
24 deal about exactly who profited and when, to the extent
25 that he felt able to ask each of them for a loan.

1 Indeed, he said he asked for that loan from the three
2 Cabinet colleagues, and in each case a loan that has
3 been unreturned.

4 The Honourable Lillian Boyce certainly benefited in
5 that she used the money from her brother as collateral
6 for another loan. She tells us that she used it for her
7 mother's house, although some parties have called that
8 into question. The Honourable Floyd Hall admitted that
9 he might have had something from the deal, but only
10 because he had been generous to his brother in the past.
11 All of these may just be coincidences.

12 On the other hand, it may be that the Cabinet
13 colleagues all used the opportunity to get an inside
14 track on a land deal, allowed Melbourne Wilson to
15 negotiate the deal whereby the Crown land policy was
16 flagrantly abused to allow profiteering by individuals
17 and then everyone took their cut.

18 If that is the case, then the Deputy Premier and
19 the Honourable Lillian Boyce are each hiding behind
20 their relatives. The Honourable Jeffrey Hall attempted
21 to hide behind Alliance Realty Limited and the Premier,
22 one may conclude, took the view that he could take
23 a percentage from each of them. I should say, sir, that
24 none of the participants accept this description of the
25 events that took place.

1 Sir, we have concentrated on the Northwest Point
2 land deal and it is cited because in my submission it is
3 a classic example of the Crown land policy and the abuse
4 of that Crown land policy.

5 It is not, however, we are well aware, the only one.
6 The purchase by the Premier, using the title of
7 MIG Investments Limited, of an 18-acre parcel, also in
8 Northwest Point, is another case. His partners there
9 are two young men called the Caltagirones, who are
10 non-Belongers, who put up the funds. His access as
11 a Belonger to the option was the only thing that Premier
12 brought to the deal. His partners paid the funds. He
13 got half of the equity.

14 Another example emerged in the evidence of Don-Hue
15 Gardiner to the effect that he and several Belonger
16 colleagues benefited to the tune of \$2 million or more
17 by applying jointly with an overseas developer for Crown
18 land. They pay nothing in but they get an equity share
19 which they trade in for cash. Same practice again.

20 There can be little surprise that this practice has
21 become widespread. If the Cabinet approves and lends
22 itself to it, why should one expect other people to do
23 differently?

24 When the Honourable Lillian Boyce was asked about
25 her attitude to this practice, she said that she did not

1 approve of it. However, with respect, she failed to
2 explain how she thought her brother might suddenly have
3 come up with \$1 million and she evinced a remarkable
4 lack of curiosity, despite having to hold the money for
5 him, arrange a payment from it to the Premier, and then
6 borrowing the rest of it herself.

7 This supposed naivety on her part, I would submit,
8 was the least convincing aspect of her evidence.

9 SIR ROBIN AULD: Mr Milne, would you pause for a moment.

10 Sir, at the back of the room, the person who is
11 conducting a conversation would you please stop. If you
12 want to conduct your conversation, leave the room and do
13 it.

14 Yes, Mr Milne.

15 MR MILNE: Sir, I am afraid that one disturbing aspect of
16 the practices that we have observed is the readiness of
17 members of the professions and particularly some members
18 of the legal profession to lend themselves to these land
19 deals of dubious propriety.

20 We have seen repeatedly an eagerness on the part of
21 the attorneys, I would submit, to claim that they were
22 obeying the letter of the law, although without any
23 apparent regard for the spirit of those laws.

24 In the two cases already cited, those being
25 Mr Don-Hue Gardiner and Mr Melbourne Wilson, both

1 attorneys who each gave evidence, we have seen clear
2 examples of lawyers who claim to be acting in
3 a professional capacity and yet are themselves parties
4 to the deal.

5 The concept of conflict of interest appears to be as
6 alien to them in this environment as it was in
7 the Cabinet.

8 The eagerness to cut corners in an attempt to make
9 personal gains seems to have trickled down throughout
10 parts of the profession. We do not seek to attribute
11 this behaviour to all of the attorneys who practice
12 here. That would be unjust. However it, is a source of
13 concern that those in their midst who abuse the system
14 appear to do so without apparent reproach or restraint.

15 The Commission would say a responsible community of
16 lawyers, whether or not through their Bar Association,
17 should, I would submit, demand of its members and seek
18 to impose where necessary a higher standard.

19 In both of those cases I have mentioned, there
20 appears to be a complete disregard for the rules
21 regarding retention of client funds in client accounts.

22 The Commission has had regard to the Legal Professional
23 Ordinance 1997 as amended, which dictates the rules on
24 this.

25 Both men claim to be familiar with the law in

1 relation to it. Neither appears to have complied with
2 it. The suggestion adduced by his own counsel of
3 Mr Gardiner that he had never been disciplined for his
4 failures does not, with respect, make his failures
5 acceptable. Not getting caught is not a defence.

6 Mr Gardiner advanced the excuse that he needed to
7 make payments into the wrong account for convenience or
8 at short notice. However, the funds remained there in
9 one example for many weeks. Mr Wilson claimed it was
10 an tactic to avoid charges from an escrow account,
11 should they have gone in there.

12 Neither of those excuses in my submission rings in
13 the least bit true.

14 I leave that topic to move on to a different subject
15 again. This is in relation to the Premier. It is quite
16 specifically in relation to the loans obtained by the
17 Premier.

18 He has given evidence in relation to his lifestyle
19 and his expenditure, which have caused widespread
20 comments and speculations within the Turks & Caicos
21 Islands.

22 It is worth stating again that the Commission's main
23 focus of concern is less over how he spent and more over
24 how he got it in the first place. He has provided
25 a range of explanations which I have touched on already.

1 One explanation that requires separate consideration is
2 that of the loans taken out by him, because of the sheer
3 volume of money involved.

4 He has given evidence of extensive loans obtained
5 over a period of years. One of them pre-dates his time
6 in office. All the others reflect his period as
7 the head of government.

8 The admissions he has made have emerged piecemeal
9 and indeed now, even since he has left the witness box,
10 have had to be supplemented by what we have learnt from
11 others at a later stage. The oldest of the loans was
12 some \$200,000 back in 1998 borrowed from
13 the First Caribbean International Bank, which he tells
14 us was to fund a condominium at the golf club in
15 Providenciales.

16 In January 2004 he added a loan of \$360,000 from
17 the Belize Bank. It is a little unclear what that was
18 for. It was either the funding of the purchase of land
19 for his house in the Leeward area, or possibly to
20 purchase some property in North Caicos. Indeed
21 Belize Bank loaned him a further \$500,000 to cover
22 a bank overdraft and consolidate debts in 2004. To that
23 stage, nothing greatly exceptional.

24 (3.45 pm)

25 It was from 2005 onwards that the loans seem to have

1 grown bigger and to have come more rapidly. Some of
2 them were formal, others less so. I will seek to place
3 them in order, so that the pattern becomes a little
4 clearer.

5 July 2005, according to his brother Chal Misick, he
6 borrowed \$250,000 from Inazio and Gataen Caltagirone,
7 the sons of Francesco Caltagirone, who is an Italian
8 billionaire. This was followed by \$250,000 from his
9 brother Philip on 15th November 2005 and a further
10 \$250,000 from the same brother Philip on 3rd February
11 2006. Chal Misick was the one who told the Commission
12 of these. The Premier did not, until he confirmed it in
13 a late statement, we having already been told about it.
14 The Premier told us of those loans he had forgotten
15 them.

16 Meanwhile, in January 2006, he had borrowed
17 \$1 million from a company called Secured Holdings
18 Limited. That company was in fact merely a shell
19 company. The funds were provided by a gentleman called
20 Mr Peter Wehrli, who was a friend of the Premier and
21 that loan was secured on the house at Leeward.

22 The start of 2006 was indeed a busy time for
23 the Premier. He was of course getting married in April
24 of that year.

25 On 24th May, he tells us he borrowed \$150,000 from

1 the Honourable Floyd Hall; 26th May, another 100,000
2 from the Honourable Jeffrey Hall; 9th June, 100,000 from
3 the Honourable Lillian Boyce.

4 On 6th July, according to Chal Misick, he received
5 \$325,000 from Chal himself for purposes unknown.

6 August 2006, another \$1 million borrowed from Arling
7 Anstalt, which is a Liechtenstein-based finance
8 organisation. These sums we know were used to make
9 repayments on credit card bills. He borrowed another
10 130,000 on 20th November 2006 from Chal, allegedly as
11 a loan, followed by a further 33,000 on
12 29th November 2006.

13 That latter loan, the \$33,000 of 29th November, was
14 a highly unusual loan indeed for the Premier because --
15 mirabile dictu -- he repaid it in January 2007.

16 In February 2007 he returned to borrowing ways. He
17 took a loan of \$4.7 million from Coral Square Limited,
18 the finance arm of Johnston International.

19 Johnstons were the company which had built his
20 house. They were also in effect lending him the money
21 for land to build his house and were securing it upon
22 the house when complete.

23 March 2007, he borrowed another \$5 million towards
24 the construction of Windsor Plaza and to refinance
25 the Grace Bay Plaza.

1 May 2007, he borrowed \$6 million from J&T Banka in
2 Prague. This money, we are told by the Premier was to
3 fund a purchase of a property in Los Angeles for him and
4 his wife. The project foundered and the \$200,000
5 deposit in escrow was lost. Nothing daunted,
6 the Premier spent the remaining funds.

7 I pause there, sir, because whilst the Premier and
8 his wife agreed there was to be expenditure on the
9 house, his wife Lisa-Raye McCoy Misick did not know that
10 that money had been borrowed for that purpose. That was
11 her evidence.

12 January 2008, the Premier borrowed a further
13 \$275,000 from his former employers, Saunders & Co. That
14 money was to buy large amounts of expensive jewellery,
15 since it all appears to have gone towards a bill at
16 Royal Jewels.

17 2008, a further \$200,000 from Meridian Mortgage to
18 pay bills and extend the Arling Anstalt facility by
19 a further \$1 million. To date on that facility we are
20 told that 1.7 million has been drawn down.

21 So what is the Commission to make of the loans taken
22 out by the Premier? High living and extravagant
23 lifestyle do not of themselves constitute evidence of
24 corruption as has been pointed out on his behalf, quite
25 rightly.

1 Even atrocious financial management, if that were
2 proven, is not of itself criminal, although it scarcely
3 enhances the reputation of a man who is helping to
4 oversee a national economy.

5 The problem for this Commission arises when one
6 looks at the circumstances and the explanations for
7 the loans. Some are indeed loans. Some bear the stamp
8 of something rather different.

9 The first curiosity about some of these so-called
10 loans, we would submit, is the total absence of
11 paperwork. Quarter of a million dollars from
12 the Caltagirones; half a million from his brother
13 Philip; \$455,000 from his borrower Chal; and then
14 \$350,000 in three loans from three work colleagues; and
15 the \$275,000 from Saunders. I am referring to loans
16 totalling \$1.8 million in all, each of which is made
17 without a single piece of paper to agree the terms of
18 any kind. No interest agreed, no return date, no
19 penalties, not even clear in some cases they are
20 actually paid or not, or received.

21 No security is offered, and no security is taken.
22 No interest has been paid on any of these loans (indeed,
23 one has to consider how could it be calculated if
24 the rate hadn't been agreed in the first place?) Nor
25 indeed with any of them has there been any repayment

1 made on the principal.
2 We are told "this is how things are done in the
3 TCI", but the banks clearly do not work that way. They
4 observe the usual rules regarding documentation and
5 records. It is clear that some of these loans are said
6 to be from close friends and relatives, but the people
7 involved are all businessmen; they are all professional
8 people. Several, including the Premier himself, are
9 trained as lawyers. One loan is actually from a firm of
10 attorneys. So one would expect at least a letter on
11 file acknowledging receipt in case there was later
12 confusion.

13 Suffice it to say that when the Premier was trying
14 to put together his returns, he had actually forgotten
15 about some of these loans when making declarations.
16 None of them, it goes without saying, ever declared to
17 the Registrar of Interests.

18 One also has to bear in mind that this supposedly
19 casual approach to financial matters was not one he
20 adopted when it came to his marriage. The Premier went
21 to the trouble of a pre-nuptial agreement for that.

22 But even if the lack of documentation wasn't
23 a problem, the fact that these loans were not repaid and
24 indeed in most cases, it seems, not even chased up, must
25 also raise concerns. The evidence of Chal Misick was

1 that he apparently made loans to his brother by putting
2 money into the funds held in his own client account to
3 be held on behalf of his brother. He personally laid
4 out \$455,000, close on half a million. But then he saw
5 other funds in massive amounts going through the same
6 account. \$500,000 in one donation came from Cem Kinay.

7 It was Chal Misick who saw his own brother,
8 the Premier, borrow \$6 million from J&T Banka,
9 the majority of which went into Chal Misick's client
10 account.

11 Indeed, I pause there to recall that of that
12 6 million, 1 million was loaned on to the Honourable
13 McAllister Hanchell. None of it, it would seem, not
14 a penny was used to repay Chal Misick or their other
15 brother Philip or any of the others, although there was
16 more than enough money available.

17 He doesn't even seem to have been asked for
18 repayment.

19 Strangest of all is the relatively modest loan
20 I mentioned a few minutes ago. Chal Misick loaned his
21 brother \$33,000, which in the overall scheme of things
22 is probably a drop in the ocean and that was loaned in
23 November 2006 and repaid fairly promptly by
24 10th January. At that date when it was repaid,
25 the client account to the credit of Michael Misick at

1 Chalmers & Co had \$467,000 in it. The Premier could
2 have repaid not only the 33,000, but he could have
3 repaid much more; indeed he could have repaid his
4 entirely outstanding debt to his brother Chal. But he
5 didn't do so and he doesn't seem to have been asked to
6 do so.

7 It wasn't pursued. One cannot help being driven to
8 the conclusion that the loan of \$33,000 was a loan
9 because it was repaid, but it was possibly the only debt
10 that was truly owed to Chal by his brother Michael.

11 The rest of the money, I would submit, sir, appears to
12 be money being channelled to Michael from sources
13 unknown without any expectation or thought of repayment.

14 When he was questioned about repayments, Chal Misick
15 seemed remarkably relaxed, remarkably sanguine about
16 the possibility of being repaid. He said his brother
17 always promised he would repay. It seems the only
18 credits that ever actually went to Chal Misick, apart
19 from the \$33,000, were rental payments that he managed
20 to offset against the additional several thousand
21 dollars he was charging his brother in legal fees.

22 Curiously, those too were not billed and offset against
23 the balance of the client account which would be
24 the standard practice.

25 If one looks at the other informal loans, it is

1 worth noting that the funds apparently borrowed from
2 the Caltagirones were from the two men who were behind
3 Sabre Holdings. This is the company with a 50 per cent
4 shareholding in a third company called MIG Investments.
5 The remaining 50 per cent of MIG is owned by
6 Arch Property, a company held by Chal Misick in trust
7 for the Premier. What that means is simply this: in
8 essence, the Premier owns half of MIG Investments.
9 The Caltagirones owned the other half of
10 MIG Investments. Presumably, sir, hence the name,
11 because it is the first initials of each of their three
12 first names, Michael, Inazio, Gataen.

13 That company owns the parcel of land at 60101/36,
14 which was the 18 acres of land I referred to a few
15 minutes ago at Northwest Point, granted freehold in
16 April 2007 for \$1.9 million, all of which paid for by
17 the partners.

18 Indeed, when he was questioned about the deal, the
19 Premier said to the Commission that the partners paid
20 all the money for the parcel. The Premier as a Belonger
21 had obtained the option to buy but paid nothing, in
22 return for which he got the 50 per cent share in the
23 land.

24 The supposed loans taken from his Cabinet colleagues
25 in 2006 have raised questions. We have already touched

1 upon these. The Premier insists he received these loans
2 after asking the three colleagues. The only person who
3 comes close to agreeing with him is the Honourable
4 Jeffrey Hall, who arranged for his attorney, Mr Wilson,
5 to pay the funds to the Premier out of the
6 Alliance Realty Limited account.

7 The Honourable Floyd Hall insists he had nothing to
8 do with this loan. The Premier insists he did. Here
9 again, quite simply the two men are accusing each other
10 of lying. Given the febrile political atmosphere which
11 presently surrounds the Cabinet, one would have to be
12 concerned about former colleagues, former friends
13 mischief-making for one another. The Premier insists
14 that he borrowed the money also from Lillian Boyce.
15 She, like the Honourable Floyd Hall, insists the loan
16 was from her brother, although it came from her account
17 as she held the money for him.

18 We have already touched upon, sir, why the Premier
19 would know of these funds. How he would know of the
20 funds is a matter to be questioned in itself. Why he
21 would need to take funds from these three small
22 investors is a separate matter.

23 He has been anxious in giving evidence to stress to
24 the Commission his acumen as a businessman and indeed
25 the extent of his capital assets. Indeed, he was to go

1 on to borrow much bigger sums from financial
2 institutions with relative ease.
3 At the time of borrowing these monies in May of
4 2006, he still had \$279,000 in his brother's client
5 account, although it has to be said he was overdrawn at
6 the Belize Bank, but rather than using the client
7 account monies, he chose to deal with that by making
8 these three borrowings.

9 How well he knew the three men remains unclear.
10 Indeed, we have heard from various witnesses when he
11 said that he was borrowing from his colleagues in
12 Cabinet, the Honourable Lillian Boyce seemed anxious to
13 depict her brother as a man who needed assistance. She
14 said he was not wealthy, the money came as a big break
15 to him, and yet she succumbed, or she let her brother
16 succumb to the pressure from the Premier. Of course no
17 repayments have been made on these loans either or
18 apparently sought from the Premier. He did not declare
19 the loans until the start of the Inquiry hearings. He
20 appears to have made no attempts or shown any tendency
21 to repay them.

22 We know now that the two ministers are at daggers
23 drawn with the Premier, yet even still, no apparent
24 efforts have been made to recoup these monies that were
25 passed over.

1 Again, the question must be asked, if a payment is
2 undocumented, if it is untracked and if no agreement is
3 made or recorded as to when and how repayment would be
4 made or what interest would be paid, coupled with
5 a total lack of any repayment for close on three years,
6 then how can one conclude other than that this is
7 a one-way payment without hope or expectation of any
8 return, and if that is the case, sir, the obvious
9 question is why?

10 I will turn briefly, if I might, to the bigger loans
11 obtained by the Premier, which are clearly loans from
12 large financial organisations and which are documented.

13 (4.00 pm)

14 I will, of course, come back in due course to the
15 issue of security on the J&T Banka loan.
16 The Secured Holdings loan, the million dollars borrowed
17 from Mr Wehrli was itself secured on the house that was
18 being built, and despite the denials and assertions of
19 the Premier to the contrary, the Commission should in my
20 submission conclude that the Premier has been less than
21 frank with Mr Wehrli who communicated with us in brisk
22 terms when he learned that a further loan had been taken
23 against the same security in contravention of the loan
24 terms, making it clear that his loan should be paid off
25 by any later borrowing.

1 Indeed, the most remarkable aspect of the
2 large-scale borrowing is the Premier persuaded all of
3 these organisations to lend him money without the need
4 for any interim payments or staged returns. In the case
5 of the J&T Banka bank, the link between the investment
6 which the bank proposed to make in the
7 Salt Cay Development and their readiness to loan money
8 seems inescapable.

9 But the necessary corollary to loans without interim
10 repayments is that the interest due on those loans
11 builds up and compounds with compounded interest being
12 added all the time. So a very simple calculation based
13 upon its admitted borrowings -- this is before
14 \$1 million of extra borrowings emerged -- showed that he
15 was going to be liable for close on \$2 million a year in
16 interest that had accrued and was still accruing.

17 The Premier, when asked about this, seemed
18 relatively unconcerned. He cited his capital assets.
19 It is equally clear, sir, that throughout, cashflow is
20 only being addressed by borrowings from further sources.

21 So the conclusion from all of this is that
22 the scenario that we heard, painted by
23 the Deputy Premier, the one where small loans are given
24 to constituents which one knows will never be repaid, is
25 being played out on a much larger field by the Premier;

1 and again by way of analogy, just as the TCI government
2 seems ready to expend capital assets by selling land to
3 meet recurrent expenditure, so too does the Premier take
4 out large loans to meet what appears to be his own
5 extravagant spending, both evidently done without
6 thought or concern for the final reckoning.

7 Very briefly, sir, there are a number of unexplained
8 funds that come into various different personal bank
9 accounts.

10 The Commission looked at the bank accounts of
11 several members and in several cases they were to find
12 that there were payments in which were simply not
13 explained by the declared income received by those
14 ministers.

15 Time does not permit me to relate all of these but
16 certainly patterns emerge. High levels of credit card
17 use were obviously common factors. The Premier, the
18 Deputy Premier, ministers Hanchell and Jeffrey Hall all
19 used their credit cards extensively. Credit card
20 repayments would then tend to be made in large round
21 sums, paid irregularly into the accounts, sometimes two
22 in a month, sometimes months missed.

23 The Commission sought to make comparisons between
24 the sums going into those credit cards and the debits
25 from the bank account. Frequently no match was found.

1 Of course both the Premier and the Deputy Premier
2 could point on occasions to large repayments being made
3 from party funds, which we were then aware of.
4 The Deputy Premier, to his credit, made the most
5 concerted attempt to provide a full explanation of the
6 source of funds, although gaps do still remain.

7 But other odd payments also remain unexplained. One
8 example, and it is only an example, is in relation to
9 the Premier's account in January of 2007 when a sum of
10 \$95,000 was paid in.

11 The reference we were given was the Villa Maria
12 Helena which meant nothing to the Commission. He was
13 asked about it and he said it was a payment received
14 from a friend called Jeanette Verella. The sum was to
15 be paid on as a deposit on a parcel of land.

16 The problem was that if it was to be paid on, then
17 it should have come out of that account, but no
18 equivalent sum of money came out of the account at any
19 stage. No evidence was presented to explain why
20 the money needed to pass through the Premier's account
21 and it was quite evidently dissipated. The explanation,
22 I would submit, sir, is unconvincing and unsupported by
23 any evidence.

24 I am going to turn from the vexed question of money
25 to deal for a few minutes with that of conflicts of

1 interest because copious evidence has emerged before
2 the Commission to suggest that decisions have been taken
3 by the Cabinet which were decided without the proper
4 disclosure of connections and links which should have
5 been out in the open. The failure to make proper
6 disclosure to the Registrar compounds this problem. It
7 makes it all the more serious.

8 Prime examples of this arose in the evidence of the
9 Deputy Premier, who was responsible for presenting
10 the Southern Health Network proposal to the Cabinet.
11 The Honourable Floyd Hall failed to mention or declare
12 at any stage before the Cabinet that the person behind
13 SHN was Delroy Howell, a man with whom he had a personal
14 friendship and with whom he had done business. We asked
15 the Honourable Lillian Boyce about this. She knew of
16 the friendship between the Deputy Premier and Mr Howell.
17 She didn't know Mr Howell was behind SHN.

18 She agreed she should have been told. If she was
19 not told, we must assume nobody else was either.

20 The qualifications presented by SHN were seriously
21 suspect, in that the company had only been formed
22 a matter of days prior to the presentation of their
23 tender. The Deputy Premier said he would have asked
24 them how long they had been going. But if he did ask
25 them, he could not recall the answer.

1 The execution of due diligence on such a deal, if it
2 were done, should have revealed this. He should have
3 known. He says he did not.

4 Again, Lillian Boyce, when asked about this, said
5 she had been left with the false impression of an long
6 established company. If she was presumably so was
7 the rest of the Cabinet. In fact the records available
8 show that authorisation had been obtained for a limited
9 tender with two other well established health care
10 administrators, one of which had already served the TCI
11 over the previous year.

12 Those two tenders were elbowed aside in my
13 submission by the actions of the Deputy Premier in
14 favour of no proper tender at all.

15 The Cabinet decision does not record other tenders
16 even being mentioned, let alone compared.

17 The Honourable Lillian Boyce recalls only being told of
18 the other tenders after they had approved SHN. She
19 never even saw the other tender documents.

20 In my respectful submission, the Deputy Premier
21 appears to have secured the contract for SHN run by his
22 friend, without proper consideration by the Cabinet and
23 without declaring the link.

24 Another link which arose in respect of the
25 Deputy Premier was his connections with the gentleman

1 Mr Richard Padgett, who was a developer on these
2 islands. Mr Padgett, the Deputy Premier told us, had
3 used him, had used the Deputy Premier as a friend, as
4 an adviser to help identify a site for development in
5 the TCI. That site, we are led to believe, will shortly
6 become the Third Turtle Club.

7 The Deputy Premier was to receive money for that and
8 for advice given which he was paid in February 2006.

9 Although this was said to represent his work and his
10 advice to Mr Padgett, and it was billed as such,
11 the Deputy Premier said he regarded the monies received,
12 which was some \$375,000, as being a windfall and for
13 that reason he gave half of it to the Premier.

14 But as with so many other people, giving money
15 directly to the Premier was regarded as being somehow
16 infra dig, so instead he gave it to Chal Misick to hold
17 for the Premier.

18 He said this was effectively like a wedding present.
19 It was a wedding present for \$161,618.92, which was sent
20 to the Premier's lawyer two months before the wedding,
21 and indeed it seems to have been wholly unknown
22 to Lisa-Raye McCoy Misick.

23 I think in fact the suggestion of wedding present
24 was one that was put to him, and he adopted, although it
25 was not his expression at the time. In any event, sir,

1 it fails to convince as a wedding present. One must
2 query firstly why it is the Deputy Premier would feel
3 the need to share the business proceeds of this deal, on
4 the work he had done and billed and been paid for with
5 the Premier.

6 Indeed, if he was simply sharing business proceeds
7 because the Premier had an involvement, why he would
8 need to invent a story to cover that up.

9 It was, of course, Mr Padgett's appeal against
10 a refusal of planning permission which was due to be
11 considered by the minister of planning, that came before
12 the Honourable Floyd Hall due to the absence overseas of
13 the Premier. So the Honourable Floyd Hall was
14 the Acting Premier. He took it upon himself to make
15 the decision, indeed he made the decision in favour of
16 Mr Padgett. That decision was later held to be unlawful
17 as the courts were to decide. And that decision related
18 solely to the extent of his powers as Acting Premier and
19 their limit.

20 Nonetheless, when he took that decision, he doesn't
21 seem to have considered -- it doesn't seem to have
22 occurred to the Honourable Floyd Hall that his financial
23 links with Mr Padgett going back some years was
24 sufficient reason to recuse himself from the task.
25 Since that time, he appears to have continued to sit in

1 on decisions which touch upon the Third Turtle Club
2 being developed by Mr Padgett without any evident
3 concern over a conflict of interest despite further
4 loans received from that gentleman.

5 Another area of conflict of interest, I would
6 submit, arises in relation to the curious saga of the
7 government aircraft and particularly
8 the Gulf Stream III. Sir, I could probably spend a long
9 time on this, and indeed we could consume a great deal
10 of Commission time and we did consume some during the
11 hearings. The Commission will remember well
12 the strikingly different evidence of the Premier, of his
13 estranged wife, Lisa-Raye McCoy Misick on this, and
14 the Commission may in due course have to ponder which is
15 the more convincing. Mrs McCoy Misick clearly thought
16 her husband had bought the aircraft. He certainly acted
17 as if he had. He allowed her to believe that she was
18 entitled to customise the interior of it and she spent
19 some time planning that.

20 I don't seek to persuade the Commission one way or
21 the other on that. What I do point out though, sir, is
22 this: the Commission may wish to look at it from
23 a slightly different angle. If one takes the Premier at
24 his own word, that he did not buy this aircraft but
25 rather he persuaded his friend and colleague Jeffrey

1 Watson to purchase the aircraft and then lease it back
2 to the government of the TCI for an extended period of
3 time, was this not a conflict of interest that he should
4 have made clear? The Premier clearly used the jet to
5 the full. The Deputy Premier says he never even stepped
6 on board. So it would appear to all intents and
7 purposes for the Premier's exclusive use. Why, one
8 might wonder, did the Premier not see fit to declare
9 that it was his friend and colleague who was profiting
10 from this deal? It certainly does not appear to have
11 been raised at Cabinet discussions.

12 Another example, sir, of conflict of interest in
13 fact can be found on a Cabinet-wide basis. This arises
14 in relation to the decision at an early stage in this
15 government to fund what were referred to as constituency
16 offices around the islands from central funds.

17 This, on the face of it, sounded to be a politically
18 balanced and neutral decision. There were 15
19 constituency offices because there were 15
20 constituencies. Each was to have an office funded.

21 But in practice, of course, the constituency offices
22 are used by the parties. This means that the PNP, which
23 had won a massive majority in 2003, had 13 offices
24 effectively paid for, while the opposition PDM had only
25 two. The provision massively subsidises the ruling

1 party which then does not have to fund its own
2 accommodation.
3 When PNP domestic accounts were seen by
4 the Commission, the combined offices of the PNP in
5 Providenciales, which for convenience had been confined
6 in one building, clearly received a large government
7 subvention each month to pay their rent. This, I would
8 submit, not only is an inappropriate way of spending
9 public money; it represents a conflict of interest which
10 should have been recognised when the decision was first
11 taken.

12 Even when the relationships involved are obvious,
13 conflicts of interest can still arise. Simple
14 declaration of an interest and withdrawal from Cabinet
15 discussion is not necessarily enough. A good example of
16 that arises with the recent case of the Caicos Oil
17 proposal for the development of extensive storage
18 facilities across the islands.

19 (4.15 pm)

20 Caicos Oil, owned by the Honourable McAllister
21 Hanchell and his brother, had put forward a proposal.
22 It would inevitably allow for a long-term expansion on
23 a commercial basis of that company's activities. The
24 Honourable McAllister Hanchell did indeed make
25 the necessary declaration in Cabinet. He withdrew from

1 the discussion. But he cannot, with respect, have been
2 wildly surprised when -- as he stood outside
3 the rooms -- his friends and colleagues inside granted
4 him what he was asking for through his company.

5 When he was questioned about the need for
6 the facilities, the minister contended that it was
7 a long-term problem on the islands, whereby fuel
8 shortages were a constant difficulty.

9 He was, however, unable to point to any government
10 study of this problem or any previous Cabinet or House
11 discussion of it. His solution appeared to be for
12 a problem that did not exist. It was the cure for which
13 there was no known illness.

14 Had there been a problem, one might have expected at
15 least some record of the thinking that had been done on
16 a strategic level to address it, and if the problem were
17 that profound then different options might have been
18 presented and might have presented themselves.

19 Whether or not such evidence of that problem ever
20 surfaces, the proposal put forward was undoubtedly
21 a massive commercial opportunity for Caicos Oil and by
22 extension, the minister.

23 Whilst the government might wish to promote
24 the business interests of business in a broad sense, it
25 is not, I would submit, the job of government to hand

1 the licence for extensive island-wide facilities to one
2 competitor simply because they got in first. When that
3 competitor sits in Cabinet, it is the clearest possible
4 example in my submission of conflict of interest.

5 The minister seemed to find that concept a difficult one
6 to grasp.

7 A general failure, I would submit, to grapple with
8 the idea of conflict of interest can be seen in many
9 responses to the Commission. The idea of being
10 an elected representative as a public servant does not
11 seem to hold sway. The repetition to us of the fact
12 that members and indeed ministers are also Belongers
13 seems to stress the idea that being elected should not
14 be a bar to private enrichment in other fields. Of
15 course if time permits ministers can run their own
16 businesses, but any overlap with government should
17 ideally be avoided, as the Ministerial Code of Conduct
18 would have told them had they but read it.

19 Given the state of Crown land, and the opportunities
20 for profit from it, any application for or grant of
21 Crown land by a serving minister must also call into
22 doubt, at the very least, the judgment of those
23 applying. This too is a conflict of interest. I add
24 here, sir, any major contract directly with the
25 government is similarly a conflict of interest and

1 should be recognised as such.

2 SIR ROBIN AULD: Mr Milne, you have been going now for
3 another hour or so. Do you want to continue to the end
4 of this section if it is nigh or would you like to
5 break?

6 MR MILNE: Sir, the next section is, I hope, relatively
7 short. If I could take five minutes more and then take
8 a break, that would perhaps be a good point. I am going
9 to deal before that break simply with this: what I would
10 submit is evidence of interference with the machinery of
11 government.

12 The immediate example of that occurred very shortly
13 before the Commission of Inquiry arrived and started its
14 hearings in January of this year. The incident involved
15 arose in relation to the proposed development of
16 Salt Cay. I am talking of course, sir, of the meeting
17 that was held of the physical planning board.

18 It is of relevance to the Commission, not because of
19 the decision taken, but rather because of the attitude
20 and behaviour of Cabinet members in relation to it.

21 The Commission know that the physical planning board
22 had held a meeting in December 2008 at which the issue
23 of the proposed dock for Salt Cay had been discussed.
24 The two alternatives for the dock were considered to be
25 either the town centre, near the historic White House,

1 or on the south side of the island. The board at its
2 meeting had received a lengthy advice from the director
3 of planning, Mr Clyde Robinson. Mr Robinson was
4 trenchant in his assessment of the earlier environmental
5 impact statement relating to the proposed dock. He felt
6 that several serious elements were missing from
7 the assessment and that they needed to be addressed
8 before the board could recommend approval.

9 The board on December date debated the paper
10 submitted; they decided to follow his recommendation and
11 in turn recommend to the minister that the application
12 not be approved.

13 That was to be the last meeting of the PPB for 2008.
14 They would in due course have had a further meeting at
15 some point in January 2009, but before that could take
16 place, there was an impromptu gathering called at the
17 Premier's office for the morning of 9th January, which
18 was not the scheduled date for the PPB meeting.

19 This impromptu meeting called, it would seem, by
20 text messages from the Premier and the Honourable
21 McAllister Hanchell.

22 Called into the meeting were several members of the
23 planning board and Mr Robinson. He attended and found
24 the Premier there together with the Honourable Hanchell.
25 It is generally agreed that Mr Stephan Kral of Salt Cay

1 Devco was in attendance, together with another
2 colleague, and that Mr Kral was afforded several minutes
3 to explain the importance of the dock to the overall
4 development before he and his colleague then left
5 the meeting, and what ensued was described as a heated
6 debate. Mr Robinson agreed that the general thrust of
7 the conversation that followed with the Premier amounted
8 to the Premier saying how dare he, Mr Robinson, reject
9 the proposal which was a government plan.

10 So Mr Robinson evidently defended his position
11 fairly vigorously, but there was not to be any meeting
12 of minds. Later that day there was a further meeting of
13 the physical planning board hastily convened by
14 the deputy chair to reconsider the matter.

15 The Chairman of the board, Mr Earl Handfield, was
16 apparently notified that this was happening and he chose
17 not to attend. He was later to give evidence before
18 the Commission, and he has made a convincing case for
19 the argument that this meeting was at least technically
20 unlawful by virtue of being ultra vires in the way that
21 it was called.

22 Mr Robinson also decided not to take part, although
23 his deputy did remain and made clear that his opposition
24 and indeed her own remained unchanged.

25 That reconvened meeting on the afternoon of

1 9th January went over the same issue again but reached
2 the conclusion sought by the Premier and the minister
3 for natural resources. Mr Handfield resigned his post
4 in disgust and he was later to say in a press conference
5 and before the Commission that this was was the latest
6 in a series of attempts by ministers to pressurise him
7 into hurrying decisions along and by implication to
8 reach conclusions that they wished to see.

9 So the relevance of the meeting to this Commission
10 is in some respects tangential, but it casts light,
11 I would submit, on the attitude of Cabinet to
12 development projects. The machinery of government is
13 not designed to move slowly simply for the sake of
14 moving slowly. It is designed to carefully test and
15 check ideas before there is a rush to judgment, and in
16 order to avoid ill thought-out projects being cobbled
17 together and undertaken at public expense.

18 The Cabinet response to being questioned in its
19 decision on development, even when those ideas are taken
20 on the hoof and without the benefit of proper
21 consultation, appears to be to apply pressure to
22 the individuals involved to bend to the will of Cabinet.

23 The scenario depicted in the lead-up on this meeting
24 is a simple example of a attempt by the Premier to bully
25 junior officials who were depicted as being obstructive

1 and dilatory in their approach. Although ironically,
2 the minister responsible, the minister for natural
3 resources, could, had he wished, simply have rejected
4 the planning board's first recommendation, but instead
5 there was an attempt to extract a dubious endorsement
6 for the government's position from the physical planning
7 board. The value of that endorsement is now, I would
8 submit, somewhat tarnished.

9 The attitude of Cabinet to the normal processes of
10 working is further highlighted in my submission by
11 reference to the scholarship programme, which was the
12 subject of a highly critical audit report, covering
13 the years 2006 to 2007. That gave a snapshot picture of
14 the regular overriding of the established policy by
15 ministers, interfering to ensure that certain persons
16 were granted scholarships. The assertions of all three
17 ministers involved, the Premier, the Deputy Premier and
18 the minister of education, to the effect that these were
19 all deserving cases, is, with respect, scarcely to the
20 point. If the public think and if the public are
21 encouraged to think by ministerial endorsement that any
22 system can be got round by a personal approach on
23 the part of a friendly politician, then the system
24 starts to unravel.

25 Instead of doing justice to the recipients, it does

1 injustice to those who don't have the ear of a senior
2 member of the Cabinet. It undermines any budgetary
3 control and it removes any form of true quality control.
4 The fact that the Honourable Lillian Boyce used
5 precisely this shortcut to get a scholarship for her
6 daughter would be a resigning issue for a minister in
7 any other mature democracy, and she seemed wholly
8 unfazed by the obvious conflict that occurred.

9 A further example, I would submit, of personal
10 intervention being allowed, which encouraged
11 the corrosion of the machinery of government, lay in the
12 provision of Crown land.

13 Notwithstanding the claims of the minister for
14 natural resources that there was a review process in
15 place for the equitable distribution of land, it clearly
16 emerged from the material provided for the Commission
17 that personal interventions by ministers were routine,
18 and a routine process whereby certain applications were
19 simply pushed to the front of the queue to ensure
20 approval.

21 The involvement of the minister himself in this
22 process explains why it persists, because a strong
23 disinterested minister exercising proper control over
24 his department would have sent back the requests to his
25 colleagues with the polite note to the effect that the

1 applicants should wait their turn in line.
2 Instead we saw individuals receiving preference
3 based upon who they know. Once again, the Honourable
4 Lillian Boyce is advancing a relative, this time for
5 the allocation of land. The irony that this was
6 the same brother who made \$1 million out of his earlier
7 land deal does not seem to have occurred to her.
8 The Deputy Premier is seen to be advancing the case of
9 companies in which he has a direct financial interest;
10 each of these documented in the papers provided to this
11 Commission by the ministry of natural resources.

12 Following the allocation to the Deputy Premier, he
13 requested and got land for those companies and on
14 the back of it he was able to obtain a large loan from
15 which he has drawn over \$1 million. Once again,
16 the self interest of ministers overlaps with the
17 willingness to undermine the proper processes of
18 government. Corners are always being cut.

19 Sir, with that, I would invite the Commission to
20 take a short break.

21 SIR ROBIN AULD: Yes, I think you should have one too. Five
22 to ten minutes.

23 (4.26 pm)

24 (A short break)

25 (4.35 pm)

1 MR MILNE: Sir, I turn next to the topic of the development
2 proposals touching upon Joe Grant's Cay. Having dealt
3 with the issues of conflict of interest, enrichments,
4 Crown land and failures to make proper declarations, in
5 the next few minutes I am going to be dealing with two
6 major items, one of them being Joe Grant's Cay, which in
7 my submission draw together elements of all of the
8 problems I have already touched upon.

9 In doing so I shall be submitting that there are
10 clear examples here of corruption in the heart of
11 government.

12 The issue of the development of Joe Grant's Cay
13 arose before the Commission in different ways, and in
14 two different contexts. The Commission has
15 a considerable volume of paperwork dealing with that
16 island and the decisions taken on its proposed
17 development.

18 These issues were originally raised during
19 the hearings with Chal Misick, the brother of the
20 Premier when he gave his evidence.

21 The Premier had been written to by attorneys Miller
22 Simons O'Sullivan, acting on behalf of Mr Arturo Malave,
23 a Venezuelan national known to the Premier.

24 The actual letter was from an attorney at that firm
25 named Neil Coles. Mr Malave, through Mr Coles, was

1 proposing a development of Joe Grant's Cay and he sought
2 government approval for the project.

3 The letter was dated 1st September 2006. It
4 indicated that Mr Malave was acting or proposing to act
5 through a company which was being formed, and that was
6 named the East Caicos Company Limited. The letter of
7 1st September, addressed to the Premier, said "your
8 recent discussions with our client".

9 The Premier was asked about this when he gave
10 evidence and he agreed that he may well have had
11 discussions with Mr Malave whom he knew, concerning
12 Joe Grant's Cay, prior to the 1st September letter.

13 Following from that letter, the issue of development was
14 placed before Cabinet and discussed on
15 18th October 2006.

16 Cabinet decided to approve in principle what was
17 termed a high-end resort project on Joe Grant's Cay.
18 That was to be developed by Mr Arturo Malave or
19 a designated company, presumably meaning by
20 that East Caicos Company Limited.

21 Various elements of the likely deal were included in
22 the Cabinet minute, including acceptance of an offer
23 made on behalf of Mr Malave to pay \$5 million over to
24 the Turks & Caicos Islands government upon completion of
25 the development agreement. TC Invest wrote to

1 Mr Malave's attorneys on 6th November 2006 to that
2 effect.

3 Matters became more complicated because a due
4 diligence report was carried out on Mr Malave,
5 presumably on behalf of TC Invest, to whom it was sent,
6 and that due diligence report painted him in less than
7 glowing colours.

8 The Premier was also asked about this. He admitted
9 that he was a friend of Mr Malave. He could point out
10 the report did not say that Mr Malave actually had any
11 criminal convictions and indeed it did not. The Premier
12 told the Commission he was introduced to Mr Malave by
13 an executive from the Carnival Corporation and indeed
14 that the Premier had no cause to be suspicious about
15 Mr Malave's past business dealings.

16 He told the Commission that in the end
17 the government did not enter into a development
18 agreement with Mr Malave due to the diligence report and
19 due to his inability to perform. Those were the words
20 used by the Premier.

21 Now, it is relevant to note, sir, we will come back
22 to this, that if one does an internet search simply
23 using the name of Arturo Malave, it quickly reveals
24 quite a number of adverse references which suggest
25 activity in fraudulent matters by Mr Malave. There may

1 be nothing in these. We cannot say. But it is clear
2 that Mr Malave was attracting adverse publicity in his
3 own name over quite some period of time, and that might
4 have been a factor in what was to follow.

5 The issue of Mr Malave was also raised when
6 Chal Misick gave evidence before the Commission, because
7 he too had an involvement in the process. He told us
8 that he acted for Mr Malave, and upon Mr Malave's
9 instructions, he had established a company for him which
10 was in fact called Caicos Platinum Company Limited. He
11 later added that Mr Malave never actually paid him for
12 this service, but we know from company records that
13 the company had been incorporated on 30th October 2006
14 in the TCI. Only one share was ever issued and that was
15 held by Chal Misick's nominee company Windsor East
16 Limited, and his other nominee company,
17 Chalmers Management Limited, was the sole director.

18 Chal Misick also said that since Miller Simons
19 O'Sullivan represented Mr Malave in his development
20 ambitions, his involvement, Chal Misick's own
21 involvement, had been just to incorporate the company
22 and no more.

23 Chal Misick's view was that Arturo Malave had been
24 unable to pay some money by late November 2006 to the
25 government and therefore the offer of a development

1 agreement lapsed.

2 This echoed to some degree what the Premier had said
3 about not being able to perform. This, however, is not
4 reflected in the Cabinet minutes that were obtained, nor
5 is it reflected in the TC Invest letter. Of course
6 Chal Misick may not have had full access to that
7 information certainly at that time. In fact, in the
8 following year, 2007, there was a decision of the
9 Cabinet which set a deadline of 30th November 2007 for
10 certain actions to be taken. The deadline was not met.

11 By the late part of 2007, Mr Malave was said to have
12 dropped out of the picture.

13 Cabinet minutes and the TC Invest minutes for
14 November 2006 had set no deadline whatsoever. It may be
15 that the two issues have become confused in the evidence
16 but there seems to have been nothing that Mr Malave was
17 required to do that he failed to do in the latter part
18 of 2006.

19 Chal Misick was asked about the company he had
20 formed, Caicos Platinum Company, and he said it was
21 retained by him and ultimately used by other clients.

22 But his evidence is that Mr Malave was no longer
23 using it. What Chal Misick says about Arturo Malave
24 dropping out is demonstrably wrong and it is wrong on
25 the basis of other documentary evidence. The following

1 March, that is mid-March of 2007, Arturo Malave was
2 still involved, still bidding for Joe Grant's Cay, and
3 we know that because Neil Coles of Miller Simons
4 O'Sullivan was still writing to the TCI government,
5 stating that the funds were now in place apparently in
6 Hong Kong for the start of the development.
7 The Commission has that letter on file. It was sent
8 directly to the Premier. A copy of the letter was sent
9 to TC Invest. Interestingly and usefully for our
10 purposes, it was sent to TC Invest by e-mail, and we can
11 see the people to whom the e-mail is copied, which
12 include Arturo Malave and indeed his colleagues.

13 So we know that Mr Coles was writing on behalf of
14 Mr Arturo Malave because he was copying Arturo Malave
15 in.

16 What is also interesting about the letter that
17 Mr Coles was using is that in pushing the proposal for
18 Joe Grant's Cay, the heading he used was
19 Caicos Platinum Company Limited, the company formed by
20 Chal Misick. Not being used by somebody else, still on
21 the face of it being used by Mr Malave.

22 (4.45 pm)

23 This clearly suggests Mr Coles and presumably
24 Mr Malave still regarded themselves as players in
25 the game. They regarded themselves as involved and they

1 regarded themselves as still acting in March 2007 under
2 the Caicos Platinum Company corporate name.

3 We go back, sir, then to Chal Misick. Another part
4 of his evidence, he revealed that he had, at least for
5 a time, represented another man who was interested in
6 developing Joe Grant's Cay and who had requested
7 a company to be formed to pursue this interest.

8 Chal Misick was very reluctant to name this man. At
9 first he was referred to as Mr X. He was later revealed
10 by Chal Misick to be a man whom he called Paola Sepe.

11 I pause here to mention, sir, that we have found in
12 Cabinet minutes of 12th June 2005 that there was
13 a gentleman called Mr Paolo Pepe, who was made
14 a Belonger, and he was made a Belonger on the same day
15 that Mr Francesco Caltagirone was granted that status.

16 Whether Mr Pepe is the same man and indeed whether he is
17 connected to Mr Caltagirone, they both have Italian
18 names, we cannot say. We will stick with the title of
19 Mr Sepe, which we were given by Mr Chal Misick, because
20 it is the same gentleman, Mr Sepe who features in
21 a different context.

22 He gave a donation of \$50,000 to the Premier via
23 the accounts of Chal Misick on 8th December 2006, we are
24 told as a personal political contribution. In late
25 2006, on behalf of Mr Sepe, Chal Misick had formed

1 the company called Oceanic Development Limited. That
2 was incorporated 10th October, three weeks before he
3 formed Caicos Platinum Company, for Mr Malave.

4 Oceanic Development was also a company held entirely
5 by Mr Misick, no shares being issued to any other party.

6 So certainly for a while, Mr Chal Misick appears to
7 have been representing both Mr Malave and Mr Sepe, both
8 of whom were competitors for the prize of developing
9 Joe Grant's Cay. Chal Misick says Mr Sepe dropped out
10 of the race after a very short while. When he was
11 pressed on this, he said four to six weeks by the end of
12 November or mid-December 2006. Chal Misick indicated
13 that whilst Mr Sepe was involved, there were three other
14 people involved with him. Those three were the three
15 nephews of Chal and Michael Misick's, named Albright
16 Gardiner, Alwood Gardiner and Clifton Black.

17 Chal Misick indeed had gone to the trouble of
18 preparing a document which was said to be a declaration
19 of trust whereby he held the share, the single share in
20 Oceanic Development Limited on trust for the three
21 nephews but not, curiously, for Mr Sepe. The document
22 was signed by Chal Misick but it was left undated.

23 He was to tell the Tribunal, he was to tell us that
24 Mr Sepe lost interest, and as a result, the three
25 nephews dropped out. What their contribution to the

1 project was going to be remains completely obscure but
2 they apparently fell out of the deal with him.

3 There does not appear to have been any conflict that
4 bothered Mr Chal Misick when he was dealing with both of
5 these men. On the face of his evidence to the Inquiry,
6 the three nephews should never have cropped up again in
7 any shape or form because they had no further interest.

8 Chal Misick tells us later on, almost as soon as
9 Mr Paolo Sepe had been removed from the process, another
10 man named Don Gardiner turned up, also to be a partner
11 in the development of Joe Grant's Cay. So this is
12 a third or fourth, or indeed I suppose the sixth person
13 who wants to develop Joe Grant's Cay, all of them coming
14 through Chal Misick, and from that point forward,
15 Chal Misick, having left Mr Sepe behind, was now acting
16 for Mr Gardiner.

17 There are similarities in names, sir. They cause
18 confusion at times. Don Gardiner, we know now, is not
19 to be confused with Ricardo Don-Hue Gardiner. Don
20 Gardiner in this context is a gentleman who is a real
21 estate agent with Prestigious Properties, and we believe
22 that he is also the former Chairman, now the
23 Deputy Chairman, of the tourist board.
24 SIR ROBIN AULD: I am always muddled by these names. Was he
25 also a nephew of the Premier?

1 MR MILNE: I think in fact that was denied, sir. It was put
2 at one point that he was related, but the Premier denied
3 that there was a blood relationship.

4 SIR ROBIN AULD: I can see Ms Missick is saying I have got
5 that wrong.

6 MR MILNE: To add to his collection, Chal Misick then found
7 himself representing yet another potential developer of
8 Joe Grant's Cay, this time Dr Cem Kinay who was and is
9 the developer of Dellis Cay. Mr Chal Misick's
10 explanation is that someone working with Cem Kinay wrote
11 to him and told him Dr Kinay wanted to become involved
12 as the developer of Joe Grant's Cay. He said Cem Kinay
13 didn't mention Arturo Malave to him or indeed
14 Caicos Platinum Company, but that Dr Kinay stepped in,
15 using the corporate banner of Star Lions, or more
16 precisely, a company called The Star Lion Limited and
17 that as a result of these instructions that he had
18 received, Chal Misick was to write to the government
19 about the proposed development agreement for
20 Joe Grant's Cay. Indeed he appears to have done so. By
21 16th May 2007, the Cabinet was considering a letter from
22 Chal Misick.

23 The Cabinet minute, whereby they accept his
24 recommendation, is a curious document because of the
25 wording. What is requested is an amendment to

1 the earlier development agreement, that being
2 the development agreement with Arturo Malave, to change
3 the name for the developers rather than saying there are
4 new developers involved.

5 The names to be used are now recorded as being
6 Oceanic Development Limited and Star Lions Limited.

7 There is a problem, though, with this evidence, sir,
8 the evidence of Chal Misick. The problem arises in this
9 way. As I have already said, Chal Misick claims
10 Dr Cem Kinay made no reference to Caicos Platinum and
11 was using Star Lions from the outset.

12 But five days after that Cabinet meeting at which
13 Mr Chal Misick's letter had been considered, in a letter
14 written to the Premier, Mr Cem Kinay stated that he was
15 involved with Caicos Platinum. We must bear in mind
16 that Neil Coles was writing on behalf of Caicos Platinum
17 Company for Mr Malave up until March 2007. Dr Kinay's
18 letter is quite striking. It is written on the
19 letterhead of the O Collection, which is his hotel group
20 and it informed the Premier that:

21 "The O Property Collection, a leading developer in
22 the Caribbean, is currently working with Caicos Platinum
23 Company ('the company') for the development of
24 Joe Grant's Cay. Since December 2006 ... We have spent
25 considerable time with our technical advisers on

1 Joe Grant's Cay."

2 The letter goes on to set out the proposals it has
3 for the development. It even refers to a letter sent to
4 Caicos Platinum Company by the government, apparently on
5 1st December 2006, as a starting point.

6 This letter from Dr Kinay suggests in the strongest,
7 clearest possible terms that the O Collection has joined
8 forces with the Caicos Platinum company.

9 How this could be the case, and Chal Misick, who was
10 the founder of the Caicos Platinum Company, and indeed
11 a representative of Dr Kinay's interests, could be
12 ignorant of it, is hard to understand.

13 The obvious inference to be drawn from the letter
14 and the change of name of the developer is that through
15 Caicos Platinum Company Limited, Mr Malave was still
16 involved, even if his name had been taken off
17 the development agreement.

18 The public controversy surrounding Mr Malave's other
19 business activities might well be the reason why
20 the government wouldn't wish to be seen to be doing
21 business with him. If another developer was the public
22 face of the deal, that would make the process rather
23 less controversial.

24 The adverse due diligence report which we have
25 referred to was prepared and sent to TC Invest on

1 18th December 2006. The Commission has seen no
2 correspondence at all, no Cabinet minutes to suggest
3 that that adverse report was the reason for a blocking
4 of the development deal.

5 Indeed, as we have already noted, there is no
6 deadline for him to have missed. The letters are coming
7 into government from Mr Neil Coles. Nothing is going
8 back saying we will not do business with Mr Malave
9 because of the due diligence report.

10 His name, however, fades into the background with
11 the change of names on the development agreement.

12 Matters unfortunately become even more obscure
13 still, because Dr Kinay wrote another letter but he
14 wrote this one to us. He wrote this one to the
15 Commission on 30th January this year, to describe his
16 involvement in these matters following mention of
17 Joe Grant's Cay in the hearings.

18 What Dr Kinay said on this occasion was as follows:

19 "In December 2006 I was informed by the Premier and
20 a number of government ministers that negotiations with
21 some developers for a proposed project on
22 Joe Grant's Cay had run into difficulties and that
23 Chalmers & Company was the law firm representing these
24 developers. We approached Chal Misick of
25 Chalmers & Company to ask how we might become involved.

1 Mr Misick informed us that the existing proposal to
2 government had been made in the name of a company called
3 Caicos Platinum, that the principals of
4 Caicos Platinum Company Limited were not in a position
5 to proceed, and there might be an opportunity for us to
6 step into their shoes. We did not know who those
7 developers were, we have not met them and we still do
8 not know what they were about."

9 The letter goes on to talk about being introduced to
10 the developer partner Mr Don Gardiner and of how
11 Chalmers & Co continued to represent Caicos Platinum
12 Company Limited over the following months.

13 Sir, this letter contradicts the other
14 documentation. The letter of May 2007 that Dr Kinay had
15 written to the Premier describing Caicos Platinum in
16 terms of a partnership is clearly at odds; one or the
17 other letter is not only wrong but is deliberately
18 misleading. Caicos Platinum was clearly still being
19 promoted by the attorneys for Mr Malave as late as
20 March 2007. If Dr Kinay was working with
21 Caicos Platinum, he would have been working with
22 Mr Malave and he would have to have known that. If he
23 was not, why was he saying that he was doing work --
24 working with them in May 2007 and quoting from a letter
25 that had been sent to them? If Dr Kinay is correct, and

1 the Premier asked him to get involved and to approach
2 Chalmers & Co, why was it that Chal Misick did not
3 mention that?
4 Dr Kinay said that Chal Misick was the lawyer for
5 the developer. Chal Misick on the other hand said he
6 only established the shelf company for Mr Malave and
7 the rest of the work was being done by Miller Simons
8 O'Sullivan. So which of those two, one must wonder, is
9 the truth? It is quite clear that Miller Simons
10 O'Sullivan were on record for Caicos Platinum and not
11 Chalmers & Company because Miller Simons were writing
12 the letters, not Chalmers & Company. Why would Dr Kinay
13 claim otherwise?

14 These questions, I am afraid, sir, hover over this
15 without proper answer. Dr Kinay says Chal was telling
16 him that the principals were not in a position to
17 proceed and yet we know Miller Simons were saying
18 the very opposite to the Premier and to TC Invest. It
19 is also difficult to understand how, when TC Invest
20 wrote to Mr Malave on November 2006 offering
21 a development agreement, that if Dr Kinay is correct,
22 the parties were concluding it was doomed to failure
23 a matter of only three or four weeks later, before there
24 was even a chance to get the project off the ground.

25 I would submit that the story that is being spun out

1 to the Commission by Chal Misick and now by Dr Kinay is
2 riddled with inconsistencies and contradictions. It
3 does not bear the hallmarks of veracity.

4 Chal Misick in his evidence vacillated as to the
5 extent he was representing Dr Kinay. He was asked if he
6 was representing the doctor in May 2007 and he said that
7 Misick & Stanbrook were acting for Dr Kinay at that
8 stage, but he did accept that by 2nd October 2007, he
9 was acting on behalf of Dr Kinay when he sent a letter
10 to TC Invest attaching for the first time proposals for
11 the development of Joe Grant's Cay.

12 In that letter Chalmers & Co were put forward as
13 the contact point and he described the project as being
14 the Star Development Limited.

15 In fact by this stage, by October, this was to be
16 promoted under the company name of Star Platinum Island
17 Limited. The repeated use of the word "platinum" in the
18 title may only be a coincidence. We cannot say. This
19 was another company set up by Chal Misick on
20 20th September 2007 and indeed a series of related
21 companies were established bearing similar names in
22 the following weeks and months.

23 (5.00 pm)

24 Largely it can be categorised this way; the other
25 companies were subsidiaries of Star Platinum Island

1 Limited. Star Platinum Island itself was owned by these
2 companies. These are quite important. The division of
3 shares in Star Platinum Island Limited was put in place
4 on 1st October 2007 and 600 shares were created.

5 They were split up three ways. Oceanic
6 Development Limited, which we have heard of before, held
7 200 shares; The Star Lion Limited took 340, so slightly
8 over 50 per cent. The remaining 60 shares went to
9 a company called Maya Holdings International Limited.

10 One curious aspect to the letter that was written in
11 October 2007, since it was written by Chal Misick, was
12 why it should contain the assertion, which it did, that
13 Dr Kinay was, as he put it, "in the process of
14 identifying one or more Belongers who are able and
15 willing to participate in the project".

16 This statement made no sense if Chal Misick was
17 telling the truth and Don Gardiner had already been
18 involved since the previous year.

19 In my submission, sir, Chal Misick, when he was
20 taxed on this point, failed to provide any proper
21 clarification on it. Indeed, Dr Kinay was to receive
22 Belonger status himself by November 2007, so
23 the following month.

24 If we move forward from there to June 2008.
25 Chal Misick is asked by TC Invest to provide the names

1 of the principals behind the project that is being
2 promoted, since TC Invest at this stage only know
3 company names.

4 Chal Misick wrote to TC Invest on 3rd June. He said
5 in that letter, which he signed himself, that the
6 beneficial owners of this project were Dr Kinay through,
7 as he described it, Maya Limited.

8 Dr Kinay, he said owned 50 per cent through
9 Maya Limited. Nothing about Star Lions at that point.
10 He said Oceanic Development Limited was owned by his
11 three nephews, Albright, Alwood and Clifton and they
12 owned 50 per cent of the project.

13 It would seem that not only did he write that in the
14 letter, but he forwarded to TC Invest because they in
15 due course provided it to the Commission, the undated
16 declaration of trust he had put together for his nephews
17 on a previous occasion, saying that he was holding
18 the share in Oceanic Development for them.

19 The proportions of ownership clearly don't reflect
20 the actual split of shares in Star Platinum Island
21 Limited. Chal Misick clearly got that wrong. He now
22 says that the names he put in the letter were an error
23 because the old declaration of trust had been left in
24 the file and he pulled it out and wrote a letter based
25 upon it. This explanation coming from Chal Misick is,

1 at the very least, sir, bizarre.

2 For an attorney to completely forget who his clients
3 are is strange enough. For the attorney to forget
4 whether or not his nephews are his clients makes it even
5 stranger. For the file that he works from to contain
6 a trust document that is wholly out of date, that is
7 apparently invalid and irrelevant, for that trust
8 document to be relied upon in writing, copied and sent
9 off with what was an obviously important letter, that
10 letter then to be signed and sent by the senior partner
11 makes this bizarre beyond belief.

12 That error, which he says it was, wasn't corrected
13 for some three months until October of 2008. Chal
14 Misick now produces to the Commission a declaration of
15 trust in very similar terms to the one his nephews had,
16 but this one is in the name of Don Gardiner and it bears
17 the date 16th November 2006. He says it existed all
18 along and it was always in the file, but of course there
19 is no independent evidence of that assertion.

20 The name of Don Gardiner does not appear in any
21 other contemporary document before it was notified to
22 the Attorney General's office on 27th October 2008.

23 Dr Kinay's letter does not refer to Don Gardiner in
24 May 2007, although if we believe Chal Misick, he was
25 working with him by that stage.

1 Don Gardiner has nothing to do with Caicos Platinum.
2 Don Gardiner, if anything, is to do with
3 Oceanic Development.

4 All of this makes no sense at all. It bears
5 the hallmarks of people lying to the Commission.

6 Both the Premier and Cem Kinay, of course, have
7 added their voices to the claim that Mr Gardiner was
8 always going to be the developer partner. Neither has
9 provided any documentary evidence of his earlier
10 involvement.

11 I should add one small point that I said a few
12 minutes ago, when asked about the dropping out of
13 Mr Sepe, who was in joint business with the three
14 nephews, Chal Misick's answer was that he had dropped
15 out by the end of November or by mid-December.

16 If that were true, then there would be no need in
17 mid-November for Don Gardiner to suddenly take over at
18 the helm of Oceanic Development or to become
19 the beneficial owner, because the three nephews with
20 Mr Sepe were still the beneficial owners in
21 mid-November. So again, there is contradiction upon
22 contradiction within the very evidence presented to us.

23 The need for a local partner has been touched upon.
24 This, I would submit, raises suspicions. If Dr Kinay
25 was to be the developer, he had all the expertise he

1 needed. He developed Dellis Cay or was in the process;
2 he has the credentials, which have never been doubted,
3 for the development of hotels and resorts. He had
4 the wherewithal, he had the money, the backing that he
5 needed to carry out the project. He could raise
6 the finance.

7 The involvement of another party in this project,
8 who had no significant expertise, seems completely
9 otiose.

10 When that party from the island is being given
11 a large proportion of the shares for no financial input
12 at all, one must read it as being effectively a gift to
13 them of property or equity to the value of several
14 million dollars.

15 When the person who is being introduced as the local
16 partner, the person who is in that lucky position is
17 related to or is close friends with the Premier, one is
18 entitled to ask whether that person is not themselves
19 merely a stooge, not merely a front man for the Premier
20 himself.

21 SIR ROBIN AULD: This is a long and tortuous tale with many,
22 many puzzles and contradictions and apparent lies on
23 behalf of various persons, but what is Mr Chal Misick up
24 to in a sentence? Is he casting around for suitable
25 Belonger stooges to generate a flipping or series of

1 flipping transactions?

2 MR MILNE: No, sir, it is a longer project than that,

3 I would submit.

4 SIR ROBIN AULD: What is he up to there?

5 MR MILNE: In my submission, what emerges from this is that

6 when Joe Grant's Cay was to be developed, what it came

7 down to was that a person, a local was to be inserted

8 who would be sympathetic to, useful to the government,

9 particularly, I would submit, useful to the Premier and

10 the initial aim was that it would be the three nephews

11 of the Premier and Chal Misick.

12 Their names went on the Oceanic Development

13 statement of trust, and when it became clear that there

14 would be political embarrassment at it being so

15 obviously a close link, Mr Don Gardiner was substituted.

16 SIR ROBIN AULD: So it is finding a suitable Belonger to do

17 not the Premier's will, necessarily, but to certainly

18 favour him in the transaction that was to take place.

19 MR MILNE: To take 50 per cent or a large proportion of the

20 equity in place of the Premier is what we submit.

21 SIR ROBIN AULD: Mr Chal Misick is the mastermind --

22 MR MILNE: He is, sir.

23 SIR ROBIN AULD: He is the man who is...

24 MR MILNE: It is my submission, sir, that all of the

25 pointers here indicate that the declaration of trust,

1 which purports to be dated 16th November 2006, that is
2 a forgery created at a much later date, in June of 2008,
3 Chal Misick did not make the bizarre and extraordinary
4 error of naming his nephews as partners. He believed
5 they were to be the partners. When it was decided they
6 were not, suddenly they had to be removed, effectively
7 written out of the history and Don Gardiner written in
8 and that is how it has come about. It is my submission
9 that the Premier and unfortunately Mr Cem Kinay appear
10 to be lending themselves now to the false story in order
11 to try to make it seem reasonable.

12 SIR ROBIN AULD: To see the transaction to its end.

13 MR MILNE: Sadly so.

14 SIR ROBIN AULD: Thank you. That's helpful.

15 MR MILNE: I was about to say the strong suspicion that
16 surrounds the development is that the involvement of
17 those nephews became politically embarrassing, and
18 Mr Gardiner, as I would phrase it, was parachuted into
19 the deal at a late stage to take their place. I cast
20 very strong doubts indeed on the authenticity of the
21 declaration of trust. I will submit that Chal Misick's
22 explanation in respect of Joe Grant's Cay is
23 contradictory, and in parts it is simply
24 incomprehensible. He says he has represented a wide
25 variety of people who were competitors for the valuable

1 prize of being granted the development and the list just
2 seemed to keep growing, sir.

3 We have to bear in mind that in the middle of all
4 this confusion and contradiction, Chal Misick
5 had quietly taken receipt of \$50,000 from Paulo Sepe on
6 8th December 2006 on behalf of his brother, the Premier.
7 He also took receipt of a secret donation of half a
8 million dollars for the Premier from Dr Kinay on
9 9th January 2007.

10 We raised this issue. The Premier in a late
11 statement to us sought to deny the letter that this
12 latter payment was a bribe. He says:

13 "At the time of the contribution in January 2007,
14 Dr Kinay, a shareholder in Turks Limited, was not even
15 involved in the Joe Grant's Cay development proposal."

16 Both of the letters from Dr Kinay make quite clear
17 he was involved from December. So that is clearly
18 wrong, and even a short consideration of the papers show
19 that the Premier must have known it was wrong. We say
20 it is only one incident of many which the Commission has
21 been told lie upon lie, and we will have to consider, I
22 would submit, sir, very carefully, why it is we are
23 being lied to about this project and who the ultimate
24 beneficiaries of it would be.

25 Sir, I am going to turn to a different aspect of

1 Joe Grant's Cay and that is to do with the price of
2 land.

3 Because Joe Grant's Cay came before the Commission
4 in a wholly different context when in 2008,
5 the government had to give consideration to the
6 provision of land for the deal. It was a valuation
7 undertaken by the chief valuation officer, Mr Shaaban
8 Hoza, in November 2006 when he valued the whole of the
9 island. He assessed that land as being worth somewhere
10 between \$230,000 to \$330,000 per acre. He stated that:

11 "It is my opinion that, with the above assumptions
12 in mind, the market value of the freehold interest in
13 the land comprised in the Joe Grant's Cay is represented
14 in \$230,000 per acre (or \$145,000,000 for the whole
15 Cay). This figure compares favourably with total
16 project costs which are estimated at \$500,000,000."

17 That valuation, sir, was addressed to
18 Mr Conrad Higgs of TC Invest. Mr Hoza had been told
19 that an investor group was interested in undertaking
20 an ultra high-end development. Mr Hoza, not
21 unreasonably, seemed to regard that snippet of
22 information as being a bit thin on detail. Nonetheless,
23 he gave his best assessment and he indicated that
24 the purpose of the valuation -- for the purpose of
25 preparing the report, he had actually visited

1 Joe Grant's Cay. The development discussed was
2 presumably the original Mr Malave proposal as TC Invest
3 were writing to Miller Simons O'Sullivan about those
4 proposals on the day before Mr Hoza had finalised this
5 valuation.

6 Sir, the valuation was never acted upon. Indeed, it
7 doesn't seem to have been communicated to the developer.
8 We can't say one way or the other, but nobody mentions
9 it again. There is no indication. The value that was
10 placed on it then would have lapsed in any event. All
11 of the documents that we have seen from the valuation
12 department not unreasonably carry the rider to the
13 effect that they have a six-month shelf life beyond
14 which they should be regarded as unreliable.

15 June 2008, Mr Hoza is again asked to value
16 Joe Grant's Cay. He prepared a report on 10th June,
17 again addressed to Mr Higgs at TC Invest.
18 The parameters on this occasion are slightly different.
19 The valuation that he was asked to give was limited to
20 a particular 300 acres. He was told of the hotel,
21 villas and condominiums, these are the ones discussed in
22 Chal Misick's letter of 2nd October the previous year
23 sent on behalf of Dr Kinay, and indeed the valuation put
24 on this time for the 300 acres produced a global figure
25 of about \$75 million, 300 acres being just under half of

1 the cay as a whole.

2 Three days later Mr Hoza was busy producing two
3 further valuations. These were addressed to
4 the Honourable McAllister Hanchell, who is minister for
5 natural resources.

6 (5.15 pm)

7 Mr Hoza refers in his reports to having heard twice
8 from the minister.

9 Sir, the gap in between the correspondence has now
10 come to light. We have seen some e-mails between
11 the two men. Following a request that was made at
12 5.18 pm on Thursday 12th June for sight of his valuation
13 report, Mr Hoza sent it to the minister but he didn't in
14 fact send the report back until 8.35 the next morning.

15 The Honourable Hanchell wrote back a few minutes
16 later by e-mail at 8.59 in the following terms.

17 " I am in receipt of your valuation report and make
18 reference of the non-publication clause."

19 Those words, "non-publication clause" are
20 capitalised in bold and underlined. The e-mail went on:

21 "We respectfully request the actual market value of
22 the raw land in its present state."

23 Why the minister thought it was so necessary to
24 stress the non-publication clause is not clear. Mr Hoza
25 had inserted and always inserted that phrase in

1 valuation reports. He would be perfectly well aware of
2 the need for confidentiality in his work.

3 There was another e-mail or it appears, sir, to have
4 been e-mails crossing one another, not necessarily
5 answering one another.

6 But an e-mail on the morning of Friday, 13th June
7 sent by the minister to Mr Hoza at 8.27 am. This is
8 before he had received the report requested the night
9 before. Indeed he sent other e-mails, I won't trouble
10 the Commission. They appear to cancel each other out.
11 Mr Hoza at 9.13 had sent a further reply to the
12 minister, not surprisingly expressing a degree of
13 confusion.

14 And he was asking that his instructions be
15 clarified. He said:

16 "The value for land is determined by forces of
17 demand and supply for goods and services. In trying to
18 satisfy this demand suitable land for development is
19 sought after. This means that the demand for suitable
20 land is derived demand."

21 That is a slightly confusing last sentence, sir, but
22 that is verbatim how it was put. He indicated that he
23 was waiting for further instructions. Whether he
24 received any, we cannot say. There is no obvious
25 correspondence. Indeed by then he would have had

1 the request -- the request was made by the Honourable
2 Hanchell for a further report.

3 That request was a tall order because it sought
4 a further valuation for the raw land in its present
5 state the same day.

6 Mr Hoza to his credit produced two reports that day.
7 So he rather rose to the challenge. He set out in one
8 of those the value of the land as if for agricultural
9 use. In the second he set out the value of the land on
10 the basis of commercial use. In each case, at the
11 specific request of the minister, he addressed four
12 specific parcels of land.

13 In respect of agricultural use, he valued them
14 together collectively at \$26,766,000. The commercial
15 use, he said the value was \$89,068,000.

16 It is a remarkable difference in the two reports and
17 they of course are clear evidence, that in the eyes of
18 the profession valuation officer, that the use to which
19 land is being put makes all the difference, I would
20 submit, to the value it is going to achieve.

21 The Honourable McAllister Hanchell was later to say
22 that he had not actually seen the report referring to
23 agricultural use. It was clearly prepared at the same
24 time as the other one. It would appear that he did
25 receive the report touching on commercial use.

1 We would have expected them to have been sent
2 together, received together, but be that as it may, it
3 is clear that this last weekend, literally within
4 the last few days, he was requesting the agricultural
5 report, as we will call it, from Mr Hoza and he was sent
6 it.

7 I mention that only for this reason, sir, because
8 there is clearly an alteration in the report, that
9 the agricultural one has been amended.

10 SIR ROBIN AULD: To what effect? To a significant effect?

11 MR MILNE: It simply explains in the alteration why it
12 should be that agriculture had been referred to and that
13 Mr Hoza regarded "raw land" -- he obviously didn't
14 recognise it as a phrase that he felt happy with, but he
15 thought "agricultural" was the closest approximation he
16 could get to simply raw land.

17 Back in June 2008, on 13th June, before he had even
18 received the 10th June report sent to him on the morning
19 of the 13th, the Honourable Hanchell had already sent
20 an e-mail to a local firm of valuers and surveyors based
21 in Providenciales called BCQS.

22 That e-mail, sent on the Friday, asked for
23 a response by close of business the same day.
24 Unsurprisingly BCQS were unable to provide a report in
25 the space of a few hours since they had had no prior

1 warns. They were able to provide a report by 17th June,
2 the following Tuesday.

3 The e-mail he had sent to BCQS referred to an
4 attached map and it sought a valuation again on the
5 basis of raw land, his expression.

6 Whilst reference was made to the parcels, the words
7 "hotel" and "tourism related villas" were mentioned,
8 there was no indication as to the development agreement
9 or indeed the detailed proposals for the valuation.

10 Sir, BCQS admitted when they prepared their report
11 they had not even had time to visit the site at
12 Joe Grant's Cay, given the rushed nature of the
13 instructions.

14 They adopted a valuation approach which was to make
15 comparisons with other islands and the rates achieved on
16 those other islands per acre. Indeed that was
17 the approach taken by Mr Hoza.

18 When the Honourable McAllister Hanchell gave
19 evidence here, he criticised Mr Hoza for making
20 inappropriate comparisons between Ambergris Cay and
21 Joe Grant's Cay. In fact, sir, on closer examination,
22 this is not the case.

23 A closer reading of Mr Hoza's report shows he was
24 using Middle Caicos as a comparator. Both of his
25 13th June reports used Middle Caicos as the best point

1 of comparison. BCQS took the same line. They also
2 looked for analogous sites in East Caicos and
3 Middle Caicos. Mr Hoza was able to identify a very
4 similar parcel to the land being looked at on
5 Joe Grant's Cay, which was on sale at the time in
6 Middle Caicos for \$364,000 per acre, suggesting that
7 there was a very buoyant price to be had for that type
8 of land.

9 But there was a grave difference between
10 the assessments undertaken by BCQS and the assessment
11 undertaken by Mr Hoza. That lay in the comparison
12 prices by date. BCQS, looking at Middle Caicos and
13 East Caicos, chose prices that had been achieved in
14 2007, the year before, 2006, two years before and as far
15 back as 2004, so some four years prior.

16 One bears in mind the six-months time limit on those
17 evaluations. The comparators that Mr Hoza used were for
18 prices achieved, that is sales made in April and May of
19 2008, which was a matter of weeks before the current
20 valuation.

21 The minister tells us that he only had the second of
22 Mr Hoza's two valuations, that is the 89 million
23 valuation, and that of BCQS; BCQS, using, I would
24 submit, out-of-date figures, valued the same parcels
25 that Mr Hoza set at 89 million, as being 7.7 million.

1 One might have expected that the minister would have
2 wished at least to have used Mr Hoza's valuation as
3 a negotiating tool. He didn't.

4 Because on 18th June 2007 Cabinet approved the sale
5 of land on Joe Grant's Cay using precisely the figures
6 provided by BCQS; that means that the land was sold for
7 under 9 per cent of the value advised to Cabinet by
8 their own valuation officer.

9 SIR ROBIN AULD: That is for the commercial valuation, about
10 one third of the agricultural valuation, even if that
11 had been taken.

12 MR MILNE: Yes. In fact, it was less than a third of the
13 figure if the land was turned over to cabbages and
14 sheep. The value they chose, they knew when they chose
15 it, had come from a surveyor who admitted he had not had
16 a chance to visit the site.

17 I would submit that valuer had not been given any
18 significant details of the proposed use and who
19 demonstrably used out-of-date comparisons for assessing
20 value.

21 I pause here, sir. I am not seeking to make
22 criticisms of BCQS who, in my submission, were put in
23 probably an impossible situation at very short notice
24 indeed. What is elusive about this whole process is
25 the complete frantic rush that was imposed for no true

1 evident purpose, that everything had to be done by some
2 deadline that had been invented by the minister. That
3 they had to get the valuation in within a matter of
4 hours and if not hours, certainly within days, and the
5 decision had to be made.

6 Joe Grant's Cay by this stage was already well
7 advanced. The need for a rush within a matter of days
8 just doesn't seem to spring from the papers, but it was
9 imposed nonetheless.

10 At that Cabinet meeting, having dismissed their own
11 valuation officer's figures, for good measure
12 the Premier chose to criticise the valuation officer for
13 his inconsistency, although the reports we have seen
14 appear to be actually remarkably consistent, at least
15 with one another.

16 We asked the Honourable Hanchell about this when
17 giving evidence. He said he wanted a simple valuation
18 for the land. His attitude appeared to be that the land
19 must have some single intrinsic market value, although
20 the evidence of the reports, the common knowledge as to
21 the flexibility of land prices in the islands would
22 demonstrate to most informed people this cannot be
23 the case. There is no single price for a piece of land.
24 It is always negotiable. One might expect the minister
25 of natural resources, who is responsible for land, to be

1 alive to this issue, or at least to place his trust in
2 the professional advisers that he had employed within
3 his own ministry. He accepted that Mr Hoza was still in
4 post and had not been dismissed.

5 When he was asked about negotiating the best price
6 for Crown land, he commented:

7 "Our position is that we don't want to be in
8 a position to negotiate the government land. We want to
9 be in a position of the value of the market -- the value
10 of the land in its present state."

11 Mr Hanchell was to claim that there had been
12 a complaint about the valuation by the buyer.

13 He said:

14 "In this particular case, when the valuation would
15 have been communicated to the developers, at some point
16 in time developers will have challenged the evaluation,
17 saying that they thought it was too high. My
18 instructions would have come from Cabinet to ask Mr Hoza
19 to kindly review his evaluations."

20 This is, sir, untrue. It is deeply misleading.

21 There is absolutely no evidence at all that
22 the November 2006 value was ever communicated to
23 the buyers.

24 SIR ROBIN AULD: We had evidence in the last few days of
25 a letter which -- it is not quite a challenge to the

1 valuation, but it was a challenge to the valuation being
2 changed at a late date. It is a slightly elliptical
3 complaint about the valuation -- a change of that sort.

4 MR MILNE: I am going to come to that, sir, because
5 the letter reads -- the e-mail which it was, Mr Owen
6 Foley, bears careful reading.

7 The November 2006 valuation was confidential. We
8 have no reason to believe it was -- that confidentiality
9 was ever breached. The June 10th valuation, which was
10 the most up-to-date one, was only communicated to
11 the minister in the early hours of 13th June, and before
12 it even reached him, he was seeking a second opinion.

13 There is absolutely no basis to believe that the
14 June 10th valuation had been sent on.

15 (5.28 pm)

16 (A short break)

17 (5.37 pm)

18 SIR ROBIN AULD: Ladies and gentlemen, I think we will
19 resume, or we will never get home tonight.

20 MR MILNE: May it please you, sir. Sir, for clarification,
21 there was correspondence which the minister put before
22 the Tribunal a couple of days ago, and it was
23 represented to the Tribunal by the minister that this
24 was evidence that the developers were challenging
25 the valuation, but a careful reading indicates that that

1 is not the truth.

2 What happened was the previous November,
3 the government had approved a figure for the sale only
4 of the hotel on Joe Grant's Cay of some \$2 million.
5 That figure apparently was conjured up without bothering
6 with any sort of valuation. There was a deadline to
7 that -- to the offer attached to that sale which was
8 30th November. The government then continued to
9 negotiate with the developers. The 30th November
10 deadline passed. This is the one that I think Mr Misick
11 either accidentally or deliberately confused when
12 Mr Malave was in the picture.

13 Dr Kinay and those advising him, Misick & Stanbrook,
14 were given, it would seem, the impression that the
15 30th November deadline was not important to the
16 government.

17 However, having passed the November 30th deadline,
18 when dealing with the Attorney General's office,
19 the Deputy Attorney General quite rightly pointed out
20 that she was not authorised to extend that deadline
21 unilaterally, and the matter would have to go back
22 before Cabinet and effectively the deadline had been
23 missed.

24 The e-mail from Mr Owen Foley is complaining,
25 perhaps not unreasonably, that he had not been given to

1 understand that the deadline would be stuck to. Of
2 course he was complaining to somebody who had no
3 authority to change the position.

4 The e-mail does not deal with the issue of any of
5 Mr Hoza's valuations, and this is the point I seek to
6 make. Because not -- the only valuation Mr Hoza had
7 done was the valuation of 2006. That does not feature
8 in any of the correspondence. There was no challenge.
9 The minister is completely wrong when he suggests that
10 there was a challenge to that valuation because that
11 valuation did not deal with the hotel.

12 The valuation of 10th June similarly was
13 confidential and was not shown to the other side.

14 So what is the point I make here, sir?

15 The point is simply this: that the minister is
16 misleading the Commission when he says that
17 the valuation had been challenged in any way at all.

18 The minister is misleading the Commission when he
19 suggests that the Cabinet had required a second
20 valuation. The Cabinet had not had to deal with this
21 matter, they had not had to return to it, there had been
22 no challenge for them to consider.

23 It was the minister's decision and his alone, when
24 he saw there was a valuation coming through, to get
25 a second value from BCQS.

1 It appears to be the minister's decision and his
2 alone to opt for the lower one without any form of
3 negotiation.

4 There is no complaint made. Indeed, when Mr Foley
5 had corresponded with the Deputy Attorney General, she
6 said that she could find no valuation to support even
7 the hotel price of 2 million. So she clearly has seen
8 nothing from Mr Hoza.

9 When the matter did come before the Cabinet on
10 18th June, it was raised by the Premier, who appears to
11 be taking an interest in it. He raised it only as
12 an oral mention. We must assume he had a personal
13 interest. The fact that the land that we were talking
14 about, sir, the larger part of Joe Grant's Cay, was
15 being sold to a man who had given him a secret gift of
16 half a million dollars may or may not have influenced
17 him. It did not influence him enough to declare that
18 link or to withdraw from the discussion.

19 In my respectful submission, it screams out for
20 declaration on the part of the Premier, but as ever, his
21 secret political donations merit not a word.

22 The decision is then taken by the Cabinet to go with
23 a value significantly lower than even the agricultural
24 value placed on it by Mr Hoza.

25 Even if on that valuation, if the Crown had sold

1 this land for agricultural purposes, they could
2 immediately have made \$20 million more. That would have
3 far outweighed, I submit, any medium-term gain from
4 Joe Grant's Cay being developed, at least for
5 the country.

6 One might have thought that with a value of
7 89 million, they could at least have negotiated a better
8 price. They do not negotiate, they capitulate and they
9 capitulate without a fight.

10 One might have thought that a value of 89 million
11 might give them pause for thought. It did not. This is
12 a Cabinet selling a valuable large-scale one-off
13 property for a pittance. It is the equivalent of giving
14 away the family silver for trinkets and beads.

15 The question that screams out from these papers, sir, is
16 why? Why should it be that they would be desperate to
17 get the lowest possible value when selling?

18 My submission, sir, the only reasonable explanation
19 is that they were giving this away essentially to
20 a friend who would benefit enormously. Dr Cem Kinay
21 would know the true value of the land and he would reap
22 the true value of the land, and the Belonger partner,
23 not that one was necessary, would become massively more
24 enriched, and through that route, I would submit
25 insiders in the government, and probably the Premier

1 himself.

2 I turn now, sir, to Salt Cay.

3 The issue of Salt Cay is a recurring theme in the
4 submissions received by the Commission of Inquiry. It
5 is clearly an area of great concern to the inhabitants
6 of the TCI. Its renowned natural beauty, the fragility
7 of its environment and indeed the historical
8 significance of the island make any attempt to develop
9 the island a topic of serious debate. We do not as
10 the Commission seek to insert ourselves into that
11 debate, but we have to consider the handling of the
12 proposed development, insofar as it casts light or may
13 cast light upon the issues at the heart of this Inquiry.

14 (5.45 pm)

15 For the purpose of the hearings we focused on one
16 aspect in particular. That was the proposed Salt Cay
17 Golf Club. That proposal was raised for the first time,
18 as we now know, on 1st August 2006. Mr Mario Hoffman,
19 the selected developer of the island, wrote directly to
20 the Premier seeking a parcel of land on which to build
21 a golf course. The letter was in formal terms. It
22 sought a long-term lease on land to construct
23 the course. It specified 222 acres on a long-term
24 99 year lease with the Premier accepting that in
25 previous discussions, Mr Hoffman had actually raised

1 this issue with him.

2 The letter itself is essentially the end of
3 a process whereby there had been discussion and it
4 simply qualified and quantified the nature of the
5 discussion that had previously occurred.

6 We can assume from that, of course, the arrival of
7 the letter wouldn't be a great surprise to the Premier.

8 The letter said Salt Cay Golf Club Limited would be
9 established to run the course but it made no mention of
10 who would be involved beyond that.

11 That letter was shown to the Cabinet meeting
12 the following day.

13 Clearly there was no chance to perform a formal
14 assessment of the proposal. The Cabinet immediately
15 approved it in principle and the Premier wrote back to
16 tell Mr Hoffman the news on 8th August.

17 TC Invest, as usual, engaged the chief valuation
18 officer, Mr Hoza, to undertake a valuation of the site.
19 He did that. He said the site was worth 7.76 million.

20 By 29th November 2006, the Cabinet had decided that
21 following a request for an extension, they would grant
22 instead 238.72 acres, so slightly more, and this would
23 be done on their decision at a peppercorn rent of only
24 \$1 per acre per year.

25 At the same time it confirmed Belonger status for

1 Mr Hoffman and said that this verified the Belonger
2 participation required.

3 So by that time Mr Hoffman had what seemed to be
4 a very good deal. He had his full golf course for
5 a tiny outlay. His resort and spa development would
6 have a valuable extra resource that would make marketing
7 the development far more attractive.

8 Of course, following the letter of 1st August,
9 the establishment of Salt Cay Golf Club had gone ahead
10 in any event, almost immediately after the Cabinet
11 decision on 4th August and indeed even before
12 the Premier wrote to Mr Hoffman. Maybe he had been
13 telephoned, maybe he was just naturally optimistic about
14 the Cabinet's decision. Whatever, the company was set
15 up.

16 The establishment of the company was carried out by
17 Chalmers Misick & Co using his nominee company,
18 Windsor East Limited.

19 Eventually, on 15th December 2007, the company was
20 put into motion. Windsor East were appointed as company
21 secretary and director and Mr Stephan Kral of Salt Cay
22 Devco became the second director. Effectively, then,
23 Windsor East means Chal Misick. So Mr Chal Misick and
24 Stephan Kral, both directors.

25 More important is the division of shares. Half went

1 to Mr Hoffman's Cyprus-based holding company, the other
2 went to a company with an innocuous title,
3 Business Ventures Limited. This was just another
4 holding company, but this holding company held shares
5 for Chal Misick. Mr Chal Misick had just been given
6 half of a golf club. He therefore owned half of its
7 assets.

8 The following year the Premier was to approach
9 J&T Banka in Prague for a loan of \$6 million. The loan
10 would in fact be granted to both him and his wife. She
11 signed the form. She has told the Commission she didn't
12 understand what she was committing herself to. That
13 loan was secured on the shares held by Chal Misick in
14 the golf club, suggesting that in the eyes of the
15 lending bank at least, a 50 per cent share in Salt Cay
16 Golf Club was good security for \$6 million.

17 Chal Misick was told about that. He expressed no
18 surprise and seemed unperturbed by the value of his free
19 gift.

20 Of course the Premier came to give evidence. We
21 asked him whether he knew of his brother's involvement
22 in the Salt Cay Golf Club project when he and
23 the Cabinet approved the lease to the new company. He
24 said no, he didn't. He could not recall when he first
25 became aware of it. He tried to suggest and indeed he

1 has argued since that his brother must have become
2 involved at a later stage.

3 Chal Misick was asked about it. He said:

4 "I was invited by the proponents to get involved."

5 His words. When asked whom he meant when he said
6 "proponents", he meant Stephan Kral. He said he had
7 been involved as an attorney and negotiated with
8 the architect on behalf of the company which led to
9 the invitation for him to get involved in about November
10 or December 2006. He said he didn't have any dealings
11 with Mr Hoffman at all but purely with Mr Kral.

12 Both men appeared to be saying very much the same
13 thing. Unfortunately for them, this is flatly
14 contradict by a letter received in the Commission from
15 Mr Hoffman dated 12th January 2009, originally addressed
16 to the attorneys for the Premier. Read carefully at
17 paragraph (e), it says:

18 "I've applied for lease of additional 239 acres of
19 Crown land for golf course and infrastructure with my
20 partner Chal Misick in 2006 as well."

21 Clearly on that letter Mr Hoffman regarded
22 Chal Misick as his partner at the time of the approach.

23 Chal Misick curiously says:

24 "I have never had one conversation with Mr Hoffman
25 about Salt Cay Golf Club."

1 The idea of a partner with whom only one's staff
2 have dealings would be strange indeed. The idea also
3 that the preliminary discussions with the Premier
4 completely failed to mention the involvement of the
5 Premier's brother is well nigh impossible to accept at
6 face value.

7 If indeed Chal Misick was the known and stated
8 partner of Mario Hoffman, as Mr Hoffman's letter
9 suggests, then both the Premier and his brother have
10 perjured themselves before this Commission.

11 Of course the alternative explanation as put forward
12 by Chal Misick is that he got involved. He negotiated
13 with the architect. He suggests that he performed this
14 task with such skill that, although he had no direct
15 dealings with the overall developer, that developer,
16 Mr Hoffman, chose to give away a 50 per cent share in
17 the enterprise to him. Mr Kral, with whom Mr Misick had
18 all his dealings, may have been a director of the golf
19 club, but Mr Kral got no shares at all.

20 Mr Misick was suitably vague as to exactly what the
21 special skills were that he brought to the negotiations,
22 beyond saying that he had a qualification in
23 engineering.

24 Ironically, the golf club already had other
25 attorneys in the form of Miller Simons O'Sullivan. So

1 Mr Misick's contribution as an attorney would not have
2 been the only one. He also seemed vague as to who
3 precisely was behind Harbour Management, the owner of
4 the other 50 per cent of the shares. He seemed unsure
5 if it was only Mr Hoffman or not. When asked about
6 the negotiations with the architect, he was unable to
7 identify the name of either the architect or of the
8 company.

9 Most attorneys, when they are engaged, are content
10 to be paid their fees hopefully in full and hopefully on
11 time.

12 The offer of a half share in the enterprise that you
13 are involved in is not what one would term an everyday
14 event. Chal Misick seems to be completely unruffled by
15 this stroke of good fortune.

16 He was asked how much he thought his share in the
17 golf course was worth. He said he had never considered
18 it. Had he made enquiries? No. He was asked if he was
19 surprised when he learnt it was to be used as collateral
20 for a \$6 million loan. He seemed equally unconcerned.
21 Finally, he was asked if he was concerned that having
22 provided it as collateral, he might now stand to lose it
23 as his brother may not be able to pay the loan. No, he
24 was not.

25 Mr Chal Misick was apparently given the share in

1 the golf course, even though he was, with respect,
2 a second-string attorney being paid by the lead
3 attorneys, Miller Simon. The only demonstrable
4 contribution he made was to form the company. That is
5 a low-level legal task usually delegated to paralegal
6 staff.

7 Without wishing to be personal in my criticism,
8 the one presentation of Chal Misick's that
9 the Commission has seen, which is the one in the case of
10 the Joe Grant's Cay, was an unimpressive document,
11 littered with spelling mistakes, errors and incorrect
12 dates. His own evidence about that incident was that
13 when writing an important letter to TC Invest, he
14 managed to forget who his own clients were and he failed
15 to correct the error for three months.

16 The idea that his skills were such that
17 a multimillionaire developer of an major resort, who
18 never had a conversation with him, would be anxious to
19 hand over 50 per cent of a significant element of his
20 project to Mr Misick requires one to strain credibility
21 to breaking point and beyond.

22 To accept the contention that his appointment as
23 a 50 per cent shareholder had nothing to do with his
24 being the brother of the Premier beggars belief. It is
25 nonsense and it deserves to be treated as such.

1 It should be said that Mr Misick, when he gave
2 evidence before the Tribunal, was at times obtuse,
3 unforthcoming and verging on the truculent. He made it
4 abundantly clear that he had no wish to be of assistance
5 or to volunteer information. This was not a man,
6 I submit, concerned for the niceties of legal privilege.
7 He simply did not wish to help the Commission get to the
8 truth.

9 His lack of concern or surprise over the acquisition
10 of value or possible loss of the golf club shares may,
11 of course, indicate a man who prefers to keep his
12 emotions to himself. The more realistic explanation in
13 my submission is that this is a man who has won nothing
14 and lost nothing. He has had no benefit from it. Only
15 the Premier has benefited, and that was how it was
16 always intended to be.

17 The provision of the golf course to Mr Hoffman,
18 whether deserved or not, whether appropriate or not in
19 the context of the development is the clearest possible
20 case, in my submission, sir, of the exploitation of
21 the power of his office by the Premier for personal
22 gain. It is, in a word, corrupt.

23 Those, sir, are my submissions.

24 SIR ROBIN AULD: Mr Milne, I am very grateful to you for
25 them.

1 Commissioner's Statement

2 SIR ROBIN AULD: Ladies and gentlemen, with the end of the
3 attorneys' submissions on the evidence given over
4 the last four weeks, I bring these oral proceedings to
5 an end.

6 In doing so, I should say a few words about the past
7 and a few words about the future.

8 Since August/September of last year, the Commission
9 has had to devote far too much time to eliciting
10 adequate information about the interests of various
11 individuals from a number of major subjects in
12 the Inquiry.

13 What could have been dealt with in the main on paper
14 months ago has required these extensive hearings here,
15 mostly under summons.

16 The hearings originally planned for late October
17 last year, with a separate evidence-taking session to
18 follow, had to be abandoned for a single oral
19 examination into interests, scheduled for December.

20 That too had to be abandoned at the last minute for
21 continuing want of adequate responses from ministers and
22 others as to their interests.

23 So it was that the Commission finally came out here
24 in early January of this year. By then it was driven to
25 try to combine in one set of hearings an examination of

1 disclosed and still undisclosed interests and also
2 further evidence that the Commission itself might wish
3 to call.

4 Here again, as you can see, the programme has
5 slipped and for the same reason: failure in the main by
6 ministers, but also others in some instances, and by
7 conduct in and out of the hearings bordering on
8 obstruction, to make complete disclosure and/or to
9 produce necessary supporting documents.

10 So instead of spending two weeks as we hoped to
11 finish the job as to disclosure and move on to other
12 evidence, the Commission has spent the best part of
13 the last four available weeks still seeking disclosure
14 and/or explanation of disclosure given to us on
15 the spot; disclosure, as those giving it to us at that
16 time must have known, the Commission could not possibly
17 master. To mix metaphors, could not possibly expect to
18 do so on the hoof.

19 (6.00 pm)

20 Now, while all this has been going on,
21 the government of this country is at a near standstill.
22 The Cabinet is divided or unstable. The House of
23 Assembly has been prorogued. The finances are in a bad
24 way and poorly controlled, and governmental and other
25 audit recommendations lie unattended and disposals of

1 Crown land to fund recurrent public expenditure deficits
2 continue, for want of governmental revenue from more
3 fiscally conventional sources.

4 It is evident, isn't it, that there are widespread
5 fears on the part of the people, many in the Territory,
6 that they are leaderless and that their heritage is at
7 risk of continuing fast, fast to drain away.

8 Now, as the Governor has recently announced,
9 the train of events leading to these hearings and
10 the Territory's parlous and volatile state has
11 necessitated a further extension of the Commission's
12 period of Inquiry to 30th April. But that does not and
13 should not allow the Commission to assume the luxury of
14 returning home for some months to polish its parses
15 before reporting.

16 In the Territory's present state, goodness knows
17 what may happen here in the meantime.

18 In the circumstances, speed, coupled with fairness
19 to all those the subject of the inquiry, is vital.

20 The Commission has to balance the strong public interest
21 of the people of the Turks & Caicos Islands for early
22 resolution of their problems against the private
23 interests of those, the subject, to be treated fairly.
24 Fairness to them here includes a reasonable opportunity
25 to respond to criticisms that the Commission may be

1 minded to make of them before finally reporting.

2 Well, this is how the Commission will seek to
3 achieve that balance, or some might say overcome that
4 dilemma.

5 Legal representatives of those who have been
6 examined or who have otherwise given oral evidence to
7 the Commission over the last four weeks will have, as
8 I have already indicated, ten days from today, to
9 Saturday, 21st February, to make further submissions,
10 but only in writing, in respect of matters concerning
11 them that have arisen up to and in these oral hearings.

12 Other persons may also make any submissions or give
13 evidence in writing within those same ten days.

14 Within the following seven days, that is by
15 Saturday, 28th February, the Commission will submit
16 an interim report to the Governor. That interim report
17 will summarise recommendations on which the Commission
18 is confident, and in respect of which it has received
19 and considered all material representations from those
20 corporately or individually affected. Those
21 recommendations will be, in the main, under
22 the Commission's second term of reference, namely as to
23 indications of systemic weakness in legislation,
24 regulation or administration in the Territory, calling
25 for reform.

1 They may also include recommendations under
2 the Commission's first terms of reference as to possible
3 corruption or other serious dishonesty, meriting
4 investigation with a view to prosecution.

5 Such matters will in the main be of a generic nature
6 and only with reference to any individual where,
7 exceptionally, the Commission is satisfied that
8 a recommendation adverse to him or her would not be
9 unfair at that stage.

10 It will be for the Governor to decide whether and
11 when to publish the interim report destined for the end
12 of this month, and what if any action should immediately
13 or in the short-term flow from it.

14 In the meantime the Commission will consider and
15 prepare its final report for submission to the Governor
16 by 30th April. I emphasise the word "by". It is hoped
17 that it will be able to do that significantly before
18 that date. That report will elaborate where necessary
19 on the summary recommendations contained in the interim
20 report. It will also contain further findings and/or
21 recommendations, after taking account of responses of
22 individuals to "minded to find and/or recommend" letters
23 from the Commission to them.

24 I should stress that the Commission cannot do any
25 better than guarantee, cannot guarantee that any

1 submissions or evidence received after 21st February
2 will be taken into account either in the interim or
3 the final report.

4 All points of contact with the Commission will be as
5 they were before the commencement of these hearings and
6 the Commission will continue to issue regular press
7 statements on the website and by other means, as before.

8 I would like now to conclude those few observations
9 with some more personal ones.

10 In concluding the proceedings tonight, I do so with
11 thanks to all the attorneys and those supporting them
12 and to the many others who have contributed to the work
13 of the Commission here and in earlier months in
14 the United Kingdom.

15 The list is a familiar one now after other counsel
16 have spoken over the last two days. It includes thanks
17 to the Governor; a number of government departments;
18 a large number of public officers at all levels in those
19 departments; the many officers at all levels of the
20 Royal Turks & Caicos Police Force who have been
21 responsible for the security and management of the
22 hearings and our general well being; it includes
23 the Regent Palms hotel, of course, for making available
24 its excellent facilities to us and helpful and friendly
25 staff to ease our way; the Commission reporters, whose

1 dedication and stamina to record our often not so golden
2 words has been the subject of daily veneration; our
3 sound recording engineer, who is not there at the
4 moment, Delano, but he is usually tucked away in
5 the corner; our computer wizard in London, Dave Wood,
6 responsible for the Commission's internet technology and
7 document control and our website, including its regular
8 updating with press statements, programmes and daily
9 transcripts.

10 And behind it all, I commend the small but powerful
11 engine of the Commission's Secretariat who with counsel,
12 and particularly leading counsel, Mr Alex Milne, and
13 the solicitor to the Commission, who have speeded surely
14 and good-naturedly our progress each day. Ladies and
15 gentlemen, thank you, and good-bye.

16 MR MAURICE GLINTON: Sir Robin, may I inquire before you
17 rise whether it is the intention that counsel
18 representing the various witnesses who have appeared
19 here be supplied with the copy of the interim report
20 that you propose to submit to the Governor by the 28th?

21 SIR ROBIN AULD: I think that I made plain that it would be
22 for the Governor to determine whether and when to
23 publish that interim report.

24 MR MAURICE GLINTON: Much obliged, sir.

25 SIR ROBIN AULD: I am trying to cover the position that

1 I think is of concern to you, and I hope I have
2 explained it adequately, that an opportunity will be
3 given where it is necessary to persons who may be
4 adversely affected by what we are minded to say in
5 the interim report, very shortly before the time we
6 propose to submit it, so that they have an opportunity
7 to say don't say it. But most of the recommendations in
8 that interim report will, as I have mentioned, be of
9 a generic nature and going to the second term of
10 reference, so that corporate bodies, or individuals,
11 should not in the main be at risk of being treated
12 unfairly by my adopting that two-stage process.

13 MR MAURICE GLINTON: Thank you, sir.

14 (6.10 pm)

15 (The hearing concluded)

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