

1 Thursday, 15th January 2008

2 (10.30 am)

3 HONOURABLE PREMIER MICHAEL MISICK (continued)

4 Cross-examination by MR MILNE (continued)

5 SIR ROBIN AULD: Good morning, everybody. Mr Milne.

6 MR MILNE: May it please you, sir.

7 Mr Premier, I am in a few minutes going to come to

8 the issue of the credit cards which was the last point

9 we touched on on the last day's evidence, but before

10 I do that, I am afraid we have to go back just slightly

11 to something which arose during the course of yesterday

12 morning.

13 You recall that I asked you about the code of

14 conduct for ministers?

15 A. Yes.

16 Q. You recall that you said, well, there is no code of

17 conduct. Essentially that was your evidence. Would you

18 agree?

19 A. Well, my evidence was that the code of conduct that we

20 were discussing was not one that has been approved and

21 finally approved --

22 Q. It had not been finally approved in Cabinet, is that

23 what you are telling us?

24 A. Yes.

25 Q. Indeed you said that yesterday and I have an extract

1 from the transcript:

2 "This draft code of conduct was never adopted and
3 therefore never enforced."

4 I asked you if you regarded it as a good starting
5 point. You said:

6 "It was never adopted and never enforced. Therefore
7 there is no ministerial code of conduct."

8 I wanted to avoid confusion. That is definitely
9 your evidence?

10 A. That is my understanding. That is my recollection.

11 Q. You would know if there was a code of conduct or not,
12 wouldn't you, because you are the Premier? You chair
13 the Cabinet.

14 A. Sorry, could you allow him to allow me to answer
15 the question? I am not on trial here. I am trying to
16 volunteer information. I am still the Premier.

17 SIR ROBIN AULD: I think Mr Milne was setting the scene for
18 the questions that are to come. He has accurately, as
19 I understand it, recorded what you said from
20 the transcript from yesterday and that was your
21 evidence. Then he read from the transcript --

22 A. Yes, but I was trying to answer it and he --

23 SIR ROBIN AULD: Is there anything you would like to add?

24 A. He didn't give me a chance to answer it.

25 SIR ROBIN AULD: Now I am giving you a chance.

1 A. Can you repeat your question?

2 MR MILNE: Are you resiling from your evidence? Are you
3 backing away from your evidence yesterday that there was
4 no adopted code of conduct, or do you still say there
5 was no adopted code of conduct?

6 A. What I am saying is that the code of conduct that is
7 before us and I have been -- when I came to office
8 I understood that there was no code of conduct. That is
9 why we were working on the code of conduct. My
10 understanding is that that code of conduct was never
11 adopted by Cabinet. It went to Cabinet and we worked on
12 it as a first step. The Cabinet Secretary was supposed
13 to have tidied it up and bring it back to Cabinet for
14 a final decision by Cabinet.

15 Q. In that case, Mr Premier, would you please turn to your
16 left and take from the red bundles volume 6.

17 If you have that, would you open it please and turn
18 to page 145. You have that in front of you now?

19 The document that you are looking at is an extract
20 from the Cabinet minutes of the Cabinet meeting that
21 took place on 6th February 2008.

22 It is minute number 08/107. There was clearly
23 a paper presented to the Cabinet, because we have
24 a paper number, although we have not been provided with
25 the paper. The subject is ministerial code of conduct.

1 What the minute records is this:

2 "The Premier introduced this paper. The Cabinet
3 advised that:

4 "1. It accepted the ministerial code of conduct
5 subject to the amendments as discussed and agreed at the
6 meeting and noted by the Cabinet Secretary being
7 incorporated into the said document.

8 "2. It authorised the Premier to sign and have
9 distributed to members the final document. His
10 Excellency the Governor concurred and ordered
11 accordingly."

12 So in February of last year the Cabinet considered,
13 approved and accepted the ministerial code of conduct.

14 All that remained was for you to sign it, get it
15 photocopied and hand it out.

16 Have you done that?

17 A. It was not presented for me today. As it states,
18 the clerk was supposed to make the adequate amendments
19 and even with the document that we have before us, it is
20 not adequately amended because it still speaks about
21 the House of Commons, it still speaks about the Prime
22 Minister, it still speaks about a lot of things. It is
23 not a clear document that is ready, even at this stage,
24 for signature.

25 Q. Mr Premier, the document that we have was provided by

1 the Cabinet Secretary. Whether or not that is the final
2 version, I am afraid we are unable to say but it is
3 the best copy that we have had.

4 A. The document that you have is provided to you by
5 the Governor.

6 Q. It was provided from the Cabinet Office.

7 A. The fax on the top says the Governor's office.

8 Q. In that case it came from the Governor's office fax
9 machine. Be that as it may, as we understand it, it
10 came from the Cabinet Office. If I am wrong about that,
11 no doubt I will be corrected at some later stage. Be
12 that as it may, it came from official sources. It would
13 appear from 5th February last year the Cabinet agreed
14 what the amendments would be. There was on the face of
15 this minute no need for further debate. No need for
16 further discussion. What was needed was somebody to do
17 a little re-typing, copy it, you sign it, that's it.

18 But it is, in its final version, whether this is
19 the final version or not, in force?

20 A. I don't accept that. It wouldn't be in force until
21 I sign it.

22 Q. Therefore the only reason that it is not in force is
23 because you didn't sign it?

24 A. And because it was never presented to me to be signed
25 because the Cabinet Secretary never tidied it up as was

1 supposed to happen.

2 Q. The Cabinet Secretary at the time, I believe, was

3 Ms Blackman, is that right?

4 A. Yes.

5 Q. Action minutes are prepared based upon Cabinet

6 decisions?

7 A. Yes.

8 Q. Are your staff reliant upon you chasing them or do they

9 normally provide an efficient service and deal with the

10 matters that they are instructed to?

11 A. Can you repeat that.

12 Q. Do you normally have to chase your staff to follow up on

13 action minutes? Do you have to harry them?

14 A. I am a minister, I am the Premier. The permanent

15 secretary and civil servants are the ones who carry out

16 and who chase up on Cabinet decision.

17 Q. When you said yesterday it had not been approved, it had

18 been approved?

19 A. I said it was approved in principle. That's what I said

20 yesterday.

21 SIR ROBIN AULD: Are you leaving that, Mr Milne?

22 MR MILNE: Sir, I need to just deal with the exact words

23 that the Premier used yesterday, that it was never

24 adopted and never enforced.

25 A. Never what?

1 Q. It was never adopted and never enforced?

2 A. Yes.

3 Q. Mr Premier, it was a simple administrative task that was

4 left and it was not carried out. The failure I would

5 suggest rests with the person who was instructed to

6 follow through, which is yourself?

7 A. The person instructed was the Cabinet Secretary to tidy

8 it up and bring it to me.

9 Q. You were authorised to sign it. You could have signed

10 it even in draft form?

11 A. Yes, but just how the Governor is authorised to sign

12 bills. He signed bills when the bills come to him. He

13 don't go to the Speaker and say where is that bill?

14 SIR ROBIN AULD: Mr Fitzgerald wants to say something.

15 MR FITZGERALD: I think in fairness my learned friend should

16 put that what he was going to sign was the final

17 document and the final document hadn't been produced.

18 SIR ROBIN AULD: I think that is the evidence. That is what

19 appears from the minute and I think that is what

20 the Premier is saying. The question is, how it was left

21 there? Presumably at Cabinet meetings, Mr Premier, you

22 have an item on the agenda at the beginning, do you,

23 matters arising?

24 A. Yes.

25 SIR ROBIN AULD: So at the next Cabinet minute, this would

1 have been one of the matters arising for report as to
2 whether it had been dealt with --
3 A. No, just to confirm the minutes, not matters arising.
4 SIR ROBIN AULD: You don't go through the minutes of the
5 last meeting to see --
6 A. We just go through minutes to see --
7 SIR ROBIN AULD: -- what has been left undone and what has
8 been done?
9 A. No. We go just to check the minutes.
10 MR MILNE: Mr Premier, this looks very much as if you can't
11 be bothered to pursue this code of conduct. Would that
12 not be a fair assessment?
13 A. The minute says the Premier introduced the paper. I was
14 not compelled to introduce it. No one had a gun to my
15 head. I didn't have to introduce it if I didn't want to
16 introduce it. I introduced it and so your
17 characterisation is completely wrong.
18 Q. Let's leave that.
19 SIR ROBIN AULD: We have not got the complete minutes for
20 the February 2008 meeting which start at page 4. Can
21 you give me the exact date in February?
22 MR MILNE: It was 6th February 2008. Let us turn
23 backward -- put aside volume 6.
24 Yesterday, Mr Premier, we were looking at the credit
25 cards that were used by yourself and we went through

1 a number of the bills and a schedule of the payments
2 into those credit cards, and you recall that that
3 schedule which is towards the very back of bundle 3,
4 the back bundle of your individual documents,
5 the schedule indicated that there had been across
6 the various cards payments in totalling 1.6 million, but
7 \$1 million of that money would not be identified as
8 coming from any of your individual accounts or not
9 clearly so.

10 Do you have any explanation for the Commission as to
11 why that should be the case?

12 A. This breakdown is from 2003 to 2008. I obviously
13 haven't had an opportunity to cross-reference
14 the payments with any of my bank accounts but in
15 relation to them -- so they could have come from one of
16 my bank accounts. Also as you -- from
17 the Prestigious Properties statement, you see they have
18 made certain payments on my behalf. In fact, a lot of
19 these would have been on my own Horizon card that says
20 office of the Premier, which is my personal card but
21 I use in relation to -- some of this could have been
22 subsistence that I got from the government in relation
23 to travel and so forth.

24 But your suggestion yesterday, and you must think
25 this is a banana republic if you can suggest that I can

1 walk into a bank or a credit card with \$50,000 in cash
2 and say could you put this on my credit card. That is
3 what you suggested yesterday. I am saying that is
4 completely absurd.

5 Q. I didn't actually suggest that you paid them in cash,
6 Mr Premier. I suggested that they might have been paid
7 in cash?

8 A. That it was me or someone else. This jurisdiction do
9 not operate in that fashion.

10 Q. This is not an economy in which cash is welcome. Please
11 tell us. Is the use of large amounts of cash unusual?
12 Is it something that would attract attention? In some
13 jurisdictions, the use of large amounts of cash is far
14 more common. As I understand it in the USA, large
15 amounts of dollar bills are regularly carried by some
16 people and it is not regarded as in any way strange?

17 A. I don't know. I am a Turks Islander.

18 Q. Your evidence is that you did not pay these sums in
19 cash?

20 A. My evidence is that I have not been able to verify that
21 your information is accurate, (1) and (2) -- I have
22 listed other areas in which the monies could have come
23 from, subsistence and so on and so forth.

24 Q. I am sorry, sir, you are dropping your voice again. You
25 have listed areas where it may have come from?

1 A. Yes.

2 Q. You are saying that Prestigious Properties may on
3 occasions have paid your credit card bills?

4 A. I said that might have happened. Subsistence from
5 the government in relation to travel.

6 Q. Mr Premier, perhaps we should draw a distinction here,
7 because it is quite important. You may well have been
8 entitled to subsistence payments, and we don't doubt
9 that you received subsistence payments because we have
10 been served with a schedule which we now know to be
11 government allowances paid for small amounts. I say
12 small amounts, obviously it racks up. Not tens of
13 thousands, not \$20,000, \$30,000, \$50,000 at a time.
14 Those sorts of figures don't appear to come from the
15 government subsistence schedule that we have been show.

16 A. Well, I mean there were times when there were ten
17 thousand or more.

18 Q. Was there ever 50,000 in subsistence?

19 A. Probably not. I didn't say it was 50,000. I list
20 a number of possibilities, including my own bank
21 account.

22 SIR ROBIN AULD: Can we just see where we are. The note
23 that I have made was that the missing, for want of
24 a better word, \$1 million could have come from other
25 accounts, including possibly your Horizon card, possibly

1 payments by Prestigious Properties, possibly government

2 assistance, but you have not had a chance to check?

3 A. Yes.

4 SIR ROBIN AULD: Would you like a chance to check? Would

5 you like to take time, not now, but after we rise today

6 and have these figures checked and see if you can find

7 the sources for the various payments making up

8 1 million?

9 A. Yes.

10 SIR ROBIN AULD: How long do you think you would need and

11 those assisting you in that task? Maybe I should ask

12 Mr Fitzgerald that.

13 MR FITZGERALD: I think we may need the weekend. Shall we

14 see, sir, what we can do overnight. We have got

15 a number of other things obviously.

16 SIR ROBIN AULD: Subject to what Mr Milne says, unless you

17 want to ask more questions about it now --

18 MR MILNE: Not in great detail, sir. Perhaps it would

19 assist if I just clarify the nature of the exercise that

20 we have carried out.

21 Sir, my learned friend and those working with him

22 are welcome to double check and I am not precious about

23 this --

24 SIR ROBIN AULD: That's the opportunity I am dealing with.

25 The Premier will understand and so will Mr Fitzgerald,

1 I want to button them down, to take an opportunity to
2 find the make up of this missing money. You should have
3 the opportunity.

4 A. It is not missing, it is on the credit card.

5 SIR ROBIN AULD: Monday?

6 MR FITZGERALD: Yes, thank you. We will check the figures
7 and see if we can --

8 SIR ROBIN AULD: And explore the possibilities that
9 the Premier has mentioned this morning?

10 MR FITZGERALD: Yes. Also the accuracy of them.

11 SIR ROBIN AULD: And the make up of the million any way.
12 Thank you.

13 MR MILNE: So it is clear, Mr Premier, the figures for
14 payments in and the dates are taken from the credit card
15 statements that were provided on your behalf.

16 The column on the right-hand side that says "Bank",
17 this is one from the right, is where a figure, which is
18 the same, appears to have cropped up in the declared
19 bank accounts.

20 The column on the extreme right that says "No Bank",
21 simply I'm afraid that is shorthand, but it means no
22 debit from any of the declared accounts could be found.

23 It is those that obviously we have a query about
24 because if it were one or two or even a dozen, we might
25 attribute that to a simple error. But given that those

1 figures total \$1 million, we would like to know where it
2 is coming from.

3 SIR ROBIN AULD: For the purpose of the record you are
4 looking at page number 1140?

5 MR MILNE: No. This document starts at 1138.

6 SIR ROBIN AULD: And runs through --

7 MR MILNE: And runs through.

8 SIR ROBIN AULD: -- to 1140?

9 MR MILNE: To 1140.

10 SIR ROBIN AULD: Thank you.

11 MR MILNE: Whilst we are dealing with that, could we please
12 also look at page 1124 and 1125. Do you have that,
13 Mr Premier?

14 A. Yes.

15 Q. These are figures extracted from the schedule provided
16 by, originally, the TCIG on your behalf. These give
17 the payments of allowances. Again, we have done
18 the same exercise, albeit I suppose in reverse. We have
19 been told that you received these, we have looked at
20 bank accounts, have they gone in? In many cases, yes.

21 In many cases, we can't find them in your declared
22 bank accounts. I accept in some examples you have
23 clearly received two cheques and there is one credit
24 which represents the combined total of those. So there
25 is obviously paying in two cheques once. That is

1 perfectly reasonable.

2 1124 and 1125 this is. In total, and we have
3 amended this slightly, the original version of this --
4 this was my error and I apologise for this -- we
5 understood from the covering letter that it represented
6 money from Prestigious Properties. It is clear now that
7 it represents money from TCIG but the point is the same
8 one.

9 We would invite you to identify for us which account
10 the missing ones are going into. Do you follow?

11 A. Well, in relation to that, that doesn't necessarily mean
12 that it went into an account. Sometimes, in relation to
13 the subsistence, it would go into an account and
14 sometimes, especially if you are travelling, you cash
15 the subsistence and you and take the money with you.

16 Q. But these are payments in arrears. These are payments
17 for money that you have expended and you no doubt have
18 presented --

19 A. Where?

20 Q. -- receipts to TCIG.

21 A. Which ones?

22 Q. The allowances.

23 A. Allowances, they are not in arrears. If you are
24 travelling you submit a form that you are travelling and
25 then the Treasury re-appears and they prepare a cheque

1 of subsistence and allowance for you. This is not
2 something that you claim. This is something that you
3 receive prior to travelling.

4 SIR ROBIN AULD: You get the money in advance?
5 A. Absolutely.

6 SIR ROBIN AULD: I wish we did.
7 A. Sorry?

8 SIR ROBIN AULD: I am sorry, I said something I should not
9 have done, I said I wish we did.

10 A. Well, you are getting a lot of it.

11 SIR ROBIN AULD: Payments in advance, all right. Thank you.

12 MR MILNE: A similar exercise we would invite you to conduct
13 in relation to page 291.

14 A. Sir, I thought I gave an answer to that.

15 Q. In relation to what? I have not asked you a question
16 yet.

17 A. 1124 and 1125.

18 MR FITZGERALD: Is what my learned friend saying he is
19 moving onto a new topic?

20 MR MILNE: It is the same topic but a different list.

21 MR FITZGERALD: Perhaps if you can give the volume number.

22 MR MILNE: It is the same volume, it is page 291, volume 1.
23 Sorry volume 3.

24 A. Can I go back to 1124 and 1125?
25 Q. If you wish, sir, yes.

1 A. Because you asked me about this and I think you were
2 confused that this was money that I claimed when I get
3 back. I accept the Commission does not accept my
4 explanation that we do get it in advance.

5 SIR ROBIN AULD: I am not challenging it at all, I have
6 noted it down that this is your answer to Mr Milne.

7 A. And that the ones I preferred not to go into an account
8 was cashed.

9 Q. Was that a common experience, that you would go in and
10 cash small cheques? We are not talking about large
11 amounts here, Mr Premier. But the Commission is
12 concerned because, again, if there were one or two or
13 even a dozen or two dozen, it might be simply that they
14 have, as it were, dropped between. But was it your
15 common experience, a common practice, when you got
16 cheques, to go into the bank and draw cash against that
17 cheque?

18 A. You are talking about over a six year period.

19 Q. Yes.

20 A. As I said, there were times when -- as a matter of fact
21 there were times when the subsistence went directly to
22 the account. And then there were times when they
23 produced cheques and I would -- and there were times
24 when I would say to my assistants, go and cash
25 the cheque, so I would have the cash to take with me.

1 (10.52 am)

2 Q. Absolutely. One can understand that. I am not
3 criticising that, but the problem I have is simply this:
4 if it was a direct transfer to your account, it would be
5 on the accounts, it would be on the statements. If it
6 was a cheque paid in, it would be on the accounts, it
7 would be on the statements. As you have sought to make
8 clear, in fairly robust terms, as this is not, as you
9 tell us, a banana republic, you would not be drawing
10 cash from TCIG. You would be getting cheques that would
11 go through the banking system.

12 But there are cheques here which are for, well, in
13 some cases, quite, as it were, fiddly amounts. \$676.37.
14 I pick that out as just one example. 25th May 2005.

15 With respect, sir, if you got \$676.37, that suggests
16 that you had incurred some expenditure or expenditures
17 to that amount. It is unlikely that in advance you
18 would be given that --

19 A. Well, there is two different -- and I think you are
20 confused. There is two issues. One subsistence and
21 allowances that you get in advance as the Premier or any
22 other minister or in fact senior officials that travel,
23 there are certain expenses that are, what is the word
24 now, refundable, if you may.

25 For example, as Premier and Minister of Tourism, if

1 I did entertainment that was of an official nature, and
2 I pay for it on my credit card, then I can claim
3 the expense. Or if I, as I did on every occasion, have
4 a car, if I went travelling on official business, that
5 is an expense that you claim. So there are expenses
6 that you claim.

7 But the bulk of the -- your allowance and
8 subsistence is something that is paid in advance.

9 Q. Mr Premier, in the global scheme of things, this is
10 actually a pretty small point and I don't wish to expend
11 unnecessary time on it.

12 If you can, I appreciate there may be some
13 difficulties, particularly with small amounts many years
14 later, could you please identify to which account they
15 were paid, if they were paid into any account? Will you
16 perform that exercise?

17 A. Sir, I have answered the question. I have said that
18 there were times when I did receive cash -- sorry,
19 receive a cheque and it was cashed.

20 SIR ROBIN AULD: Which are we talking about now, the TCIG
21 allowances on pages 1124 and 1125?

22 MR MILNE: We are, sir.

23 SIR ROBIN AULD: You are saying that you said all you can on
24 that, are you?

25 A. Yes.

1 SIR ROBIN AULD: But some of these -- as I understood the
2 questions and in part your answers, some of these
3 payments are likely to have been made by way of cheque
4 and others by way of cash.

5 A. No, all of them -- the government don't pay in cash
6 unless it's a weekly worker --

7 SIR ROBIN AULD: So all of these in the schedule on
8 pages 1124, 1125 are cheque payments, are they?

9 A. Yes.

10 SIR ROBIN AULD: What is the problem in identifying
11 the source --

12 A. Well, the source --

13 SIR ROBIN AULD: The account into which they were paid.

14 A. It is not a problem. My answer is that the government
15 cheques -- the ones that probably didn't go into
16 an account was cashed.

17 SIR ROBIN AULD: Now we are going in circles, so some were
18 in cash and some in cheque?

19 MR FITZGERALD: Were cashed, I think he said. He had
20 the cheque and he cashed it to cover his expenses.

21 SIR ROBIN AULD: Right, that would have been cashed with the
22 bank?

23 A. Yes, to the bank that issued it, yes.

24 SIR ROBIN AULD: So there should be a bank record of that,
25 shouldn't there?

1 A. Of the cash?

2 SIR ROBIN AULD: Yes, of the cashing of the cheque.

3 A. I don't know.

4 SIR ROBIN AULD: Well, there must be. Mr Milne has asked

5 you to document your explanation and you can say yes or

6 no. If you won't, you won't or if you can't, you can't

7 but perhaps you could make enquiries to see if it is

8 possible. Would you do that?

9 A. What are you asking me, sir?

10 SIR ROBIN AULD: To document these payments. That is what

11 Mr Milne is after here. It may be quite impossible now.

12 A. So you don't accept my answer?

13 SIR ROBIN AULD: Because he has no basis for doing so

14 without knowing whether there is documentary support.

15 He doesn't know. You can't remember maybe. Somebody

16 might be able to help if there was a search for

17 some documentary record of the cashing of the cheques,

18 which there should be if they were cashed with a bank.

19 Now, Mr Milne is asking you if you will have a check

20 made, you will be given time as you will be for the

21 earlier enquiry. You can say no to that or you can say

22 yes or you can say I can try.

23 A. I certainly can try.

24 SIR ROBIN AULD: Thank you.

25 MR MILNE: A simpler, shorter but very similar task arises

1 from page 291 of volume 1. We find on that page a list,
2 headed Saunders & Co payments to Michael Misick.

3 We touched upon this before. You have given
4 explanations in relation to why you were paid this
5 money. The issue now is simply this: where did it go?

6 The salary paid on 16th January, 2004, which was a lump
7 sum of \$10,000, it may be bank transfer, it may be
8 cheque, we don't know?

9 A. Where did it go?

10 (11.00 am)

11 Q. Into which account did it go? It does not appear in any
12 of the disclosed accounts. Similarly, on 23rd December
13 2004, a cheque for \$15,000, we don't see that going into
14 any account. Again, on 22nd December 2006, a cheque
15 this time for \$35,000, we don't see that in any of your
16 accounts. Where did that go? So that is 16th January
17 2004, 23rd December 2004 and 22nd December 2006.

18 Maybe you would remember this one. They loaned you
19 \$275,000. Can you recall now where that money went?

20 A. Yes.

21 Q. Where did it go to, sir?

22 A. Royal Jewels.

23 Q. Royal?

24 A. Jewels.

25 Q. Jewellers?

1 A. Yes.

2 Q. Was that payment for jewellery?

3 A. That is what they do. It was payment of a bill I had

4 there.

5 Q. So they loaned you \$275,000 for jewellery?

6 A. I have -- I had accumulated a debt to them of that

7 amount and I borrowed the money to pay it off.

8 Q. So they have picked up the bill on a purchase or

9 purchases for that sum?

10 A. I borrowed \$275,000 to pay a bill. That is not someone

11 picking up a bill. Again --

12 Q. You have told us that you are good for the money.

13 A. I told you my asset is worth more than my liabilities.

14 SIR ROBIN AULD: What happened to the jewellery? Where is

15 it?

16 A. It is not one piece of jewellery, it is a bill

17 accumulated --

18 SIR ROBIN AULD: An accumulated bill?

19 A. Yes.

20 SIR ROBIN AULD: And jewellery you gave to somebody?

21 A. Yes.

22 MR MILNE: That jewellery is not really what we are

23 concerned with, but presumably you would have the bill

24 from that time?

25 A. Well, because the -- your statement to my lawyers was

1 that you are more interested in where the money was
2 coming from, not how I spend my money. How I spend my
3 money is my business.

4 Q. Mr Premier, the concern that we have had, and I should
5 perhaps make this clear so that there is no
6 misunderstanding when you perform these exercises is
7 this: we have looked at your bank accounts and there are
8 credits, many credits. You have given explanations for
9 some of those, but there are many where I will submit
10 that you simply are unable to explain where the money
11 comes from. Similarly, with your credit cards, there
12 is -- please let me finish --

13 A. Sir Robin he has been making speeches for the last three
14 days.

15 SIR ROBIN AULD: Let him finish and then let's see what the
16 question is if any.

17 A. But he is making speeches.

18 SIR ROBIN AULD: Please be quiet, Mr Premier, and let him
19 finish.

20 MR MILNE: We have looked at your credit cards. There are
21 sums going into your credit cards that we can't explain.
22 We seek an explanation. We look at payments which you
23 accept you receive. We can't find those going into your
24 bank accounts. One possibility and it is not, with
25 respect, sir, a wholly unrealistic possibility is that

1 there is another or several other bank accounts which
2 you have chosen for whatever reason not to disclose.

3 Now, we invite you to dispel that possibility by
4 demonstrating where that money has either come from or
5 gone to. Do you follow?

6 I would not wish there to be any misunderstanding as
7 to what the Commission seeks and why the Commission
8 seeks it.

9 MR FITZGERALD: Sir, can I just make one point. I think in
10 fairness to the witness, we did ask for a list of the
11 questions that were going to be posed to the Premier and
12 the areas which were going to be dealt with and we were
13 provided with a list. It didn't contain any of the
14 questions which we have been consumed with over the last
15 two days, and for the witness to be presented with this
16 series of requests now, on the basis of these schedules,
17 does cause some difficulties.

18 That is to say we had a series of topics which were
19 indicated the Commission needed answers to and we
20 addressed them in the statement. What has happened is
21 that the whole series of questions about the other
22 accounts and all that have been asked, which were not
23 notified to the witness and we didn't have
24 an opportunity to deal with sir. I think in fairness to
25 the witness, it is right to put on record that he didn't

1 have notice that this series of questions were going to
2 be asked and that may be one of the reasons why they
3 have to be asked in this rather cumbersome way, that is
4 to say by my learned friend.

5 SIR ROBIN AULD: There are difficulties arising in different
6 ways out of the late disclosure here and I accept that
7 you have not been given notice of every account which
8 may be a possibility or a reality, but the schedule 2 to
9 the summons makes plain that the Premier was going to be
10 asked for details of the sources of income to all
11 accounts held or operated on his behalf. Now we have
12 alighted on some of those as a result of very recent
13 disclosure by the Premier and I make no complaint about
14 that now.

15 But it seems to me that if the Premier is prepared,
16 as he has indicated he is, to produce by Monday or
17 attempt to, the documentary basis for the so-called
18 missing 1 million, he can do the same exercise for
19 page 291, the payments from Saunders & Co and also in
20 respect of the jewellery, the last item in the
21 Saunders & Co schedule.

22 MR FITZGERALD: Sir, what I can undertake is, insofar as
23 records are available for some of these matters, we will
24 do the best we can.

25 SIR ROBIN AULD: That is all I am asking for. If you can't

1 find them, then it will have to be a matter of record
2 and it may or may not be relevant to my report.
3 A. I have something to say too, sir.
4 SIR ROBIN AULD: Yes, it depends what you want to say. Tell
5 me.
6 A. Forget it.
7 SIR ROBIN AULD: No, no, tell me.
8 A. Your counsel is going on and on about how I spend my
9 money. I have declared all of my accounts and he is
10 making some sarcastic remarks about jewellery.
11 SIR ROBIN AULD: What he is doing, it may be a bit of
12 advocate licence here --
13 A. I thought this was a serious Commission.
14 SIR ROBIN AULD: -- what he is doing is asking you to
15 identify sources of money which you have not so far
16 identified. Now, it may be you can't do that after this
17 distance of time. But if you can, try. That is all we
18 are about.
19 A. But he is going on and on about what I spend
20 on jewellery.
21 SIR ROBIN AULD: Don't worry about that. He hasn't spent a
22 great deal of time on how you spent it; he wants to know
23 where you got it from.
24 A. He knows where I got it from. I got it from
25 Saunders & Co.

1 SIR ROBIN AULD: Let's get on, shall we.

2 MR MILNE: You have told us, Mr Premier, that your cards,
3 the cards that you had were essentially one for personal
4 use and one for business use. Is that a clear
5 distinction that was drawn?

6 A. No, I never said that.

7 Q. You didn't say that one was for business use and one was
8 for personal use?

9 A. No.

10 Q. You have two Horizon cards, were operating two Horizon
11 cards throughout that period, throughout the period with
12 which we are concerned, one of which was addressed to
13 yourself and one of which was addressed to the office of
14 the Chief Minister?

15 A. Yes.

16 Q. What was the significance of having one addressed to the
17 office of the Chief Minister or indeed later the office
18 of the Premier?

19 A. When the card was originally issued, that's how
20 the issuer, I guess because I was the Chief Minister,
21 issued it that way. It has always been -- it is
22 a personal card.

23 Q. If you were abroad on business, working for
24 the government, no doubt you would charge items on that
25 card?

- 1 A. I would charge items on?
- 2 Q. On both cards?
- 3 A. On any card. Any card that can take it at the time.
- 4 Q. Was it simply a case, sir, of whichever card came out of
- 5 your wallet first would be used for expenditure that you
- 6 were having to meet? Were they interchangeable?
- 7 A. It was a case of whatever card had available credit on
- 8 it at the time, I would use. Whether it was Horizon,
- 9 whether it was American Express, whether it was
- 10 the Scotia Bank or whatever it was.
- 11 Q. You clearly used both cards extensively. How would you
- 12 know at any given time whether one card had credit on it
- 13 or not? Would you check your statements monthly?
- 14 A. If the card had credit on it?
- 15 Q. Yes.
- 16 A. If it didn't have credit on it, they would tell you: can
- 17 I have another card; this one is no good.
- 18 Q. So you would use whichever card was usable at the time?
- 19 A. I would use whichever card that I choose to use at the
- 20 time, based on the ones I thought were able to deal with
- 21 the matter that I was dealing with.
- 22 Q. You will appreciate that both cards are being used for
- 23 personal items?
- 24 A. They are my cards, all of them.
- 25 Q. The card that is entitled office of the Chief Minister

1 clearly is one that would be used on a number of
2 occasions for official expenditure. But if we see
3 personal expenditure --
4 A. No, no, no. I have explained to you that the --
5 I explained in the way the Turks & Caicos government
6 work. Would you like me to explain it again?
7 Q. You have told us certain things about payments of
8 allowances whereby you have claimed. I simply want to
9 explore in a little more detail the mechanics of it.
10 A. Well, ask the question.
11 Q. If you used a card, let's say the office of the
12 Chief Minister card, it would clearly come to the office
13 of the Chief Minister when the bill was ready each
14 month.
15 A. No, it would come to me.
16 Q. It would come to you, but it would be sent to the
17 address that is on the card, which is the Turks & Caicos
18 Islands government, Providenciales. So it would come to
19 your official address, your office?
20 A. So does all my mail. We don't have an address system
21 where personal mail comes to your house and your
22 business mail goes to your office.
23 Q. Your personal card, however, goes to a different
24 address?
25 A. It all comes to my office.

1 Q. Well, it is addressed to Michael Misick,
2 Lochhaven Financial Limited, Providenciales. That is
3 not your office, is it?
4 A. That is the credit card issuer.
5 Q. So it is not going to your office; it is going to the
6 credit card issuer presumably?
7 A. But they then send it to my office.
8 Q. Once you receive the bill, which will include both
9 personal items and potentially business items, who
10 carries out the exercise of dividing the two? How do
11 you decide what you claim back and what you don't?
12 A. The only time --
13 Q. Do you do that personally?
14 A. Sorry, there were times when my former assistant would
15 carry out that exercise.
16 Q. Who is that, please?
17 A. My former assistant was Mark Fulford, but any of my
18 assistants would carry out that exercise. But also, in
19 any expenses that you claim, you can only claim if you
20 submit an invoice. So, for example, if I had an invoice
21 for transportation, then, the transportation --
22 the company that provided transportation would issue
23 an invoice for that, and then if I claimed that expense,
24 then, I would get reimbursed for that expense.
25 Q. So it is not simply a case of you handing over

1 the credit card statement and it being paid against
2 a credit card statement; there would have to be
3 an additional receipt?
4 A. That is my understanding, but again the permanent
5 secretary who was the accounting officer deals with
6 these matters. I don't.
7 Q. Are we to understand your evidence, then, that
8 essentially the decision as to what was claimed and what
9 was not is not one that you made yourself?
10 A. The decision?
11 Q. Yes.
12 A. There are certain items that are claimable and certain
13 items that are not.
14 (11.15 am)
15 Q. There are certain items that are obviously personal.
16 Obviously not government business. I needn't go through
17 them?
18 A. Items like what?
19 Q. I beg your pardon?
20 A. Items like what?
21 Q. A night out at Funky Buddha nightclub, things of that
22 nature?
23 A. Funky Buddha?
24 Q. Yes, it is a nightclub in London.
25 A. You know it well, do you? What page are you on?

1 Q. If you wish to see it, it is on the 21st, it's on
2 the Chief Minister's card.

3 SIR ROBIN AULD: Are we going to get anywhere by looking at
4 it?

5 MR MILNE: I do not think we are. I am not proposing to go
6 through each one.

7 SIR ROBIN AULD: Let's look at the mechanics of this. You
8 made the valid point, Mr Premier, that vouchers are
9 needed for claiming public expenses. So presumably you
10 would hand to your assistant the appropriate vouchers
11 for him or her to do that job.

12 A. I would not hand it to him. My assistant is the one who
13 deals -- or assistant or permanent secretaries or
14 a whole slew of advisers.

15 SIR ROBIN AULD: Where would he get the vouchers from?

16 A. He would get it from the hotel, from the car company,
17 from whatever. Funky Buddha, I don't remember that.

18 SIR ROBIN AULD: Presumably you would come back from trips
19 and you would have paid and used your credit card and
20 you would have vouchers for the expenses.

21 A. Presumably, and I am not conceding that anything for
22 Funky Buddha was claimed.

23 SIR ROBIN AULD: Let's not worry about Funky Buddha.

24 A. I think it is important for me to be clear. Even if
25 something from Funky Buddha was claimed, presumably we

1 went on a tourism trip, and I as Minister of Tourism
2 made a decision that I was going to take travel agents
3 to entertain them.

4 SIR ROBIN AULD: We are getting away from the point here.

5 You made the valid point that vouchers had to be
6 produced. I simply want to understand what the
7 mechanics of that were. Did you come back from trips
8 with vouchers or did you have an assistant who did or
9 did they simply look at the credit card statements and
10 identify what they thought were public and what they
11 thought were private before making claims on your
12 behalf?

13 A. My understanding is that before making claim on my
14 behalf, they would -- if any event happened or anything
15 happened during the visit, they would get an invoice.
16 For example, transportation is never paid in advance.
17 So my transportation bill, they should get an invoice
18 and submit it on return.

19 If there's any other entertainment, they would do as
20 well.

21 SIR ROBIN AULD: What about a restaurant bill, for example,
22 or a expensive taxi or something like that? That would
23 be something for which you would have a receipt at the
24 time?

25 A. Absolutely.

1 Q. So you would bring these back and hand them to somebody

2 in your office, is that how it worked?

3 A. I will bring them back or my chief of staff or someone

4 would bring it back, hand it to the permanent secretary

5 who then goes through it and submits it.

6 SIR ROBIN AULD: I understand, thank you.

7 MR MILNE: You see, Mr Premier, help me with this one. I am

8 going to look at your statements. What is being spent

9 is probably not important here. The example I am going

10 to take is simply this: I am going to take two similar

11 dates and compare the two cards. I would like you to do

12 this with me. Would you please turn first of all to

13 page 755 in the second bundle.

14 Forgive me I am going to move you on slightly, 868

15 is a better page for this.

16 SIR ROBIN AULD: Just as luck would have it, that is in

17 the next bundle.

18 MR FITZGERALD: Sir, my bundle 2 gives out at 813.

19 MR MILNE: In that case, sir, go to the beginning of

20 volume 3. I apologise. Towards the bottom of that

21 page, this is in April of 2006, there was clearly a trip

22 to Israel, because there are a number of purchases made

23 in Israel, Jerusalem, Tel Aviv, Metzada, Einbukek(?).

24 They are a variety of things, but it includes what

25 appears to be Vandome Nike Malha. That is a purchase at

1 a Nike shop. Over the page, Kibbutz Kiner, the Edge of
2 the Stream, Ginesar(?). It is hard to say what they
3 are, but I suggest that some of these may be hotels.
4 There are certainly hotels mentioned, and indeed
5 restaurants. Kudeta restaurant, 20th April 2006.

6 So it would appear that there was spending going on
7 in Israel?

8 A. Yes.

9 Q. It was going on -- the Chief Minister card, which had
10 a previous balance to it in fact of some \$45,000, being
11 racked up on a previous occasion. There had clearly
12 been a payment off. In fact there were two payments off
13 that month to bring it down.

14 The other card, your personal card for that same
15 period is back at page 784.

16 SIR ROBIN AULD: That is bundle 2.

17 MR MILNE: Bundle 2, I am afraid, sir, yes.

18 SIR ROBIN AULD: Page?

19 MR MILNE: 784. The balance on that card previously had
20 only been some \$7,000. These two cards were both your
21 cards. Did they have similar credit limits?

22 A. No.

23 Q. Any reason why one would have a different credit limit
24 or would they both be about the same?

25 A. These cards, the Horizon cards are not strictly, they

1 are credit cards but they are not strictly speaking
2 credit cards. They are more like a credit/debit card.
3 For example, if you have a Horizon card and even if
4 the limit is \$5,000, if you have \$10,000 on your card,
5 then you can use \$10,000.

6 Q. So what would be the limit on this card at any given
7 time? Can you tell looking at that statement? Clearly
8 large amounts are being paid on. Payments and credits
9 in the month were to run to somewhere in the order of
10 \$27,000. Although it appears there was a payment in
11 that was immediately cancelled towards the end --
12 I think that is 11th April 2006. They are American
13 notations, so month, day, year.

14 The reason I raise this particular one -- sorry,
15 Mr Premier, you wish to say something?

16 A. I mean, I don't know what you are getting at.
17 The period that you are talking about was a period of --
18 well, ask the question.

19 Q. The period we are talking about is the period you were
20 on honeymoon. You had been married on 8th April 2006,
21 is that correct?

22 A. Yes.

23 Q. So immediately after your marriage, perfectly normal,
24 you go away with your new wife and the trip appears to
25 take in Israel. What I am curious about is this, why

1 would you, on your honeymoon, be charging hotels, food,
2 to the business card rather than the personal card when
3 it appears that the personal card is carrying a much
4 lower balance? There is no shortage of credit on
5 the personal card but you choose to use the business
6 card? Do you see what I am asking?

7 A. I have said to this Commission that all of my cards are
8 personal cards. I settle my cards myself. So you keep
9 saying they are business cards.

10 SIR ROBIN AULD: I have ignored that word. What I have
11 written in my note is what is being put to you is you
12 have been charging honeymoon expenses to your office of
13 the Premier card and not to the card in your name of
14 Michael Misick which seemingly had a lower credit. That
15 is the question.

16 A. Yes, the clarification for all that is the clarification
17 that I gave from the very beginning. The fact that this
18 card was never a government card, it is my card.

19 SIR ROBIN AULD: That I understand and I think that is
20 plain, as your evidence.

21 Just don't use the word "business" any more.

22 MR MILNE: I will avoid that word, sir. I am going to move
23 on to a different topic.

24 A. As a matter of fact, I think, if I can further clarify
25 that for the sake of being clear to the Commission, in

1 the very, very beginning, I believe when the card was
2 applied for, my then permanent secretary,
3 Mr Kingsley Been, I think it was the intention of having
4 a card for the office of the Chief Minister and for
5 actually the card for ministers in relation to travel.

6 I have not received that card. I believe
7 I informed the cardholder that the card issuer, which is
8 Horizon, that I, this would be a personal card and so
9 the fact that on it it says office of the
10 Chief Minister, is purely incidental. So for him to
11 keep repeating as if I am charging expenses of my
12 honeymoon to the government, is again not true and he is
13 simply doing it to mislead the public.

14 SIR ROBIN AULD: Yes, Mr Milne.

15 MR MILNE: Mr Premier, no doubt there will be somebody
16 within the office you work in who can assist us.

17 The civil servants who work with you will have records
18 of the amounts and the receipts. Could you tell us
19 through which department it goes, to whom would these be
20 addressed, who would retain these records?

21 A. What records?

22 Q. The records of the amounts that you claimed.

23 A. The permanent secretary.

24 Q. Which permanent secretary?

25 A. My permanent secretary.

1 Q. That currently, I think, is Mr Gloyd Lewis, is that

2 correct?

3 A. Yes.

4 Q. How long has he been in the post?

5 A. I don't know, he is the accounting officer for

6 the office of the Premier.

7 Q. So any detailed questions as to accounts really should

8 be addressed to Mr Gloyd Lewis?

9 A. He is the accounting officer.

10 MR FITZGERALD: Sir, this has been dealt with in for your

11 note, in the correspondence bundle, B3, there is

12 a reference:

13 "We have previously disclosed these statements for

14 the period of November 2007 to September 2008 ...

15 the complete set of statements. This card is held by

16 the Premier exclusively. This is one of the Premier's

17 personal cards ... he is responsible for the repayment

18 at all times and not any government offices."

19 That was stated in the --

20 (11.30 am)

21 SIR ROBIN AULD: This is the one which is marked or called

22 "office of the Premier card"?

23 MR FITZGERALD: Yes. That has been -- was made clear in the

24 correspondence.

25 SIR ROBIN AULD: That's clearly so but then presumably

1 the allegation business that the Premier has described
2 with the use of vouchers has to be done by somebody so
3 as, for example, not to charge honeymoon expenses to his
4 professional or formal allowances. Is that what you
5 want to --

6 MR FITZGERALD: I wonder, sir, just to clarify, if we could
7 clarify who makes the payments on the card because that
8 seems to be the fair question to ask the Premier.

9 SIR ROBIN AULD: Mr Fitzgerald wants to know who makes
10 the payment on the card and I want to know what you want
11 to ask Mr Gloyd Lewis.

12 MR MILNE: We would invite Mr Gloyd Lewis to provide, if he
13 possibly can, some clarification as to what was being
14 charged and what was not. There is, as you will be
15 aware, sir, a lot of suggestion. I make no comment on
16 it one way or the other but it is something that
17 the Commission has to explore. The suggestion being
18 that the Premier has to some extent used his position to
19 effectively cover private expenses and that there has
20 been expenditure not only of an excessive amount but of
21 an inappropriate amount.

22 Now, it is clear that much of the expenditure whilst
23 overseas, and the Premier is a man who has travelled
24 extensively overseas during his tenure, involves use of
25 credit cards.

1 A. That is a political statement.

2 SIR ROBIN AULD: Mr Premier, don't exacerbate the problem.

3 We have got to try to get through this in a reasonable

4 time. The question will be to somebody, for example,

5 were you charging your honeymoon expenses to your public

6 allowances. That is the sort of exercise that I think

7 Mr Milne is about. Is that right, Mr Milne?

8 MR MILNE: That is correct sir.

9 SIR ROBIN AULD: For example, did you charge your honeymoon

10 expenses to the public purse here?

11 A. Absolutely not.

12 SIR ROBIN AULD: Well, there you are. Mr Milne wants to

13 check that.

14 MR MILNE: I make clear, sir, it is not simply confined to

15 the honeymoon.

16 SIR ROBIN AULD: No, I took that as an example.

17 MR FITZGERALD: I wonder if he could ask then the question

18 of who made the payments on the card.

19 MR MILNE: As I understand it, sir, the Premier has said

20 several times that he made the payments on the card.

21 I don't know if my learned friend wishes me to ask him

22 so he can say it again, but that was the clear

23 understanding. I am not in any doubt, and I am sure

24 the transcript will show that that is his evidence. Do

25 I in any way misrepresent that, Mr Premier? You have

1 said that you made the payments?

2 A. Yes.

3 Q. Right.

4 Can we deal with a slightly different topic. It is

5 slightly off this track but it also, I am afraid

6 concerns money. It is this and you will find it at

7 volume 3, page 1039. Do you have that page, sir?

8 A. Yes.

9 Q. This is what appears to be some banking document. It is

10 in the name of a lady called Youlanda Scott.

11 Youlanda Scott, it would appear, is an American and

12 indeed over the page we see that she banks with

13 the Bank of America and we have a series of payments,

14 three documented here, into her bank account.

15 Youlanda Scott, it would appear from the page after

16 that, which is 1043, is part of a business, no doubt

17 US-based, called CY Designs by Carla and Youlanda. It

18 sets out, addressed to you, in all fairness, M Misick,

19 deliberately part of a telephone to protect the privacy,

20 but clearly a Turks & Caicos Islands telephone number.

21 A series of items which appears to be an invoice.

22 Yes?

23 SIR ROBIN AULD: Did you say 1029?

24 MR MILNE: 1043, sir.

25 Essentially, it is a clothes list. It is a bill for

1 in total \$23,000?

2 A. How much?

3 Q. \$23,000 appears to be the amount due, page 1043. These
4 are clearly ladies' clothes, perhaps men's clothes as
5 well. With some it is a little unclear.

6 Items for the house, pillows, vacuum, red box,
7 candles, matters of that sort, billed in total 23,000.
8 Clearly some sort of designer and no doubt an item that
9 was required by yourself or perhaps by your wife at the
10 time.

11 The query that we have is simply this, and perhaps
12 you could assist, with each of the three bills before
13 that, and none of these transfers in fairness appears to
14 reflect the actual bill at the end, but it is clear that
15 this was not the only bill that was sent. Transfers
16 have been made to Youlanda Scott of \$65,000. This was
17 on 18th January 2007. On 29th August 2006, page 1041,
18 \$20,000. On 25th September 2006, a further \$27,703.

19 Not insubstantial sums. Around \$100,000 in total.

20 In each case the body paying those bills was
21 the Progressive National Party. Could you tell us why
22 the Progressive National Party was paying the bills of
23 a designer in California, I think? Los Angeles.

24 A. I think we explained that to you in my statement, 2.9.

25 Q. You provided in that --

1 A. And I stand by the --

2 SIR ROBIN AULD: We had better just look at that, hadn't we?

3 This is A, paragraph 2.9.

4 MR FITZGERALD: 2.9, page 6.

5 SIR ROBIN AULD: Let's have a look at that.

6 MR MILNE: What you said is this, concerning Youlanda Scott,

7 a stylist to the Premier's wife, who has billed PNP for

8 her services. You don't give an explanation. You say

9 there are a number of possible explanations:

10 "There may have been a contribution to the PNP on

11 the understanding that the money was by way of a wedding

12 gift to me, or the PNP may have been meeting a cost

13 incurred by me just as I incurred costs on their behalf

14 personally."

15 A. You can read on --

16 Q. As with the Victory Store purchase --

17 A. -- as with the Victory Store bills that I paid. That is

18 my answer then and that is still my answer.

19 Q. The Victory Store purchases were purchases made on the

20 Chief Minister's card for about \$38,000 from a company

21 in Davenport, Iowa, I believe, which were promotional

22 items for the PNP?

23 A. Right.

24 Q. I am not asking you about those in fact, but since you

25 raised them, we are aware of them and we are aware of

1 your explanation for that. What I am asking is have you
2 managed to pin down why it is that the PNP paid out
3 \$100,000 to your wife's stylist?
4 A. My answer is in 2.9.
5 Q. So your answer is there are a number of possible
6 explanations but you don't know which is right?
7 A. I am answering it based on my recollection.
8 SIR ROBIN AULD: What are you saying, Mr Premier? What is
9 your answer?
10 A. My answer is in 2.9.
11 SIR ROBIN AULD: All there?
12 A. Yes.
13 MR MILNE: You can't add to that or elaborate upon it?
14 A. No.
15 Q. Thank you.
16 Presumably the PNP records will indicate what it was
17 that they were paying for. PNP are aware that they are
18 paying a California stylist to provide services to your
19 wife. So no doubt there will be some internal balancing
20 exercise, the Premier paid for \$100,000 elsewhere,
21 therefore we pay for this. No doubt there will be paper
22 records for that?
23 A. We shall see.
24 Q. I beg your pardon, sir?
25 A. We shall see.

1 Q. We will only see if you help provide them, sir. Are you
2 prepared to do that?

3 SIR ROBIN AULD: Mr Fitzgerald, I wonder if Ms Missick could
4 add this to her list of matters that are to be produced
5 by the PNP?

6 MR FITZGERALD: Yes, if there is paperwork to deal with
7 this.

8 SIR ROBIN AULD: There will be a bank account, won't there?

9 MR FITZGERALD: Yes, we will deal with it.

10 SIR ROBIN AULD: Thank you very much.

11 MR MILNE: Mr Premier, we are going to take a break in
12 a couple of minutes' time. There are two very short
13 topics and I can deal with each of them. I simply
14 invite your comment upon this because the Commission has
15 received a number of suggestions or assertions about
16 items that you own, items that you are involved in, be
17 that corporate or personal.

18 One of those is that you in some way own, be that
19 directly or indirectly, the Casablanca Casino. Is that
20 true?

21 A. The Casablanca Casino?

22 Q. Yes. Do you own it or do you have any interest in it?

23 A. No, not the casino, no.

24 Q. What do you own?

25 A. I own a lot of things.

1 SIR ROBIN AULD: Stop fencing, Mr Premier. Do you have any

2 interest in the Casablanca Casino of any sort?

3 A. No, I said I have no interest in the casino. I believe

4 we declare that I had an interest in the land in which

5 the casino sits on.

6 SIR ROBIN AULD: That is the answer, thank you.

7 MR MILNE: Which parcel of land is it that the casino sits

8 on?

9 A. I can't recall.

10 Q. What else is on that land apart from the casino?

11 A. Apart from that?

12 SIR ROBIN AULD: I didn't hear.

13 A. A parking lot. There is the land and there is a parking

14 lot.

15 MR FITZGERALD: Sir, this is dealt with at page 63 of bundle

16 B under the heading, Hydronox Limited. So it is II,

17 page 63 of the correspondence bundle, in the letter from

18 the Premier's attorneys dealing with the fact that

19 the land is owned by Hydronox Limited in which he has

20 a share. But that is the land.

21 SIR ROBIN AULD: But no interest in the business operation

22 at all there at the casino?

23 A. No.

24 Q. So the company Hydronox owns the land.

25 Windsor Investment Group owns 50 per cent of Hydronox.

1 You own 10 per cent of Windsor Investments Group?

2 A. Yes.

3 Q. That is the extent of your connection or involvement in

4 it?

5 A. Yes.

6 MR MILNE: Sir if that's an appropriate moment?

7 SIR ROBIN AULD: Yes. Let's take a short break, shall we?

8 (11.42 am)

9 (A short break)

10 (11.49 am)

11 SIR ROBIN AULD: Yes, Mr Milne.

12 MR MILNE: Mr Premier, we are going to move on to a totally

13 different topic now and that is the topic of tourist

14 board. I am going to ask you first to look at page 73

15 of bundle -- red bundle 6.

16 Do you have that, sir?

17 A. Yes.

18 Q. That is a Cabinet minute from 23rd August 2006. It

19 concerns a discussion that took place in Cabinet

20 following the swearing-in ceremony of the Premier,

21 Deputy Governor and the Deputy Premier. You produced

22 a paper, it would appear. Addressing the paper you

23 said, you wished to register your disappointment that

24 the monies spent on the function, when figures were

25 submitted to Cabinet for approval for a function

1 activity, you expected that the outturn would be in line
2 with the request. The minute records you as saying, it
3 is becoming a practice that quotes are submitted and
4 when the actual bills are received, the amounts
5 reflected were not what the service provider quoted.

6 You noted that for future events, service providers
7 would have to submit pro forma invoices prior to
8 functions being held. Although you acknowledge
9 the government had to honour commitments, you further
10 stated the Cabinet was drawing the line:

11 "In future any monies approved by Cabinet for events
12 must be adhered to as the Cabinet will not tolerate
13 excess expenditures. Persons will be personally held
14 responsible where such occurred."

15 That is a very realistic, if I may say, reminder to
16 your Cabinet colleagues that budgets are important, that
17 invoices should be presented in advance. There should
18 be an element of financial planning. You would agree
19 that that is something that you, as Premier, have
20 an element of overall responsibility for, of good
21 financial management of the government?

22 A. Yes.

23 Q. I accept that you have within your Cabinet a finance
24 minister who in due course will give evidence. Could
25 we, however, move on just a few pages --

1 SIR ROBIN AULD: Before you do, what is the date of that
2 Cabinet meeting? We don't have the entirety of the
3 minutes, do we, in each case?
4 MR MILNE: No, sir. We would end up with many, many more
5 volumes if we put the whole lot in.
6 SIR ROBIN AULD: Do you know the date of this meeting?
7 MR MILNE: 23rd August 2006.
8 SIR ROBIN AULD: Thank you.
9 MR MILNE: We move on, please, if we could to page 101.
10 This is a Cabinet meeting, the very early part of the
11 following year. 17th January 2007. The heading on this
12 minute, which is the lower half of the page:
13 "Funds required for overspent amount, Turks & Caicos
14 tourist board. The Premier raised this matter seeking
15 that Cabinet approved an additional amount of
16 \$1.3 million subvention in respect of the Turks & Caicos
17 Islands tourist board."
18 You go on to deal with the music festival and
19 the TCI international film festival events, forming part
20 of the tourist board budget in future. You say:
21 "Expenditure revenues would form part of the budget
22 of the Premier's office and be managed and accounted for
23 in the normal way as in other departments.
24 The president, that being the Governor, stated that to
25 comply with financial instructions, the board should

1 have sought authority in advance of overspending so that
2 the supplementary appropriation could have been approved
3 by the House of Assembly, prior to incurring
4 the expenditure. The Cabinet who approved the overspend
5 now forced it to contravene the law. While the current
6 situation left Cabinet with no choice, the President
7 [again the Governor] had to register serious concern at
8 this state of affairs."

9 You responded that the present administration had
10 improved on the record of all previous administrations
11 bringing supplementary expenditure to the House in
12 a timely manner, as opposed to the past when
13 supplementary appropriations never reached the House and
14 if they did, it was two or three years in arrears. You
15 said this was not an excuse for non-compliance with the
16 law, and should the government be returned to office,
17 and of course the government was facing another election
18 shortly after that, this record would be much improved.

19 Then there is discussion about the possibility of
20 a contingency reserve fund, but essentially
21 the \$1.3 million was approved.

22 MR FITZGERALD: Is this 17th January 2007?

23 SIR ROBIN AULD: That is the date I have.

24 MR MILNE: 17th January.

25 Mr Premier, I take that as one example, I am not

1 going to go through all of them, but the fact is
2 the tourist board has a, we would submit, poor history
3 of overspending. It appears to be spending massive
4 amounts in recent years. Would you agree with that?

5 A. Well, I would agree that the tourist board has had
6 a long history since its inception under all
7 administration of overspending.

8 Q. The tourist board is your personal ministry. You are
9 involved in the tourist board or at least you are
10 involved in the ministry?

11 A. I take offence to the word "personal". I am
12 the Minister of Tourism.

13 Q. I am not suggesting you do it outside office hours, sir.
14 What I am suggesting is that part of your duties are as
15 Minister of Tourism?

16 A. I am Minister of Tourism as well as Premier. As Premier
17 I take responsibility for all of the things that have
18 happened under my premiership. But in relation to
19 the tourist board and in relation to financial
20 management, there is the Minister of Finance, there is
21 the PS finance, there are permanent secretaries who are
22 accounting officers, who are personally liable under
23 the law for the management of public funds.

24 The tourist board as a statutory body, also, those
25 board members under law, is also liable.

1 Q. You ultimately take responsibility. The responsibility
2 in any Parliamentary democracy goes upwards. As I think
3 used to be -- it may still be on the desk of the
4 American president, the buck stops here.

5 You take the ultimate responsibility for what is
6 done in your name, do you not?

7 A. No. I take, as head of government, and this is
8 a democracy where there is a Cabinet and when decisions
9 are taken by Cabinet, the Governor, as you rightly said,
10 is the president of Cabinet. Under our constitution, if
11 Cabinet advise him on a matter and he thinks otherwise,
12 he can refuse to take the advice and seek instructions
13 from the Secretary of State.

14 Q. The overspend on the budget, I would suggest --

15 A. And there is collective responsibility.

16 Q. Yes. But the overspend on the budget is something that
17 you should be very, very concerned about. As you have
18 made clear on another occasion in a slightly different
19 context, you are prepared to raise the issue. You are
20 prepared to make criticisms. You are prepared to be
21 robust about it?

22 A. Absolutely.

23 Q. But you don't appear to have been very robust about
24 the tourist budget, sir?

25 A. I was. The overspend by its very nature, you will know

1 about it -- certainly I would only know about it after
2 that the overspend has taken place.

3 Q. I would suggest that many of the items that are
4 overspent are overspent because you make decisions about
5 how money is going to be spent within the tourist
6 industry, within the tourist ministry and as a result of
7 that, budgets are simply disregarded. Budgets are
8 overspent on a routine basis.

9 A. The tourist board is a statutory body that has certain
10 legal requirements.

11 As Premier -- or no minister makes unilateral
12 decision on how money is spent. That is done
13 collectively in Cabinet.

14 (12 noon)

15 Q. How long have you been a Minister of Tourism?

16 A. Since the time I was Premier.

17 Q. Since 2003?

18 A. 2003.

19 Q. Could you please turn to core volume 2. Do you have 2
20 in front of you?

21 A. Yes.

22 Q. Could we turn, please, to tab 9.

23 A. Yes.

24 Q. These are not all numbered but the first document after
25 tab 9 is about seven or eight pages long and it is

1 headed "The Financial Statements for the Turks & Caicos
2 Islands Tourist Board, Year Ending March 2006".

3 There then follows an audit report for the financial
4 statements for the year ended 31st March 2006. Do you
5 have that?

6 A. Yes.

7 Q. We turn over the page. This is an audit report by
8 the official auditor carried out at the time. I believe
9 that was Cynthia Travis. Do you remember her?

10 A. I remember her very well. She was very much
11 anti-government.

12 SIR ROBIN AULD: She was very what?

13 A. Anti-government, and she wrote a lot of reports that
14 were parting a blow to the government. She was
15 in cahoots with the opposition. In fact she stayed at
16 one of the homes of the opposition members. I remember
17 very, very well and I spoke out many times in Parliament
18 about the unbiased nature of the work that she did.

19 MR MILNE: Ms Travis, I believe, is a lady with many years'
20 audit experience who objected vehemently to the
21 criticism that you levelled at her in public where she
22 had no opportunity to answer because she had no public
23 platform as you did. Is that not correct?

24 A. I am sorry?

25 Q. She objected vehemently, sir, to the criticism that you

1 piled upon her because you had the public platform of
2 being Premier of this Overseas Territory. She had no
3 platform whatsoever and was unable to answer back?

4 A. She did. Her platform was in the audit report. Sorry,
5 don't raise your voice at me. She did. Some of the
6 objections, all of us had with the audit report, even
7 permanent secretaries, was that information was given to
8 her. She would send a draft report as draft audit
9 reports are supposed to be --

10 SIR ROBIN AULD: She would do what?

11 A. Send a draft. Let me speak slowly. She would send
12 a draft audit report as is required. Accounting
13 officers would make submission to her, correcting
14 the allegations or the misinformation that she may have,
15 and she would completely disregard that and still
16 the final report would still indicate what her draft
17 report said.

18 SIR ROBIN AULD: We have read her reports. We are familiar
19 with the dynamics there.

20 A. You should also seek to see some of the response --

21 SIR ROBIN AULD: We have done that too.

22 A. -- that was given to her by some of the accounting
23 officers.

24 SIR ROBIN AULD: I have seen this. We are familiar with
25 the dynamics here. I understand that. Your view was

1 she was in cahoots with the opposition and very

2 anti-government?

3 A. Yes.

4 MR MILNE: So the criticism that is made of the management

5 of the tourist board, you regard as being a purely

6 personal attack or attack upon your party?

7 A. Absolutely not. I am not talking about the tourist

8 board. I am talking about her reports straight across

9 the board.

10 Q. Let's deal with this one for the moment and we can

11 consider what is being said in here. She is making this

12 report and it is to cover the period up to

13 31st March 2006. Now, this is in fact the last

14 available, the most recent available audited report

15 because no doubt work is being done but we have no

16 published final report for subsequent years; which is

17 why 2006 is being chosen. It is simply as up-to-date as

18 we can get. She states in the executive summary of that

19 document:

20 "The tourist board is in a poor financial state."

21 A. What are you reading?

22 Q. This is page 3 of 31. It is the executive summary. If

23 you turn past the first page of the audit reports?

24 A. Are you in tab 9?

25 SIR ROBIN AULD: Unfortunately the whole section has not

1 been paginated. You have to flip through a bit before
2 you hit the audit report.

3 MR MILNE: Let's start again, sir. If you go from tab 9,
4 leave aside the simple financial reports because that is
5 the initial document that is prepared. You are looking
6 at the audit which is about eight pages in. It has
7 a standard TCI --

8 SIR ROBIN AULD: It follows a page marked 15 in the bottom
9 left-hand corner.

10 MR MILNE: Do you have that?

11 A. I still don't have it?

12 Q. Do you have it?

13 A. I don't have it. Is it page 6?

14 Q. No. (Handed) (Pause)

15 MR FITZGERALD: Sir, can I just raise one short issue at
16 this stage. Sir, we have indicated in our -- well, it
17 is clear from the response that the Premier has made
18 that there is an issue as to whether this really goes to
19 dishonesty or corruption.

20 SIR ROBIN AULD: Which response are you talking about?

21 MR FITZGERALD: The document A.

22 SIR ROBIN AULD: So you want me to look at what is said in
23 A?

24 MR FITZGERALD: Yes, about the level of expenditure. It is
25 2.2 and 2.3.

1 SIR ROBIN AULD: Thank you.

2 MR FITZGERALD: Sir, I just wondered, given that time is

3 running out, whether this exercise of criticisms over

4 expenditure is within the terms of reference,

5 particularly in the light of what is said at the bottom

6 of page 3 of 31:

7 "Fortunately we found no instances of fraud or

8 misappropriation arising from the false balances used."

9 SIR ROBIN AULD: Where are you now?

10 MR FITZGERALD: In the report that my friend is relying on,

11 in the executive summary which my learned friend was

12 taking the witness to. At the bottom it said:

13 "Fortunately we found no instances of fraud or

14 misappropriation arising from the false balances used."

15 My respectful submission is, if even this critical

16 report is not alleging fraud or misappropriation of any

17 sort and if the terms of reference are dishonesty or

18 corruption, is this really within the terms of reference

19 and given the pressure of time, is this a useful

20 exercise? I respectfully submit, is it a useful

21 exercise?

22 SIR ROBIN AULD: What do you say to that, Mr Milne?

23 MR MILNE: Sir, the response is simply this: that one does

24 not find fraud in a box marked "fraud". One has to

25 search for it in different areas. The exercise we are

1 carrying out here is not -- I accept what is said in the
2 audit report, is not to identify areas where somebody
3 has had, to put it colloquially, their fingers in
4 the till. What we are looking at is an entire
5 government department. It is mentioned, of course, in
6 the summons and in documents and it has been
7 foreshadowed to my learned friend and his client, that
8 there is a pattern, a culture of widespread disregard,
9 perhaps a cross-party culture of disregard, one knows
10 not, but a culture of disregard for budgets. A culture
11 of simply spending the money at whim and I stress that,
12 at whim, which leads ultimately, we would say, to
13 an erosion of the proper systems of government. This is
14 but one example. It can be a short example because --
15 SIR ROBIN AULD: I think I can probably shortcircuit this.
16 Forgive me for interrupting you, Mr Milne. I have two
17 terms of references, you will all recollect. The second
18 one goes to systemic matters which I am asked to report,
19 and if appropriate make recommendation for approval of
20 financial structures and controls which may at least
21 enable improper conduct, if not encourage it. I would
22 have thought, whatever the nature of the allegation,
23 alive under the terms of reference 1, it clearly comes
24 within terms of reference 2.
25 MR MILNE: Mr Premier, if you have before you the audit

1 report, I am looking at page 3 of 31. Do you have that?

2 A. Yes.

3 Q. Executive summary. The second paragraph of that, the
4 first simply outlines the report, says this:

5 "The tourist board is in a poor financial state. At
6 the end of March 2006, the tourist board had an
7 accumulated deficit of [1.7 million, in fact \$1,700,654]
8 an overdraft bank balance of over half a million
9 dollars, as well as outstanding creditors of
10 \$1.3 million. Subsequent to the financial year 2005 to
11 2006, the tourist board paid its creditors in total
12 \$1,246,725. The government's subvention was therefore
13 reduced. As with previous years, the tourist board has
14 a history of requiring ad hoc funding to supplement its
15 budget from the TCI government. Despite a 15 per cent
16 increase in government subvention received during
17 the financial year 2005 to 2006 compared to the previous
18 one, the tourist board still incurred an operating
19 deficit."

20 I go down the page, two more paragraphs. Simply
21 this:

22 "Of the 13 issues raised in this audit report, that
23 is criticisms of the financial management and handling,
24 half of the issues, issues 8 to 13, were raised in the
25 previous year's audit report. Management has made

1 little effort to address previous issues raised. It
2 appears that there is a lack of willingness, both on
3 behalf of the management and board of directors, to
4 operate in an efficient and effective manner."

5 She then goes on to list a number of the criticisms.
6 Lest there be any doubt. The layout for those who have
7 never seen such a report is that the draft report does
8 go to the people concerned, to no doubt the civil
9 servants and to the politicians, and with each of the
10 criticisms and recommendations, because these are not
11 simply criticisms, they are recommendations for
12 improvement. The criticism is set out in the audited
13 report. The recommendation follows. The management,
14 that is the tourist board in this case, are given
15 the opportunity to respond and their response is put in
16 and any further response coming back from
17 the chief auditor is then published.

18 So it reads in a sense like a conversation. Would
19 you accept, Mr Premier, that you would have seen this
20 audit report as part of your duties as Minister of
21 Tourism?

22 A. This report goes further. Not only is it ultimately
23 laid on the table of the House of Assembly and
24 the leader of the opposition, who is the chairman of the
25 public accounts committee, also gets this and --

1 SIR ROBIN AULD: Just deal with the question. Did you see
2 it? That is all the question was. Did you see it?
3 A. Yes, I have.
4 SIR ROBIN AULD: Well, the answer is yes, I saw the report.
5 MR MILNE: Can we take it, you would have seen the previous
6 year's one which had a series of criticisms and
7 recommendations?
8 A. I would have seen all of the -- at least I would have
9 had all of the reports in relation to the tourist board,
10 yes.
11 Q. You would therefore have been aware that these
12 criticisms were coming back year after year? Half of
13 the criticisms were repeated two years running?
14 A. Yes, but again, the tourist board operates its own
15 budget. The report is directed to them. When a report
16 such as this comes, certainly the permanent secretary
17 meets with the tourist board but the tourist board runs
18 its own budget. So I don't know what you are getting
19 at, the relevance to me. I am not a member of the
20 tourist board, I am not a director of tourism and so --
21 SIR ROBIN AULD: Give the Premier some indication of where
22 you are going on this, Mr Milne.
23 MR MILNE: I simply want to know what political intervention
24 there was, given your political post as tourist
25 minister, to try to knock some sense into your ministry,

1 to try to get it to comply with the legal obligation to

2 stay within budget.

3 A. I changed the board.

4 Q. You changed the board?

5 A. We changed the board, yes.

6 (12.15 pm)

7 Q. Did you sack the entire board?

8 A. We changed the board. I would not say sacked. We

9 changed the board periodically. We changed the board

10 the end of every March.

11 Q. Can you recall whether you changed the board between

12 the previous year and this year, between 2005 and 2006,

13 because clearly the same criticisms were coming back --

14 A. No. What I can say, what we have done, since these

15 reports, prior to some of these reports, in terms of

16 trying to now be accounting in the tourist board, we

17 have hired a certified public accountant to be a

18 financial controller, and the board has made steps to

19 try to tighten up on the over-expenditure.

20 So there are a number of steps that have been taken

21 to try to deal with them.

22 SIR ROBIN AULD: The tourist board has made improvements?

23 A. Yes.

24 MR MILNE: When this particular matter was debated and

25 raised in 2006, which was the last full audit report,

1 was it debated by the Public Affairs Committee?

2 A. What?

3 Q. When this report was produced, you have told us it was

4 laid before the leader of the opposition --

5 SIR ROBIN AULD: Public accounts committee, I think he said.

6 MR MILNE: Slip of the tongue, I beg your pardon. Was it

7 debated by the public accounts committee?

8 A. I don't know. I am not a member of the public accounts

9 committee.

10 Q. Would you have attended the public accounts committee?

11 A. I am not a member of the public accounts committee.

12 SIR ROBIN AULD: Did the public accounts committee ever sit?

13 A. Yes.

14 SIR ROBIN AULD: Are there minutes of its meetings?

15 A. Yes, the chairman of the public accounts committee is

16 the leader of the opposition who can call that at any

17 time.

18 SIR ROBIN AULD: Does it require a forum?

19 A. I am sure it does, but I know it sits regularly.

20 SIR ROBIN AULD: There would be minutes of its meetings?

21 A. Should be, yes.

22 SIR ROBIN AULD: The person to approach about such minutes

23 would be Mr Floyd Seymour?

24 A. The clerk -- because the public accounts committee is a

25 committee of the House.

1 SIR ROBIN AULD: It has a clerk, does it?

2 A. Yes, the clerk to the House is clerk to all of the House

3 committees.

4 SIR ROBIN AULD: So the clerk to the House would have access

5 to all the minutes of public accounts committee

6 meetings.

7 A. Should have.

8 MR MILNE: I asked you a few moments ago if you attended

9 the meeting. Your response was you were not a member,

10 which I accept, but you could still possibly attend

11 a meeting of which you are not a member. In some cases

12 people can attend ex officio, that is by virtue of their

13 status, or they can simply be allowed to sit in. Do

14 I take it you did not attend that meeting?

15 A. Not in our system. That may be the way it works in

16 Britain.

17 Q. Would you have seen or would you have tried to see the

18 minutes of that public accounts committee meeting?

19 A. No, they would not have sent it to me.

20 Q. Would it not have been relevant to your job as Minister

21 of Tourism to know what it was the public accounts

22 committee was saying about this court?

23 A. If the public accounts committee wanted to see me, they

24 could have asked me to attend and they did not.

25 Q. No doubt there will be another audited report due soon.

1 Perhaps the year up to 2007 will be ready shortly.

2 Would that have to go before the public accounts
3 committee?

4 A. All reports, all audit reports go to the House.

5 The public accounts committee can decide to discuss,
6 summon, persons in relation to any of its report. That
7 is a matter for the public accounts committee.

8 Q. Can you tell me, sir, other than the leader of the
9 opposition, who are the present members of the public
10 accounts committee?

11 A. I can't tell you exactly. I can't recall.

12 Q. Is it not the case that in fact there are no members of
13 the public accounts committee because you have not
14 appointed any?

15 A. That is not the case.

16 Q. When did you appoint them?

17 A. We appoint, except for three or four months during
18 this -- last year, there has always been a public
19 accounts committee. I believe the committee is then
20 reappointed in its present state at the last meeting of
21 Parliament.

22 Q. When was that?

23 A. Whenever it was, sometime in December.

24 Q. The very last meeting of Parliament in December,
25 the public accounts committee was reappointed?

1 A. I believe that is the case.

2 As a matter of fact what was said was that
3 the present members, because the committees comprise
4 members from both sides of the House, so I nominate all
5 of the members that was on the Committee to remain on
6 the Committee from my party, and I believe that
7 the opposition leader did the same.

8 So except for six years that I have been Premier,
9 except for about three months out of this year,
10 I believe since September, there was always a public
11 accounts committee.

12 SIR ROBIN AULD: Do you know how frequently it sits?

13 A. I don't know. I think it sits -- you probably have
14 an opportunity to ask the leader of the opposition but
15 I think it sits at least monthly. Sometimes more,
16 I believe.

17 MR MILNE: Would you be able to make available the minutes
18 of the last Cabinet meeting to the Commission?

19 A. The last Cabinet meeting?

20 Q. Yes.

21 SIR ROBIN AULD: I think he said Parliament. Decided at its
22 last meeting in December.

23 MR MILNE: Since those minutes would no doubt list the names
24 of those who were being appointed.

25 A. I am sure you can get it from the House of Assembly from

1 the clerk. But I will see if my office can assist you

2 in that matter.

3 Q. Thank you very much. The present state of the tourist

4 board, I would suggest, as we stand here today, is

5 parlous. It is heavily overspent. It is well beyond

6 budget. Would you agree with that?

7 A. Heavily overspent and what?

8 Q. Heavily overspent and beyond budget?

9 A. Without seeing the accountants, I can't say that the

10 present state of the tourist board budget is heavily

11 overspent in the end budget.

12 Q. Is the government as a whole heavily overspent?

13 A. I don't know what you are asking.

14 SIR ROBIN AULD: Can I shorten this. Are you aware of

15 difficulties, financial difficulties, with the tourist

16 board at the moment?

17 A. I am aware of financial difficulties in England, I am

18 aware of financial difficulties in the US, I am aware of

19 financial difficulties all around the world --

20 SIR ROBIN AULD: Let me be more precise. Are you aware of

21 a pending litigation against the tourist board at the

22 moment?

23 A. No, I am not aware, no.

24 MR MILNE: You are not aware of litigation against

25 the tourist board at present?

1 A. Unless it is something new, I am not aware. It was not
2 brought to my attention. The tourist board, there are
3 a number of like government agencies who have
4 outstanding invoices. Some of these that we are in
5 the process, because of the financial situation of
6 negotiating with our creditors for state payments and so
7 within the context of the economic situation which we
8 found ourselves in, we are trying to manage the country,
9 to manage our economy, and I must say for the last three
10 days you were bragging so much about being a British
11 Territory and we got absolutely no assistance from
12 the UK for its Territory.

13 When you look in the last six years, more money was
14 spent on public investment, on education, on bringing
15 our country to what it is. I am very proud of the six
16 years of the PNP administration and what it has done to
17 our country.

18 SIR ROBIN AULD: I think you are making a speech now too.

19 You will have a chance. You are not going to miss your
20 chance but the question, I think, is fairly narrowly
21 focused. You are not aware of any particular
22 overspending problems in the tourist board.

23 A. I am aware that we have -- as I said, the tourist board
24 has always overspent in its history.

25 SIR ROBIN AULD: Nothing special at the moment?

1 A. I am aware that we have substantial advertising bills
2 that have to be paid that I have said we are working on
3 paying, that is owed. Now, whether they have been sued
4 by some of them, I can't say but I don't believe so,
5 because I know that they have been trying to negotiate
6 with some of the creditors.

7 MR MILNE: Who are the creditors? The big creditors?

8 A. Without -- I mean, there are Conde Naste Travel. There
9 are publications.

10 Q. Conde Naste Traveller, Conde Naste, the publishing
11 company, is presently contemplating suing the TCI for
12 \$1,040,277. Is that correct?

13 A. Is what correct?

14 Q. That they are thinking about suing the TCI for
15 \$1 million?

16 A. How can I answer what they are thinking about doing?

17 SIR ROBIN AULD: The Premier said he was not aware of any
18 impending litigation.

19 A. The last information I had from Conde Naste was they
20 were willing to accept periodic payments.

21 SIR ROBIN AULD: You have said you are not aware of any
22 impending litigation.

23 A. No. I can't answer to whether they are thinking about
24 doing it.

25 MR MILNE: You are aware of the dispute?

1 A. I am aware of the bill.

2 Q. You are aware that they are unhappy and that they have
3 attorneys in New York who are in contact with you. They
4 are not the only one, sir, are they? There are others?

5 A. What does this have to do with dishonesty and
6 corruption?

7 SIR ROBIN AULD: I think the Premier said he is not aware of
8 this. Unless he wants to add or qualify that in any
9 way, we have to take his answer for the moment.

10 A. The tourist board owes money for advertising. We spend
11 a lot of money promoting these islands. When we came to
12 office, there was less than 100,000 people coming here.
13 Now it is almost 300,000 stay-away visitors. There is
14 half a million cruise ship visitors. We have built in
15 this country with no assistance from the British. What
16 is your point?

17 SIR ROBIN AULD: You are off again now. Let's keep this
18 sharply focused.

19 MR MILNE: My point, sir, is this: you personally were
20 involved in appointing a company in New York called
21 Kerwin Communications. They do not appear, I would
22 suggest, on the tourist board budget, but you intervened
23 to appoint them as a PR agency on behalf of the Turks &
24 Caicos government.

25 A. The tourist board has appointed Kerwin.

1 SIR ROBIN AULD: The tourist board --

2 A. The tourist board and the Minister of Tourism. The

3 tourist board -- Kerwin has made presentations to

4 the tourist board. Kerwin is a reputable agency that

5 does advertisement for Bermuda, does for Israel, does

6 for other high end products.

7 SIR ROBIN AULD: No criticism is being made of Kerwin, so

8 let's go to the next question, please.

9 MR MILNE: They are a PR agency based in Caldwell, New

10 Jersey, and they have incurred these debts on the behalf

11 of the TCI and the debts are not being settled. What

12 I am suggesting is that there have been

13 effectively expenditures incurred on behalf of the

14 tourism ministry, writing cheques that could never be

15 honoured. You have been spending money in massive

16 amounts, \$1 million with Conde Naste, when the board was

17 simply not able to pay it and you were aware of that.

18 A. No, that is not the case.

19 If you go to the budget booklet, the monies were

20 allocated for advertising. As a matter of fact, I can't

21 remember exactly, but I know there was about \$3 million

22 or \$4 million per annum that was allocated for

23 advertising. Now, because of the -- obviously

24 the economy changed on us and so the economy changed.

25 We had two or three hurricanes. We had other

1 priorities. So some of those bills were -- is still

2 left unpaid.

3 Q. This, I take it, is the same Kerwin Communications who

4 paid your wife \$299,700 in 2007 that we see on your

5 appendix 5?

6 A. Yes.

7 Q. That money going into the My Way Productions 2 Limited

8 account?

9 A. And she did an advertising campaign for Kerwin, was

10 hired by him to do it, and billboards and advertising

11 all over the world and she got paid for it.

12 Q. It is pure coincidence that she gets the job of working

13 for Kerwin Communications when you give them your

14 contract?

15 A. The tourist board gave them a contract.

16 Q. You are the head effectively of the tourist ministry, so

17 you have some involvement with it. You are in contact

18 with Mr Jim Kerwin in person, aren't you?

19 A. Am I in contact with him?

20 Q. Yes.

21 A. Well, yes. As you rightly said, the tourist board owes

22 the advertising agency or the companies that Mr Kerwin

23 represent and he has not only my account, but he has

24 been in contact with the director of tourism, the

25 chairman of the tourist board. He has been in contact

1 with as many people as he could be in contact with to

2 try to get his money.

3 Q. You said to us that Kerwin Communications had been

4 chosen by the tourist board, yes?

5 A. Yes.

6 Q. You played no part in choosing Kerwin Communications.

7 Are we to understand that?

8 A. The way it works in relation to advertising or PI

9 agencies, my understanding in all of the time that

10 I have been Minister of Tourism is that these agencies

11 make proposals or presentations to the board.

12 Invariably, because I am the Minister of Tourism, or

13 whoever was the Minister of Tourism, they would

14 introduce you to the Minister of Tourism. The decision

15 in terms of choosing an agency or PR agency for

16 the tourist board would be the tourist board.

17 (12.30 pm)

18 SIR ROBIN AULD: Keeping Mr Fitzgerald's strictures in mind

19 as to my first term of reference, what is the answer to

20 the question, did you play no part in her appointment?

21 A. No part. The tourist board made the appointment.

22 SIR ROBIN AULD: Did you play any part in the process

23 leading to her --

24 A. To his firm? I mean, I can't strictly answer that

25 because I certainly haven't appointed him. I didn't

1 instruct the board to hire him.

2 SIR ROBIN AULD: Did you play any part in the process of her

3 appointment?

4 MR FITZGERALD: Is it the appointment of his wife?

5 SIR ROBIN AULD: Yes.

6 MR FITZGERALD: He thinks the question was about

7 the selection of Kerwin Media.

8 SIR ROBIN AULD: Which was it, Mr Milne?

9 MR MILNE: I am not sure.

10 MR FITZGERALD: I understood my learned friend to be saying,

11 did you play a part in the selection of Kerwin Media,

12 and sir, you were asking about the appointment,

13 the selection by Kerwin Media of his wife.

14 SIR ROBIN AULD: I certainly was, but perhaps I picked up

15 Mr Milne's question wrongly.

16 MR MILNE: The question, as I think my learned friend

17 rightly points out, is who played a role in deciding

18 that Kerwin Media -- Kerwin Communications is

19 the correct title -- would get this job. Get this

20 contract. As I understand your evidence, you played no

21 part in it. Is that your evidence?

22 A. The tourist board is the body that appoints advertising

23 and PR agencies.

24 SIR ROBIN AULD: It doesn't deal with the question. Please

25 deal with the question.

1 A. I am dealing with the question.

2 Mr Kerwin was introduced to me. I knew of Mr Kerwin

3 so in terms of my knowledge of him, yes. But did I sit

4 on a board to appoint him? Did I instruct the tourist

5 board to appoint him? No.

6 Q. Is it therefore a complete coincidence that your wife

7 gets a contract from Kerwin Communications which in turn

8 is billed back to the Turks & Caicos government?

9 A. I guess it is.

10 Q. Of all the models, of all the people who might have

11 promoted, they chose your wife?

12 A. You have to ask Mr Kerwin that. He chose my wife

13 because I guess she is or was a celebrity and he

14 thought -- he chose her. I mean, that is a relationship

15 between them. He chose her.

16 Q. You played no part in it, no involvement, no influence

17 brought to bear?

18 A. No.

19 SIR ROBIN AULD: Thank you.

20 Q. You correspond directly with Mr Kerwin as you told us

21 and therefore presumably you could pick up the phone,

22 you could e-mail him?

23 A. Could I?

24 Q. I am asking you, sir.

25 A. I am trying to clarify the question.

1 SIR ROBIN AULD: He is asking, did you?
2 A. Did I?
3 SIR ROBIN AULD: Yes.
4 A. I have never asked Mr Kerwin to hire any of my wives.
5 MR MILNE: As far as any litigation is concerned, would you
6 be the point of contact for Mr Kerwin or would he simply
7 go back to board members of the tourist board?
8 A. The tourist board has attorneys.
9 Q. Have you been in communication with Mr Kerwin, sir?
10 A. In relation to?
11 Q. The last two weeks, have you been corresponding with
12 Mr Kerwin concerning impending litigation against
13 the tourist board?
14 A. No, my recollection is that as early as in the last two
15 weeks, Mr Kerwin -- I had corresponded with Mr Kerwin in
16 relation to trying to resolve the issue, and which
17 I have invited him to come down to the Turks & Caicos to
18 meet with the tourism director and the PS of finance to
19 work out a payment plan in relation to settling
20 the debts.
21 MR MILNE: A slightly different topic, dealing again with
22 government expenditure. I am moving away from
23 the tourist board. The Commission has been told that
24 there are many, many jobs handed out by the Turks &
25 Caicos government which are meaningless jobs effectively

1 but very meaningful salaries. Do you understand what I
2 mean? That people are being paid to do nothing. Were
3 you aware of that?

4 A. Well, are you saying that of 3,000 civil servants that
5 worked here, many of them in this room today do nothing?

6 Q. Not at all, sir.

7 A. Is that what you are saying?

8 Q. No, it is not, sir. I am asking if you are aware of
9 jobs which are empty jobs. Let me give you an example.

10 The island of Grand Turk is not a particularly big
11 island, is it? It is one of the smaller islands within
12 the Turks & Caicos Islands, but it has, I think on it,
13 seven public parks, were you aware of that?

14 A. Yes.

15 Q. We have been informed and we are going to seek further
16 information in relation to this that 150 people are on
17 the books as park keepers. None of them do any work but
18 they get a weekly salary. Were you aware of that? Is
19 that true?

20 A. As a matter of fact, there is a --

21 MR FITZGERALD: There were two questions asked in one.
22 Firstly is it true and then were you aware of it.
23 I think in fairness to the Premier, he ought to be asked
24 the question whether it is true to his knowledge and
25 then whether he is aware of it.

1 MR MILNE: Is it true to your knowledge?

2 A. Within the ministry of finance, there was a vote that

3 these would -- park, again, something that was voted by

4 Parliament, park wardens or whatever they call it. As

5 a matter of fact, this is a matter that is being

6 discussed by the Cabinet -- it was discussed as late as

7 the last Cabinet meeting where part of the hiring as

8 I understand it was part employment and part social

9 service. The PS of finance, who briefed Cabinet at the

10 last meeting, was asked to review the persons who were

11 working on this park, with a view of cutting back based

12 on government's overall strategy of cutting back on

13 expenditure.

14 Now, this is a matter before Cabinet. Unless --

15 the Cabinet matters are certainly private and

16 confidential, and this is a matter that is unsettled

17 within Cabinet that has been dealt with.

18 Q. When was it discussed?

19 A. Are you not listening to me?

20 Q. Can you give us a date?

21 SIR ROBIN AULD: I think you said it was the last Cabinet

22 meeting. We don't know when that was but we can find

23 out. Thank you.

24 MR MILNE: Will you provide those Cabinet minutes to us,

25 sir?

1 A. Sir, Cabinet minutes is the property of Cabinet.

2 Q. Yes.

3 A. Cabinet minutes, unlike the way you have been getting

4 it, can only be given by the consent of the Cabinet, so

5 I would have to ask Cabinet for its consent.

6 SIR ROBIN AULD: We can obtain the minutes under my

7 directions in the ordinance. Very helpfully, your

8 Cabinet Secretary has provided us with minutes, as you

9 know, and we are very grateful for the assistance that

10 we have been given.

11 MR MILNE: The Cabinet minutes will record the discussion of

12 the fact that there are people working who perhaps --

13 people being paid who are not working. Is that what it

14 reflects?

15 A. I am not going to answer that question.

16 SIR ROBIN AULD: Do you know the answer to the question?

17 A. To the question of whether there are people working --

18 that is being paid that is not working?

19 Q. Yes.

20 A. I don't know that answer.

21 Q. There have been other allegations that many people are

22 paid as road sweepers.

23 A. People are paid as road sweepers and I hope they are

24 sweeping the road. Do you expect Gordon Brown to

25 supervise road sweepers in London?

1 Q. No.

2 A. Neither do I.

3 Q. In this case, sir, the problem is complaints have been
4 made, and I would suggest complaints that you would know
5 about because they were raised before the Foreign
6 Affairs Committee, that there are many, many jobs that
7 are nominally government funded jobs, such as sweeping
8 the roads, such as, as they say, park maintenance, where
9 effectively these are political favours. Your party
10 members receiving weekly salaries, weekly wages but not
11 being expected to turn up and not being expected to do
12 anything for it. Were you aware that that was not only
13 a specific allegation but a fairly widespread
14 allegation?

15 A. I take offence and so would an old person in Grand Turk
16 who is working as a park attendant that they are being
17 paid to do nothing or being paid -- in fact, most of
18 these park -- I don't even know who they are.

19 Q. Were you aware of the allegations, Mr Premier?

20 A. What allegations?

21 Q. The allegations that it is a widespread problem or are
22 you in ignorance of that allegation?

23 A. What is a widespread problem?

24 Q. People having meaningless jobs but being paid because
25 they are of the right political persuasion?

1 A. No, I am not aware of that.

2 Q. Thank you. Can we turn next to the issue of the
3 scholarships that are handed out by your government.

4 The government has for many years operated a
5 scholarships policy whereby people are sent overseas to
6 train, is that correct?

7 A. Yes.

8 Q. In the constraints of the present financial problems,
9 that policy I believe has undergone some revision?

10 A. Yes.

11 Q. As a result there have been great cutbacks in
12 the numbers that have been sent abroad, is that correct?

13 A. Yes.

14 Q. However, in respect of the scholarships programme, there
15 has also been an audit report. Were you aware of that?

16 A special audit report. This one prepared in

17 October 2006?

18 MR FITZGERALD: Sir, he deals with that at 2.11 of his

19 statement, page 7. So my learned friend knows he is

20 aware of it. He refers to it.

21 MR MILNE: The criticism that was made, and I can take this

22 fairly shortly, Mr Premier, I can take you to it but you

23 are well aware of it, as you have covered it in your

24 statement, is this: that the policy that was adopted, no

25 doubt by the Cabinet, for awarding scholarships was

1 routinely, regularly, indeed frequently subverted,
2 I would suggest, by the awarding of scholarships without
3 the normal tests being applied. You are aware of that
4 allegation?

5 A. Well, I am aware of the allegation once you put it to
6 me.

7 Q. Indeed, in the special audit report to which I refer --

8 A. What page are you at?

9 Q. This is core volume 3 and the audit report is section 5.

10 Red 3.

11 A. Is this another report by the same lady?

12 Q. I believe so. Do you have that document?

13 A. Yes.

14 Q. It is double sided. It is 6 of 34, which is the summary
15 of recommendations in fact, where she recommends (1):
16 "Scholarship awards should be issued within
17 the terms of the policy, that is all awards approved by
18 the Committee."

19 There was a committee set up to determine awards.

20 "The Committee should have a clearly defined mandate
21 which should not only include the granting of awards but
22 also review all aspects of the scholarships programme."

23 Do you think that that is an unreasonable
24 recommendation, sir?

25 A. The first one or the second one?

1 Q. The first one.

2 A. The first part of it? The scholarship should be awarded
3 by the Committee?

4 Q. Yes.

5 A. In a perfect world, yes. But we don't live in a perfect
6 world and --

7 Q. How are you going about making it more perfect, sir?

8 A. The world? Come on.

9 (12.45 pm)

10 Q. Let's just concentrate on the scholarships programme for
11 the moment.

12 A. I said in a perfect world and your question was how was
13 I going about making the world more perfect.

14 Q. The allegation which I do not think you dispute is that,
15 in the period considered by this audit report, on 130
16 separate occasions you intervened to allocate
17 sponsorship, scholarships to individuals without the
18 Committee examining their cases.

19 A. My answer to that is at 211, sir. We are very proud of
20 what we have been able to accomplish with our
21 scholarship programme. We are very proud of the
22 hundreds or thousands of young Turks & Caicos islanders
23 that we have trained into lawyers, doctors and
24 accountants and so many of them are coming back home to
25 take their place within our society and so many of them

1 are future leaders of our country.

2 We have never gotten any assistance from the British
3 for scholarships. When we came to office, the previous
4 government was spending less than \$2 million on
5 scholarships and we are very proud of what we have been
6 able to do. Be that as it may, in most of the cases,
7 the scholarships went through the scholarship board.

8 There were times when, for whatever reason, and you
9 said 140 times --

10 Q. I think I said 130, sir.

11 A. It is 140, I am proud of that.

12 SIR ROBIN AULD: Where do we find that in the report,
13 please?

14 MR FITZGERALD: Page 8 at C. There are a number of
15 occasions.

16 A. So from what the counsel to the Commission, a person who
17 does not know the facts, if he listened to everything --
18 140 times, I intervene -- the fact of the matter -- and
19 he knows it -- is that 140 scholarships was issued under
20 my signature. This was issued by probably two or three
21 letters.

22 In one case I believe there was a situation where
23 maybe the board couldn't get together or whatever and
24 the Ministry of Education submitted -- and all of these
25 were chosen on consultation from the Ministry of

1 Education, as well as ministers and most of these were,
2 if not all, were people from poor areas like Five Cays
3 and others, who deserve a scholarship.

4 You can go through the list of the 140 people.
5 There are people from all different political
6 persuasion. Awarding scholarship, it has always been my
7 government's policy that we award scholarship to the
8 Turks & Caicos islanders. We don't see PDM or PNP in
9 awarding scholarships, we see Turks & Caicos islanders
10 and we are very proud of our track record when it comes
11 to education and scholarship.

12 MR MILNE: Mr Premier, the issue is not whether people
13 should have them and we are obviously unable to say from
14 looking at this whether the individuals were deserving
15 or undeserving, many of them no doubt were deserving.

16 A. All of them were deserving.

17 Q. But your decision appears to have been purely on
18 personal grounds. What interviews did you carry out
19 with these people that you were putting forward?

20 A. I said to you, sir, that this decision was made --
21 actually the truth of the matter is that I signed
22 the letter. The Ministry of Education brought
23 the letter to me. I signed the letter and I don't
24 apologise for awarding the scholarships to all
25 Belongers. The Ministry of Education, the application

1 goes to them, not to me.

2 Whatever the criteria they use and the criteria is
3 based on needs, it makes no sense with the government
4 giving someone a scholarship to be a rocket scientist
5 because the first is a need for our country.

6 So those decisions were taken based on the Ministry
7 of Education for whatever reason unable to constitute
8 the scholarship board.

9 So she brought it to me as Premier to -- whether
10 I had the authority or not -- to sign the letter, asking
11 them to provide these scholarships.

12 Q. Mr Premier, if the system isn't working why not fix
13 the system? Why not speak to your Minister of Education
14 and say, get a grip, organise this properly, we want to
15 give these scholarships?

16 A. She was there. She is the head of the ministry. But if
17 someone has to go to school in September, should I say
18 to them, the system is not working?

19 Q. Do you not see the risk that you are effectively
20 subverting the system, encouraging it not to work if you
21 are going to step in and simply give them out to anybody
22 who asks?

23 A. But that is not the case. In a perfect world it should
24 have gone through the board. If you look at the
25 thousands of scholarships that were given over the last

1 six years and, again, if you look at those scholarships
2 under my signature, it was issued on maybe one or two
3 letters, rather than the impression that he has given
4 the public that I intervened. To use his exact word.
5 I intervened 140 times.

6 So, yes, in a perfect world it should go through
7 the scholarship board and this is why -- even we have
8 proposed legislation to make the issuance of scholarship
9 more transparent, so to avoid any criticisms of
10 political patronage.

11 What I can say, on my father's grave, all of the
12 scholarships that we have given have been given to Turks
13 & Caicos islanders in spite of their political
14 affiliation. In fact, if opposition members want to be
15 fair to you, there were PDMs who couldn't get
16 a scholarship for whatever reason under their
17 government, who got it under this government and I am
18 proud of that.

19 SIR ROBIN AULD: Before you leave that, Mr Milne, I think,
20 to be fair to the Premier, and highly relevant to my
21 term of reference 1 as well as the second, there are two
22 aspects to this question of scholarships. One which
23 Mr Milne has been putting to you, albeit obliquely, that
24 scholarships were awarded to have effect as political
25 patronage, which you have denied?

1 A. Completely.

2 SIR ROBIN AULD: The other aspect, which concerns possibly

3 you, possibly others, is suggestions that have been made

4 that there have been returns from institutions in

5 respect of whom scholarships have been awarded in the

6 form of payments either to ministers or to others in

7 this country. In other words, there was money in this

8 for the award of scholarships to certain institutions.

9 Is there any truth in that as far as you are concerned?

10 A. That is the first time I am hearing that one.

11 SIR ROBIN AULD: You have not heard that before?

12 A. I don't think that the University of Florida or

13 University of Buckingham or --

14 SIR ROBIN AULD: There is absolutely no truth in the

15 suggestion?

16 A. To my knowledge, what I can say, I have never, certainly

17 me, Michael Misick, have never received any money from

18 any university.

19 SIR ROBIN AULD: You are not aware of any allegations of

20 that?

21 A. No one has made that allegation to me about any

22 minister.

23 SIR ROBIN AULD: Thank you.

24 MR MILNE: Again a different topic and this aspect I can

25 take relatively shortly. It has been suggested to

1 the Commission and I am giving you the opportunity to
2 comment upon it, sir, that Belongership is handed out on
3 many occasions undeservedly or if deserved, then
4 accelerated for certain people or certain categories of
5 people. Specifically I suggest people who are potential
6 developers seem to get Belongership relatively quickly,
7 do you accept that?

8 A. Who told you that?

9 SIR ROBIN AULD: Well, if you need an answer to that, there
10 are many, many allegations in writing before
11 the Commission and in the evidence that were before
12 the Foreign Affairs Committee and before us. Since you
13 asked the question --

14 A. There are probably some people who didn't get
15 the Belonger status and they are aggrieved.

16 SIR ROBIN AULD: You asked the question and I give you
17 the answer; many, many people have told us.

18 A. In relation to Belonger statistical status the vast
19 majority -- and I deal with that in my submission.

20 MR FITZGERALD: It is at part 5 at page 35. We were asked
21 in respect of certain specific individuals.

22 A. You know, this is one that is very, very political.

23 Very, very political. When we were in the opposition,
24 we accused the PDM of giving out too much Belonger
25 status, when we are in government, they accuse us of

1 giving out too much Belonger status, or they say we gave
2 it to our white men and they say we gave it to their
3 white men.

4 That is the way it works in this system. The vast
5 majority under my government of people who Belonger
6 status, were people who got it through marriage. Also
7 when we came to office because of the victimisation by
8 the PDM under the former Minister of Immigration, the
9 Honourable Orwell Skippings(?), who I see is not
10 testifying, there were people who had been in this
11 country for 20 years, for 30 years, they were kids who
12 were born in this country, no other country, who was not
13 allowed to even go to school and we had a period of
14 amnesty, if we may, to say, if you have lived in this
15 country for 20 years or more, I believe it was, we will
16 allow you to take up citizenship and that is one of the
17 things.

18 Now, the second part, which is raised, is in
19 relation to developers. I see he raised it only in
20 relation to one or two developers here. This very hotel
21 you are in, that the government has paid millions of
22 dollars for, which is owned by PDMs. The non-Belonger,
23 which is now a Belonger owner, was given Belonger status
24 by the former government.

25 SIR ROBIN AULD: It looks as though this may not be a short

1 matter --

2 A. It is not --

3 SIR ROBIN AULD: We might want come back to at 2 o'clock.

4 Before we rise we ought to talk briefly about

5 the programme again.

6 MR FITZGERALD: Yes, sir. I think you know and my learned

7 friend does that I cannot be here beyond Friday until

8 the following Friday.

9 SIR ROBIN AULD: You are going in the course of the day on

10 Friday?

11 MR FITZGERALD: No, I have changed that. I am leaving on

12 Saturday but I do have to be in London for a case next

13 week. I can't be back here until Thursday night.

14 SIR ROBIN AULD: I know you have other commitments.

15 MR FITZGERALD: So if my learned friend does not finish

16 before Friday, I would have to, after consultation with

17 the Premier, see if we could give his response later.

18 SIR ROBIN AULD: Let's find out how long Mr Milne thinks he

19 may be today?

20 MR MILNE: I will finish today, sir. I hope I will finish

21 at some point in the afternoon. It may take me,

22 depending on answers of course, a substantial part of

23 the afternoon.

24 SIR ROBIN AULD: Is a clear day sufficient for you?

25 MR FITZGERALD: That would be fine. If my learned friend

1 finishes today, then I have the whole of tomorrow.

2 SIR ROBIN AULD: We must ensure that that can be done. That

3 depends on you dealing with the questions shortly and

4 Mr Milne putting them shortly.

5 A. He is a great speaker.

6 SIR ROBIN AULD: All right, 2 o'clock.

7 (1.00 pm)

8 (The short adjournment)

9 (2.00 pm)

10 SIR ROBIN AULD: Mr Milne and Mr Fitzgerald, before we start

11 this afternoon, just an additional word about

12 the programme.

13 Originally it was hoped that the Deputy Premier

14 would be able to be called on Friday but it now looks as

15 though that would be impossible. I think that

16 the probably suitable alternative will be to re-list him

17 if it is convenient for him and I think it is, for

18 hearing on Monday. I think Mr Oliver Smith who appears

19 for him can confirm that would be so.

20 MR SMITH: Yes, that is convenient for him.

21 SIR ROBIN AULD: What if there was any problem of going over

22 into Tuesday? Would that be an inconvenience to the

23 Deputy Premier?

24 MR SMITH: I hope he does not need to go over into Tuesday.

25 SIR ROBIN AULD: So do I, but if he does?

1 MR SMITH: It shouldn't be a problem.

2 SIR ROBIN AULD: Thank you very much indeed. I am sorry
3 that he has had to be delayed in this way.

4 MR SMITH: I understand the circumstances.

5 MS MISSICK: Sir, if I may interrupt, in relation to
6 Honourable McAllister Hanchell, who I also appear on
7 behalf, who was supposed to appear on Monday, what is
8 the likelihood of his programme?

9 SIR ROBIN AULD: We really need to look at the programme for
10 the rest of the week and we will do that probably late
11 today now, but it looks unlikely that we shall reach him
12 at all on Monday, but can I perhaps raise that with you
13 again at the end of the day?

14 MS MISSICK: Yes, sir.

15 SIR ROBIN AULD: Possibly early tomorrow morning. I think
16 the high likelihood is that it won't be possible to
17 reach Mr Hanchell on Monday, or maybe make a start.
18 Again, we will suit his convenience. He may have other
19 commitments.

20 MS MISSICK: Much obliged, sir.

21 SIR ROBIN AULD: Yes, Mr Milne.

22 MR MILNE: Mr Premier, we touched before the short
23 adjournment on the question of Belongership and
24 the allocation of Belongership. Very simply this.
25 There are suggestions, and I am going to give you

1 the opportunity to deal with them, as to why people got
2 Belongership. You will be aware that allegations have
3 been made on occasions that Belongership has effectively
4 been sold; is that true or not?

5 A. Is what true, that I am aware of the allegations?

6 Q. Yes, are you aware of those allegations?

7 A. I am aware that there always has been in our society
8 murmurings about the issuance of Belonger status. What
9 I can say to you is that certainly during the period of
10 my Premiership, the question of selling of Belonging
11 status, I think before we break I explained -- I was
12 explaining that Belonger status were given on a number
13 of different occasions. One by way of marriage. We had
14 an amnesty. People who were outside of the embassy, who
15 have lived here and made either economic or social
16 contribution, that has been given Belonger status. At
17 no time have -- Belonger status is issued by Cabinet.
18 It is important to note that no individual minister
19 gives Belonger status. It is a Cabinet decision. So at
20 no time has my government given Belonger status outside
21 of the -- those criterias.

22 MR MILNE: Thank you.

23 A. I also want to bring to your attention something that
24 was sent to the Commission, a minute for -- under
25 the previous government where the Honourable Orwell

1 Skippings asked council approval for a certificate of
2 Belonger status to be issued to Mr Stan Hartling. He
3 said he had not received the Belonger certificate of
4 3rd July. The president informed the council that he
5 had not received the certificate for his signature.

6 The Honourable Orwell Skippings informed the president
7 that he, the Minister of Immigration, would bring
8 the certificate to the Governor's office for signature.

9 This was submitted to the Commission, along with
10 many other allegation against the previous government.

11 The person who gave me this said that their response
12 from the Commission was, well, do you have any
13 information on -- in relation to the present government?

14 SIR ROBIN AULD: Can you give me the date of the Cabinet
15 minute?

16 A. I can give you the entire minute.

17 SIR ROBIN AULD: Just give me the date.

18 A. The minute number is 03796.

19 SIR ROBIN AULD: No, the date, is that the date?

20 A. Yes. It is the minute number.

21 SIR ROBIN AULD: Thank you.

22 A. That is just an example of the many things that have
23 happened under the previous government that I know that
24 persons put in, that has unfortunately not been
25 investigated.

1 SIR ROBIN AULD: This is 1996, isn't it?

2 A. Yes, it probably would be.

3 MR MILNE: Dealing with more recent matters, Mr Premier,

4 yesterday I raised with you the issue of your loans and

5 we were able to spend quite some time in relation to

6 this. We discussed the issue of loans that had been

7 placed on or secured upon your home property. Do you

8 recall that?

9 A. Secured what?

10 Q. Secured on your home property. That is Belview Villa?

11 A. Yes.

12 Q. When we discussed that, it was clear that there were two

13 loans, both in relation to that property, one for

14 \$1 million which came from Secured Holdings Limited,

15 the other for 4.7, I think maybe 4.72 million, from

16 Coral Square Limited.

17 Do you recall?

18 A. Yes.

19 Q. The loan from Secured Holdings in fact was a loan from

20 a gentleman called Mr Wehrli, whose name came up in

21 other contexts.

22 I pointed out to you at the time that each loan had

23 documentation; each loan stated that that loan had to be

24 first in priority; and neither should, as it were, drop

25 behind the other, which is a logical impossibility. One

1 must be first or they must both be equal.

2 Your answer, let me remind you from the transcript

3 of what exactly was said, because this is important.

4 I said to you yesterday.

5 "Question: You signed a formal agreement with

6 Mr Wehrli, indeed he had an attorney involved..."

7 MR FITZGERALD: Would it be fair to show the witness

8 the transcript.

9 SIR ROBIN AULD: Yes, I would quite like the page number of

10 the transcript or some reference please.

11 MR MILNE: I can hand copies if that would be easier.

12 MR FITZGERALD: Yes, if the Premier could see a copy.

13 SIR ROBIN AULD: But for the benefit of the record it is

14 transcript 2, page?

15 MR MILNE: Page 99. 98.

16 SIR ROBIN AULD: Would you like the Premier to take time to

17 read this before you put your question Mr Milne?

18 MR MILNE: He is welcome to do so if he wishes.

19 SIR ROBIN AULD: Which part should he look at? All of it.

20 MR MILNE: I was starting with page 99, which is line 23.

21 "Question: You signed a formal agreement with

22 Mr Wehrli..."

23 SIR ROBIN AULD: Thank you.

24 A. Yes.

25 MR MILNE: So it is clear, I suggested, I put to you:

1 "Question: You signed a formal agreement with Mr
2 Wehrli, indeed he had an attorney involved [I am reading
3 from page 99] and that agreement contained most of the
4 standard clauses which I am sure you are thoroughly
5 familiar with, since you have been in real estate as you
6 have told us since the 1980s. One of the provisions is
7 when you make that loan, that loan should not rank equal
8 with or below any other loan, is that correct? Are you
9 familiar with that?"

10 I also asked:

11 "Do you know what the expression pari passu means?"

12 "Answer: I think the loan in relation to
13 Security Holdings [Secured Holdings] ranks pari passu
14 with the loan from Coral Square.

15 "Question: Both of those agreements though, maybe
16 we can go and find them, say they should not rank
17 pari passu with any other loan. In both cases they wish
18 to be the first loan, the priority loan. Have you told
19 either of them that you have the other loan?"

20 "Answer: They both know. It is on
21 the Land Registry record.

22 "Question: It may be on the Land Registry record,
23 have you told them personally? Have you said: I am
24 taking out another loan on this?"

25 "Answer: I believe in relation to the second loan,

1 the first holder would have had to agree."
2 Sir Robin Auld asked which one was taken
3 first. You asked to refresh your memory. You
4 thought you said Security.
5 I think over the page it becomes clear you are
6 saying the Secured Holdings loan was taken out first.
7 It was registered first. I said:
8 "Secured Holdings --"
9 You said:
10 "Was at least registered first."
11 Sir Robin said:
12 "Was taken before which loan, the Arling asset?
13 "Answer: No, the Coral -- was registered before
14 the Coral Square.
15 "Question: Secured Holdings, the contract included
16 a particular provision in it, a term, that if a further
17 subsequent loan was taken out, this subsequent loan
18 should be used to pay off the first loan, but that was
19 not done, was it?
20 "Answer: I would have to see the contract. I am
21 not aware that that was the case. I know that when
22 I took out the second loan, they were aware of it and
23 they were aware of the nature of it and they agreed to
24 have the second loan on the security.
25 "Now, whether or not the agreement was amended to

1 accommodate that, I am not sure."

2 You made it clear it was talking about your personal
3 house. Do you stand by that evidence, sir?

4 A. Based on my recollection, that was the case.

5 The Coral Square loan was certainly taken out to assist
6 me with the construction of the house. My understanding
7 is that any time a loan is registered, the loan that is
8 registered first takes first precedent in law here. In
9 terms of the detail of whether the first person who
10 loaned the money had to agree before the second person
11 or both of them had -- again, I had a lawyer that was
12 dealing with that and --

13 Q. Who was the lawyer who was dealing with it?

14 A. The lawyer was Saunders & Co.

15 Q. Saunders & Co?

16 A. Yes.

17 Q. That is Norman B Saunders?

18 A. Yes.

19 Q. You see, Mr Wehrli has been in contact. We have been in
20 contact with him and he has been in contact with the
21 Commission, and overnight he was asked to comment upon
22 the evidence that you gave, and you have seen, I think
23 now, an email that has come back from Mr Wehrli. Do you
24 have that?

25 A. Yes.

1 Q. What Mr Wehrli has said is this:

2 "Secured Holdings Limited were unaware that a second
3 loan of \$4.7 million from Coral Square Limited had also
4 provisions placing them first in priority. Neither
5 myself or Ariel Misick, my lawyer, were informed..."

6 Ariel Misick is another of your brothers?

7 A. What is the point?

8 (2.15 pm)

9 Q. "Neither myself or Ariel Misick, my lawyer, were
10 informed, nor has our consent been sought. We have
11 a certified copy of the register showing dated
12 [1st February 2006] 1-2-06 which only shows the charge
13 favouring Secured Holdings Limited. We have provided
14 you with a copy of our contract and will insist on our
15 rights. The Premier must be ill informed. We have also
16 never heard of Coral Square Limited until recently."

17 Is the fact of the matter that no effort was made to
18 inform Secured Holdings who had provided the \$1 million
19 loan that you were going to follow up with
20 a \$4.7 million loan on the same property?

21 A. No. In relation to this, you said my lawyer dealt with
22 the matter. My evidence yesterday is that it was my
23 belief and obviously I guess it is my word against
24 Mr Wehrli. But he knew the nature of his first loan and
25 he knew that that was to assist with the construction.

1 He knew that it was being financed.

2 Q. Mr Wehrli is a friend or acquaintance of yours?

3 A. I have known Mr Wehrli for 20 years.

4 Q. He knew that the \$1 million that he was putting forward

5 was to help in the finance of the property, to help fund

6 the construction of the property?

7 A. I am sorry?

8 Q. He knew that the \$1 million he put forward was to help

9 fund the construction of the property?

10 A. He knew the \$1 million he loaned me?

11 Q. Yes.

12 A. Yes.

13 Q. Having put that money forward, he appears to have been

14 left out of the loop when it came to you borrowing

15 further money, obviously reducing, perhaps jeopardising

16 his loan?

17 A. No, it is not jeopardising his loan, because when you

18 look at the value of the property and his loan and

19 because his loan is registered first, even if I sold

20 the property, his loan would have to be paid first.

21 Q. His loan, though --

22 A. It doesn't dilute his interest. It doesn't dilute his

23 charge at all.

24 Q. His loan is supposed to be paid off by any subsequent

25 loans and you didn't do that?

1 A. Again, as I said, my lawyers at the time was handling
2 the transaction. Fine, I rely on lawyers. So did I go
3 through the loan document page by page to see that it
4 had been paid off? I assumed that the lawyers said it
5 is okay to be signed and I assume that it is.

6 There is nothing untoward about it. Mr Wehrli's
7 position is secure.

8 Q. Tell me, sir, you used Norman B Saunders in relation to
9 the Secured Holdings loan, yes?

10 A. I have said it before.

11 Q. No, you have not been precise, and I am asking you now
12 to be precise. If you will focus on the question. It
13 is important. There is a distinction I am seeking to
14 draw here and you can help me with it. Norman Saunders
15 assisted in relation to the Secured Holdings loan. Did
16 Norman Saunders assist in relation to the subsequent
17 Coral Square loan?

18 A. In relation to -- and again I have to rely on my
19 recollection -- Belview Holdings, Norman B Saunders is
20 a lawyer for Belview Holdings, so he would have dealt
21 with those issues for me.

22 Q. So he would have known that you were taking out a second
23 loan and he would have known that the provisions of the
24 first loan required the first loan to be paid off by any
25 subsequent loan?

1 A. As I say, I was relying on him in relation to these
2 transactions.

3 Q. You have, with respect, quite a number of loans to your
4 name now, and presumably you would wish to check on
5 those loans fairly carefully, because they are stacking
6 up? Did you not read the terms?

7 A. That is my business. That is not your concern.

8 Q. The question I asked was did you read the terms?

9 A. I rely on my lawyer.

10 Q. Do I take that as a no?

11 A. You can take that how you like.

12 Q. It is a simple question, sir. Did you read the terms?

13 A. I relied on my lawyer in relation to executing --

14 SIR ROBIN AULD: I take the implication as no but is it?
15 I don't want to record for my own note a wrong
16 implication.

17 A. Do I have to say no or yes?

18 SIR ROBIN AULD: Why not say no if that is the effect of
19 your answer?

20 A. I can't recall that I read the terms but what I do say
21 is that I relied on my lawyer.

22 MR MILNE: In relation to Mr Wehrli, you have also told us
23 that you received a commission of \$320,000, I think it
24 was, as a salesman. That was in the early part of 2006.
25 There is in fact an ordinance governing real estate

1 sales which came in in 2007. Was there a previous law?
2 Was there an ordinance that pre-dated the 2007 one?
3 A. I don't think so.
4 Q. When you made the introduction, am I right in thinking
5 that the commission that you received was paid by
6 the vendor, by the seller of the property?
7 A. No. You are not right in assuming that.
8 Q. Who paid the commission --
9 A. I declared that it was paid by the -- did you say
10 the seller?
11 Q. Yes.
12 A. Yes.
13 Q. So the answer to the question is yes, it was paid by
14 the seller and not the purchaser?
15 A. It was paid by Ashley.
16 Q. So you had a part, you had a role in this sale? Is it
17 not right that subsequent to that Mr Wehrli's company,
18 Aquarius Development Limited, approached the government
19 to get a -- I think you already had an agreement.
20 Approached His Excellency the Governor to sign
21 a supplemental agreement and development agreement in
22 relation to Water Cay?
23 A. Well, the Aquarius Development have signed many, many
24 supplementary agreement. None of the supplementary
25 agreement have anything to do with the sale of those

1 lands. Most of those supplementary agreements have to
2 do with the fact that there were two things. (1) there
3 were time frames in which they were supposed to do
4 certain things, whether it is planning permission,
5 instruction, so on and so forth and also has to do with
6 the agreement had a provision to drawdown on the land
7 that they are getting directly from the Crown.

8 SIR ROBIN AULD: I think you should wait for the question.

9 He has not asked you. All he wants to know is whether
10 Aquarius approached the government to sign
11 a supplemental agreement --

12 A. Yes, but I have to put it in the right context.

13 SIR ROBIN AULD: Let's see what the context of the question
14 is.

15 A. I am answering it before he tries to link it to
16 something else.

17 SIR ROBIN AULD: No, you wait for the question. Put your
18 question, Mr Milne.

19 MR MILNE: Do you recall that the Aquarius Development
20 agreement came before the Cabinet a matter of weeks
21 later on 22nd February 2006?

22 A. Not particularly.

23 Q. Would you have regarded it as your obligation to declare
24 an interest?

25 A. In Aquarius?

1 Q. Yes.

2 A. I don't have an interest in Aquarius.

3 Q. Would you have regarded it as your obligation to declare

4 an interest in relation to the obtaining of land by

5 Aquarius? If you had a link with them.

6 A. I don't have a link, I don't have an interest with

7 Aquarius. I don't.

8 SIR ROBIN AULD: The question is, whatever you had, link,

9 interest or something in Aquarius, if you had been in

10 Cabinet at the time when the supplemental agreement was

11 being discussed, would you have felt an obligation to

12 disclose that interest or link?

13 A. Well, link is a wide --

14 SIR ROBIN AULD: It was your word.

15 A. It is not my word but link, according to Cabinet --

16 SIR ROBIN AULD: Would you have felt an obligation to

17 disclose any involvement in this matter?

18 A. If I had an interest in Aquarius, I would have disclosed

19 my interest.

20 SIR ROBIN AULD: The answer is no, then?

21 A. No, the answer is if I had an interest in Aquarius --

22 SIR ROBIN AULD: Well, did you?

23 A. No, I don't have an interest in Aquarius.

24 SIR ROBIN AULD: Well, then, the answer is no, you would

25 have felt no obligation to disclose it, isn't it?

1 A. No, that is not my answer.

2 SIR ROBIN AULD: Well, tell us what your answer is.

3 A. The answer is yes, if I had an interest in Aquarius --

4 SIR ROBIN AULD: But you said you didn't have an interest in

5 Aquarius?

6 A. But the question is.

7 SIR ROBIN AULD: For goodness sake. Put your question

8 again, Mr Milne.

9 MR MILNE: I first asked, did you recall it coming before

10 Cabinet. You say not. Will you take it from me that in

11 fact it did come before Cabinet?

12 A. Okay.

13 Q. I am sorry, I don't think that my learned friend has

14 seen this. We found this overnight and I should have

15 handed it to him before and there is a copy for

16 the Premier as well. (Handed)

17 MR FITZGERALD: I think, sir, having reviewed the answer, it

18 was, if I had an interest in the development, I would

19 have felt an obligation --

20 SIR ROBIN AULD: Yes. Then he said he didn't have

21 an interest, so the natural implication is that in this

22 instance, he would not have felt an obligation to

23 disclose it. It is not harmful to him to say that.

24 MR FITZGERALD: I accept that.

25 A. It is probably a language barrier.

1 MR MILNE: The acquisition of \$300,000-odd, it is capable of
2 being seen as an interest, isn't it? It creates a link
3 between you and this deal.

4 A. Which deal?

5 Q. The development of Water Cay by Aquarius Limited?

6 A. That was a separate deal, separate land, private land to
7 my knowledge that was owned by someone else, which had
8 an interest in it, even to my information, probably even
9 before it occurs. So I didn't link one to the other.

10 Aquarius agreement in relation to Crown land, the land
11 that they draw down was directly with the government.

12 Q. If we put that to one side, please, we will go on to
13 a different topic. This is a different development but
14 it is again one in which you appear to have had some
15 involvement. I would like you to take, if you would,
16 please, volume 7 of the red bundles.

17 A. Yes.

18 Q. This volume is divided into three sections. The first
19 section has some documents in relation to Dellis Cay.
20 It might help if we mention that Dellis Cay is being
21 developed by a company called Turks Limited, isn't it?

22 A. Yes.

23 Q. Moving forward, I believe the managing director of
24 Dellis Cay is Mr Cem Kinay?

25 A. Yes.

1 Q. Who is, I think, a friend of yours and gentleman who is
2 investing through his companies in Dellis Cay. Is that
3 correct?

4 A. Yes.

5 Q. It is fair to say that Mr Kinay appears to have a fairly
6 reliable track record as a developer. He has
7 investments not only in Turks & Caicos Islands but
8 I think overseas as well. Is that right?

9 A. That is my information.

10 Q. No doubt that experience would have been something that
11 would have influenced the Turks & Caicos government in
12 doing deals with him. You would have been reassured by
13 that.

14 A. Yes, his track record seemed very great, and also the
15 opportunity to have a Mandarin Oriental, the first
16 Mandarin Oriental in the Caribbean.

17 Q. Mr Kinay in due course obtained Belonger status?

18 A. Yes.

19 Q. My focus here is actually not on Dellis Cay but
20 Joe Grant or Joe Grant's Cay, we see it called both.
21 I don't know if there is a preferred term within
22 the islands, but both versions seem to be adopted. Do
23 you have a preference?

24 A. It is your Commission.

25 Q. In 2005, if you go to the second section of this bundle.

1 The third page. The Turks & Caicos Islands government
2 was approached by a firm, a firm of attorneys, Miller
3 Simons O'Sullivan, who are an established firm of
4 attorneys on the Turks & Caicos, and indeed I think one
5 of their senior partners is involved in the Commission
6 now.

7 They wrote a letter dated 1st September 2006.

8 (2.30 pm)

9 SIR ROBIN AULD: Where do we find that please?

10 MR MILNE: Page 3 of the middle section, headed, "Joe Grant

11 Cay". This is a letter written to yourself by name,

12 Premier Turks & Caicos government. 1st September 2006.

13 Miller Simons O'Sullivan said the following:

14 "We act for Mr Arturo Malave of the East Caicos

15 Company Limited, a company currently being formed at the

16 Companies Registry. We write further to your recent

17 discussions with our client."

18 That suggests that you, since the letter is

19 addressed to you in the first person by name, were

20 having discussions with Mr Arturo Malave. Is that

21 correct?

22 A. That is what it refers to, yes.

23 Q. I am sorry, I didn't hear that answer?

24 A. Yes, that is what it refers to.

25 Q. That is what it refers to. So you had had conversations

1 with Mr Arturo Malave and this is a follow-up letter?

2 A. It is very possible that was the case.

3 Q. Do you recall those conversations?

4 A. I don't recall it exactly. I have a lot of

5 conversations, but it is very possible.

6 Q. "Our clients [presumably clients used to indicate
7 the company] wish to enter into an agreement with
8 the government of the Turks & Caicos Islands with
9 respect to the development of Joe Grant Cay and wish to
10 undertake an ultra high end development on the Cay as
11 discussed with you."

12 They then seek:

13 "If the government is able to agree in principle to
14 our clients having the right to acquire and develop
15 the entire island, our clients will undertake within 90
16 days thereafter to prepare a master plan, prepare
17 a detailed development plan and provide evidence of its
18 financial ability to complete the proposed development."

19 The way such things go, the organisation TC Invest,
20 I think became involved, to consider this development
21 possibility.

22 Subsequently and I am turning here to page -- we
23 need a separate one. Can you please open volume 6.
24 Turn to page 88. This was a subsequent Cabinet meeting
25 in 2006. The minute we see at page 88 is:

1 "Subject, Joe Grant Cay."

2 It is clearly the Cabinet discussion concerning
3 the possibility of this being promoted:

4 "The Premier introduced this paper. Cabinet advised
5 that it approved in principle the development of a high
6 end resort on Joe Grant Cay and instructed
7 the Attorney General's chambers and TC Invest to
8 negotiate a development agreement with Mr Malave or a
9 designated company. It approved for Mr Arturo Malave
10 through his lawyers to be advised that TCIG is receptive
11 to the idea of developing Joe Grant Cay. It approved
12 that through his lawyers he should be advised TCIG to
13 have no objection to their preparing a master plan and
14 detailed development plan."

15 Indeed it is clear that there is a proposal under D:

16 "The proposed developer should be advised that
17 the government accepted the offer as outlined in the
18 letter, paragraph 4, whereby upon completion of the
19 development agreement, \$5 million would be immediately
20 payable to TCIG."

21 There are other terms that have been discussed there
22 as to percentages. Reducing on construction materials
23 any duty, dealing with plant, machinery, project
24 sponsors were charged a flat rate of 5 per cent on
25 tools, equipment and materials.

1 No doubt the sort of commissions that one has
2 regularly.

3 So Arturo Malave is on the scene. Arturo Malave is
4 apparently set fair for the development.

5 The precise date of that, it is at the front of the
6 page, page 88, would indicate that was in fact on
7 18th October.

8 SIR ROBIN AULD: 2006.

9 MR MILNE: Yes, sir.

10 If you go back to volume 7, Mr Premier. Page 26 in
11 that second section, by this stage Mr Malave has been
12 written to or his attorneys have in any event to say
13 that Cabinet is minded to agree.

14 It would appear that due diligence was carried out
15 on Mr Malave by somebody. Can you say who it was who
16 would be responsible for that?

17 A. The due diligence is done through TC Invest but in this
18 particular case, the TC Invest normally instruct -- is
19 responsible for carrying out due diligence once -- in
20 relation to investors.

21 Q. I won't read through all of this. It is quite a lengthy
22 document prepared by somebody who I believe was based in
23 the USA who provides due diligence assessments.

24 Would it be fair to say, you may have seen this
25 document before in any event, he didn't come out in

1 glowing colours?

2 MR FITZGERALD: This is dealt with in the statement at
3 pages 31 and 32.

4 MR MILNE: Indeed, the name Arturo Malave crops up on the
5 Internet in a number of places and appears to be known
6 to the press for, I put it as neutrally as I can,
7 suspect deals in a number of countries.

8 A. Well in relation to this, the government did approve as
9 you indicated in principle. Also, with fairness to
10 Mr Malave, while the report, and the public don't have
11 the benefit of reading the report as you have, while
12 the report said that he had a chequered past, the report
13 did say that he was never charged of any crime or was
14 found guilty of any crime. Number 1. Number 2, in
15 relation to my submission on page 31, I have indicated
16 to -- and the Commission knows and you know that in fact
17 because of Mr Malave's inability to -- because of the
18 due diligence as well as -- which includes the inability
19 to perform -- that government withdraw the offer to
20 Mr Malave.

21 So you know that and it is a non-issue because
22 the government never entered into a development
23 agreement with Mr Malave. Just like sometimes in
24 England your government enter into or deal with persons
25 and sometimes you withdraw offers.

1 Q. You see, he was a friend of yours?

2 A. Yes.

3 Q. You were unaware of his chequered past?

4 A. As far as I know Mr Malave had done -- as I indicated in

5 31 and 32, business here in the Turks & Caicos before.

6 In fact when I met him, I met him through

7 Carnival Corporation, which is a public US company. He

8 was the owner of both Carnival Grand Bay hotels in Miami

9 and Capus Keen(?). This was back in the 1990s. So

10 I imagined if a US public company was doing business

11 with him, then, they would have done even a greater

12 degree of -- or as great a degree as -- as great due

13 diligence as we would.

14 So the fact is that you cannot rely -- I am sure

15 after this Inquiry, if you Google me you will say I have

16 a chequered past too. But the fact is Mr Malave was

17 never charged, still has never been charged of any crime

18 and has never -- anywhere in the world.

19 Q. He is, however, the subject of fraud alerts on the

20 Internet, isn't he?

21 A. You tell me.

22 Q. You have been served with them, sir?

23 A. I am sorry?

24 Q. You have been served with them. It involves one Google

25 search against the name to throw up references to --

1 A. The point is that the government does not have

2 an agreement with Mr Malave.

3 Q. In any event, the process of development on Joe Grant

4 Cay appears to have gone ahead. If we turn, please, to

5 page 42 within the same section. This in fact is a

6 Cabinet action minute. This is still within core

7 bundle 7.

8 The matter comes back before Cabinet. This is on

9 31st May 2007. So several months later. In this case

10 it is the acting Premier. It is not you personally.

11 I must take it -- it does not make clear who was acting

12 as Premier. It is usual that your Deputy Premier acts

13 as Premier in your absence, is that not correct?

14 A. If he is in the island.

15 Q. The acting Premier raised this matter, the heading being

16 "Caicos Platinum Company Limited -- Joe Grant Cay":

17 "The acting Premier raised this matter and

18 circulated correspondence in relation to the same. In

19 the correspondence it was noted that at a previous

20 Cabinet meeting, it approved a development agreement

21 from Mr Arturo Malave."

22 It refers back to the one we looked at earlier:

23 "Chalmers & Co, attorney for the developers, has

24 requested that the principals of the company be changed

25 in the name of Oceanic Development Limited and

1 Star Lions Limited and has sought Cabinet's approval for
2 same. Cabinet advised the grant and approval for
3 the amendment of the development agreement to reflect
4 the name change from Mr Arturo Malave to that of Oceanic
5 Development Limited and Star Lions Limited. The acting
6 Governor concurred and ordered accordingly."

7 Obviously you were not there, Mr Premier, you were
8 not recorded as being present, but no doubt you would
9 have been aware at some stage of what is described as
10 the change of name. Can you just clarify this: the fact
11 that the name was changed may or may not signify that
12 the personnel have changed.

13 Is it your evidence that Mr Malave was effectively
14 discounted as a future developer?

15 A. It is my evidence that the -- in relation to Joe Grant
16 Cay, that the government has an agreement with -- with
17 companies where the principals are Mr Cem Kinay and
18 Don Gardiner to develop Joe Grant Cay.

19 It is also my evidence that they intend to develop
20 a Bulgari resort, which is one of the top resorts in
21 the world, at Joe Grant Cay.

22 SIR ROBIN AULD: Just a point of clarification, Mr Premier.

23 The name Don Gardiner, is he sometimes known as
24 Farrington or Ferrington Gardiner, or is this Don-Hue
25 Gardiner?

1 A. No. There are a lot of Gardiners.

2 SIR ROBIN AULD: Yes. It is neither of those?

3 A. Neither of those.

4 Q. The two companies that are brought in, we are told

5 initially, certainly the minute for some reason is

6 headed up "Caicos Platinum". Do you know whose company

7 that is?

8 A. No.

9 Q. You do not?

10 A. No.

11 Q. It is not a company associated with Mr Malave, is it?

12 A. I said I don't know whose company they are.

13 Q. Subsequently Mr Chal Misick, your brother, having

14 notified the change of personnel in this, told

15 the Cabinet, by means of a letter, that the principals

16 behind the project were Cem Kinay through a company

17 called Maya Limited. Here I am looking at page 59 in

18 the same section?

19 A. He told TC Invest?

20 Q. Yes. It is a letter to -- the letter itself goes to

21 TC Invest. This was a requirement that he disclose

22 the names of the principals. Do you have that?

23 A. Yes.

24 (2.45 pm)

25 Q. So Mr Cem Kinay of Maya Limited, 50 per cent.

1 So in fact Star Lions Limited doesn't appear to
2 feature in this. Is that another change of
3 nomenclature?
4 A. Again, I was not dealing with the matter, so I can only
5 assume like you assume.
6 Q. The other 50 per cent is held by a company called
7 Oceanic Development Limited. A moment ago you said
8 Don Gardiner, by which you meant Don-Hue Gardiner.
9 SIR ROBIN AULD: No.
10 A. There is a whole island full of Gardiners.
11 MR MILNE: These two, I think were Allwood -- how would you
12 pronounce it?
13 A. You pronounce it.
14 Q. Allwood Gardiner and somebody called Albright Gardiner.
15 Do you know either of those two gentlemen?
16 A. Yes.
17 Q. Are they related to you?
18 A. Yes.
19 Q. How are they related?
20 A. They are my nephews.
21 Q. And Clifton Black?
22 A. He is also my nephew.
23 Q. So your three nephews form Oceanic Development Limited?
24 A. Sorry?
25 Q. Oceanic Development Limited?

1 A. What is the question?

2 Q. Are they the three principals of Oceanic Development
3 Limited?

4 A. I don't know.

5 Q. Certainly on that letter they appear to be described as
6 such --

7 A. But I understand from -- this matter was raised when you
8 raised it with my lawyers. It was also raised to Chal
9 by them and I understand that that was -- he said it was
10 a mistake. In fact, when the issue of Joe Grant Cay
11 was -- there should be another letter here that shows
12 that the owners of Joe Grant Cay or the developers was
13 Cem Kinay and Don Gardiner. Because I remember clearly
14 when the matter was discussed in Cabinet, the present
15 Governor said, when we were discussing he said to me,
16 because he too like you thought it was Don-Hue Gardiner.
17 He said to me, do you have an interest to declare in
18 Joe Grant Cay and I said no, Don Gardiner is in fact not
19 a nephew or a cousin of mine.

20 So that is what I know.

21 Q. So were you never made aware that your three nephews had
22 a 50 per cent share in Joe Grant Cay?

23 A. As far as I am aware, the developers of Joe Grant Cay
24 and I said -- is Cem Kinay and Don Gardiner.

25 Q. Don Gardiner is not mentioned by the attorney in this

1 case, Chal Misick, is he?

2 A. Not in this case but I believe he is mentioned

3 otherwise. I think he was mentioned --

4 SIR ROBIN AULD: You say these names are a mistake here in

5 this letter.

6 A. That is what I was told. So when the Cabinet paper --

7 when the paper went to Cabinet, as I was told,

8 Don Gardiner and Cem Kinay was a principal. What

9 happened between them in Cabinet, I don't know. He was

10 dealing with TC Invest.

11 MR MILNE: We have not seen the Cabinet minutes to that

12 effect.

13 A. You have not seen it?

14 Q. No?

15 A. You have not seen anything to indicate Don Gardiner?

16 Q. No.

17 MR FITZGERALD: Sir, it is what is clearly stated in the

18 statement of 4.12.

19 SIR ROBIN AULD: Which statement is this?

20 MR FITZGERALD: The statement of the Premier at page 32. As

21 to the new developers, they are Dr Cem Kinay and

22 Don Gardiner. That is clearly stated by him.

23 I understand there may be further materials to

24 confirm a declaration of trust in respect of

25 Don Gardiner and Oceanic.

1 A. I am surprised you don't have it because
2 the Attorney General Chambers have it and so does
3 the Governor office have it and you have everything they
4 have.

5 MR MILNE: We don't have everything that they have, sir. We
6 have what we have been given. And we have
7 an explanation that was given to us two days ago. So we
8 do the best with what we have. In this case are you now
9 saying that these three individuals have no involvement
10 with --

11 MR FITZGERALD: He has never said anything different with
12 respect to my learned friend. He has said it quite
13 clearly, Dr Cem Kinay and Dr Don Gardiner.

14 MR MILNE: Is Oceanic Developments still involved to the
15 best of your knowledge?

16 A. I don't know. I stand by my statement of number 32. On
17 page 32.

18 Q. Clearly there would be an element of conflict if it were
19 your three nephews, wouldn't there?

20 A. And I would have declared those interests if there was
21 a conflict.

22 Q. Thank you. I am going to turn to another island that
23 has caused controversy, is that of Salt Cay?

24 SIR ROBIN AULD: Is Mr Rigby still there? Am I looking at
25 Mr Rigby?

1 MR RIGBY: Yes, you are.

2 SIR ROBIN AULD: We might want to ask Mr Chal Misick about

3 that. Just to warn him in advance, that's all.

4 MR RIGBY: I have taken some notes. Much obliged.

5 MR MILNE: Salt Cay is an island that has caused a lot of

6 controversy, you would agree, no doubt?

7 A. I am sorry.

8 Q. Salt Cay and the development of Salt Cay has caused

9 controversy?

10 A. There have been a lot of people who have opposed

11 development and empowerment of our people who speak out

12 against Salt Cay.

13 Q. You would characterise the opposition to the development

14 of Salt Cay as being an attempt to hold back

15 the islands? Would that be a fair assessment?

16 A. Not if they were legitimate opposition, based on, they

17 were based on some particular facts or reason.

18 Q. I am sorry, sir, I can't hear your answer.

19 A. Not if they were legitimate opposition, based on some

20 fact or reason.

21 Q. You knew that Mr Mario Hoffman was developing through

22 his companies Salt Cay and had been doing so throughout

23 2006 and indeed before then?

24 A. Sir, my answers to the question are in relation to

25 Salt Cay and Mr Hoffman is on page -- on Salt Cay it

1 starts from page 30 --

2 MR FITZGERALD: 25. Part 4, page 25.

3 MR MILNE: You received a letter from Mr Hoffman and here

4 I am looking at the third section of core bundle 7. Red

5 7. Third section.

6 Do you have that?

7 A. Which page?

8 Q. The first page.

9 A. First page of 7?

10 Q. No the first page of the third section of 7.

11 A. For the benefit, sir, of yourself and the public,

12 Mr Hoffman first got involved with Salt Cay back in

13 I think 2000 or 2001 when he bought a development in

14 Salt Cay and the development was bought under the

15 previous administration. This was a development that

16 was on going for years and this development had already

17 had a development agreement and for this development was

18 called -- for those who are from Salt Cay -- I can't

19 remember the name of it. Anyway, so Mr Hoffman's

20 involvement of Salt Cay started in 2000, 2001, when he

21 bought this company to develop Salt Cay. Over the years

22 he expanded his ideas as to how he wants to develop

23 Salt Cay. I think that is important to put it in its

24 right perspective.

25 Q. We are dealing only with one specific aspect of this,

1 which is a letter that he wrote to you, page 1 of that

2 section?

3 A. I know you would not want it to be put in perspective.

4 Q. Dated 1st August 2006, to you personally again:

5 "Dear Mr Misick, I am writing you this letter to

6 acquire a long-term lease of Crown land and in order to

7 build a golf course on Salt Cay. The project will be

8 prepared and undertaken by Salt Cay Golf Club Limited

9 which I will found and provide funding. Salt Cay Golf

10 Club will be incorporated for the purposes of building

11 and operating a golf course in Salt Cay. I propose to

12 lease the necessary land, approximately 222 acres."

13 He refers to an attached preliminary development

14 plan for 99 years. He goes on to describe his

15 background. He says that he want to build a world class

16 golf resort on Salt Cay.

17 That letter dated 1st August 2006. The matter came

18 before Cabinet within a matter, I think, of a few hours.

19 Within a day or two.

20 Is that right?

21 A. A few hours?

22 Q. A few days anyway?

23 A. Don't be ridiculous.

24 SIR ROBIN AULD: If there is any issue of this, let's just

25 get it right. When did it come before Cabinet,

1 Mr Milne? Do you have a record there?

2 MR FITZGERALD: I understand it to be August 2nd because one
3 sees that --

4 SIR ROBIN AULD: The next day.

5 MR MILNE: The next day. It was placed before Cabinet
6 the next day.

7 Essentially it would appear that the letter may have
8 been put before the Cabinet because it says
9 the Chief Minister, as you were then:

10 "... circulated correspondence in reference to
11 Salt Cay Golf Club Limited, stating that this was
12 approved at a previous executive council meeting.
13 However, Mr Hoffman would like to add a golf course on
14 to his existing proposal and as such he has made an
15 application for some additional land."

16 This is, however, an oral mention. It is not
17 attached to any formal paper within Cabinet. So this is
18 simply the correspondence put forward by Mr Hoffman
19 which is handed round. The Cabinet agree it, 222 acres.
20 The acting Governor concurred.

21 Q. Had there been any meeting with Mr Hoffman at any stage
22 around then between the two of you to discuss this?

23 A. Again, it is important to put the entire Salt Cay
24 development into the right perspective. There had been
25 many meetings with, whether it is myself or TC Invest or

1 others, in relation to the development of Salt Cay. As
2 I stated earlier, at one stage he wanted to build
3 a smaller resort and then began to expand, and so
4 the question of, I think, based on his enquiry with
5 hotel operators, and I think again he was trying to get
6 St Regis, they indicated that in order to make
7 the resort on the island appealing, that there should be
8 other activities and perhaps a golf course would be one
9 of the ways to go. Based on that, it is not unusual, we
10 came to office and we look at our manifesto on the basis
11 of trying to avoid red tape --

12 SIR ROBIN AULD: You are answering a question that has not
13 been asked yet. All you were asked is did you have some
14 discussion with Mr Hoffman about this proposal for
15 222 acres?

16 A. I have answered that.

17 SIR ROBIN AULD: You have not. You said you had lots of
18 meetings with him over -- had you had some discussion
19 with him about this proposal in the letter we have just
20 looked at before the letter was sent to you?

21 A. Yes, I am sure I would have --

22 SIR ROBIN AULD: Answer yes, and it is not unusual.

23 MR MILNE: The Cabinet, however, didn't get any other papers
24 apart from what he had submitted and the document that
25 he submitted doesn't mention price or any technical

1 details at all, really, does it? It was a planning
2 application of some sort attached to it but we don't get
3 to see that.

4 In fact I don't think there is even that. I beg
5 your pardon, I am thinking of another document.

6 SIR ROBIN AULD: He offers more information in the letter.

7 Did he provide any before the Cabinet meeting the next
8 day?

9 A. Also if you would note, the approval was granted in
10 principle. This is not unusual.

11 (3.00 pm)

12 SIR ROBIN AULD: Just answer my question and then we can

13 deal with that. Did he provide any more information
14 that he offered to provide before the Cabinet meeting
15 the next day? The last line of his letter is:

16 "... an offer to provide any more information and to
17 contact him personally for the purpose."

18 Did he do that or did you before the Cabinet meeting
19 of next day?

20 A. I can't recall whether he did and I can't recall whether
21 there was -- and I have seen an attachment of the sort
22 of the map of the golf course.

23 SIR ROBIN AULD: I think Mr Milne wanted to know, was there

24 any supplemental documentation before Cabinet on that
25 meeting?

1 A. I can't recall that.

2 SIR ROBIN AULD: Thank you.

3 MR MILNE: Why was it necessary to get it in front of the
4 Cabinet and get agreement in principle so quickly? Why
5 not prepare a proper paper? Cabinet meets once every
6 week or two, so it could have waited a little while,
7 couldn't it?

8 A. When you are dealing with -- when you are a small,
9 developing country and you are dealing with trying to
10 attract investment to your country where capital moves
11 quickly, you try to deal as quickly as possible. But
12 this was not a new proposal. This was an ongoing
13 proposal, (1). (2), it was in relation to lease land.
14 (3), this was in principle and as you note from my
15 answer that it instructs -- the Attorney General and
16 TC Invest negotiated a development agreement in relation
17 to the golf course that was not signed until six months
18 later, so the matter came back to the Cabinet for formal
19 and detailed consideration. This was an in-principle
20 decision. That is not unusual. There are many
21 in-principle decisions that is made.

22 Q. You have told us, sir, that a small developing country
23 wants to act quickly, perhaps one can see that, but
24 Mr Hoffman isn't going anywhere, is he? He has already
25 committed his money to Salt Cay. You have told he was

1 already, as it were, entrenched there?

2 A. I never used the word entrenched.

3 Q. No, you didn't use the word, I use that word, but he was

4 already established. He had already committed himself

5 in financial terms?

6 A. He already owned property on the island, yes.

7 Q. This development, which was supposed to be a large scale

8 development on Salt Cay, was one which would obviously

9 involve the commitment by him of quite a a lot of money?

10 A. Yes.

11 Q. But would ultimately involve him having a, you would

12 hope, world class resort?

13 A. Yes.

14 Q. That appears to be what is discussed on a regular basis,

15 world class resorts, the idea that it would draw people

16 in and it would be profitable?

17 A. Draw people in. It would bring in tourism revenues,

18 badly needed, for the government and business

19 opportunities for our people.

20 Q. So it would benefit the people of the Turks & Caicos

21 Islands?

22 A. Yes.

23 Q. And a golf course is a very attractive asset for any

24 development. You shrugged. That doesn't show up on

25 the transcript, I am afraid. You are a golfer yourself,

1 sir, I think?

2 A. Not really. I am a fisherman.

3 Q. A golf course is something that would draw people in,

4 particularly potential golfers. It should add to the

5 attraction of a resort. It will make a resort easier to

6 sell, would you agree?

7 A. A golf course is an added attraction to a resort, yes.

8 I can see that.

9 Q. You regarded Mr Hoffman's request as being sufficiently

10 important and indeed sufficiently pressing that it

11 needed to be put before the Cabinet the following day

12 and discussed, so that agreement in principle could go

13 back to him.

14 A. I guess I did because I did it.

15 Q. I accept what you say, that later on there was far more

16 discussion. At this stage there doesn't appear to have

17 been any discussion as to price or terms or what it was

18 worth to him or what it was worth to you. Nothing of

19 that nature.

20 A. Because that is, as I said, it was an in principle

21 agreement.

22 Q. Right.

23 A. Which the Attorney General Chambers and TC Invest, that

24 is the way it is done here in Turks & Caicos most of the

25 time.

1 Q. The letter and the Cabinet minute of 1st September and
2 then 2nd September in fact both refer to Salt Cay Golf
3 Club Limited. Would you accept from me, I can take you
4 to the page if it assists, but Salt Cay Golf Club
5 Limited in fact had not on those two days been set up.
6 It was formally established within the Turks & Caicos
7 Islands on 4th September.
8 So a few days later.
9 SIR ROBIN AULD: You mean to say 1st August.
10 MR MILNE: I beg your pardon, 1st August.
11 SIR ROBIN AULD: 1st August 2006 in both instances. Sorry
12 I interrupted your answer, Mr Premier.
13 A. What is the question again?
14 MR MILNE: Salt Cay Golf Club was set up about two days
15 after this Cabinet meeting, within the Turks & Caicos
16 Islands, as a Turks & Caicos company.
17 A. I accept your answer.
18 Q. Indeed, it may be appropriate that we go to that
19 document.
20 A. What page is it?
21 Q. It is not a volume we have looked at before. Volume 4,
22 sir. It is page 128 in red volume 4. Salt Cay Golf
23 Club, established 4th August 2006.
24 Do you have that?
25 A. Mmm hmm.

1 Q. The director of Salt Cay Golf Club, the directors list

2 two people, one, a gentleman called Stefan Kral.

3 The other one a company, Windsor East Limited.

4 Shareholders, there are two shareholders, each with

5 50 shares. One is Harbour Management Development

6 Limited. That gives an address in Nicosia in Cyprus.

7 That is in fact the holding company used by Mario

8 Hoffman?

9 A. I don't know. I am not his lawyer, I don't know about

10 his affairs.

11 Q. The second one is Business Ventures Limited, the company

12 in Providenciales, Turks & Caicos Islands. Are you

13 familiar with that company?

14 A. Yes.

15 Q. Who owns that company?

16 A. That company is owned by Chal.

17 Q. So that company is owned by your brother. So the shares

18 in Salt Cay Golf Club are 50 per cent Mario Hoffman

19 through his holding company, 50 per cent your brother.

20 Correct?

21 A. That is the way it seems, yes.

22 Q. That is the way it seems. Were you aware of that at the

23 time, sir?

24 A. Not at the time, no.

25 Q. Did you do any due diligence on the new company? Did

1 you not ask, who are these people, Business Ventures
2 Limited?

3 A. Well, at the time that, as you can see, the letter was
4 sent to or went to Cabinet, there was -- the letter came
5 from Mario Hoffman. By all of the questions you have
6 already asked me, it shows that this letter itself was
7 circulated. You yourself said that the company was not
8 even formed yet.

9 So how would I -- I was dealing with Mario Hoffman,
10 who --

11 SIR ROBIN AULD: Did I detect a flash there?

12 MR MILNE: I think the light went.

13 A. Mario Hoffman, who had long dealings with government in
14 relation to his various developments, and so who
15 Mario Hoffman ultimately decide to, and it is clear from
16 the presentation, number 24/25, who Mario Hoffman
17 ultimately decide to choose as partner, is a matter for
18 Mario Hoffman.

19 As you -- as also was made clear by my answer to
20 the Commission, as you know there were other person who
21 were involved with Mario Hoffman who he subsequently
22 bought out in relation to his development.

23 So that is a matter for Mario.

24 But the short answer is that when the matter came to
25 Cabinet, I was not aware of who the shareholders or

1 directors were because to my mind I was dealing
2 with Mario Hoffman.

3 SIR ROBIN AULD: When did you first become aware that your
4 brother owned 50 per cent?

5 A. I can't recall exactly. I became aware of that --

6 SIR ROBIN AULD: Was it days or months?

7 A. I can't recall exactly. Certainly later on. Obviously
8 this was an ongoing thing for some time.

9 MR MILNE: So of all the people on all the islands that
10 Mr Hoffman could have chosen, he decided to go into
11 business with your brother who is an attorney.

12 Mr Hoffman is a millionaire, a multimillionaire from all
13 accounts, yes?

14 A. What are you asking me?

15 Q. Is that true?

16 A. Is he a multimillionaire?

17 Q. Yes.

18 A. How do I know?

19 Q. Have you ever asked him?

20 A. Are you a multimillionaire?

21 Q. I am not trying to buy a golf course, Mr Misick. Have
22 you never discussed the exact extent of Mr Hoffman's
23 wealth? You are aware that he has major interests in
24 Slovakia, he has major interests in other parts of the
25 world?

1 A. Yes, as I indicated Mr Hoffman bought his original
2 company back in 2000, had a development agreement with
3 the government at the time. When we came to office we
4 continued the relationship from a government standpoint
5 in relation to Mr Hoffman.

6 Q. Did you ever say to your brother: look, this will look
7 really bad if you get involved in this business because
8 this is a direct deal between my government and this
9 very wealthy individual? Mr Hoffman clearly had
10 the facilities, he clearly had the money available to
11 set up a golf course, develop a golf course, develop
12 an entire island. He didn't need to go to Chal Misick
13 for a few extra shillings, did he? So Mr Chal Misick
14 was not likely to be a financial contributor?

15 A. You are going to have an opportunity to interview Chal
16 and you can put that to him.

17 MR FITZGERALD: Sir, I think this matter is dealt with in
18 4.9.

19 SIR ROBIN AULD: Thank you.

20 MR FITZGERALD: As to the position at the bottom of page 30.

21 SIR ROBIN AULD: A, page 30, 4.9.

22 MR MILNE: So the negotiations continue with Mr Hoffman and
23 at some stage, we know not when, you learned that your
24 brother has a 50 per cent share in the Salt Cay Golf
25 Club Limited, yes?

1 A. Yes.

2 Q. Later on, 29th November, we have a minute from
3 the Cabinet. A memo in fact based upon a minute from
4 the Cabinet. This --

5 SIR ROBIN AULD: Page?

6 MR MILNE: Is page 11 within that section.

7 SIR ROBIN AULD: This is red 7?

8 MR MILNE: Red 7, third section, sir.

9 On 29th November, clerk to the Cabinet advises
10 Mr Gloyd Lewis, the office of the Premier, and indeed
11 the Attorney General by copy, the Cabinet had approved
12 the draft development agreement in relation to
13 the Salt Cay Resort and Spa. Further on in that memo
14 confirmed it had approved a 99 year lease. By this
15 stage, Mr Hoffman had come back, 222 acres it would seem
16 wasn't quite enough, and it had grown, not by
17 a magnificent amount, but it was now 238.72 acres of
18 Crown land.

19 This is page 11. Do you have that, sir?

20 A. Yes.

21 (3.15 pm)

22 Q. So the project was pressing ahead and there were
23 discussions. Obviously there were discussions
24 internally and there was a lot of consideration given to
25 this parcel, and if you turn back, please, to page 5, we

1 have two pages 5 --

2 SIR ROBIN AULD: Just before we leave that, paragraph 3,
3 this is a memorandum at page 11 to Mr Gloyd Lewis,
4 the Attorney General, from the clerk to the Cabinet of
5 29 November. Paragraph 3 of it reads:

6 "Cabinet confirmed that the development is 50
7 per cent Belonger ownership and it further certified
8 that Mr Mario Hoffman was issued with a Belonger
9 certificate. Therefore it confirmed that the Belonger
10 participation is verified."

11 So what was 50 per cent Belonger was your brother,
12 was it?

13 A. I take it to be.

14 SIR ROBIN AULD: Then the other 50 per cent was Mr Mario
15 Hoffman when he was granted --

16 A. I take it. Well, sorry but as -- I don't know I mean --

17 MR MILNE: So Mario Hoffman by this stage was being given
18 Belonger status himself?

19 A. Yes.

20 Q. Going back to page 5. This is a memo from the valuation
21 department, the ministry of natural resources and in
22 fact this memorandum was prepared by the chief valuation
23 officer, Mr Hoza, and is dated 13th November 2006,
24 addressed to Mr Clayton Been at TC Invest. I will take
25 it as shortly as I might. Mr Hoza was requested to

1 place a value upon the land earmarked for development as
2 a golf club. The figure which we see over the page
3 which he placed upon that land was \$7.76 million.

4 You would no doubt at some stage have been made
5 aware of that, but as you told us, I think, yesterday,
6 land in the islands is going up considerably. If
7 somebody obtains land then there is a good chance that
8 the value will rise. 7.76 was the value placed on it at
9 the time, which was November of 2006. There is a clause
10 that is standard to these valuations:

11 "The opinion of the value should not be taken as
12 valid for a period exceeding six months from the date
13 hereof or if there is a material change in the
14 circumstances."

15 So a valuation of this sort is very limited. It is
16 for a limited period. But that is the figure that was
17 being put on it, 7.76 million. Freehold. Mr Hoffman of
18 course wasn't asking for freehold as such. All he
19 wanted it for was 99 years. Presumably he would give it
20 back after 99 years. You would agree, no doubt, that it
21 was unlikely he would be handing it back to you?

22 A. I don't agree with that.

23 Q. Because in 99 years, sad to say, it is unlikely that
24 anybody present in this room will still be alive.

25 A. Well --

1 Q. You are hoping, I know?

2 A. I am not God.

3 Q. We are not gone yet. The truth of the matter, I would

4 suggest, sir, is that 99 years' lease --

5 A. I said I am not God. That is what I said.

6 Q. 99 years is essentially as good as freehold?

7 A. No, because in a lease there are conditions. There are

8 conditions in the lease that one has to meet, but also

9 if I can assist you and hopefully shorten your speeches,

10 this is nothing unusual. All of the -- it has been past

11 and present government policy in relation to golf course

12 in the islands, we issue 99 years lease because the golf

13 course itself, well, it is not valuable in terms of --

14 it is an amenity to the resort.

15 SIR ROBIN AULD: It has to be complemented by other

16 developers.

17 A. Absolutely, just as we did in Amanyara and Northwest

18 Point, we issued 99-year lease in relation to the golf

19 course land, and those lands are normally issued, and

20 this has been the broad policy of all governments, is

21 they should, at a peppercorn rent in relation to

22 the golf course land.

23 Now, for example, if the land is used purely for

24 golf course, then it's leased at an nominal rate.

25 SIR ROBIN AULD: There were development conditions really is

1 the point, weren't there?

2 A. Yes.

3 SIR ROBIN AULD: Which were very expensive to fulfil. You

4 were saying it was not as good as freehold because there

5 were obligations going with this 99 year lease that

6 wouldn't apply to freehold, namely to spend a lot of

7 money developing it.

8 A. Yes.

9 SIR ROBIN AULD: Not only this piece of land itself but

10 others that were complementary to it, is that the point?

11 A. The golf course without any of the managers is

12 worthless. Yes.

13 SIR ROBIN AULD: Is that going to be a convenient moment?

14 MR MILNE: That would be a moment.

15 SIR ROBIN AULD: We will break for a little while, shall we?

16 (3.20 pm)

17 (A short break)

18 (3.30 pm)

19 SIR ROBIN AULD: Just before you resume, Mr Milne, let's

20 have a quick minute of housekeeping again. Ms Missick,

21 we spoke about Mr Hanchell's programming which is

22 presently listed for next Monday.

23 MS MISSICK: Yes, sir.

24 SIR ROBIN AULD: It doesn't look, given the arrangements we

25 have had to make for Mr Floyd Hall, that there is any

1 real prospect of very much of any time being available
2 for Mr Hanchell on Monday. So shall we say for now, not
3 before Tuesday and we will come back to, if not at the
4 end of today, tomorrow morning with a programme which we
5 hope will accommodate his particular conveniences as
6 well and the others who have got to be re-adjusted too.
7 Is that convenient?

8 MS MISSICK: Yes, sir, it is convenient. Much obliged.

9 SIR ROBIN AULD: Not before Tuesday.

10 MR FITZGERALD: Sir can I mention one other matter which is
11 that Mr Rigby and I have discussed the situation in
12 relation to Mr Chalmers. Mr Rigby had suggested that
13 Thursday would be most convenient from his point of
14 view. Having discussed it together, in order that both
15 he and I could be there for that part of the evidence,
16 we were going to propose that his evidence started on
17 next Friday.

18 SIR ROBIN AULD: Friday, the 23rd?

19 MR FITZGERALD: Yes.

20 SIR ROBIN AULD: I will put Chal Misick, question mark, for
21 that day and we will see if we can accommodate you. You
22 will be back the day before, will you?

23 MR FITZGERALD: I will be back, and obviously the Premier
24 would wish me to be there.

25 SIR ROBIN AULD: Thank you. Yes, Mr Milne.

1 MR MILNE: So, Mr Premier, you told us before the short
2 break that it is more conventional at least to put
3 a golf course on a long lease rather than freehold.

4 A. Yes.

5 Q. You trusted Mr Hoffman to develop this as a golf course,
6 didn't you?

7 A. Yes.

8 Q. This land was worth on a valuation and the valuation of
9 course was based on the premise that this would be
10 a golf course with golf course buildings and golf course
11 amenities, the valuation put upon it was \$7 million,
12 nearly \$8 million.

13 So TCI Investments must have thought it was
14 worthwhile having the valuation done by the officer,
15 the chief valuation officer, mustn't they?

16 A. Well, I guess.

17 Q. In Mr Hoffman's hands this was a very valuable amenity
18 which would greatly improve the quality of the product
19 he could offer to tourists. It would, not on its own
20 but indirectly make him popular, make his resort more
21 popular, make him more money in the long-term. This was
22 going to work to the benefit of the developer and you
23 hoped in due course it would work to the benefit of the
24 TCI?

25 A. It is a known fact that golf courses hardly make money.

1 You can check the Provo golf course that had been
2 operating for --

3 SIR ROBIN AULD: I didn't hear your answer. They have or
4 haven't made money.

5 A. It is a known fact that golf courses hardly make money,
6 and you can check the Provo golf course which has been
7 here for 15 years, and I don't think they have been
8 profitable yet.

9 SIR ROBIN AULD: So what is the point you are making? Golf
10 courses hardly make money, so?

11 A. So the golf course on its own --

12 SIR ROBIN AULD: You made that point, but do they make money
13 when they have all the complementary facilities?

14 A. I am saying the complementary facilities make money.
15 The resort, the hotels and everything else. They are
16 the ones that make money.

17 SIR ROBIN AULD: It is the same point we had just before
18 the break.

19 A. Yes.

20 MR MILNE: So it would be wholly artificial to look at it in
21 isolation. One has to look at it in context. It is
22 part of the overall development.

23 A. The golf course?

24 Q. Yes.

25 A. Yes, it is an amenity.

1 Q. As the overall development will make money, if the golf
2 course stood on its own, no facilities, nobody would
3 bother playing, nobody would even tee off. But put it
4 together with the resort that is already being
5 constructed, then it is a boost, it is an accelerator
6 for the resort as a whole. I am sure Mr Hoffman is
7 a man who gives to charity, but he was not building
8 a golf course out of charity, was he? It was a business
9 proposition.

10 A. I thought I dealt with that already.

11 Q. You may have dealt with it already. I am putting that
12 to you as a premise. Do you agree with it, that it was
13 a business proposition, he would have set about building
14 a golf course because he thought it would be in his
15 business interests?

16 A. My answer to that is that the golf course is an amenity
17 of resorts. The golf course on its own don't make
18 money. The resort and activities around it do. So
19 certainly from Chal's standpoint, it was probably a bad
20 deal, because the golf course will probably never make
21 money.

22 Q. If the golf course wasn't going to make money, why
23 didn't you say: Mario, please don't enter into this, it
24 is going to lose money, just stick to doing what you do
25 best, build the resort, don't bother with the golf

1 course?

2 A. I am not his adviser.

3 Q. He wanted a golf course. He was prepared to approach

4 you for it? He had gone to that much trouble?

5 A. He wrote to me as the minister for development for it,

6 yes.

7 Q. He was prepared to invest in it. He was going to build

8 the amenities that go round it. No doubt lay it out,

9 get a designer in, put in the sand traps. Employ

10 the staff. The TCI government wouldn't have to do that,

11 would they? It would be purely a business venture, am

12 I right?

13 A. The golf course had the -- the business part of the golf

14 course has nothing to do with the government.

15 Q. I am sorry, I can't hear the answer you are giving with

16 your hand in front of your mouth. Could you speak into

17 the microphone?

18 A. The business part of the golf course has absolutely

19 nothing to do with the government.

20 Q. So you had a valuation on this land of \$7.8 million.

21 What was he charged for the 99 year lease?

22 A. I am not sure what he was charged specifically but as

23 I indicated earlier, it is the policy -- been the policy

24 of this government as well as past government in

25 relation to golf course, that the golf course, where it

1 involves just a golf course itself, they would be done

2 on a nominal or peppercorn rent.

3 Q. Look at page 11, please, sir. We looked at it a minute

4 ago. Paragraph 1D. Cabinet approved that the annual

5 rent of land for the golf course be at a peppercorn rent

6 of \$1 per acre reviewable after 20 years. So the golf

7 course was going to set Mr Hoffman back \$238.72 every

8 year. That is a peppercorn rent?

9 A. Again, that is not unusual. That is the same type of

10 arrangement that the golf point at Northwest Point have,

11 any other golf course have. When you consider the level

12 of investment that you have to put into a golf course to

13 make it profitable or to make it work rather, that has

14 been the policy of past and present governments. Not

15 only here in the Turks & Caicos but you can check around

16 the region.

17 Q. So you were bound by that policy. You couldn't get

18 \$7.8 million for your land. You had to only get \$238

19 a year?

20 A. It is leasehold, it is not freehold.

21 Q. It is a leasehold, absolutely.

22 A. Whether it is Mario or any other development, if you try

23 to sell land to build a golf course for 7, 8, 9,

24 10 million dollars, it is simply not going to happen.

25 Q. With respect, sir, you are a lawyer. You are qualified

1 as a barrister yourself, I think. You will be aware of
2 the idea of restrictive covenants. You can sell
3 freehold, get the full value. He could have had
4 the freehold which would have made all the same
5 difference to the Turks & Caicos government and you
6 could have placed a restrictive covenant saying this
7 land may only be used for a golf course. That would
8 have been just as effective as leasehold conditions,
9 wouldn't it?

10 A. That is not the template in which we operate on in
11 the Turks & Caicos.

12 Q. It is not what you choose to do. So you chose to
13 provide --

14 MR FITZGERALD: That was not the answer that the witness
15 gave and my learned friend just proceeded to make
16 a statement.

17 MR MILNE: I apologise.

18 A. Sneaky.

19 Q. You had the opportunity, I suggest, to get much, much
20 more for this area of 238 acres?

21 A. No.

22 It is the similar agreement that they have with
23 Amanyara, which is on Providenciales for that matter.
24 It is a similar agreement that it is on in relation to
25 all golf course that involves public land on the Turks &

1 Caicos.

2 Q. So from the point of view of Mr Hoffman, all he has to

3 do is write a letter and he gets agreement in principle.

4 All he has to do is pay less than \$250 a year and he

5 gets 238 acres so that he can build a golf course on it?

6 A. A leasehold.

7 Q. Leasehold, freehold. He gets the use of the land, would

8 you not agree, sir?

9 A. No, no.

10 Q. He gets the use of the land for a pittance.

11 A. Well, he gets to develop the land. He gets to provide

12 employment opportunities and so he gets to revitalise or

13 vitalise an area that has been dormant all during my

14 lifetime. He gets to provide tens of millions of

15 dollars into the revenue of the government, assuming

16 that the resort and our activities are profitable.

17 When agreeing to development, you can't strictly

18 look as a prosecutor, as you are, would look at it.

19 That is why all through the world, including the Turks &

20 Caicos in the region, concessions are given to

21 developers to develop, whether it is golf course, hotels

22 or et cetera, because of the value it brings to

23 the country.

24 SIR ROBIN AULD: Could we look back at page 5, please, in

25 the bundle, Mr Premier. This is the memorandum of

1 Mr Hoza, giving the valuation of 7.6 or 8 million. He
2 refers in the first paragraph of the memorandum to
3 receipt of another memorandum from a Mr Clayton Been,
4 the inward investment manager of TCI Investment Agency.
5 It looks as if he was asked in reaching this valuation
6 of 7.6 or so to give an opinion of the market value of
7 the freehold interest. So he was asked to give that
8 valuation.

9 A. Yes.

10 SIR ROBIN AULD: Why would he have been asked to give that
11 valuation if it had no particular relevance?

12 A. Because that is what is normally done in any -- most of
13 the time in the allocation of Crown land, they would ask
14 for --

15 SIR ROBIN AULD: It may be, but he was asked to give
16 a valuation --

17 A. Yes. That is a standard --

18 SIR ROBIN AULD: -- of freehold value which you say has to
19 be obviously considered in a different context from
20 a conditional purchase lease, where there are
21 development obligations. But nevertheless I suppose it
22 is an indicator of something, isn't it, the development
23 being made.

24 A. It is an indicator of the value of the land.

25 SIR ROBIN AULD: Yes.

1 A. Then having seen the value of the land, Cabinet and
2 again -- we operate on a principle of collective
3 responsibility -- Cabinet in line with what has been
4 the policy and practice --

5 SIR ROBIN AULD: I expect Mr Milne is going to ask you about
6 that now.

7 A. Well.

8 MR MILNE: So Cabinet agree that it be given out on
9 a leasehold basis, at peppercorn rent, and as you said
10 a moment ago, sir, this will ultimately result in
11 the generation of tens of millions of dollars. It will
12 only do that if Mr Hoffman makes tens of millions of
13 dollars. Can I take that as your agreement that he
14 would do well out of this?

15 A. All being well, the government would get revenue. But
16 I think you also have to look at, like any investor,
17 many who invested here. Some has done well, some
18 hasn't. It is a risk you take. You can't assume
19 that -- there are many around the world, especially now,
20 there are many failed developments. It is a risk he has
21 taken or was prepared to take.

22 SIR ROBIN AULD: But in every present valuation of land
23 there is an element of the potential for development and
24 profit that will ensue; there is a futurity in it in
25 every present valuation, isn't there?

1 A. Yes.

2 MR MILNE: Let me take another example, sir. I will take

3 you, if I might, to core volume 6. Do you have that

4 still in front of you?

5 A. Yes.

6 Q. This is a minute from in fact the early part of 2008?

7 A. What page are you?

8 Q. It is page 142. This minute is from the first Cabinet

9 meeting at 2008 which took place on 9th January.

10 The minutes I am looking at is in relation to Salt Cay

11 resort, minute 0813, headed "Salt Cay Resort":

12 "The minister for natural resources, fishery and

13 the environment..."

14 Not yourself obviously. Is that the Honourable Mr

15 Hanchell?

16 A. I am sorry, is that what?

17 (3.45 pm)

18 Q. That is one of your colleagues. Is that the Honourable

19 Mr Hanchell?

20 A. Yes.

21 Q. "... raised the matter advising Cabinet that

22 representatives of Salt Cay Resort and Spa have

23 expressed an interest in the outright purchase of parcel

24 number 10702/19 and as such hereby seeking approval for

25 outright sale of that parcel to Salt Cay Resort and Spa

1 at an open market value of \$160,000 and the register be
2 amended to show the lease is expired and is free from
3 any encumbrance. Cabinet essentially agreed. It
4 granted approval for the outright sale of that parcel at
5 Salt Cay Resort at an open market value of \$160,000. It
6 further approved the register to be amended to reflect
7 the fact that the lease had expired and the land is free
8 from encumbrance."

9 That in early 2008 was a freehold sale, \$160,000 of
10 a parcel.

11 Do you remember that that was a sale that later came
12 to be considered by an auditor. Not Ms Travis, but
13 a different auditor who had replaced her?

14 A. Yes, there was a whole issue of auditing.

15 Q. I am sorry, you are cutting off your words?

16 A. I said yes, I remember that the whole issue of land
17 involving Salt Cay was audited.

18 Q. We have that audit report at page 39 in the Salt Cay,
19 that is core bundle 7?

20 A. 7?

21 Q. Bundle 7.

22 A. What page?

23 Q. Section 3, page 39. This deals -- do you have that --
24 with failure to re-value property. This is the
25 highlighted section:

1 "A clear illustration of this point [this is failure
2 to revalue] relates to a prime piece of beachfront land
3 on Salt Cay. Original lease taken out in 2004 reached
4 its earliest expiry date in 2007 was cancelled by
5 decision of Cabinet on 9th January 2008."

6 The minute we have just seen.

7 Freehold was then offered to a new developer at the
8 same open market valuation of \$160,000 used in 2004,
9 based on a valuation done by the valuation officer in
10 January 2001. This is despite the fact that similar
11 sized adjacent parcels -- he refers to another table --
12 sold in late 2007 for nearly \$1 million.

13 "The decision not to re-value shows at best
14 a reckless disregard for the finances of TCIG as well as
15 possibly raising other concerns."

16 It seems, Mr Premier, that when it comes to
17 Mr Hoffman, every deal goes his way. He got 1 million
18 worth of land on that occasion for \$160,000?

19 A. That is not the case. The case in relation to that, and
20 I am not sure whether this is in the Deloittes report.

21 SIR ROBIN AULD: This is a Deloitte audit, isn't it?

22 A. Yes, this is a Deloittes audit. There is no question
23 that Mr Hoffman in my view anyway overpaid for a lot of
24 land on Salt Cay because the land based on the valuation
25 at the time I believe -- because this question was asked

1 to the ministry of lands, why did they not re-value it
2 and they said based on the activities, nothing had
3 happened on Salt Cay since 2004. In spite of the fact
4 that Mr Hoffman was gearing up to do the development,
5 that they didn't re-value the land.

6 But as a developer, I understand that he paid in
7 some cases more than the land was worth because he
8 wanted the land to include in his development.

9 Now, if the ministry did not re-value the land when
10 a Cabinet decision is made, that has nothing to do with
11 me. The Cabinet makes a decision. The Cabinet decides
12 that it is going to sell the land. Then it is up to the
13 ministry to then deal with that. I don't deal with it.

14 Q. Mr Premier, I am not suggesting that you personally deal
15 with these items on a case-by-case basis, but you are
16 close to Mr Hoffman, you deal with him, I would suggest
17 on a regular basis. You have travelled abroad with him
18 in the past.

19 A. I have been close to many people in the past.

20 Q. I am sure you are, but we are not talking about many
21 people, we are talking about Mario Hoffman. You have
22 travelled with him socially haven't you?

23 A. Yes I have.

24 Q. He seems to get very good deals overall. He seems to be
25 doing very well out of this?

1 A. Out of what?

2 Q. Out of the Salt Cay development.

3 A. I don't know. He has not built a thing yet.

4 Q. He has not built a thing yet? But he has got Belonger

5 status, he has got a golf course --

6 A. The golf course is not built, but also Mr Hoffman has

7 had a house here since 1997.

8 Q. Well no doubt but --

9 A. And he has spent millions of dollars investing in our

10 country. So that is more than I can say for a lot

11 of ... people with Belonger status in the past.

12 Q. As long as he is putting millions of dollars into

13 the country, that is what matters?

14 A. I didn't say that. We are talking about Belonger

15 status. You live comfortably in England, you don't have

16 to worry about providing employment and opportunities

17 for Turks & Caicos people and I am sure you have no

18 interest in them.

19 SIR ROBIN AULD: We are leaving the Deloitte report

20 completely, are we now, Mr Milne?

21 MR MILNE: Yes.

22 SIR ROBIN AULD: May I ask this. The report is

23 comparatively recent, June 2008. What if any

24 governmental response has there been to this report of

25 Deloittes?

1 A. If you would look at the -- as a matter of fact, I think
2 there is a letter from Mr Hoffman. I am not sure if you
3 have seen it --
4 SIR ROBIN AULD: The Premier is looking at you,
5 Mr Fitzgerald.
6 MR FITZGERALD: We have it. We gave it to you and indeed
7 I was going to take the Premier to it.
8 A. In relation to that, the fact is that as a result of
9 many allegations and reference to the Salt Cay deal,
10 I know that your report says that the then Governor
11 ordered an audit but the Cabinet ordered an audit of all
12 of the dealings in relation to Salt Cay. This is how
13 the Deloittes report came about.
14 SIR ROBIN AULD: That is a different report.
15 A. No, that is the same report. The Deloittes report.
16 Because Mr Hoffman in his group had some land that was
17 pending that they had bought in relation to
18 the development. Also the development agreement,
19 amended development agreement and the then Governor, in
20 spite of the Cabinet decision, refused to sign it until
21 the Deloittes audit was completed.
22 After the Deloittes audit was completed, having
23 reviewed it, he signed the development agreement and
24 the other matters that needed to be signed. So
25 I assumed that based on the Deloittes audit, he was

1 satisfied that everything was done in a manner that
2 was -- as a matter of fact, he is president of Cabinet.
3 So all of these decisions, most of the decisions
4 certainly was taken in his presence with his
5 participation. Cabinet is a collective responsibility,
6 including the Governor.

7 SIR ROBIN AULD: I am just trying to find out what if any
8 response there has been. Just allow me for a second,
9 will you? This Deloitte report was prepared to a very
10 narrow brief which was agreed between the Governor and
11 I think members of the Cabinet, possibly you. It
12 contains an great deal of statistical information but is
13 lacking in analysis. One of the requirements
14 I understood at one stage was it would be considered by
15 the Governor and possibly the Cabinet to see what
16 conclusions should be drawn from the figures in it. Did
17 that happen?

18 A. I guess it did. If the Governor thought there was
19 something untoward, I am sure he would not have signed
20 it.

21 SIR ROBIN AULD: But you are not aware of any governmental
22 response other than this of the Governor finally
23 approving the transaction.

24 A. I am not aware. The minister of natural resources may
25 be aware.

1 SIR ROBIN AULD: That is all I need to know, thank you.

2 MR MILNE: Has a development planning permission been given
3 for Salt Cay.

4 A. Any planning permission?

5 Q. Yes.

6 A. Not to my knowledge.

7 Q. Development agreement been concluded?

8 A. Yes.

9 Q. This, you tell us, sir, will be in the long-term good
10 for the people of the Turks & Caicos?

11 A. Well, I don't know. I think it is dead. I think it is
12 now dead.

13 Q. You think it is dead?

14 A. Well --

15 Q. Why is it dead?

16 A. That is just my opinion.

17 Q. It is your opinion. Why do you think so?

18 A. That is just my opinion.

19 SIR ROBIN AULD: I think you had better help if you can on
20 this, Mr Premier.

21 A. I can't help. It is just my off-the-cuff opinion.

22 SIR ROBIN AULD: Why do you think it is dead? Why is it
23 your opinion?

24 A. I can't help with that. I am just saying that is my off
25 the cuff --

1 SIR ROBIN AULD: People have opinions on a rational basis,

2 don't they? What is your basis for this opinion?

3 A. Maybe it was irrational then.

4 SIR ROBIN AULD: Well, I hope not. But do help me on this.

5 Is this a runner any more?

6 A. I don't know. It is going through the process of -- we

7 are in the process of doing a ten-year master plan for

8 the entire islands, including Salt Cay and so it is

9 going through all of the various processes.

10 Q. Who is doing the master process?

11 A. It is a consultant company out of --

12 SIR ROBIN AULD: I probably should know this but I can't

13 call to mind --

14 A. I don't know. I can't recall either.

15 SIR ROBIN AULD: A consulting company is undertaking

16 a master process.

17 A. For the entire islands.

18 SIR ROBIN AULD: But why should that lead you to the view

19 that the thing is dead. Financial problems now, the way

20 of the world, the economy is down?

21 A. If I was you, I would not read into anything into that.

22 It was just an off-the-cuff remark.

23 SIR ROBIN AULD: So all this has come to nought in your

24 opinion?

25 A. That is not what I am saying. I am saying that was

1 an off-the-cuff remark in relation to the... Joe...

2 SIR ROBIN AULD: All right, thank you.

3 MR MILNE: When did the planning board last meet?

4 A. I don't know. I am not the minister of planning.

5 Q. Had you not heard? It met very recently. Do you not

6 know when?

7 A. I can't remember.

8 Q. It met last Saturday. 10 January. It met at

9 the request of Mr Mario Hoffman, we are informed, who

10 flew specifically in to have this planning meeting?

11 A. Mario Hoffman?

12 Q. Yes.

13 A. He is not a member of the planning board.

14 Q. He is not a member of the planning board, no, but he met

15 with them, we understand?

16 A. I can't discuss rumours.

17 Q. He came to the islands. I correct myself. I have

18 been misinformed myself. He was not at the meeting but

19 the planning board met on Saturday. Mr Mario Hoffman

20 apparently was concerned to get planning permission, one

21 of his projects as quickly as possible.

22 A. No.

23 Q. For some reason it would appear that he was concerned

24 that if it was left to this week, something might have

25 changed.

1 A. Absolutely rubbish. Absolutely rubbish.

2 Q. Would it be the case that if you were not in office,

3 that Mr Hoffman would find it more difficult to pursue

4 his project?

5 A. Absolutely not. Absolutely not.

6 Q. We have --

7 A. And why wouldn't I be in office this week? Do you have

8 plans, that is secret plans for me?

9 Q. I have no plans at all for you at all, I am afraid,

10 Mr Misick?

11 A. So why would you speculate that I would not be in office

12 this week?

13 Q. That is not what I said.

14 SIR ROBIN AULD: Let's keep it to a fairly confined nature,

15 this question and answer.

16 MR MILNE: Mr Premier, I would suggest that the project goes

17 beyond simply benefiting the people of the Turks &

18 Caicos Islands, and that there is evidence, and I will

19 invite you to comment upon this, that it benefits you

20 personally.

21 A. No.

22 Q. The reason I suggest that is as follows: yesterday we

23 dealt with the loans that you obtained, and you recall

24 that one of those loans from J&T Banka was for

25 \$6 million, that being a bank based in Prague. You were

1 introduced --

2 A. I think while we are on that, sir, I think you did

3 mention correct reporting. One of the television

4 stations reported that I had borrowed money from

5 a Russian bank. So I think it is important for you --

6 SIR ROBIN AULD: The reason why Mr Fitzgerald is here is to

7 clear up matters of that sort when he comes to examine

8 you. Let's just deal with the questions as they come.

9 If there is points to raise arising out of them,

10 Mr Fitzgerald will look after you very well.

11 (4.00 pm)

12 MR MILNE: You were in fact introduced to the J&T Banka,

13 I think, by Mr Hoffman, is that right?

14 A. I met the chairman of the J&T Banka via Mr Hoffman.

15 Q. Indeed, when your loan agreement with the J&T Banka was

16 signed, the witness -- you signed, in fact your

17 documents in Turks & Caicos Islands was Mr Stefan Pral?

18 A. Yes, he witnessed my signature.

19 Q. Who was also an official of the Salt Cay development

20 company.

21 A. Yes.

22 Q. We mentioned yesterday, albeit in passing, that

23 the J&T Banka loan was secured against shares, yes?

24 A. Yes.

25 Q. It was secured against your brother's shares in

1 the Salt Cay Golf Club. Is that not correct?

2 A. Yes.

3 Q. So by virtue of your brother having a 50 per cent share

4 in the Salt Cay Golf Club, through his company

5 Business Ventures, you get a \$6 million loan.

6 A. Absolutely not. As indicated in my response to you,

7 which is at page 29 and 30 --

8 MR FITZGERALD: Sir, it is 4.7 at page 29.

9 A. When I apply for the loan at J&T Banka, I offered

10 a number of collateral. As I indicated earlier,

11 the purpose of the loan was to buy a house in

12 Los Angeles, re-finance the house there and pay off

13 the loan.

14 The bank obviously looked at -- they I think somehow

15 realised that -- they were more content with

16 a collateral from the golf course. They were familiar

17 with Mr Hoffman and my brother was kind enough to allow

18 me to use his collateral just like I allow him to use --

19 just like how -- you know there are -- well, he is

20 occupying parts of one of my building. So it has

21 nothing -- the fact I have to pay back the loan has

22 nothing to do -- I have not benefited in any dishonest

23 or corrupt way. It is a loan.

24 SIR ROBIN AULD: So your brother is occupying part of one of

25 your buildings?

1 A. Yes.

2 SIR ROBIN AULD: Which is? For the record, which is?

3 A. Windsor Plaza.

4 MR MILNE: You own Windsor Plaza.

5 A. Yes.

6 Q. Is that part of Grace Bay Plaza?

7 A. No, it is a Cinema Plaza.

8 Q. Thank you. So he was kind enough to stand surety for

9 a \$6 million loan that was due to be spent on a property

10 in Los Angeles?

11 A. Yes.

12 Q. \$200,000 of which was a lost deposit, the rest of which

13 has been drawn down, put into various bank accounts and

14 spent?

15 A. Well, when you say various bank accounts, into my

16 accounts that you know and based on my testimony

17 yesterday.

18 Q. But there is no longer \$6 million in your bank account?

19 A. Again, you have it in front of you where I said it was

20 spent on expenses.

21 SIR ROBIN AULD: The 6 million has been spent on expenses,

22 is that it?

23 A. Yes.

24 MR MILNE: In the interim, the interest on that which

25 amounts to about \$600,000 a year has been racking up.

1 You extended the loan once. On 29th April this year, in
2 three months and two weeks, you have to repay
3 approximately \$7.2 million. Do you have that money sir?

4 A. No.

5 Q. In every case of every loan, the parties involved have
6 foregone interim payments of interest. I would suggest,
7 Mr Premier, that that raises questions, wide-ranging
8 questions about how you obtained those loans and whether
9 indeed, sir, ultimately they are loans?

10 A. That is your opinion. They are loans. They are loans
11 of which I -- my assets outweigh my loans. They are
12 loans of which I will pay back.

13 MR MILNE: Thank you, sir. For the moment I have no further
14 questions.

15 SIR ROBIN AULD: Thank you Mr Milne. Now, before
16 Mr Fitzgerald asks any questions if he intends to today,
17 I ought formally to give an opportunity to all attorneys
18 present on behalf of other parties to ask the Premier
19 any questions if they feel that the interests of their
20 clients have been in any way implicated or involved by
21 his evidence. Is there any application to cross-examine
22 him? By any attorney present? Thank you.

23 SIR ROBIN AULD: Mr Fitzgerald, would you like to start
24 today?

25 Re-examination by MR FITZGERALD

1 MR FITZGERALD: I think it might be of assistance if I made

2 a start.

3 Mr Premier, you understand that the nature of this

4 Inquiry is about corruption and dishonesty and I want to

5 ask you just a few simple questions at the start about

6 those issues.

7 Have you ever sought any bribe or payment from

8 developers in exchange for development permission?

9 A. No.

10 Q. Have you ever sought any other favours in respect of

11 development conditions or permission?

12 A. No.

13 Q. Have you ever received any payment or award in exchange

14 for a decision in favour of development?

15 A. No, I have not.

16 Q. As to the decisions that you have taken, as development

17 minister in respect of development, what has been your

18 motive in all the decisions you have taken?

19 A. My motive has always been to try to attract development

20 for the Turks & Caicos, to be able to benefit the Turks

21 & Caicos people, to provide employment and opportunities

22 and empowerment for my people. It has always been to do

23 it in a way that was consistent with our strategy of

24 high end development, high end tourism in a sustainable

25 manner that is also environmentally friendly.

1 Q. You have just been asked a series of questions about
2 the Salt Cay development and Mr Hoffman. You are aware,
3 I think, that Mr Hoffman has written a letter for
4 the attention of the Commission.

5 A. Yes.

6 Q. I think if I can just read out certain aspects of that
7 and see if they can be confirmed by you?

8 SIR ROBIN AULD: Would you give the date of the letter,
9 please.

10 MR FITZGERALD: It is 12th January 2009. Can I just read
11 out two passages from it. Firstly he says:

12 "I would like to state that I have never been asked
13 for nor offered to the current or previous Governor,
14 Premier, minister, MP, member or any other public agents
15 any commission in regards of Salt Cay project or any of
16 my businesses."

17 So far as you are concerned as Premier, is that
18 correct?

19 A. Yes.

20 Q. He further says:

21 "I have never asked for neither received any
22 privileges or advantages compared to other developers
23 from the current or previous Governor, Premier,
24 minister, MP, member or any other public agent in
25 regards of Salt Cay project or any of my businesses."

1 So far as you are concerned as Premier, is that
2 correct?

3 A. Yes.

4 Q. He then deals with the criticisms that have been made of
5 the project. He deals with his history of involvement
6 with the Turks & Caicos Islands over the page. Do you
7 see him referring there to the fact that he first came
8 to the Turks & Caicos Islands in 1997?

9 A. Yes.

10 Q. And since has fallen for the island and the people, is
11 that right?

12 A. Yes.

13 Q. And that he has a great respect for the people's
14 representatives and political scene of this country, but
15 his investments on TCI and interest to do a unique
16 development with full respect for environment, history
17 and people of these beautiful islands has nothing to do
18 with neither the current or previous Governor, Premier,
19 minister, MP, member or other politicians?

20 A. Yes.

21 Q. In addition he deals with the question of -- you dealt
22 with the benefits to this jurisdiction, and at (j), is
23 this right, he says:

24 "In addition to common developers' obligations, that
25 is, to give preference in employment to Belongers,

1 certain amount of investment in certain time schedule,
2 the environmental impact assessment and beach access, we
3 have in our development agreement an obligation to
4 invest 15 million to public infrastructure, public dock,
5 airport, public roads and to contribute to the national
6 scholarship fund more than \$2 million, which as far as
7 I know no other developer has in the TCI."

8 You see that?

9 A. Yes.

10 Q. In your view, would this development be of benefit to
11 the people of these islands?

12 A. In my view it would be a tremendous benefit to the
13 people of the Turks & Caicos.

14 Q. In addition, he said at (k):

15 "There is no doubt we have no other advantages in
16 comparison to other developers on TCI and there is
17 absolutely no reason to do any commission to the
18 Governor, Premier, minister, or any public agent on TCI
19 or elsewhere for it. All our land transactions and
20 development conditions have been cross-checked by
21 government, independent experts and lawyers and previous
22 Governor Richard Tauwhare has signed our development
23 agreement and land transfer and lease more than ten
24 months after the TCI government approved it."

25 So far as you know, is that correct?

1 A. Yes.

2 Q. In respect of the Salt Cay development, as far as you
3 are concerned, was that development a development
4 together with the golf course which would be of benefit
5 to the people of these islands?

6 A. As far as I am concerned, the Salt Cay development,
7 including the golf course, would be of tremendous
8 benefit to the people of Salt Cay in particular and
9 people of Turks & Caicos in general.

10 Q. In taking decisions, such decisions as you personally
11 took or participated in to approve of that development,
12 were you motivated by personal motives or by
13 the interests of the development of this country?

14 A. I was completely motivated by the interests of the
15 people of the Turks & Caicos Islands.

16 Q. In respect of the development on Joe Grant's Cay that is
17 now being developed by Dr Cem Kinay, is it your view
18 that that development is for the benefit of the people
19 of these islands?

20 A. I think to be able to attract a developer such as
21 Dr Kinay and also a development such as a Bulgari resort
22 will be a major coup for the Turks & Caicos Islands in
23 its quest for high end tourism.

24 Q. In respect of the Dellis Cay development, do you regard
25 that as to the benefit of the people of the TCI?

1 A. It should be able to attract and have a Mandarin
2 Oriental hotel and resort in the Turks & Caicos Islands
3 would be significant for particularly being the first
4 and only Mandarin resort in the Caribbean, to the Turks
5 & Caicos Islands.

6 MR FITZGERALD: You have been also summonsed to this Inquiry
7 --

8 SIR ROBIN AULD: Mr Misick, are you reading?

9 A. No.

10 SIR ROBIN AULD: What is the piece of paper in your hand?

11 A. That is Mario Hoffman's letter. This comes from
12 the heart.

13 SIR ROBIN AULD: Thank you.

14 MR FITZGERALD: I handed him the letter so I could refer to
15 certain aspects, sir.

16 A. Would you like to see it?

17 SIR ROBIN AULD: No, I accept what you say.

18 MR FITZGERALD: Have you ever made any dishonest use of
19 public funds?

20 A. No.

21 Q. Have you ever exploited your position as Premier to gain
22 any benefit of a financial nature?

23 A. No.

24 Q. Now, what has been your motive in your actions as
25 Premier of these islands?

1 A. My motive has always been to develop a sustainable
2 modern country, a country that is based on the rule of
3 law, a country that we can be proud of. It has always
4 been my party's policy to --

5 SIR ROBIN AULD: Ladies and gentlemen, in fairness to the
6 Premier, would you please remain silent. All his
7 evidence should be heard in quiet.

8 MR FITZGERALD: Please continue.

9 A. To modernise our country, to build institutions, to
10 educate our people, to provide modern health care. As
11 we have always said, we are building a nation, and
12 building, there are challenges and over the last six
13 years, I believe my government and I have risen to those
14 challenges and the Turks & Caicos is a considerably
15 different place today than it was six years ago.

16 Q. I want to come on to another issue. There has been
17 a suggestion that certain witnesses have come forward
18 anonymously and in secret because of a climate of fear.
19 Have you ever done anything to lead to a climate of
20 fear?

21 A. Well, I am shocked and appalled by the suggestion that
22 there is a climate of fear here. When you look at
23 the -- all of the newspapers in the Turks & Caicos
24 Islands, all of them write whatever they want about
25 the government, about me and that is their right to do

1 so.

2 (4.15 pm)

3 Q. Just pause for a moment there. The TCI Journal and
4 the Weekly News, do their editorials and their articles
5 suggest people gripped by a climate of fear and unable
6 to criticise you?

7 A. They have not suggested that, and in fact those two
8 publications in particular regularly criticise me, and
9 I must say that all of the editors, all of the writers
10 are persons who -- in most of the newspapers and media
11 are persons who are on work permits, whose work permit
12 has to be renewed every year. To my knowledge, over
13 the last six years of my government, no one has been
14 denied work permit because of what they have written,
15 contrary to what it used to be back in under the PDM
16 government when the former Minister of Immigration went
17 on the ballpark because I believe somebody wrote
18 something about him and said, "Who let the dog out?".
19 A famous quote.

20 Q. Can I just move on to one question. You have been
21 sitting here with the audience that we have here. Does
22 the audience here appear to be gripped by a climate of
23 fear? When they laugh at you or when they make a joke
24 about something, do they appear to be gripped by
25 a climate of fear?

1 A. They seem very relaxed. They seem to be having fun.

2 Q. Can I move on from there to the value of the position in

3 2003. My learned friend put to you at the start, have

4 you ever said that your worth at the time that you took

5 over as Premier in 2003 was only \$50,000? Have you ever

6 said: I was only worth \$50,000 in 2003?

7 A. I have never said --

8 SIR ROBIN AULD: Please, we must have quiet here. This

9 witness deserves all the respect that every other

10 witness will have before this Inquiry and the evidence

11 given now should be treated in the same way as before,

12 in silence. Now continue, Mr Fitzgerald.

13 A. Thank you. I have never said in any forum that I was

14 worth \$50,000. As a matter of fact, as I said earlier,

15 in filling out your declaration, there is no way of

16 saying what you are worth. In 2003 I had already,

17 having worked for most of my life, I already had

18 interest in Prestigious Properties and Alexandra Resort

19 and so on and so forth. So it is absurd.

20 Q. If we go back to 2003, you already had substantial

21 properties --

22 A. I already had a full life.

23 Q. You had North Caicos?

24 A. Yes. I already had, you know --

25 Q. You had the condo, the golf club?

1 A. Yes.

2 Q. You had shares in Prestigious Properties?

3 A. I had already been married once and sold -- a married

4 house and divorce and had a full life.

5 Q. To the suggestion that you have got rich by being

6 Premier, what is your response, is that fair or not?

7 A. Completely unfair. I work hard all my life.

8 Q. As to your salary as Premier, you were asked questions

9 about that and about the fact that your salary is

10 \$150,000?

11 A. Yes.

12 Q. Now, is that comparable to the salary of the Governor?

13 A. It is exactly the same salary that the Governor gets.

14 Q. In respect of the allowances for housing, do you regard

15 those allowances for housing as reasonable?

16 A. Yes.

17 Q. Again, compared to the Governor, does he in fact have

18 residences that are paid for from the public purse?

19 A. The Governor has a house and a golf course in Grand Turk

20 that is paid for from the public purse. He has

21 a beachside condominium here in Providenciales that is

22 paid for by the public purse. All of his entertainment

23 allowances. All of his transportation. The police

24 plane and everything is paid for by public purse.

25 Q. I want to move on to -- you had been asked questions

1 about non-disclosure in the Register of Interests and
2 you were shown by my learned friend volume 5, tab 16.
3 Do you have volume 5 of the core bundle? This red
4 bundle?
5 This is just to trigger your memory of the return
6 that was made in 2003.
7 SIR ROBIN AULD: Page?
8 MR FITZGERALD: It is at tab 16, of volume 5, sir.
9 SIR ROBIN AULD: Thank you.
10 MR FITZGERALD: Can you help the Commission in this way, how
11 would those returns actually be made out when they were
12 made out?
13 A. In most cases, the returns would be made out in
14 Parliament itself, or in many cases the Registrar of
15 Interests would bring the form in when we are in
16 Parliament or during the break and say to fill it out.
17 In most cases either I would fill out some of the same
18 information, or I may say to one of my assistants, same
19 as last year. What I can admit, it was not filled out
20 with any due care.
21 SIR ROBIN AULD: What we are looking at here is the Register
22 of Interests compiled by the Registrar from different
23 documents which were your returns; is that right?
24 A. Yes, it is put in by the Registrar.
25 SIR ROBIN AULD: Compiled from your returns.

1 A. Thank you.

2 MR FITZGERALD: If you can speak up a little. So

3 the Registrar would come to you to seek the information.

4 A. Yes.

5 Q. Then he would get the information from you and then type

6 it up into the Register of Interests, is that right?

7 A. Yes.

8 Q. So that is not the actual form you yourself would have

9 filled in?

10 A. No.

11 Q. But you have described how it would be done during

12 the sessions. How much time would you have to take over

13 a process like that?

14 A. Not very much.

15 Q. Not very much?

16 A. Not very much.

17 Q. When filling this in or filling in the forms on

18 the basis of which this was made, did you think it

19 through very carefully?

20 A. No.

21 Q. It has been suggested that you should have taken

22 a little bit more trouble, for example, in dealing with

23 the question of financial sponsorships and gifts and

24 such matters. Is that a fair comment?

25 A. That is a fair comment.

1 Q. But in that, in not filling in everything about gifts or
2 sponsorships, were you alone or was that standard
3 practice?

4 A. That has been -- that is standard practice. If you
5 would see -- check the returns of other members, that
6 would not be filled out as well. So it is standard
7 practice.

8 Q. There are other forms, I think, in relation to other
9 members that we have a little bit further on at tab 25.
10 We can see, I am not going to read out their names, but
11 if one looks at tab 25 there, financial sponsorships and
12 gifts, it seems to say nothing to declare, nothing to
13 declare, time and time again in all those entries, is
14 that right?

15 A. Yes.

16 Q. Do you see that? Is that just standard practice?

17 A. Yes.

18 Q. Moving on from there, you have been asked about the code
19 of conduct, which was the subject of some questions this
20 morning, which you find at volume 1 of the core bundle
21 at tab 9. If you just have volume 1, Premier. Perhaps
22 I can just ask you these short questions in relation to
23 that. You have that now, do you?

24 A. Yes.

25 Q. Had it in fact been brought into force during the period

1 that we are concerned with?

2 A. No.

3 Q. At the time that you were involved in all these events,
4 was there a plan that it would be edited and amended and
5 then brought back to you for signature?

6 A. Yes.

7 Q. Did that ever take place?

8 A. No, it never did.

9 Q. We see that it was you who introduced the proposed code
10 of conduct. Was that on your own initiative?

11 A. Yes, it was.

12 Q. Had that ever been done before?

13 A. Prior to me introducing it, it was never done.

14 Q. I want to just move on from there to one further topic
15 before we break.

16 That is the question of disclosure to this
17 Commission. There, if you can look at the core bundle,
18 the black bundle at A1 to A17, the declaration of
19 interest prepared by your attorneys in September of
20 2008. I think you are familiar with that document?

21 A. Yes.

22 Q. I just want to ask you a little bit about the context in
23 which that document was prepared.

24 It is the first 17 pages of that, right at the
25 start.

1 SIR ROBIN AULD: So we know what we are looking at here,
2 these are the 2008 reproductions of returns in earlier
3 years.

4 MR FITZGERALD: Exactly. So these are the reproductions by
5 your attorneys of the returns that would have been
6 filled in, representing in respect of each year what
7 your interests and assets were.

8 A. Yes.

9 Q. Just to help us about that, is this right, that on
10 12th September, the Commission had written to your
11 attorneys, fixing a deadline for the provision of those
12 returns? I can give you the reference. It is at B,
13 the correspondence bundle. It says:

14 "I wrote to the Honourable Premier on 15th August."

15 Then essentially it indicates that
16 the Commissioner has required a receipt of the requested
17 disclosure by Friday, 19th September.

18 Do you recall that?

19 A. Yes.

20 Q. Just so that we get the historical context of that, what
21 had been happening in these islands in the month before
22 that deadline of 12th September was imposed on you?

23 A. We had at least two hurricanes. Three if you count that
24 Hannah hit us twice.

25 Q. Was that an easy time for you as Premier to focus on

1 this particular task?

2 A. Not at all.

3 Q. Your attorneys then wrote in bundle B at page 5 on

4 17th September to the Commission. Page 5.

5 SIR ROBIN AULD: You are talking about bundle B?

6 MR FITZGERALD: It is bundle B, sir.

7 SIR ROBIN AULD: I have a black volume 1, 2 and 3. Is it

8 volume 2 for me?

9 MR FITZGERALD: You had invited us to make them A, B and C.

10 SIR ROBIN AULD: It is your bundle. I have it.

11 MR FITZGERALD: Sir, if I can just take the Premier to

12 page 5. Do you see there that your attorneys are

13 writing on 17th September and saying:

14 "We will let you have as much of the information as

15 is available by September 19 2008 and a timeline for

16 providing the remainder."

17 A. Yes.

18 Q. Turning over from there, do you see on 18th September,

19 2008, a further letter to the Commission. I am not

20 going to read it all out.

21 SIR ROBIN AULD: I do not think you should miss the last

22 paragraph of the letter of 17th September from Misick

23 and Stanbrook, should you?

24 MR FITZGERALD: Fine.

25 "We are having some difficulties identifying

1 the registration of interest ordinance to which you
2 refer in paragraph 4 of your letters. We are not aware
3 that such an ordinance exists. Please confirm the
4 accuracy of the ordinance to which you are referring."

5 SIR ROBIN AULD: But the ordinance is 2003, isn't it? It
6 was amended but originally it was 2003.

7 A. No.

8 (4.30 pm)

9 MR FITZGERALD: I understand there was some confusion as to
10 whether there was some other ordinance than that.

11 If we can go on from there to page 7. Can I just
12 take you to the big paragraph in the middle, the last
13 two sentences, where it states after explaining how your
14 attorneys have attempted to go about this exercise:

15 "Our client believes the information is as accurate
16 as he can provide given the time and other constraints.

17 In any case it would not be possible to provide all of
18 the details required by September 19 2008. We regard
19 this timetable as unreasonable and unrealistic."

20 That is what --

21 A. Yes.

22 Q. Did they then subsequently enter into a series of
23 correspondence with the Commission after that providing
24 further details, a process that has gone on, I think
25 there being some 12 or 13 further letters?

1 A. Yes, at least 12 or 13 letters back and forth.

2 Q. Have you sought to assist the Commission throughout that
3 process in providing the materials as best you could?

4 A. Yes I have.

5 Q. Whilst attending to your other duties?

6 A. Yes, I have.

7 Q. You are criticised because you mention the Saunders
8 employment in 2003 and you don't mention it after that.
9 Was there ever any intention there to mislead by
10 mentioning it in relation to 2003 and not mentioning it
11 as employment thereafter?

12 A. No, none at all.

13 Q. I think there is a criticism that though you mentioned
14 all the other bank statements, you don't mention My Way
15 Productions 2 Limited when you deal with your bank
16 accounts at A17. You accept that although you mentioned
17 all your other bank accounts, your My Way Productions 2
18 Limited wasn't mentioned?

19 A. Yes, I accept that.

20 Q. Can you explain why at that stage My Way Productions 2
21 Limited was not mentioned?

22 A. At the time especially with going through -- we had
23 a hurricane and I was going through a divorce and all
24 that, because I know the company was really that of my
25 ex-wife, at the time it slipped my mind that I still had

1 an interest in it.

2 MR FITZGERALD: My Way Productions 2 was in fact your wife's
3 company?

4 A. Yes.

5 Q. In relation to the account of My Way Productions 2

6 Limited, you omitted to mention it?

7 A. Yes.

8 Q. But eventually all that matter was --

9 A. It was ratified as quickly as possible.

10 Q. I think it is right that it was first disclosed by your

11 lawyers about a month later on 15 October, which we have

12 at page 49 of the correspondence, is that right?

13 A. Yes.

14 Q. Then on 21st October, your attorneys dealt with it at

15 pages 55 to 56. Do you see that? Sorry, if I can take

16 you to page 64 of the correspondence. Do you see

17 page 59 begins, but at page 64, there is further

18 materials in relation to My Way Productions 2 Limited.

19 You have been criticised by my learned friend on

20 the basis that it says there at (v) on page 64,

21 "valuation none". Do you see that?

22 A. Yes.

23 Q. The valuation is being made of My Way Productions 2

24 Limited, the firm as it were? The firm, the company?

25 A. My understanding was that this was in relation to --

1 this is a private company so the shares would not have

2 value --

3 SIR ROBIN AULD: You said that yesterday.

4 MR FITZGERALD: Can I just take you back to page 36.

5 The actual question that you are answering there is

6 the current valuation. Do you see under directorships

7 and (f), the current valuation. So that is what you

8 were being asked for.

9 A. Yes.

10 Q. As far as you were concerned, did it have a valuation?

11 SIR ROBIN AULD: Are you leaving My Way Productions 2

12 Limited now, Mr Fitzgerald?

13 MR FITZGERALD: Yes, I am.

14 SIR ROBIN AULD: Would that be a convenient moment?

15 MR FITZGERALD: It would be, yes.

16 SIR ROBIN AULD: I am going to ask the public to withdraw

17 and counsel to remain for a short matter which concerns

18 procedure only. 10.30 tomorrow morning.

19

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