

Turks and Caicos Islands

Commission of Inquiry 2008-2009

into possible corruption or other serious dishonesty in relation to past and present elected members of the Legislature in recent years

Report of the Commissioner

The Right Honourable Sir Robin Auld

Note Redactions to this Report have been made on the authority of His Excellency the Governor pursuant to: (a) directions given by the Hon. Chief Justice in proceedings brought by Dr Cem Kinay and others, and Mr Mario Hoffmann; and (b) an assurance given by the Hon. Attorney General in proceeding brought by Mr Jak Civre, regarding its publication at this time.

Presented to His Excellency, Gordon Wetherell,

Governor of the Turks and Caicos Islands

1

TURKS and CAICOS ISLANDS

COMMISSION OF INQUIRY INTO GOVERNMENTAL CORRUPTION

REPORT

CONTENTS

Page No

Appointment of Commission

5

Submission of Report to the Governor

7

Acknowledgements

9

Summary of the Report

11

1 - INTRODUCTION

The Nature of the Inquiry

14

Brief Description of the Turks and Caicos Islands

17

Short History of the Islands

19

Matters giving rise to the Commission's appointment

27

Scope and conduct of the Commission's Inquiry

31

2 - CORRUPTION

Introduction

48

Conflicts of interest

52

Disclosure of interests

55

Politics and political donations

62

Belongership

67

Constitutional Watch Dogs

69

2

3 - CONTEXT OF CORRUPTION

Abuse of office and of the political and electoral process

77

Crown Land

81

Public contracts

100

Immigration and permission to work

104

Revenues and Exemptions

108

4 - INFORMATION OF POSSIBLE CORRUPTION AND/OR OTHER SERIOUS
DISHONESTY

AND

RECOMMENDATIONS

Introduction

113

The Hon Michael Misick

Background

114

Declarations of Interests

119

Disclosure of Interests to the Commission

119

Political Donations or 'Loans'

120

Other Payments

125

Tourism

132

Use of Government and leased aircraft

138

Casablanca Casino and the Windsor Investment Group Ltd

141

Joe Grant Cay

146

Salt Cay

151

The Hon Floyd Hall

Background

158

Declarations of Interests

158

Disclosure to the Commission

160

Political Party Finances

161

Links with Richard Padgett

164

'Flipping' of Crown Land

168

Ministerial intervention in the allocation of Crown Land

171

Scholarships

172

Health Care

173

Cabinet Responsibility

178

The Hon McAllister Hanchell

Background

178

3

Declarations and Disclosure of Interests

179

Loans

182

Caicos Oil Ltd

183

Ministerial Allocation of Crown Land

184

Joe Grant Cay

188

Salt Cay Dock

193

The Hon Jeffrey Hall

Background

195

Declaration and Disclosure of interests

195

Melbourne Wilson and the first North West Point transaction

197

Melbourne Wilson and the second North West Point transaction

203

The Hon Lillian Boyce

Background

204

Declarations to the Registrar of Interests

204

Disclosure to the Commission

205

Allocation and Flipping of Crown Land

205

Award of scholarships

207

Profit making from government contracts

208

Southern Health Network

208

The Hon Galmo Williams

Background

209

Declarations to the Registrar of Interests

209

Disclosure to the Commission

211

Conflicts of Interest

211

First Caribbean Trust Company

212

Immigration

212

5 - SYSTEMIC LEGISLATIVE AND GOVERNMENTAL WEAKNESSES

General Fault Lines

214

Partial Suspension of the Constitution and Interim Direct Rule from Westminster through the Governor

218

Criminal Sanctions and Civil Recovery

224

Integrity in Public Life

230

Crown Land Allocation, Sale and Management

238

4

A New Constitution

240

6 - SUMMARY OF FINDINGS AND RECOMMENDATIONS

From Chapter 4 – Information of Possible Corruption And/Or Other Serious Dishonesty

The Hon Michael Misick

244

The Hon Floyd Hall

249

The Hon McAllister Hanchell

253

The Hon Jeffrey Hall

255

The Hon Lillian Boyce

256

From Chapter 5 - Systemic Weaknesses

Partial Suspension of the Constitution and Direct Rule

257

Criminal Sanctions and Civil Recovery

259

Integrity in Public Life

260

Crown Land

262

A New Constitution

APPENDICES

1.

Maps:

i) Caribbean

ii) Turks and Caicos Islands

iii) Providenciales

iv) Salt Cay

2.

Commissioner's Opening Statement, Providenciales Proceedings 13th January 2009

3.

Commission Interim Report of 28th February 2009

4.

Significant legislative and other instruments:

i) Constitution Order 2006

ii) Constitution (Interim Amendment Order) 2009

iii) Commissions of Inquiry Ordinance

iv) Registration of Interests Ordinance

v) Ministerial Code of Conduct

vi) Public Service Code of Ethics and Conduct

5

6

7

SUBMISSION OF REPORT TO THE GOVERNOR

Your Excellency,

Your predecessor in the office of Governor of the Turks & Caicos Islands, His Excellency Richard Tauwhare MVO, appointed me as sole Commissioner under a warrant signed and issued by him on 10th July 2008, pursuant to the Commissions of Inquiry Ordinance. The warrant, which is reproduced at the head of this Report, required me to conduct an inquiry

into the possibility of corruption and/or other serious dishonesty in relation to past and present Members of the Legislature of the Turks & Caicos Islands and to report my findings and recommendations by the end of October 2008. On 14th July 2008 I attended before His Excellency in Grand Turk and took the oath. On the following day he and I attended and spoke at a press conference in Providenciales, at which I opened the Inquiry.

For reasons with which you became familiar following your succession to His Excellency as Governor on 5th August 2008, and which have been well publicised in Press Reports issued by Your Excellency and by the Commission, it became necessary for you to enlarge the time for the conduct of the Inquiry and submission of the Report. The Report is now to be submitted by 31st May 2009.

Following my appointment in July 2008, I spent the best part of six months until early January 2009, making written enquiries, mainly from the Commission's Office in London. In doing so, I had the able and dedicated assistance of Mr Alex Milne and Miss Sarah Clark, Counsel to the Commission, Mrs Jacqueline Duff, Solicitor to the Commission, and Mr Laurance O'Dea and Miss Bahareh Ala-eddini, respectively Secretary and Assistant Secretary to the Commission.

As you know, in early January 2009 the Commission moved to Providenciales in the Turks & Caicos Islands to conduct oral proceedings, in the main for the purpose of examining Ministers and other Members of the House of Assembly as to their interests declarable under the Registration of Interests Ordinance 1993 and/or sought by the Commission under the Commissions of Inquiry Ordinance. Despite requests from the

8

Commission, many of those interests had still not been disclosed. The oral proceedings, which included, towards the end, evidence from a number of other witnesses called by the Commission, took just over four weeks, ending on 11th February 2009. For reasons that I gave on that day when closing the proceedings, I considered that there was a national emergency in the Territory necessitating an Interim Report by 28th February 2009 at the latest. The Commission Team returned quickly to the United Kingdom to enable me, with their help, to prepare and submit it to Your Excellency on 28th February 2009. With the continued and dedicated help of the Commission Team, involving also the conduct of an extended Salmon exercise,¹ I have completed the Final Report today, 31st May 2009, and present it herewith for Your Excellency's consideration.

The Right Hon Sir Robin Auld

¹ Letters of this kind were recommended in the Report of the Royal Commission on Tribunals of Inquiry, which was chaired by Lord Justice Salmon in 1966. The Report laid down a set of general principles, designed to safeguard the interests of witnesses and parties to a tribunal of inquiry – Royal Commission on Tribunals of Inquiry (1966) Cmnd 3121, London, HMSO

9

ACKNOWLEDGMENTS

I cannot submit this Final Report without recording many and warm acknowledgements due to so many for their help in the Commission's inquiry in and from the Turks and Caicos Islands, the United Kingdom and elsewhere. Throughout, I have been greatly aided and reassured by the welcome accorded to the Commission by the people of the Turks and Caicos Islands and valuable assistance that the vast majority have voluntarily given by way of contributions in writing and/or in oral evidence, and by some of those who gave oral evidence on summons.

I include in my thanks the Governor, His Excellency Gordon Wetherell, his predecessor, His Excellency, Richard Tauwhare MVO, and their hard-pressed staff, the Attorney General and the many senior Departmental Officials and their staffs who responded promptly and helpfully to our many requests for information and assistance.

The Commission was also extremely fortunate in the arrangements made for its accommodation and oral proceedings in January and February of this year in Providenciales. The Regent Palms Hotel, under the well-judged and hospitable arrangements made by Monica Neumann and her proficient and welcoming staff, provided us with comfortable living and a location for the oral proceedings that was just right.

In such a setting, and despite all the customary travails of any such exercise, the Commission Team, Mr Alex Milne and Miss Sarah Clark, of Counsel, Mrs Jacqueline Duff, Solicitor, and Mr Laurance O'Dea and Miss Bahareh Ala-eddini, respectively Secretary and Assistant Secretary, all gave more than their best, not just to the Commission, but also, I believe, to all who attended the hearings or had occasion to contact it. I include in that tribute the vast majority of the parties' attorneys who, consistently with their duty to their clients, showed high professionalism, good nature and a prompt and helpful response to the many demands that the Commission made on them.

10

In addition, I should record my gratitude to the Commission's Real-Time Stenographers, Christina Yianni and Catherine Eden, without whose dogged and talented work in producing daily transcripts of the hearings, much of interest and importance for many at the time and for the future, would have been lost. A similar and equally fulsome tribute is due to David Woods, the Commission's web-site Consultant, for his regular postings of the transcript and other information about the Inquiry's work.

Finally, a thank you to the Royal Turks and Caicos Police, who, under the direction of Superintendent David Ryder, ensured – with great efficiency and unobtrusively – the orderly and secure manner in which the Commission was able to go about its task.

11

SUMMARY

1. There is a high probability of systemic corruption in government and the legislature and among public officers in the Turks & Caicos Islands in recent years. It appears, in the main, to have consisted of bribery by overseas developers and other investors of Ministers and/or public officers, so as to secure Crown Land on favourable terms, coupled with government

approval for its commercial development. Breach and/or by abuse of the Government's Belongers' Empowerment and Crown Land Policies appear to be frequent mechanisms of, and aids to, such transactions.²

2. Over the same period there has been serious deterioration - from an already low level - in the Territory's systems of governance and public financial management and control.³

3. This deterioration has been accompanied by extravagant and ill-judged commitments by those in public office, primarily Ministers, in public expenditure and in their private expenditure at public expense. There has also been deterioration in the Territory's financial condition and, more recently, accumulating budget deficits and a near collapse of its financial reserves, giving it difficulty on occasion in paying its bills as they have fallen due.⁴

4. Among the contributors to this moral, governmental and financial decline have been: 1) the potential and encouragement in the system of governance for abuse of public office, concealment of conflicts of interest at all levels of public life, and consequent venality; 2) the power of politics in the mix of public decision-making and commercial activity, and willingness of overseas developers and other investors to exploit that power for their own purposes; 3) vulnerability of the majority of the Territory's long-term residents, owing to the precariousness of their permission to live and work here, and to whom Belongership and, with it, the right to vote are denied; and 4) lack of effective constitutional checks and balances in the system of governance to protect the public

2 See Chapter 1, paras 1.41 – 1.44, Chapter 2, paras 2.44 – 2.49, Chapter 3, paras 3.9 – 3.52, and Chapter 4 generally, and the Commission Interim Report of 28th February 2009 at Appendix 3 to this Report

3 See Chapter 1, paras 1.38 – 1.43 – 1.49, Chapter 2, paras 2.50 – 2.64

4 See Chapter 4 generally and the Commission Interim Report of 28th February 2009 at Appendix 3 to this Report

12

purse, the inefficient from scrutiny, the dishonest from discovery and the vulnerable from abuse.⁵

5. There is also much scope in the wide discretionary powers accorded to Ministers by the 2006 Constitution, and/or arrogated by them, for abuse by them of their public office, inefficient governance and poor public financial management and control, particularly in the grant or withholding of Crown Land and permission to develop it and other investment opportunities, and in the exaction or waiver of government taxes and other dues.⁶

6. Pursuant to the Commission's first Term of Reference, I find that there is information of possible corruption and/or other serious dishonesty, including misfeasance in public office, in relation to five present elected Members of the House of Assembly, all of whom until recently were Members of the Cabinet, namely, the Hons Michael Misick,⁷ Floyd Hall,⁸ McAllister Hanchell,⁹ Jeffrey Hall¹⁰ and Lillian Boyce.¹¹ I have recommended criminal investigation by the police or others with a view to prosecutions, if so advised, in relation to such possible offences in respect of matters identified and described in Chapter 4, and summarised in Chapter 6, of this Report.¹²

7. Pursuant to the Commission's second Term of Reference, I find that there are systemic weaknesses in legislation, regulation and public administration in the Territory, in respect of which I have made recommendations,¹³ largely confirming those made in my Interim Report of 28th February 2009.¹⁴

8. Those recommendations include: 1) partial suspension of the 2006 Constitution and Interim Direct Rule from Westminster acting through the Governor;¹⁵ 2) provision for special criminal process and civil recovery of assets arising out of any criminal or other investigations prompted by this Report, including trial by judge alone and partial reversal

5 See Chapter 2 generally

6 See Chapter 3, paras 3.9 – 3.86

7 See paras 4.6 – 4.109 and Recommendations 1 to 13

8 See paras 4.110 – 4.151 and Recommendations 14 to 26

9 See paras 4.152 – 4.189 and Recommendations 27 to 33

10 See paras 4.190 – 4.211 and Recommendations 34 to 36

11 See paras 4.212 – 4.22 and Recommendations 37 to 39

12 See Chapter 4 generally and Chapter 6, Recommendations 1 - 39

13 See Chapter 5 and also Chapter 6, Recommendations 40 - 65

14 See Appendix 3 to this Report

15 Chapter 5, paras 5.11 – 5.22 and Recommendations 40 to 47

13

of the burden of proof;¹⁶ 3) improvement of standards of integrity in public life;¹⁷ 4) statutory reform of the system for administration and disposal of Crown Land in the form of a Crown Land Ordinance (already partly in draft), so as to remove or severely reduce the scope for corruption and loss without appropriate return of the Territory's most valuable asset;¹⁸ 5) on return of the Territory to ministerial government, amendment of the 2006 Constitution or, with a view to a new Constitution, reform of the Franchise and removal or reduction of constitutional imbalances and weaknesses;¹⁹ and 6) review, in consultation with the TCI Bar Association, of The Legal Profession Ordinance.²⁰

16 Chapter 5, paras 5.23 – 5.32 and Recommendations 48 to 53

17 Chapter 5, paras 5.33 – 5.43 and Recommendations 54 to 59

18 Chapter 5.44 and Recommendation 61

19 Chapter 5, paras 5.45 – 5.48 and Recommendations 62 to 64

20 Chapter 5, para 5.49 and Recommendation 65

1 - INTRODUCTION

The Nature of the Inquiry

1.1 On 10th July 2008 I was appointed sole Commissioner of Inquiry under the terms of the Turks and Caicos Islands Commissions of Inquiry Ordinance²¹ by His Excellency Richard Tauwhare MVO, the then Governor of the Islands. The Terms of Reference of the Commission (taking into account subsequent amendment) were as follows:

To inquire into ...[w]hether there is information that corruption or other serious dishonesty in relation to past and present elected members of the House of Assembly (previously known as the Legislative Council) may have taken place in recent years ... [and] to submit ... its preliminary findings and recommendations ... concerning:

- (a) instigating criminal investigations by the police or otherwise, [and] ... to refer such information it may obtain to the TCI prosecuting authorities];
- (b) any indications of systemic weaknesses in legislation, regulation and administration; and
- (c) any other matters relating thereto.

1.2 As I observed in my Interim Report submitted to the Governor on 28th February 2009, the tasks set for me by the Terms of Reference could not sensibly have been expressed with lower thresholds.

1.3 Under the first Term of Reference, I am to consider whether there is information - in whatever form and giving it the weight I consider it deserves – of possible corruption in relation to, that is, involving, elected Members, past and present of the Legislature. If so, I am to consider whether to recommend criminal investigation by the police or other bodies. The potential targets of the Commission's Inquiry and any such criminal investigation are those who may have been bribed, those who may have bribed them and/or those who may have been parties to any such corrupt and/or otherwise seriously dishonest behaviour.

1.4 Under the second Term of Reference I am to consider, in the light of the information before me, making findings as to any systemic weaknesses in legislation, regulation or

21 Ch 21; See Appendix 4(iii) to this Report

administration relevant to possible corruption and/or other serious dishonesty, and, if I so find, to make recommendations for change in order to prevent and to deter such conduct.

1.5 Under the third Term of Reference, I am to consider, in the light of the information before me, whether to make findings and/or report on any other related matters, for example, those that bear on, or may be affected in a fundamental way by, any statutory, regulatory and/or administrative changes that I recommend. These I have interpreted as including the Constitution, the extent and manner of grant of the Franchise, the over-all structure of the Territory's system of governance and financial and other control, the funding of political parties and any relevant codes of public or professional conduct.

1.6 Over six months of extensive written investigations by the Commission before it began oral proceedings in Providenciales in January 2009, I received much information pointing to possible systemic corruption and/or of other serious dishonesty involving past and present elected Members of the Legislature in recent years. I also found indications of systemic weaknesses in legislation, regulation and administration and related matters calling, in my view, for attention. As will appear in the ensuing chapters of this Report, the oral proceedings, were necessitated in the main to secure full disclosure of interests from Ministers and other Member of the House of Assembly. Those proceedings produced an abundance of further information – information that pointed, not just to a possibility, but to a high probability of such systemic venality. Coupled also with clear signs of political amorality and immaturity and of general administrative incompetence, they demonstrated an urgent need for suspension, in whole or in part, of the Constitution and for other legislative and administrative reforms. There were also strong indications, from the information before me, of the need for changes in other related matters.

1.7 I accordingly determined, by the close of the oral proceedings on 11th February 2009, that I should submit an Interim Report to the new Governor, His Excellency Gordon Wetherell (who had succeeded Governor Tauwhare as Governor on 5th August 2008), that is, well before the expiry of the Commission's period for completing the Inquiry and reporting to the Governor (by then extended to 30th April 2009). In closing the oral proceedings, I explained why I considered it necessary to take that course:

16

... the government of this country is at a near standstill, the Cabinet is divided or unstable, the House of Assembly has been prorogued, its finances are in a bad way and poorly controlled, governmental and other audit recommendations lie unattended, and disposals of Crown Land to fund recurrent public expenditure deficits continue for want of governmental revenue from other more fiscally conventional sources. It is evident that there are wide-spread fears on the part of the people of the Territory that they are leaderless and their heritage is at risk of continuing fast to drain away.

... the train of events leading to these hearings and the Territory's parlous and volatile state has necessitated a further extension of the Commission's period of Inquiry to 30th April. But that does not – or should not – allow the Commission to assume the luxury of returning home for some months to polish its parses before reporting. In the Territory's present state, goodness knows what may happen in the meantime. ...

1.8 I duly presented the Governor with an Interim Report on 28th February 2009, conveying my findings that the Inquiry had produced information, at the very least, of possible systemic corruption and/or of other serious dishonesty involving past and present elected Members of the Legislature, coupled with indications of systemic weaknesses in the Territory's legislation, regulation and administration and in related matters. I included in the Report some 24 interim recommendations, some of which I regarded and expressed to be of great urgency to meet what I considered to be chronic ills collectively amounting to a national emergency, others for the middle and longer-term.

1.9 In this Report, I set out what was absent from the Interim Report, the factual bases for the findings of systemic governmental weaknesses and more fully developed recommendations flowing from those findings. I also set out for the first time findings of

information of possible corruption and/or other serious dishonesty involving individual Members of the House of Assembly - all Ministers at the material time and some third parties, with recommendations for criminal investigations. In addition, I refer to a number of other transactions and relationships, which, for want of resources and time, I have not been able to investigate as fully as I would like to have done, but which may be of interest to any criminal investigators who may be appointed as a result of this Report. Absence of specific mention or criticism of transactions or relationships should not be taken by individuals concerned in them as necessarily exculpatory.

17

Brief Description of the Turks and Caicos Islands

1.10 The Territory of the Turks and Caicos Islands ("TCI") is one of 14 United Kingdom Overseas Territories. It consists of an archipelago of islands - some very small and known as cays – at the eastern edge of the Caribbean. They lie to the south of the Bahamas Chain, some 600 miles south-east of Miami and 90 miles north of Haiti and the Dominican Republic – see Map at Appendix 1(i).

1.11 The Territory consists of some 40 islands and cays divided by a deep-water channel into two groups – see Map at Appendix 1(ii). To the north-west of the channel and extending in an arc to the south-east are the Caicos chain of islands, starting with West Caicos and Providenciales, the latter being the main tourism and commercial centre – see Map at Appendix 1(iii), and continuing south-eastwards with North, Middle and South Caicos. To the east and south, and on the other side of the deep-water channel, are Grand Turk, where the Territory's capital, Cockburn Town, and the seat of Government are situated. Extending in a south-westerly direction from Grand Turk is a chain of mainly small cays, which make up the rest of the Turks Islands. They include, at their southern extremity, Salt Cay, which, as its name suggests, has had a long connection with the production of salt – see Map at Appendix 1(iv). The whole land area is about 190 square miles. It has a permanent or long-term population estimated in 2008 to be about 36,000,22 plus a transient and varying number of overseas workers and illegal immigrants, the latter mostly from Haiti and other parts of the Caribbean. About two thirds of the population live and work in Providenciales.

1.12 On many of the Islands and small cays there are high quality tourist developments and expensive private homes. The main attractions to residents and visitors alike are the dazzling white beaches, fringed with spectacular reefs, internationally renowned diving areas, and, of course, good fishing. In recent years these attractions have become an increasingly popular lure for tourists, and for overseas developers seeking to accommodate and profit from them. This has led to a boom in development on many of the Islands, particularly in Providenciales, which the TCI Government has encouraged and enabled by releasing and selling large areas of Crown Land for tourist resorts and associated projects.

22 TCIG Department of Economic Planning and Statistics, 2008 Estimate.

18

1.13 There are also environmentally protected land areas, but the poor soil – mostly limestone – and dry climate do not encourage agriculture. The Territory has to import most of its food, save for fish. The Territory is subject to periodic – that is, in the Summer and

Autumn – tropical storms and hurricanes. Most recently, in early September 2008 and during the currency of this Inquiry, there were two in short succession, Tropical Storm Hanna and Hurricane Ike. They caused much damage, including very serious devastation in the south-east of the archipelago, on Grand Turk, South Caicos and Salt Cay.

1.14 Of the total permanent or long-term population there are an estimated 11,750 Belongers – mainly locally born or descended, but including others to whom, exceptionally, the status has been granted. Only adult Belongers have the right to vote, and they enjoy a number of other benefits, including the opportunity to acquire Crown Land at a very substantial discount for private housing and commercial development.

1.15 The Islands, as a British Overseas Territory, are not constitutionally part of the United Kingdom (UK). They have enjoyed varying degrees of self-government over the years, subject to oversight from the UK exercised through an Administrator or Governor. The fundamental relationship between the UK and the TCI, as with all other of its Overseas Territories, is to assist and guide them to full independence when they are ready for it. That aim is at the heart of the UK's obligations under the United Nations Charter, Article 73 of which imposes on it, as the administering power, a solemn and heavy responsibility to recognise that the interests of the Territory's people are paramount. That includes a duty to promote their well-being, including their political, economic, social and educational advancement, just treatment, protection from abuse and a move to self-government.

1.16 In 1999 the United Kingdom Government underlined its commitment to the goal of eventual grant of full independence to all its Overseas Territories in a White Paper,²³ setting out a new partnership with them based on four principles: 1) eventual grant of independence where the development of a territory is such that it is considered an option; 2) in the meantime, the grant of the greatest possible autonomy; 3) defence, encouragement of sustainable development and care for their interests internationally, in return for their exercise of high standards of probity, law and order, good governance and

23 FCO (1999) Partnership for Progress and Prosperity; Britain and the Overseas Territories, Cm 4264, p 4

19

observance of the UK's international commitments; and 4) continuing financial help where needed.

1.17 As to the last of those principles, the TCI, in common with most other British Overseas Territories, also has an indirect relationship, through the UK, with the European Union (the EU), pursuant to an EU Council Decision, known as the Overseas Association Decision, rendering the Territory eligible for consideration for European Development funding,²⁴ and also access to other regional funding schemes.

1.18 The TCI has its own Constitution by virtue of an Order made by the Queen in Council in 2006,²⁵ under which it is governed by the Queen acting through a Governor. The Governor acts in consultation with a Cabinet appointed by him, except sometimes in relation to certain matters for which he has special responsibility, or when so instructed by Her Majesty through a Secretary of State, or when acting in his discretion or judgement on the recommendation of a person or authority other than the Cabinet. Matters reserved to the Governor include

responsibility for defence, external affairs, regulation of international financial services and internal security, including the police, the public service and administration of the courts. The Constitution also reserves to the UK a number of powers. They include the power of the Queen to legislate for the TCI by Order in Council, to instruct the Governor in the exercise of his functions to act without consultation with, or contrary to, the advice of the Cabinet, and, acting through a Secretary of State, to disallow any law to which the Governor has assented.

Short History of the Islands

1.19 I should say something about the history of the TCI before moving to the circumstances giving rise to the appointment of this Commission. In doing so, I have borrowed from other much fuller accounts than are necessary here. One account, to which I am particularly indebted is that of Sir (as he now is) Louis Blom-Cooper QC in 1986 of an

24 FCA (2008), *Overseas Territories: Seventh Report of Session 2007-2008, Volume 1* (Report, together with formal minutes), HC147-1, London TSO, p 47, para 112

25 The Turks and Caicos Islands Constitution Order 2006, SI 2006/1913

20

Inquiry he conducted into allegations of arson, corruption and related matters in the Territory (the Blom-Cooper Inquiry).²⁶

1.20 The first permanent settlement in the Islands was in the late 17th century when Bermudan salt rakers established salt-pans in Grand Turk and later in nearby Salt Cay and South Caicos, establishing what was to become one of the principal world-sources of salt for use as a preservative. After the French drove the Bermudans out in the 1760s there was a period of thirty years during which the British, acting through the Governor of the Bahamas Islands, claimed territorial jurisdiction. Notwithstanding their claim, the British were hard put to keep at bay, first, the French and, by then, the well-established salt workers. To add to the mix, in the late 1780s American loyalists arrived in the Bahamas and began to establish cotton plantations in the Caicos Islands.

1.21 At the turn of the 18th and 19th centuries the TCI became a restless part of the Bahamas – restless in large part because of the Islands’ salt proprietors’ deep resentment of the salt duties imposed on them by the Bahamians. The outcome was separation from the Bahamas in the mid 19th century and the introduction of a form of self-rule called a Presidency, under the superintendence of the British Governor of Jamaica – some 400 miles to the west. Over the succeeding years the decline of the salt industry and of the economy - and a devastating hurricane, by the sound of it worse than Hurricane Ike – led in 1874 to the Islands becoming, at their inhabitants’ request, a dependency of Jamaica. They so remained for the best part of a century until 1962 when Jamaica itself gained independence.

1.22 By this time refrigeration had largely replaced salt as a preservative, and the salt industry in the Islands had all but come to an end. By this time too, the Territory had, acquired a constitution,²⁷ but now with the Governor of Jamaica as its Governor (acting through an Administrator appointed by him) and an Executive Council and a Legislative Assembly. This was a short-lived arrangement, coming to an end in 1965 with the Territory’s second Constitution and a period of rule by the Governor of the Bahamas (also acting

through an Administrator), and a further (slightly) amended Constitution in 1969. Finally, following the grant of independence to the Bahamas in 1973, the Territory acquired in 1976

26 Report of the Commissioner Mr Louis Blom-Cooper QC, into Allegations of Arson of a Public Building, Corruption and Related Matters, December 1986, London: HMSO, See in particular Parts A, E, F and G, General, Related, and Unrelated, Matters, and Political Patronage

27 The Turks and Caicos Islands (Constitution) Order in Council 1959

21

its first very own fully-detached Constitution²⁸ (the 1976 Constitution) and resident Governor.

1.23 Turning back for a moment from the constitutional status of the Islands achieved by 1976, it may be helpful to look back briefly at their physical, cultural, social and economic development since the beginning of the 20th century. For this purpose, I cannot do better by way of scene-setting for today than draw on the following passages from the 1986 Blom-Cooper Report:²⁹

... At the beginning of this century Grand Turk, Salt Cay, South Caicos, East Caicos, Middle Caicos, North Caicos and West Caicos were all populated. Today East and West Caicos are uninhabited. This small group of islands, sparsely populated, have limited natural resources. There are vast diseconomies of scales, both in public and private sectors, resulting in the high cost of goods and services which must be duplicated on each island. This is exacerbated by the geographical spread of the Islands ranging over 166 square miles and surrounded by reef and shallow waters. Communication between the Islands has been a perennial problem. On the Caicos Islands there were no proper roads and the journey between the non-coastal settlements was often made on foot or by donkey. Grand Turk was a cable station and had contact with the outside world, but the Caicos Islands were not so fortunate.

There has been historically a marked divide between people from the Salt Islands (Grand Turk, Salt Cay and South Caicos) and those from Middle Caicos, North Caicos and Providenciales ... In the Salt Islands, salt was a cash crop and created a wage economy, whereas in the other islands subsistence farming and fishing provided the sole means of livelihood. During the Second World War an airstrip was built by the US forces on South Caicos and another was established on Grand Turk. The US established a Coast Guard base at the northern end of South Caicos. On Grand Turk, at the polarities of the six mile-long and mile and a half wide island, the US maintained a Naval Base and an Air Force Base. The construction and operation of these two bases brought a significant addition to the wage economy. While they provided much-needed employment, they masked the underlying weakness of a 'one-crop' economy. The weakness was unmasked when the bases were discontinued in the early 1980s, leaving unoccupied buildings, a reminder of indirect aid from the US, not since replaced.

1.24 Aid, not since replaced, that is, until the start in the early 1970s of US tourism to the Islands, developing eventually into another one-crop economy,³⁰ with its main focus on one of the most attractive, though hitherto least economically favoured Caicos Islands,

28 The Turks and Caicos Islands (Constitution) Order 1976, 1976/1156

29 Report, pp 5 - 6

30 It is true that since the late 1970s the Territory has also sought to establish itself as offshore financial centre, but with only moderate success.

22

Providenciales. The next 30 years saw a gathering momentum, indeed an explosion, on that Island of large-scale tourist developments, radiating out to some of the other Caicos Islands and associated cays, but not to any great extent in Grand Turk or the other former Salt Islands. Despite, or because of, this dramatic economic turnabout, the cultural, social and economic divide between the two sets of Islands has persisted in large part to this day, Sir Louis Blom-Cooper, commenting in 1987, again aptly set the scene:³¹

... Between the population of Grand Turk and that of the Caicos Islands, there was an initial difference. The former consisted of Bermudans and their slaves in search of salt. The latter were Loyalists from the US who emigrated after the War of Independence. While the salt industry brought a measure of prosperity to Grand Turk, agriculture was always a struggle: Grand Turk, the seat of government has been concentrated in a single town and has been politically more advanced. In the larger Caicos Islands settlement has been more scattered and less cohesive but with a sturdy parochialism encouraged by sectarian variety in religious matters. For these and other reasons there has been a division of long standing between the two groups, divided by a 22 mile deep-water channel, and difficult communications. ...

But a new dimension to the traditional rivalry and parochialism was already developing by the early 1970s. Tourism was mushrooming on the most attractive of the Caicos Islands, Providenciales. Today there is a reversal of the unequal fortunes of the two groups, with those anxious for development on Providenciales believing it to be thwarted by the political dominance of Grand Turk. It is a new ingredient in the rivalry ...³²

1.25 All of this, as I have indicated, formed the back-drop to the 1976 Constitution, a change to a Westminster style administration. This had the familiar trappings of a British dependent territory of the day, a Governor, acting in the main in consultation with and on the advice of an Executive Council, save in certain matters reserved to him or when instructed from London.³³ It had a Legislative Council composed partly of members appointed by the Governor and partly ex officio, all subject ultimately to the control of London in matters of policy and administration.³⁴

1.26 The 1976 Constitution gave rise to two main political parties, the Progressive National Organisation, the forerunner of the Progressive National Party (PNP) and the People's Democratic Movement (PDM). With the support of independent members, the PDM, led by

31 op cit 26, p 8

32 ibid, p 8

33 s 7

34 ibid, s23

James (Jags) McCartney as Chief Minister, was able to command a majority in the Legislative Council for four years until the 1980 General Election. Thereafter the PNP secured a substantial majority in two further elections under the successive leadership of Mr Norman Saunders Snr and Mr Nathaniel Francis as Chief Minister, and was the party in power at the time of the Blom-Cooper Inquiry in April 1986.³⁵

1.27 The main subject matters of the Blom-Cooper Inquiry were, on the face of it, comparatively narrow, namely alleged arson of a building on Grand Turk on New Year's Day 1986 and alleged corruption in the Public Works Department in 1985/1986. However, the terms of Sir Louis' appointment also authorised him to inquire into, and report on, Related Matters, which he did. His general conclusions on those matters, suggest that little has changed over the last 20 or so years leading to this Inquiry, except as to the possible range and scale of venality in public life. The following passages from his Report, under the heading of Conclusions, give a flavour of what he found or believed he would have found had it all been within his terms of reference:³⁶

Nineteen eighty six ought to witness a point of departure in the political and governmental life of the Turks and Caicos Islands. ... I am driven to the conclusion that the time has come to disperse the cloud that hangs like a brooding omnipresence in a Grand Turkan sky. Persistent unconstitutional behaviour (through the application of political patronage) and contraventions of the fundamental freedom of the individual from discrimination on the grounds of political opinions, maladministration by both Ministers and civil servants at every level of government (mostly at middle management level), and intolerable (not to say seditious) conduct by leading opposition members of the Legislative Council are constant blights upon a constitutionally ordered society which is already displaying signs of political instability.

...

... I have not found corruption. But I cannot simulate deafness to the voices of responsible people in the Islands who complain that there is pervasive corruption in government, if only it could be uncovered by diligent and sustained inquiry over a number of areas of governmental administration, all of them outwith my terms of reference. ...

³⁵ Appointed under the Commissions of Inquiry Ordinance 1986 (of which the current Commissions of Inquiry Ordinance is a revision); the first of two Inquiries conducted by Sir Louis in 1986, the second into a narrower issue, See Report of Commission of Inquiry into the North Creek Development Project 1986-1987 (1987), Cm 195, London: HMSO

³⁶ *ibid*, Part H: Conclusions and Recommendations, Chapter XIX, pp 98 - 99

If nothing is done about this depressing state of public affairs, the disease in the body politic that I have identified may all too readily become – if it is not already – endemic and ineradicable for the present generation of Islanders. ...

... The twin development of tourism and, since 1979, the offshore financial centre has offered ... these Islands their first modern opportunity of economic prosperity. But both

elements in the economy are at present precariously poised. It is the responsibility of the people not to forego this opportunity through inertia and unwillingness to adapt. It is the duty of the politicians, with the assistance of administrators, to promote and stimulate that prosperity, not just for themselves or their supporter{s] but for the benefit of all the peoples of these Islands.

1.28 In the result, Sir Louis found that three Ministers, including the Chief Minister, Mr Nathaniel Francis, had been guilty of unconstitutional behaviour and of ministerial malpractices rendering them unfit to exercise ministerial responsibilities.³⁷ He also made findings against two leading Members of the (PDM) Opposition in the Legislative Council and a Public Works Department employee, expressing the view that they were unfit to hold public office. However, he recommended that they should not be prosecuted for two main reasons. First, the adverse publicity given to them before and in the course of the Inquiry would deprive them of a “fair hearing” to which they were entitled under the Constitution. Secondly, it would be impossible to empanel an impartial jury: ³⁸

... Almost everyone in the Islands identifies himself with one or other of the political parties. With such a manifest commitment to party politics, it would be impossible to achieve impartiality in a jury empanelled from among the qualified jurors in the Turks and Caicos Islands.

1.29 On a wider plane, and following in large part from those findings – and also, no doubt because of his view as to the general constitutional, administrative and political malaise in the Islands, he recommended three further options for consideration.³⁹ They were: 1) suspension of the 1976 Constitution and introduction of an interim system of direct rule through the Governor; 2) not to amend the Constitution, but to operate the Executive Council through Ministers without portfolios; or 3) – his diffidently expressed preference – partial suspension of the Constitution to retain administration of the Territory by the Governor acting on, but not bound by, the advice of an Advisory Executive Council, while retaining the Legislative Council.

³⁷ Report, p 97

³⁸ *ibid*, pp 58 and 97

³⁹ *ibid*, pp 99-101

25

1.30 In July 1986, shortly after the submission by Sir Louis of his Report, the 1976 Constitution was amended by an Order in Council, temporarily suspending the ministerial system of government, his preferred option. A Constitutional Commission under the Chairmanship of Sir Roy Marshall (the Marshall Commission) was appointed to consider possible future constitutional arrangements.⁴⁰ The Marshall Commission’s Report, submitted in December 1986, gave rise to an Order in Council in 1988 introducing a new constitution (the 1988 Constitution),⁴¹ restoring ministerial government in the form of the Governor and Executive Council, including a Chief Minister and four other Ministers, and a Legislative Council, consisting of 12 elected members and three appointed members. The 1988 Constitution lasted for 18 years until its replacement by an Order in Council in 2006.

1.31 That period, in political terms, continued to be dominated by rivalry between the PNP and PDM, and - particularly since the turn of the century - accelerating economic development and growth in public wealth and private prosperity engendered in large part by tourism and overseas developers catering for it. In the years from 2000 up to the recent world-wide economic crisis, the Territory had, according to the UK National Audit Office, experienced economic growth among the highest in the world.⁴² This influx of overseas investment, much of it hungry for Crown Land at the disposal of the Governor in Cabinet, also brought with it continued governmental maladministration and a mix of incompetence and perceived corruption in public affairs - whichever of the two parties was in power.

1.32 So, there is nothing new about allegations of governmental incompetence and abuse of power in the TCI. As indicated in the next Chapter of this Report, many who gave evidence to the UK Foreign Affairs Committee in 2007-2008⁴³ and to this Inquiry have stigmatised the conduct of both political parties and their members when in government, accusing them of abuse of office or political power for personal or political advantage. However, of the two, the PNP have in recent years attracted the main and most vociferous criticism.

40 TCI Constitutional Commission (1986), Report of the Constitutional Commission, Cm 111, London: HMSO

41 The Turks and Caicos Islands Constitution Order 1988, SI 1988/247

42 UK National Audit Office (2007), Report by the Comptroller and Auditor General, Foreign and Commonwealth Office: Managing risk in the Overseas Territories, HC 4 2007-08, p 58

43 *ibid* p 56, para 149

26

1.33 What is new about these criticisms, often clearly the product of strongly felt grievance, is the increase in their prevalence and seriousness. That is particularly so in respect of those voiced against the Hon Michael Misick, his political colleagues and supporters and families, since the PNP gained control and he became Chief Minister in the 2003 elections. The dramatic surge in power and wealth that he and they enjoyed over the succeeding years, which they openly displayed, appeared to many to be egregious and tell-tale signs of, at best, abuse of power and favouritism, at worst, corruption or other serious dishonesty.

1.34 It was in such a political and economic climate that, at the suit of a now highly confident PNP administration, seeking more devolution of powers from Westminster and a further move towards total independence, that the 2006 Constitution came into being.⁴⁴ The principal changes wrought by it were the introduction of a modernised chapter on fundamental rights and freedoms of the individual and the replacement of the Legislative Council with a House of Assembly composed of a Speaker, 15 elected Members (one for each of 15 electoral districts), four appointed Members and the Attorney General. The former Executive Council was replaced with a Cabinet consisting of the Governor, a Premier⁴⁵ and six other Ministers appointed by the Governor on the advice of the Premier from the elected or appointed Members of the House, and the Attorney General.

1.35 The Constitution requires the Governor to consult the Cabinet on matters of policy and in the exercise of all functions conferred on him, save when otherwise instructed by the Secretary of State or in functions expressly exercisable by him in his discretion. It also

reserves to the Governor certain special responsibilities, namely: defence, external affairs, internal security, including the police force and appointment to any public office; and it provides for the judiciary and the public service.

1.36 The Cabinet and its Members individually were granted, or were enabled to exercise, significantly more discretionary power than they or their predecessors had enjoyed as Members of the Executive Council under the previous Constitution.

1.37 When the 2006 Constitution came into force on 9th August 2006, the Governor in post was His Excellency, Richard Tauwhare, MVO. The PNP, with the Hon Michael Misick, as Chief

44 Schedule 1 to the Caribbean and North Atlantic Territories – The Turks and Caicos Islands Constitution Order 2006, 2006/1913

45 so styled by section 27(1)(b)

27

Minister, had been in office for three years, having in August 2003, following an election and two by-elections, defeated with a modest majority⁴⁶ the previous PDM Administration under the Hon Derek Taylor as Chief Minister. The 2006 Constitution called for fresh elections, which were scheduled for February 2007. The Premier, as the Hon Michael Misick had then become, and his fellow PNP colleagues and supporters resolved to secure a much larger majority than the majority it had been able to secure in 2003. I shall have more to say about the February 2007 election campaign later in this Report. For the moment it is enough to record that this time they secured a resounding majority in the new House of Assembly composed, in addition to the appointed members and the Attorney General, of 15 elected members, with 12 seats to the two of the PDM. This result, no doubt coupled with the continuing rising wave of tourism and associated prosperity to the Islands, gave to the Hon Michael Misick and his political colleagues and friends optimism and zest for even more ambitious projects.

Matters giving rise to the Commission's Appointment

1.38 Despite the seemingly booming economy at the time of the PNP's sweeping election victory in February 2007, all was far from well with its public finances and their management, as the Reports of TCI Chief Auditor, Cynthia Travis, for 2005 and 2006 show.⁴⁷ Despite unprecedented growth in governmental revenue and expenditure in those years, there were growing budget deficits for want of proper control and monitoring of expenditure. In her Reports,⁴⁸ the Chief Auditor identified many serious issues, and made many recommendations requiring urgent attention. Most of them were largely dismissed or ignored by the Misick Administration, the Hon Michael Misick and the Hon Floyd Hall treating her with hostility. Audit Reports of individual government boards, for example, the Tourist Board and the National Insurance Board⁴⁹ revealed similar serious deficiencies in their financial management and control, mostly routinely ignored by those in government responsible for them. Until about 2007, income from stamp duty on land sales and import duties had been the largest contributors to meeting current expenditure, some 50% of which went to meet the costs of government and public healthcare. But with the weakening

46 By a majority of 8 to 5 seats in the Legislative Council.

47 The most recent audited accounts.

48 Annual Reports to the House of Assembly, Grand Turk Audit Office

49 Audit Reports of the Tourist and National Insurance Board for the year ended 31st March 2005.

28

economy, as 2007 gave way to 2008, those sources of revenue diminished, a diminution not matched by reduction in extravagant spending by Ministers on various projects and themselves. The result was that the Government had to borrow heavily to meet its recurrent revenue expenditure as well as significant capital expenditure obligations. The accumulated public deficit was to rise by the end of the financial year in March 2008 to some \$38 million, with an overdraft on its bank accounts of over \$6 million, shortly before the Commission started work.

1.39 That worrying trend was confirmed in a Report by the UK National Audit Office in November 2007 on Managing Risk in the Overseas Territories (the UK 2007 National Audit Report).⁵⁰ The UK National Audit Office considered proper management of TCI public finances to be a key risk, noting: 1) expenditure consistently over budget, without prior statutory authorisation and with financial controls routinely overridden and projects informally added; 2) reliance on unplanned surpluses over budgeted revenue, in particular the proceeds of sales of Crown land to meet current sales receipts; 3) rising public sector debt; 4) widespread departures from competitive tendering; 5) public funding of Ministers' extravagant life-style; and 6) electoral abuse, particularly in the form of bribes.⁵¹

1.40 In July 2007 the UK Foreign Affairs Committee opened an inquiry into the security and good governance of the 14 United Kingdom Overseas Territories. It soon had reason to pay particular attention to the TCI. As the Committee has recorded in its Report,⁵² the number and weight of submissions that it received from the TCI led it to single out the Territory as a particular cause for concern. By far the most evidence received from any of the 14 Overseas Territories was from the TCI, as also were the majority of all witnesses requesting confidentiality because of fear of intimidation or reprisals if their evidence became known.⁵³

1.41 The evidence, in summary, consisted of allegations, much of it hearsay, of widespread governmental corruption, in particular in relation to sales of Crown Land, allocation of contracts and development agreements, grants of Belongership under statutory power for discretionary grant in exceptional cases, misuse of public funds, mismanagement of public

50 op cit 42 p 58

51 ibid, pp 60 - 61, paras 166 - 169

52 ibid, p 51, para 127, and p 55, para 147

53 ibid, p 51, paras 127 – 131, leading it to recommend, in para 131, extension to evidence given to the FAC of the protection of the Witnesses (Public Inquiries) Protection Act 1982.

29

finances, lack of freedom of speech and a climate of fear. The PDM submitted an extensive memorandum detailing the same and other serious concerns, which concluded with a request, echoing that of individual witnesses, for the appointment of a Commission of Inquiry.⁵⁴ Many of these concerns were, as the UK Foreign Affairs Committee put it, highlighted in private meetings that a delegation of some of its members had with individuals during a visit to the TCI.

1.42 The UK Foreign Affairs Committee also received, by way of response from the TCI Government,⁵⁵ oral evidence from the Hon Michael Misick⁵⁶ and a written submission from the Hon Floyd Hall, then Minister of Finance and Deputy Premier, with particular reference to criticisms of the Territory's governance and public financial management in the 2005 and 2006 TCI National Audit Reports and the 2007 UK National Audit Report.⁵⁷ In the visit of some of the Committee members to the Territory they also spoke with Governor Tauwhare, the Premier and fellow Ministers.

1.43 The Hon Michael Misick, in his oral evidence to the Committee, hotly denied the allegations of widespread corruption and abuse of public office, public maladministration, mismanagement of public finances, and of intimidation. The Hon Floyd Hall, in his written evidence to the Committee, sought to discredit the TCI Chief Auditor and to dismiss the concerns in the 2007 UK National Audit Report as a result of bias in her Audit Reports and her contribution to the UK Report.⁵⁸ His evidence makes interesting reading. It is too long for inclusion here, but I shall return to it in different contexts in later parts of the Report.

1.44 The Committee explored with the Governor Tauwhare suggestions by some that he, in his role as Governor and as President of the Cabinet, had not been sufficiently vigilant in putting a stop to possibly corrupt transactions or proposals approved in Cabinet, particularly in relation to grants of Crown land. His response to the Committee was that it was constitutionally very difficult to intervene when all legal requirements appeared to have been met.⁵⁹ From my examination of the Cabinet papers and the Governor's own files, his

54 FAC (2008), Overseas Territories: Seventh Report of Session 2007-2008, Vol II (Oral and Written Evidence), HC147-II, London: TSO, Ev 339, Memorandum submitted by HM Loyal Opposition, Turks and Caicos Islands

55 op cit 24, pp 63 – 65, Ev 351

56 ibid, p 63, para 176, Ev 11

57 op cit 42, p 43

58 op cit 24, p 63, para 177

59 ibid, pp 65 - 66, paras 183 - 187

30

response as recorded by the Committee does not do him justice. He clearly scrutinised matters closely, took issue in Cabinet, and, in reporting to the Foreign & Commonwealth Office, expressed concern on some worrying proposals, notably for the development of Salt Cay.

1.45 The UK Foreign Affairs Committee also examined the role of the UK Government, characterised by many then as effete in the face of obvious corruption. The response of Meg Munn, the then Parliamentary Under Secretary of State at the Foreign & Commonwealth Office responsible for Overseas Territories, was that, despite the allegations, there was no substantive or compelling evidence of corruption to justify either prosecution or intervention, say by a Commission of Inquiry.⁶⁰ She added that the Constitution of the Territory empowered the Secretary of State to intervene and overrule the Cabinet on any matter should it prove necessary, and that she was reassured by new TCI provisions designed to promote integrity and openness in public life, including an Integrity Bill, a Crown Land Bill and a Ministerial Code of Conduct based on the UK Code about to be introduced.

1.46 The Committee's conclusion and recommendation on all this evidence was clearly and trenchantly expressed in favour of the appointment of a Commission of Inquiry:⁶¹

... We are very concerned by the serious allegations of corruption we have received from the TCI. They are already damaging TCI's reputation, and there are signs that they may soon begin to affect the Islands' tourism industry. There is also a great risk that they will damage the UK's own reputation for promoting good governance. the onus has been placed on local people to substantiate allegations in TCI. This approach is entirely inappropriate given the palpable climate of fear on TCI. In such an environment, people will be afraid to publicly come forward with evidence. We conclude that the UK Government must find a way to assure people that a formal process with safeguards is underway and therefore recommend that it announces a Commission of Inquiry, with full protection for witnesses. ...

As to the stance of the Foreign & Commonwealth Office with regard to intervention, the Committee commented:⁶²

437. ... in ... cases which should ... cause grave concern, in particular, allegations of corruption on the Turks and Caicos Islands, its approach has been too hands off. The Government must take its oversight responsibility for the Overseas

60 *ibid*, pp 67 - 69, paras 188 - 197; and *op cit* 24, Ev 56

61 *ibid*, para 196

62 *ibid*, para 437

31

Territory more seriously - ... demonstrating a greater willingness to step in and use reserve powers when necessary on the other.

1.47 The publication of the UK Foreign Affairs Committee Report in mid June 2008 was thus of a piece, in its expressions of serious concern about governance of the TCI, with the 2007 UK National Audit Report.

1.48 The UK Foreign Affairs Committee's concern also reflected a growing outcry among the people of the TCI against perceived governmental corruption, misuse of public funds, serious mismanagement of public finance and the escalating public deficit. These concerns were accompanied by a perception of increasing control by the Hon Michael Misick and his

PNP Administration of people's lives and livelihoods, inhibition of freedom of speech and of non-Belongers' right to remain, extensive exercise of power to grant or withhold patronage, increasing control of the public media and, over-all, a general atmosphere of intimidation, as reported by the UK Foreign Affairs Committee.⁶³ To all of this was now added some criticism of Governor Tauwhare for seemingly not standing up to the Premier and his fellow Ministers and the UK Foreign Affairs Committee's apparent endorsement of the growing perception of neglect by the Foreign & Commonwealth Office.

1.49 It was in such circumstances that the Governor, now with the encouragement and support of the Foreign & Commonwealth Office, took urgent steps to establish this Commission, pursuant to the Commissions of Inquiry Ordinance, which he did on 10th July 2008 – within a month after the publication of the UK Foreign Affairs Committee Report.

Scope and Conduct of the Commission's Inquiry

1.50 As I have said, the tasks set by the Terms of Reference could not sensibly have been expressed with lower thresholds. As I have interpreted them, they required me to investigate and report within four months:

1) whether there is information - in whatever form and giving it the weight it deserves - of possible corruption and/or other seriously dishonest behaviour in recent years in relation to, that is, involving, elected Members, past and present,

63 *ibid*, para 173

32

of the Legislature and/or those who may have been parties to any such behaviour, and, if there is, whether to recommend criminal investigation;

2) whether there are indications of systemic weaknesses in legislation, regulation or administration, and, if there are, to make recommendations for change in order to prevent and to deter corruption and/or other serious dishonesty; and

3) whether they give rise to findings and/or recommendations on any other related matters, for example, matters relevant or complementary to the cause and/or remedy of findings and/or efficacy of recommendations under 1) and/or 2), including the extent and manner of immigration control through the grant of Belongership and permission to work, any relevant codes of public and/or professional conduct, governance of and by political parties, electoral reform and the overall structure of the Territory's system of governance and public financial control.

1.51 On 15th July 2008 Governor Tauwhare and I publicly opened the Inquiry with a press conference in Providenciales. The Governor, in his introductory observations indicated, as he had in announcing the Inquiry, that he had appointed the Commission only after the Foreign & Commonwealth Office had instructed him to consider doing so. He indicated that a number of persons had written to him in confidence prompting him to refer their concerns to the relevant TCI authorities for inquiry and that he had directed the Commission to respect confidentiality by conducting parts of it in camera as considered appropriate. He also referred to a number of recent legislative and other initiatives in the Territory to reduce the

scope for corruption and to promote integrity, openness, fairness and accountability in the conduct of government business.⁶⁴

1.52 In my opening statement,⁶⁵ I stressed, as I have done many times since, that this Inquiry is into possible corruption or other serious dishonesty meriting criminal investigation and into indications of need for systemic governmental and administrative reform. It is not

64 including the establishment of an Integrity Commission, a Human Rights Commission, a Ministerial Code, a Public Service Code of Ethics and Integrity, appointment of a Chief Auditor (the post then being vacant), adoption of a Proceeds of Crime Ordinance, advanced work on a Crown Land Bill and a revised Immigration Bill.

65 See the Commission web-site for the press statement containing this opening statement in Providenciales of 15th July 2008.

33

for me to make findings of corruption or other criminality, simply to recommend areas and people or bodies for further investigation, while at the same time indicating areas of systemic weakness suggesting a need for consideration by others of reform. I also said that, with liberal use of a Commission web-site and press statements, I would make a start by seeking information in writing - under terms of confidentiality if requested - and when ready, would follow it with oral hearings in the TCI. Towards the end of my statement I made the following appeal for cooperation from Ministers and other Members of the House of Assembly:

In all of this, I hope to have the full cooperation of those asked to assist the Inquiry. Those Ministers and Members of the House of Assembly, or Members of the former Legislative Council who have nothing to fear from the truth should have no need to withhold the true source of their capital and income on any issue relevant to the Inquiry. As I am concerned with Ministers and elected Members of the Legislature, whose remit is the honest stewardship of their public responsibilities to the people of these islands, there should be no need for me to have recourse to the wide powers given to me by the [Commissions of Inquiry] Ordinance to compel disclosure.

1.53 How wrong the hope proved to be. On the previous day, 14th July, two back-bench PNP members of the House of Assembly, the Hon Royal Robinson and the Hon Samuel Been, had already taken steps to apply to the Supreme Court of the TCI seeking, among other things, a declaration to restrain me from proceeding with the Inquiry. They claimed that my Terms of Reference were invalid and my appointment, therefore, was of no effect. This application, which in due course was rejected by the Chief Justice, the Hon Gordon Ward, and the Court of Appeal of the TCI,⁶⁶ was accompanied in the early days of the Inquiry by regularly repeated television broadcasts of the Premier urging opposition to it. He stigmatised it as nothing more than a fishing expedition, to disguise the true plot, to make criminals out of our politicians, on both sides of the political divide, and destabilise our country, and suggested an early move by way of elections or a referendum towards independence.

1.54 Notwithstanding that inauspicious start, I returned immediately to the UK and established a Secretariat in London and began to consider the information already available. My starting point was a preliminary discussion I had had with, and briefing note from, the

66 On 1st October 2008 the two applicants withdrew a proposed application to the Court of Appeal for leave to appeal to the Privy Council.

34

out-going Governor Tauwhare on my short visit to the TCI, supplemented by further information provided shortly afterwards by his successor as Governor, His Excellency Gordon Wetherell, following his appointment on 5th August 2008.

1.55 Shortly afterwards, the UK Foreign Affairs Committee – for whose ready and helpful assistance throughout I am grateful - made available to the Commission the recently published two volumes of its Report, the first containing the Report itself and the second a record of the oral and written evidence given to it by those who had not requested confidentiality. As I have indicated, many of those from the TCI who gave evidence to the Committee did so only on the basis that it would be treated as confidential. The Committee had sought and obtained their consent and that of all other persons who had given evidence to it, for its provision to the Commission on the same terms. I have treated that body of material as information and evidence in the Inquiry. Over-all, it is consistent with the vast body of written and oral information since provided to the Commission, other than that of the Hon Michael Misick and his ministerial colleagues and other political supporters.

1.56 The time allowed to the Commission was short, and its Terms of Reference were wide. A broadly based, but also selective inquiry was clearly necessary. The aim was to discover whether there were certain major categories and/or serious instances of possible corruption involving elected members of the TCI Legislature and/or others that might merit criminal investigation and/or as leads for such investigation. I could not hope to investigate every allegedly corrupt or dishonest relationship or transaction, however big or small. It does not follow that, because I have not mentioned as possibly corrupt a particular relationship or transaction, it should be excluded from any ensuing criminal investigations.

1.57 I also decided that I should have to concentrate on relatively recent matters, since the priority is to identify the present malaise, said to be one of endemic corruption in public life in the Territory. There was also the important practical consideration that the older the alleged crime, the colder the trail for the purpose of investigation and prosecution. Accordingly, I took a period of up to ten years, thus covering, not only the PNP's five years of office from mid 2003 to mid 2008, but also the previous three to four years of the PDM administration under the leadership of the Hon Derek Taylor from 1999 to 2003. If my widely directed requests for assistance were to be heeded, there would be every

35

opportunity for evidence of any significant venality in the Hon Derek Taylor's time to be put before me. As I have already observed, like Sir Louis Blom-Cooper, I was aware that there had long been a public perception of corruption in this Territory by more than one political party when in power.

1.58 I decided to devote the first part of the four months then available to giving the widest possible publicity to the Inquiry. I did so through the Commission's web-site and in correspondence, seeking assistance from TCI public in general and from many individuals in

the private and public sectors of the Territory, including all present and past members over the last ten years of the Legislature.

1.59 In early August and early September 2008, through the Commission's web-site, the Commission made general requests to the public for information that might assist the Inquiry, indicating as it did throughout that such information could be provided confidentially. As a result, the Commission has received, by way of written submissions and oral approaches, much assistance from persons within and outside the Territory. These include almost 500 submissions, 26 under pseudonyms, 81 confidential, 299 from members of the public, 39 from TCI Government officials and 27 from former Ministers and Members of the House of Assembly. There were almost none from current Ministers or other Members of the House of Assembly or others in positions of responsibility or from developers who might have been expected to come forward. Much of the information was of a direct nature; many submissions, whether of a general or anecdotal nature, were in the form of hearsay. Overwhelmingly, the information presented a picture consistent with that given to the UK Foreign Affairs Committee. It was of widespread abuse of public office, corruption and other forms of dishonest or unethical behaviour by Ministers and other Members of the Legislature, present and past, and some public officials. The Commission also sought and obtained copies of a wide range of the Territory's Cabinet Minutes and Papers, public records and reports, including audit reports. Responses from members of the public included much information alleging or suggesting corruption in recent years by those in the PNP Administration or their family and friends. But there was relatively little about earlier days when the PDM held governmental sway.

36

1.60 In addition, in early September 2008 I wrote personally to the majority of Members of the Legislature over the previous decade, inviting their assistance with whatever information or submission they considered might bear on my Terms of Reference. I later extended that invitation to the Cabinet Secretary and most Government Permanent Secretaries and Under Secretaries. Even allowing for the disruption and devastation to the Islands caused by Tropical Storm Hanna and Hurricane Ike in late August and early September, the result was deeply disappointing. There was no response from the Hon Michael Misick or his fellow PNP Ministers, and little from other Members of the Legislature, present or past, or the senior public servants to whom the Commission had written.

1.61 So, despite the Commission's attempt to be politically and historically even-handed in its search for information of possible corruption or other serious dishonesty, the responses to its requests pointed mostly one way. They pointed to a rapid rise in the range and scale of corruption, abuse of political office, personal aggrandizement and extravagance by the Premier and his fellow PNP Ministers and intimates. They painted a picture which, in more guarded terms is to be seen in two missives, separated by about a year, from within the PNP and directed to the Premier.

1.62 The first was a letter of 18th October 2007, purportedly from Executive Members of the PNP, including its Chairman, Lloyd Stubbs, its Deputy Chairman and Secretary General, the Hon Don-Hue Gardiner,⁶⁷ headed Leadership Concerns. The letter listed 11 complaints about the Hon Michael Misick's and his fellow Ministers' conduct, including his absenteeism, failure to attend to government or parliamentary business, failure to inform the public of

governmental matters and ministerial private extravagance accompanied by failure of public financial management. It concluded with the following exhortation to deal with corruption:⁶⁸

11. House of Assembly – There needs to be more frequent meeting of the House of Assembly to deal with the several bills that are outstanding and need to be addressed as a matter of urgency. We make reference to the Anti-Corruption Legislation in particular, which the PNP promised to deal with since the 2003 general elections. This bill should be presented in Parliament if only to give the perception that the Government is serious about it.

67 The Hon Don Hue Gardiner told the Commission that he did not sign and was not party to the drafting or sending of this letter; Transcript, 4 February 2009

68 PNP Party (2007) Leadership Concerns, available from TCI Net News, published on 16th August 2007

37

... We expect that you will immediately address these issues and change the manner in which you and your Cabinet are governing the Country.

1.63 The second missive was a letter to the Governor on 15th December 2008, passed to the press, revealing serious dissent among PNP Members of the House of Assembly purportedly from several PNP elected Members, including the Hon Floyd Hall⁶⁹ and the Hon Lillian Boyce,⁷⁰ in protest at a broadcast address to the nation by the Premier. It was of a piece with much of the evidence given to the UK Foreign Affairs Committee and with that provided to the Commission before it began its oral hearings in Providenciales:

... Many of us within the Government, within the Progressive National Party and indeed within the country at large have long been frustrated with the Premier's tabloid, D List Hollywood style of leadership. We have watched in disbelief as the resources of our country have been squandered on an unsustainable materialistically oriented lifestyle. We have sat in stunned silence as our cautious and [sic] warnings have been rudely rebuffed. And we have lived each day in fear of being the next victim of the Premier's much touted appetite for vengeance had we been more outspoken.

The net result of our failure to bring the Premier to heel, and for which we owe our country an apology, has been that Government's finances are in such total disarray that we have been unable to assist the victims of last September's storms from our own resources and have had to rely instead on international and charitable aid. That notwithstanding, the Premier saw fit recently to charter a jet to Paris for a shopping spree for himself and his mistress at the expense of the Government and the people of Turks and Caicos Islands.

The Premier has also brought us a notoriety abroad that is usually associated with the most despotic and parasitic of regimes worldwide. ...

1.64 Given the many allegations to the UK Foreign Affairs Committee and to the Commission of the striking increase in affluence and extravagance of the Hon Michael Misick and of his ministerial colleagues and other Members of the House of Assembly in the relatively short time since achieving public office, I decided to give priority to their financial affairs. I did so by recourse to their duty under the TCI Registration of Interests Ordinance 1993⁷¹ to make annual declarations of them. The Ordinance provided for a Registrar of

Interests, whose duty it was to ensure the fullness and accuracy of each declaration by examination and, if necessary, by questioning the declarant about it, and to compile an

70 The others were the Hons Karen Delancy, Amanda Missick, Wayne Garland, Gregory Lightbourne, Norman Saunders, Royal Robinson and Samuel Been.

71 The Hon Floyd Hall denied before the Commission having been a party to the release.

71 enacted pursuant to s 87 of the 1988 Constitution; now s 98 of the 2006 Constitution.

38

Annual Register of interests declared by Members. He was also required to produce his Register to the Legislature for inspection by members of the public at any of its sittings. Failure by any member to make a timely, full and accurate declaration also required him to report the failure to the Legislature, a Select Committee of which could impose a sanction of a fine of up to \$5,000 or suspend the defaulter from sitting or voting.

1.65 From mid-August 2008 the Commission wrote to each Member of the Government and other present and past elected Members of the Legislature inviting them voluntarily to provide by the end of the first week in September: 1) copies of their annual declarations of their financial interests, benefits and obligations for each of year of office; and 2) information they would give if making such a declaration at the time of receipt of the request. The response over the following three weeks was scant, evasive and in some respects clearly obstructive. So also was the response of certain public officials on the Islands to the Commission's attempt to identify and locate some of their number and certain public records, including the Register of Interests itself. Those delays, to which Tropical Storm Hanna and Hurricane Ike contributed, led the Commission to extend the period of time for reply to its request to the third week in September.

1.66 For those and other reasons the Commission was compelled to delay the planned visit of two members of its Team to the Islands to contact officials and others and to examine public records. I also sought from the Governor an enlargement of the four months originally allowed for completion of the Inquiry, contemplating by then: 1) a visit by members of the Commission Team to the Islands in October to interview potential witnesses and examine public records; 2) oral examination in the Territory in November of Ministers and other Members of the House of Assembly on their declarations of interest; and 3) further oral hearings there in December to examine specific allegations of corruption and/or other dishonesty. The Governor granted an enlargement of the Commission's time for submission of its Report until 16th February 2009.

1.67 Meanwhile, as September gave way to October, responses from Ministers and others to the Commission's invitations voluntarily to provide details of their financial interests continued, in the main, to be slow and inadequate, and in some instances were not provided at all. As a result, the Commission by letters and in its press statements of 3rd and 10th

39

October, indicated that, failing full and accurate responses, it would issue summonses under the Commissions of Inquiry Ordinance requiring attendance of those concerned to give

evidence and/or to produce the relevant documentary information in public oral proceedings in the Territory.

1.68 Throughout October and into November the Commission continued, in a series of exchanges of correspondence, to press for full and adequate disclosure from Ministers and other Members of the House of Assembly, but largely without success. Accordingly, in early November the Commission Team began preparing lists of information and documentation outstanding from Ministers and Members for inclusion in summonses requiring them to attend for examination in the Territory. During that period two members of the Commission Team spent some time in the Territory interviewing potential witnesses and trying to locate and examine various public records. However, they did not always succeed in gaining access to what they needed to see. As a result of those two set-backs, Senior Counsel to the Commission and I had to make a short impromptu visit to the Territory in early November to take up the search for outstanding public files which, with the helpful assistance of the Cabinet Secretary and Departmental Permanent Secretaries, was more fruitful.

1.69 The Commission's indications that it would, if necessary, resort to its powers under the Commissions of Inquiry Ordinance to examine Ministers and other Members of the House of Assembly prompted most of them in November to provide a good deal more information. However, the information was still, in the main, inadequate and in some respects questionable. It was also submitted in a piecemeal fashion, without regard to the time-tables and well-publicised programme set by the Commission for two sets of hearings in early December. Those delays were accompanied by a surge in submissions from the public, some offering to give oral evidence.

1.70 Because of the shortness of time left for the Commission to analyse and document the newly arrived and still incomplete information as to interests, and also the volume of recent submissions, the Commission had again to postpone the two sets of hearings it had planned. In its press statement of 25th November 2008, it stated:

The Commission, in its Press Statement of 17th November 2008, indicated its intention to hold hearings in Providenciales in December, depending on the

40

information provided and yet to be provided by Ministers and Members of the House of Assembly as to their interests. Only recently ...some Ministers and Members have begun to provide the Commission with voluminous quantities of documents purportedly in full and accurate disclosure of their interests. However, in the main, such documentation – in the short time the Commission has had to examine it – still appears to be inadequate and in significant respects otherwise questionable.

The process of piecemeal disclosure continues – mostly without regard to time-tables set by the Commission. Some of the promised documentation has been made available only in hard copy in Providenciales or has still to arrive at the Commission Secretariat in London. Much that has been sent to London, either in hard copy or electronic form, has arrived only in the last few days. All of this new material has now to be analysed and considered alongside previous returns and disclosures to the Commission to enable it to determine the need for and form of any oral examination.

This late provision, principally by Ministers, of documentation has been accompanied by a recent surge of approaches from others seeking, not only to provide information, but also to give evidence. This too has led to the production of much fresh documentation for analysis and comparison with ministerial disclosures of interest.

Fairness requires that all this new material, whatever its source and where relevant, should be considered for inclusion in reconstituted or new bundles of Commission copy documents for service on Ministers and others in advance of any hearings.

In the circumstances, the Commission has been driven to abandon its intention to hold hearings in December ...

1.71 In the event, the Commission, having reviewed the state of disclosure throughout December, still found it seriously wanting, and re-cast and served its summonses on Ministers and others to attend for examination. The Commission Team left for the Islands in early January - still not having had an opportunity to examine all the last-minute disclosure, and with no time to complete its task before the start of the hearings on 13th January 2009.

1.72 By the time the Commission finally opened the proceedings in Providenciales, it had been driven to try to combine in one set of hearings oral examination as to disclosed and undisclosed interests and also further evidence that the Commission wished to call. Here again, the programme was to slip – and for the same reason – continuing failure, in the main

41

by Ministers, but also others – in some instances by conduct in and out of the hearings bordering on obstruction – to make complete disclosure and/or to produce necessary supporting documents.

1.73 It was now obvious that the Commission would not be able to complete its work within the enlarged period allowed by the Governor, namely by 16th February 2009, and would require still more time. The Governor was shortly to grant an enlargement of time until 30th April 2009.

1.74 Before I continue, I should pause to say a few words about the political and economic scene in the Territory by this time. Its government was at a near stand-still. Notwithstanding a heavy legislative programme, proceedings in the House of Assembly had been suspended and had stood prorogued since 15th December 2008 at the instance of the Hon Michael Misick. He had taken that course to avoid a debate on a potentially successful motion of no confidence in his Administration by the PDM minority, which a discontented majority of PNP Members, including at least two Cabinet Members, showed signs of supporting. The Cabinet was thus, at best, highly unstable, at worst, bitterly divided, the Premier devoting a great deal of his time before and during the Commission's hearings to abortive attempts to re-construct a new Cabinet and a supportive majority in the House of Assembly.

1.75 The Territory's finances were, as they had been for some time, in a very dangerous state, with a deficit, said to be of about \$6 million and rising, outstanding debts that it could not pay and current obligations, such as the government monthly pay-roll, that it could not meet as they fell due. Its management of public finances continued to be of great concern, for want of long-term disregard of national and other audit recommendations and no, or no effective, scrutiny by the House of Assembly's Public Accounts, Expenditure and

Administration Committees. Meanwhile it was still attempting to fund recurrent public expenditure partly out of the proceeds of disposal of Crown Land, for want of other more fiscally conventional sources.

1.76 Such was the scene when the Commission opened its oral proceedings in Providenciales on 13th January 2009. My opening statement is Appendix 2 to this Report. In it I stressed that I was concerned with the possibility, not proof, of corruption. I had no power to determine issues of fact or to direct any particular outcome. It was not my job to

42

make findings of guilt or to exonerate those against whom allegations had been made. The most I could do – if I had information of possible corruption or other serious dishonesty – was to recommend further and more searching investigation by the police or some other body, with a view to criminal prosecution, recovery of the proceeds of crime and consideration of other sanctions.

1.77 I also referred in my opening statement to the state of the information and material by then accumulated by the Commission:⁷²

Anyone with any familiarity of the public affairs and commercial life of the Territory knows that the escalating volume of allegations – true or false – has reached a crescendo. The pressing concern is for the health of the Territory and its people today and for the future – not what may have happened some years ago. The vast bulk of the information put before the FAC and this Inquiry is of alleged corruption under this Administration, relatively little about their political predecessors. That may be in large part a symptom of the passing of time, dimming as it does keenly felt grievances and memories and leading to disappearance of evidence. I should also mention that a likely source for canvassing such earlier transgression, namely present Ministers and other Members of the House of Assembly, produced very little. Personal letters that I wrote to all of them and others inviting whatever assistance they could give me in my task, were in the main greeted with silence. In short – in contrast to the many complaints about them – there was very little from them or others about their predecessors.

...

So here I am, with much of the Commission's enquiries made and the information in, but still short of full and accurate disclosure from a number of persons, in the main Ministers in the present Administration alleged to have profited from bribery. I have made repeated complaint in the Commission's press statements about the absence of hard and statutorily disclosable information from them – not so much about how they spent their money, but where they got it from. Hence the summonses that I have been obliged to serve on them to produce documents and give evidence of their interests and how they acquired them. ...

1.78 In the oral examinations of the Ministers and Members, starting with the Hon Michael Misick, as to their interests, it soon became obvious that, despite the previous best efforts of most of their legal representatives, there were still large and significant gaps. Moreover, the piecemeal and incomplete process of disclosure, coupled with continuing attempts on the part of some not to give it, continued throughout the hearings. As will appear later in this

⁷² See Appendix 2 to this Report.

Report, the highly unsatisfactory way in which most of the Ministers responded to questions about their interests so dominated the four weeks set aside for the hearings, that very little time was left to the Commission to call other witnesses for examination.

1.79 The oral proceedings came to an end on Wednesday, 11th February 2009. It was urgent in the interests of the Territory and its people that the Commission should, if possible, complete its work by the end of April. Such was the urgency that I considered it necessary to attempt to provide an Interim Report by 28th February. I gave my reasons for that in a statement closing the proceedings:⁷³

... instead of spending two weeks, as hoped, to finish the job as to disclosure and move to other evidence, the Commission has spent the best part of the four available weeks still seeking disclosure and/or explanation of disclosure made on the spot – disclosure as those giving it must have known the Commission could not possibly master on the spot.

While all this has been going on, the government of this country is at a near stand-still, the Cabinet is divided or unstable, the House of Assembly has been prorogued, its finances are in a bad way and poorly controlled, governmental and other audit recommendations lie unattended and disposals of Crown land to fund recurrent expenditure deficits continue for want of governmental revenue from other more fiscally conventional sources. It is evident that there are wide-spread fears on the part of people in the Territory that they are leaderless and that their heritage is at risk of continuing to drain away.

... the train of events leading to these hearings and the Territory's parlous and volatile state ...[have] necessitated a further extension of the Commission's period of Inquiry to 30th April. But that does not – or should not – allow the Commission to assume the luxury of returning home for some months to polish its parses before reporting. In the Territory's present state, goodness knows what may happen in the meantime.

In the circumstances, speed coupled with fairness to all those the subject of the Inquiry is vital. The Commission has to balance the strong public interest of the people of the Turks and Caicos Islands for early resolution of their problems against the private interests of those the subject of being treated fairly. Fairness to them here includes a reasonable opportunity to respond to criticisms that the Commission may be minded to make of them before finally reporting.

...

73 See Transcript, Day 22, pp 171 – 177.

1.80 On its return to London, the Commission allowed legal representatives of those examined as to their interests ten days, i.e. until 21st February to make further written submissions in respect of matters concerning them that had arisen during the proceedings. It also allowed any others to make submissions or to provide further information in writing over the same period. Within seven days thereafter, on 28th February, I submitted to the Governor an Interim Report, to which all the Commission Team contributed, summarising in the barest outline and in general terms some of my provisional conclusions and making 24

Interim Recommendations, in the main in relation to my second Term of Reference concerning indications of systemic weaknesses in legislation, regulation and administration.⁷⁴

1.81 My provisional conclusions in summary were that, on all the material and evidence before me, there was information in abundance pointing to a high probability of systemic corruption and/or other serious dishonesty. This, coupled with clear signs of political amorality and immaturity and of general administrative incompetence, demonstrated to me an urgent need for suspension, in whole or in part, of the TCI Constitution and for other legislative and other reforms and change, all set out in my Interim Recommendations.

1.82 On 16th March 2009, Gillian Merron, who had succeeded Meg Munn as Parliamentary Under Secretary of State at the Foreign & Commonwealth Office, made public a draft Order, to be made by the Queen in Council, pursuant to her powers under the West Indies Act 1962 and her other powers, suspending, initially for two years, parts of the Constitution, including those relating to Ministerial Government and the House of Assembly. As the Under Secretary of State and the Governor explained in corresponding public announcements on the same day, she took that course:

... In the light of the accumulation of evidence in relation to TCI in the last year or so, and fortified by the Commissioner's interim report, the UK Government has formed the view that parts of the Constitution will need to be suspended and has decided to take steps to enable it to do so.

1.83 The Under Secretary of State added that, unless the final Report significantly changed the Foreign & Commonwealth Office's current assessment of the situation, the Order would be brought into force after receipt of that Report, or sooner if circumstances arising in the

⁷⁴ See Appendix 3 to this Report.

45

Territory prior to that date justified suspending relevant parts of the Constitution. She explained:

As drafted, the Order would leave in place important elements of the Constitution such as the fundamental rights chapter and provisions relating to the Governor, the courts and the public service, while removing the Cabinet, House of Assembly and references to ministerial and related powers. Powers and functions currently exercised by Ministers would be exercised by the Governor acting in his discretion, including in relation to public finances, legislation necessary and regulatory reform.

This would be an act of constitutional significance in order to restore the principles of good governance.

1.84 On 18th March 2009 Her Majesty in Council made the Order, the Turks & Caicos Islands Constitution (Interim Amendment) Order 2009 (the 2009 Constitution Order),⁷⁵ laying it before Parliament on 25th March, with a view to implementation following receipt of the Commission's final Report. In addition to the partial suspension of the 2006 Constitution provisions for the Cabinet, House of Assembly and references to ministerial and related powers, the Order in Council provides for the Governor to exercise, at his own discretion,

powers currently exercised by Ministers, including those relating to public finances, legislation and necessary regulatory reforms. The Order also provides for the Governor to be assisted in the exercise of those powers by an Advisory Council composed of persons nominated by him, the majority of whom are to be Belongers, and also a Consultative Forum drawn from persons representative of the TCI community to make recommendations in relation to legislation and policy issues.

1.85 Within a month after the making of that Order, the House of Assembly was recalled, in mid April 2009 with the Hon Galmo Williams as Premier and a Cabinet, apart from himself, of new Ministers. The House initially sat for two days, but with little productivity, early adjournments and leaving the business of each day unfinished. Following nearly a month's adjournment, it sat for a third time on 15th May 2009 for half a day, again leaving more business unfinished, before adjourning until 29th May 2009.

1.86 In the meantime and since mid February 2009, I have, with the assistance of the Commission Team, prepared this, my Report and Recommendations, confirming and, where

75 See Appendix 4(ii) to this Report.

46

I consider it helpful, elaborating on or adding to my Interim Report. In every case where I was minded to make an adverse finding leading to a recommendation of criminal investigation in respect of any person whose conduct is the subject, or who is implicated or concerned in the subject matter, of the Inquiry, the Commission Assistant Secretary wrote a Salmon letter⁷⁶ inviting any representations within a week to ten days. This was shorter than I wished, and most of those who made representations in response are to be commended for doing so in the time. Others took longer, seeking to challenge the Commission in considerable detail on its provisional adverse findings, and/or seek particulars as if they were counts in an indictment. Some even threatened the Commission and/or the Foreign & Commonwealth Office with legal proceedings with a view to preventing me from submitting my Report to the Governor, or sought access to its content before I did so. In all, 19 persons made written representations in response to Salmon letters, many of them repeating or supplementing written and oral submissions on their behalf in the proceedings in Providenciales and in further written submissions in February 2009. In making my findings and recommendations set out in this Report, I have taken all those representations into account. 1.87 The Inquiry ended as it began, with legal challenges **intended to thwart its work**. This time the challenges were made by the Hon Michael Misick personally and two overseas developers in the TCI, Mr Mario Hoffmann and Dr Cem Kinay. The former Premier's challenge was made in the Administrative Court in London, by way of application for leave to claim against the Secretary of State at the Foreign & Commonwealth Office for judicial review of the 2009 Order. He sought to have it quashed as ultra vires the West Indies Act 1962, in removing him and other elected Members of the House of Assembly from their posts without compelling grounds. On 1st May 2009, the Administrative Court refused his application on the ground that it had no realistic prospect of success, and on 20th May 2009, the Court of Appeal dismissed his application for permission to appeal against that refusal. Mr Hoffmann's claim is for judicial review in the TCI Supreme Court against me and the Governor to restrain me from, amongst other actions, submitting a Report to the Governor

unless I comply with Mr Hoffmann's demands to exclude any references in it to him, and to the Governor to restrain him from publishing the Report without advance reference to him.

76 op cit 1

47

Dr Kinay's challenge is in similar form, namely to require me to remove any references to him from the Report, to require me to recommend the Governor not to publish it, or to require him not to publish it or any press release accompanying it referring to Dr Kinay. Hearing dates for both matters have been set for early June.

48

2 - CORRUPTION

... the very nature of corruption defies precise definition. Like a rot which can, unseen, destroy the fabric of a house before coming to the surface, corruption grows and spreads out of sight, only occasionally revealing itself. When it does, it reveals only its presence, not its extent or when it started. Treatment of the visible part alone is not sufficient. The true extent of the trouble will only be revealed by further examination. ... 77

Introduction

2.1 Corruption is a simple enough notion; there is nothing technical about it. At its most basic, it is to rot what was pure. In the context of human relationships it is to render morally unsound what was – or should have been - morally sound. At its heart is the notion of dishonesty, which is or should be clear to all in these Islands, especially those holding high public office, and whatever the Caribbean culture to which some of the Ministers had resort from time to time in their evidence.

2.2 In lawyers' language, it is an offer and/or the payment of a bribe or grant of a favour to another as an inducement or reward for improper misuse of position, or the request and/or acceptance of a bribe or other favour from another as an inducement or reward for such behaviour. Impropriety in a case of alleged bribery of or by a public servant is a question of fact for determination in the circumstances of each case, but is most readily identified by asking the question whether there was a sought or actual misuse of position. The Law Commission of England & Wales, in its recent report, *Reforming Bribery*,⁷⁸ took as its starting point for bribery at common law, the following venerable proposition from the 12th edition of *Russell on Crime*:⁷⁹

Bribery is the receiving or offering [of] any undue reward by or to any person whatsoever, in a public office, in order to influence his behaviour in office, and incline him to act contrary to the known rules of honesty and integrity.

77 per Gordon Ward CJ in *Royal Robinson and Samuel Been v The Rt Hon Sir Robin Auld and The Hon Attorney General of the Turks and Caicos Islands* 26th September 2008, CA 17/2008, para 25.

78 Law Commission (2008), *Reforming Bribery*, Law Com No 313, HC 928, London: TSO

I am not sure what the word undue adds to the test, other than to indicate that it is an evidential feature of a transaction from which a corrupt intent on the part of the giver and/or the recipient may be inferred. As the Law Commission's discussion in Part 3 of its Report make plain, impropriety is the test and that, in most circumstances, means misuse of position.

2.3 When applied to a public officer, Mr Ariel Misick QC, in his submissions on behalf of the Hon McAllister Hanchell, helpfully took the common law as his starting point in the following proposition, derived from the words of Lawrence J, giving the judgment of the Court in *R v Whittaker*: 80

It is a common law offence for a public officer who has a duty to do something in which the public are interested to receive a bribe either to act contrary to his duty or to show favour in the discharge of his functions.

2.4 The criminal law of bribery in the TCI is much the same as in England & Wales, its relative simplicity in each case masked by an unsatisfactory mix of common and statutory law. Mr Misick and other counsel helpfully directed me to section 18 of the Legislative Council (Powers and Privileges) Ordinance 1998, which makes it an offence to bribe Members of the House of Assembly in relation to proceedings before the House, and to sections 68 and 69 of the Elections Ordinance 1998,⁸¹ which make it an offence to bribe voters, both sets of provisions overlapping with or replacing the general common law offence of bribery in their respective contexts.

2.5 However, while corruption, in particular, of those in public office, may be a simple enough notion, it is by its very nature often hard to prove. There are two reasons for this. First, as Chief Justice Ward observed in the passage from his judgment set out at the head of this Chapter, its invisibility or secrecy, usually between two consenting persons, readily defies discovery or proof. Secondly, even when the material relationships and facts are established, it can still be a difficult value judgment whether, in the circumstances of any particular case, a transaction is corrupt or accords with widely accepted social and business norms of its context. It is an internationally acknowledged phenomenon that the difficulty

80 [1914] 3 KB 1283, at 1296; See also 10 Cr App R, 245 CCA

81 Cap 5, Revised 15th May 1998

of proving corruption in any society is almost always in inverse proportion to weakness of that society's democratic controls.⁸²

2.6 Various legal systems have employed different formulae for dealing with the problem, mostly through the notion of illicit enrichment coupled with some form of reversal of the burden of proof, such as inexplicable wealth calling for satisfactory explanation as in Hong Kong and Argentina. There are similar legal devices in the field of control of drugs, where the knowledge as to possession of drugs or of their proceeds is peculiarly within the knowledge

of the suspect. Perhaps the best known and well-tryed provision of this sort is section 10 of the Hong Kong Prevention of Bribery Ordinance (Cap 201), which enables a court to convict an official where there is evidence that he is living above his present or past official means and for which he has not given a satisfactory explanation. Convictions under section 10 carry a heavy financial penalty and imprisonment for up to 10 years. The provision has survived the scrutiny of the Privy Council and more recently the Hong Kong Court of Appeal,⁸³ even after paying due regard to the presumption of innocence enshrined in the International Covenant on Civil and Political Rights. ⁸⁴ It is for a defendant to establish, on a balance of probabilities, a satisfactory explanation for disproportionate wealth; the smaller the disproportion, the easier it would be to give an explanation.⁸⁵ The introduction of some such provision as a rule of evidence in corruption cases and the like, rather than the creation of a new substantive offence, may be worth considering for the TCI. This could be an interim measure to meet the present insufficiency or rustiness of the Territory's democratic controls. Or it could be a longer term and common-place international protection against insidious corrupt practices whatever other constitutional, investigative and forensic tools are deployed against them.

2.7 There have been a number of conditions in the TCI over recent years which, together, have made it a very fertile ground for corruption, namely:

1) a Constitution and other statutory provisions and policies that allowed individual Ministers, acting individually and in Cabinet, considerable

⁸² See United Nations Convention Against Corruption (UNCAC) Doc A/58/422, New York, 31 October 2003; and Legislative Guide of the United Nations Convention against Corruption, Vienna 2006

⁸³ Attorney General v Hui Kin-hong [1995] 1 HKCLR 227

⁸⁴ United Nations General Assembly Resolution 2200A (XXI) of 16th December 1966 (in force 23rd March 1976)

⁸⁵ Fung, Daniel R, Anti-Corruption and Human Rights Protection: Hong Kong's Jurisprudential Experience, paper presented at the 8th International Anti-Corruption Conference

51

discretionary power in various respects, notably in: (a) allocation of Crown Land and as to price, development and terms of development, planning permission and conditions and concessions as to Belongers' discount and stamp duty; (b) the award of public works and other governmental contracts; and (c) in relation to immigration matters, in particular in the grant of Belongership on exceptional grounds, the right to remain and the grant or withdrawal of permission to work;

2) a booming tourist economy, attracting a surfeit of overseas interest and investment in tourist developments;

3) limited supply of land for development unless by release of Crown Land under the policy of the day,⁸⁶ and at a substantial discount to Belongers or companies in which they held at least a 50% equity;

- 4) because of the small TCI community, considerable exposure of Ministers and other Members of the Legislature to conflicts between their public duty and private interests;
- 5) lack of basic and available mechanisms of governance to deter or combat possible corruption by Ministers and other Members of the Legislature, and/or of guidance in the form of a promulgated and enforced Ministerial Code of Conduct;
- 6) widespread disregard by Ministers and other Members of the Legislature of their constitutional obligation regularly and publicly to declare their financial interests;
- 7) the power of politics or more particularly in recent years the power of the PNP to dominate the TCI Legislature and Executive, and to channel unaccountably large sums of money to and from Ministers and their associates;
- 8) empowerment of Belongers; and

86 i.e. the Crown Land Policy; See paras 3.9 – 3.52 below

52

- 9) lack of, or of the constitutional machinery for, effective public watchdogs over the TCI Government's governance and financial management and control, in particular through its parliamentary committees.

I discuss all those matters in some detail later in the Report, but it may be helpful to set the scene by saying a little more here about the last six.

Conflicts of Interest

2.8 If local signposts were needed to point to possible corruption in public office they were and are to be found in plenty. As a starting point, there has been a seemingly embedded disregard by Ministers and other Members of the Legislature of the imperative to avoid, if possible, any conflict of interest or perceived conflict that may impair their duty and ability to act in the interest of the public. It is an imperative enshrined since 1995 in the United Kingdom in the Nolan Principles⁸⁷ – The Seven Principles of Public Life, Annex A to the British Code of Ministerial Conduct. The Hon Michael Misick introduced an almost identical document to the Cabinet as long ago as 7th March 2007, with a view to such adaptation for use in the TCI as might be necessary.⁸⁸ It took nearly a further year before the Cabinet, on 6th February 2008, accepted it in principle, subject only to a few small amendments substituting references to the TCI for references to the UK.⁸⁹

2.9 The Code,⁹⁰ including the Nolan Principles, makes detailed provision for avoidance of conflicts of interest and for declaration of potentially conflicting private interests, acceptance of gifts and hospitality and in connection with overseas travel. It sets out basic aspects of honesty that are or should be familiar enough to all civilised people engaged in public life, whatever their local culture. Such norms are as - or more - critical in small countries like the TCI with closely-knit relationships and associations, than in larger and possibly more politically and economically sophisticated nations. The two most relevant and obvious aspects of honesty in this context are summarised in the sixth and seventh Nolan Principles:

⁸⁷ so called because they were drawn up under the Chairmanship of Lord Nolan.

88 Minute 07/141/2007 of Cabinet Meeting 7th March 2007

89 Minute 08/107 of Cabinet Meeting 6th February 2008

90 See in particular sections 7 and 9.

53

Honesty

Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.

Leadership

Holders of public office should promote and support these principles by leadership and example.

2.10 On 10th July 2008, Governor Tauwhare, in his press statement announcing the appointment of the Commission, included the Ministerial Code in a list of important steps ... recently taken or under way to reduce the scope for corruption. A few days later, on 14th July, the Hon Michael Misick, in a widely reported speech challenging the need for the Commission, spoke of having introduced and passed such a Code.

2.11 As Counsel to the Commission observed in his closing submission, despite those two public references to the Code, and its acceptance in principle by the Cabinet in early 2007, it does not appear to have been formally adopted, published or promoted. When the Commission finally obtained a copy, it was in the form of a reproduction of the British Code, save for the title and crest of the TCI and with small, but incomplete, adaptations for use in the Territory.

2.12 The attitude of the Hon Michael Misick and some other Ministers to the principles set out in that Code is well illustrated by his denial in evidence in the Commission's oral proceedings that the Code existed.⁹¹ When pressed by Counsel to the Commission, he stated:

... I had asked the clerk to the House of Assembly to get a copy of the code from the UK. The cabinet had – the plenary went through it. ... it was never adopted. She was supposed to have tidied it up – make it relevant to our situation here in the Turks & Caicos for further consideration. That never happened. And so the fact is that there is no ministerial code of conduct that presently exists here in the Turks & Caicos. ...

When asked whether he had regarded it as a good starting point for seeking to enforce standards of probity within the Cabinet, he continued in the same vein:

91 Transcript, Day 2, pp 6 - 15

54

This draft code of conduct was never adopted and therefore never enforced Therefore, there is no ministerial code of conduct. ... That's my answer. ... I am saying that this ministerial code is not enforced. this is a work in progress.

Later, when the Cabinet Minute of 6th February 2008 was put to him,⁹² he abandoned the stance that it had never been adopted, and sought this time to blame the Cabinet Secretary for not having tidied up the document and presented it to him for signature and distribution. The Minister for Natural Resources, the Hon McAllister Hanchell, like the Hon Michael Misick, repeatedly stressed that the Code had not been introduced.

2.13 The Hon Floyd Hall had a different approach. When questioned, he said that he had known that the Cabinet had approved the Code and that, although it had not come into force, he had regarded it as a guide to proper behaviour and its principles as binding on him.⁹³ However, he does not appear to have applied those principles to his own conduct so as to avoid conflicting interests.

2.14 The lethargy and lack of interest with which the Cabinet as a whole approached the simple but important task of incorporating the essentials of the UK Code into its law and practice are unfortunate. Their disregard of it in promoting their private interests and those of their intimates deserves more serious censure, as does the hypocrisy of the Hon Michael Misick on 14th July 2008 in his public reliance on his claimed introduction of it to the TCI as an argument against the need for the Commission.

2.15 The attitude of the Hon Michael Misick and his fellow Ministers in this respect has not, as I have said, been peculiar to the PNP Administration for which they were responsible. It has been a constant theme of many complaints made against them and their PDM predecessors over the years. With the sweeping electoral majority of the PNP in February 2007, giving it seemingly impregnable control of the country, the need for clear recognition and observance of such a Code became even more necessary.

2.16 As Cabinet papers, Minutes and other public and private documents in evidence before the Commission show, there have been frequent actual or potential conflicts of interest in the public life of the Territory in various contexts. Many individual and collective examples are discussed in Chapter 4 of this Report. They include failures by Cabinet

⁹² Transcript, Day 3, pp 5 - 14

⁹³ Transcript, Day 5, p 7

Ministers to declare interests on particular matters coming before Cabinet for decision, for example as to grant or development of Crown Land, making of commercial concessions, grant of franchises of what in practice amount to publicly protected monopolies, the award of public contracts, or with regard to parties who in other ways would benefit from government spending under consideration. There are also a number of examples of Cabinet Ministers, purportedly exercising their own discretionary powers in favour of themselves, members of their families, close friends, the PNP, political supporters or business colleagues.

2.17 In all of those respects, the political domination by the Hon Michael Misick of the PNP, and through it and its financial dealings, over the engine of State and its peoples, has given

special potency to the evil of abuse of conflict of interest in public life. That domination was and is aided by the small size of the electorate, confined as it is to Belongers – less than 7,000 of them being registered to vote in 2007 – out of a total of some 36,000 permanent residents of the Islands. This political dimension is not limited to cash payments and improper favours to potential electors at election time – most egregiously in the last election in February 2007. It includes longer term lures to Belongers that were likely to predispose them to the PNP. These Belongers were encouraged and sometimes prompted, purportedly as part of their empowerment, to profit from that status, not just to acquire a small area of Crown Land at substantial discounts for themselves, but also to acquire it, sometimes in large tracts, for onward sale to overseas developers (flipping), or to front, in whole or in part and sometimes just temporarily, for such developers. They were also provided with non-existent government jobs - popularly known as government ghost workers - for which they received regular wages.

Disclosure of Interests

2.18 The potential for exploitation by Ministers and their fellow Members of the Legislature of conflicts of interest in their public lives was complemented and encouraged by their indifference to their constitutional duty to make full and accurate disclosure of their financial affairs. Such indifference has been evidenced in abundance by: 1) their failure, year on year, to make full and accurate returns to the Registrar of Interests, pursuant to the Registration of Interests Ordinance 1993; 2) the Territory's Chief Auditor's identification of

56

such failure in her TCI Audit Reports for 2005 and 2006,⁹⁴ in each of which she called attention to the fact that the majority of the Legislative Council had failed adequately or at all to disclose their interests to the Registrar; 3) their delays, disregard and, in many cases, obstruction of the Commission in the opportunity it gave them to make good those deficiencies, even when, late in the day, it brought into play its powers under the Commissions of Inquiry Ordinance; and 4) such openly expressed disregard, bordering on disdain, in their evidence to the Commission as to their constitutional obligations of disclosure to which the Registration of Interests Ordinance gave effect.

2.19 The result is that the Commission has had to extract – albeit with difficulty and incompletely - information of hitherto hidden interests and involvement in suspect transactions and relationships. The revelation of many of these interests was the product in large part of the Commission's written investigations over the first five months of its work in and from London. Many more were to emerge in the glare of publicity in its examination of Ministers and others in the oral proceedings in Providenciales.

2.20 In all of this, the Hon Michael Misick set the tone in his late, inadequate and misleading written responses to the Commission's requests for details of his interests, and in his evasive and sometimes truculent and obstructive oral evidence on the point. Effectively, his stance was to dismiss those statutory obligations as of no practical application to elected Members of the House of Assembly because, as he put it, of a cross-party culture to ignore them. There may be some truth in the suggestion that there was a cross-party attitude to that effect. But to call it a culture and - given his position - to do nothing about it amidst the increasing din of public concern over perceived excesses of his Administration, would have caused raised eyebrows in the foc'sle of a pirate sloop, as PG Wodehouse might have

said.⁹⁵ The disclosure obligations have long been a feature of TCI law, starting at least as early as the 1988 Constitution,⁹⁶ and re-enacted in the 2006 Constitution.⁹⁷ They are necessary, familiar and obvious aids to encourage and enforce honesty and openness by those in public office, at which ordinary canons of public behaviour and the shelved Ministerial Code of Conduct were directed.

94 See para 1.38 above

95 Wodehouse, PG (1926), Keeping In With Vosper, London, p 99

96 s 87(1); See also ss 25(1)(f) and 26(3)(d)

97 s 98; See also ss 47(1)(f) and (g) and 48(2)(d)

57

2.21 The 2006 Constitution,⁹⁸ like its 1988 predecessor, requires provision to be made for the appointment of a Registrar of Interests, and imposes a duty on all Members of the Legislature, including Ministers, to declare annually to the Registrar their financial interests, including assets, income and liabilities and those of such persons connected with them as might be prescribed. The Registration of Interests Ordinance 1993 spans both Constitutions in prescribing by way of a Schedule the form of the annual declaration and the interests to be declared to the Registrar. The form of the annual declaration could not have been plainer. It requires the declarant to disclose in respect of himself, his spouse or any child:

- 1) Directorships - the names of companies in which any of them held a remunerated directorship;
- 2) Employment or office – the details of any remunerated employment or office;
- 3) Trades or professions etc. - details of any remunerated trade, profession or vocation practised;
- 4) Financial sponsorships, gifts etc - including any material [i.e. \$10,000 or more] benefits received as a candidate or member of the Legislature;
- 5) Overseas visits - including details of every visit relating to ... membership of the Legislative Council[/Cabinet] undertaken ... the cost of which has not been wholly borne by the declarant, his spouse or child or by public funds;
- 6) Land and Property - including the location or description of any land or property from which the declarant or his spouse or any child derive an income in excess of \$10,000, or which constitutes an asset worth \$10,000 or more whether by way of rental or otherwise;
- 7) Declarable shareholdings ... in companies or bodies – of the declarant, his spouse or any child (i.e. a beneficial interest in shareholding of a value exceeding \$10,000);
- 8) Liabilities – including the names of any creditor to whom the declarant, his spouse or any child is indebted to an amount exceeding \$10,000.

98 s 98

58

2.22 It was and is the Registrar's duty to ensure completeness and accuracy of the Register by examination of each declaration, and if necessary by questioning the declarant. He is also bound to make the Register available for inspection by members of the public at any sitting of the Legislature. Failure by a Member of the Legislature to make a timely, full and accurate declaration requires the Registrar to report the failure to the Legislature, a Select Committee of which may fine the Member up to \$5,000 or suspend him or her from sitting or voting.

2.23 I decided to request all Members of the Legislature over the last ten years, who were still alive and could be traced, voluntarily to provide me with copies of their declarations over the period, and from those still in the Legislature, a fresh declaration upon receipt of the request. In making those requests, I had in mind the power of the Commission to require such information, pursuant to the provisions of the Commissions of Inquiry Ordinance.⁹⁹ However, it proved extremely difficult to obtain from any public source the identity or address of the Registrar and the addresses or telephone numbers of many of those to whom the Commission wished to write, especially previous Members of the Legislature who had held office before 2003.

2.24 From about mid-August 2008 the Commission Secretary sent to present and past Members of the Legislative Council and/or the House of Assembly a letter in the following terms:

... [the Commissioner] has instructed me to write requesting you voluntarily to inform and provide him with copies of the following information:

1) the date and content of each Declaration of Interests made by you at any time during your tenure as a Member of the Legislature of the Turks and Caicos Islands to the Registrar of Interests, pursuant to your obligation to make such Declarations under section 98 of the Constitution Order 2006 and/or its statutory predecessor and/or any law made under either instrument;

2) whether or not you have made any such Declarations, the information and documents that you would now provide in such a Declaration of Interests if made pursuant to section 98(3) and/or of any law made under it;

3) if, in any 12 month period during your period of appointment as an elected Member of the Legislature, you have not complied with your obligation to make such Declaration pursuant to that provision, or its statutory predecessor and/or of any law made under either instrument:

99 ss 4(1)(d),(f), (k) and (2); See Appendix 4(iii) to this Report.

59

a) why you did not do so; and

b) what, if any, sanction, admonition or direction resulted. ...

2.25 At the same time the Commission attempted to find and seek the assistance of the Registrar, with a view to examining the declarations made to him over the years and the Register in which he had recorded their details. It proved very difficult to identify him, never mind locate him. Nobody in the TCI seemed to know who he was or where he lived or

worked, or otherwise how he could be contacted. Ruth Blackman, the Clerk to the House of Assembly and other public officials were seemingly unable to help – even the Governor's Office could not immediately assist. Eventually, the Commission learned that the Deputy Governor, the Hon Mahala Wynns, knew his name - Alfred Been, a retired schoolmaster - and his telephone number, but not his address. Following a telephone call, contact was established and arrangements made for a member of the Governor's staff to collect from the living room in his home a heap, as he put it, of declarations and the Register in various forms.

2.26 These documents could not be examined by the Commission until late October, when its Solicitor, accompanied by the Commission Secretary made a visit to the Territory for the purpose. Some of the declarations of interest, including those of the Hon Michael Misick, went back to the early and mid 1990s. The returns from 2000 to 2007, which were not all complete, were filed year by year in separate envelopes. For each of the years 2004 to 2006 there was a bound Register containing typed entries taken from the declarations. The entries for 2007 were recorded in manuscript in an exercise book.

2.27 I have referred to delays, evasion and obstruction by Ministers and others in their responses or lack of response to the Commission's requests and then to summonses for information as to their financial interests. I shall refer to that conduct again in more detail when dealing with individual Ministers and other Members of the House of Assembly.¹⁰⁰ Counsel to the Commission – echoing the Territory's Chief Auditor in her 2005 and 2006 Reports, rightly summarised it all as a picture of wholesale and widespread disregard for the requirements of the law. He referred, in particular, to the requirement of disclosure of Financial Sponsorships, Gifts etc. None of the Ministers or other elected Members of the House of Assembly ever properly completed that section of the declaration form. Each of

100 Ch 4

60

them who gave oral evidence to the Commission admitted that and other deficiencies in their returns. Some, in particular the Hon Michael Misick and the Hon Floyd Hall, did so because they regarded their statutory obligations under the Ordinance as of no importance at all. Others, such as the Hon McAllister Hanchell and the Hon Jeffrey Hall, attributed the omissions to simple error.

2.28 The Hon Michael Misick, in answer to a general question from Counsel to the Commission about the inadequacy of his returns, explained:

... this has to be put in its right perspective. ... in relation to the Register of Interests, and there is no excuse for it, there were members as a matter of fact that never even declared an interest at all. it has been a cross-party culture to report in the manner in which I did. Particularly in relation to gifts and party political donations, there has been no one who has ever declared, probably with the exception of one new member who probably declared a small amount and this is primarily because, particularly the small nature of our Territory, persons giving political contribution would have preferred to be not named.¹⁰¹

... there has been a cross-party culture not to – to enter these as correct as possible based on your recollection and in many cases there were members and members of the opposition

who were then in government from 1995 to 2003, who never declared their interests at all. ... So notwithstanding the fact that it is a legal obligation, ministers as a whole were quite prepared to adopt a lax approach to it. ... I have always declared interest based on my knowledge in terms of the cross-party culture. It is what it is.¹⁰²

2.29 The Hon Floyd Hall, who had made fuller, but still far from complete, declarations of interest, said that he too had not declared financial sponsorships or gifts, adding:¹⁰³

... No one filled out that section. I guess it was a case of group thinking, in my respect and that section was not filled out. ... it was not filled out because nobody else seemed to have been doing it and there were no penalties being enforced as a result of it. So it was a group think situation I think amongst all of us and resulted in my not filling out that section. In hindsight I do believe that it was inappropriate to do that.

That evidence of the Hon Floyd Hall, when confronted with the inadequacy of his declarations, is to be compared with his written evidence to the UK Foreign Affairs Committee a year or so before, in which he had asserted, without qualification, Ministers do regularly and routinely declare their interests. In a further passage in that evidence to the

101 Transcript, Day 1, pp 47 - 48

102 *ibid*, pp 51 - 52

103 Transcript, Day 5, p 7

61

Committee, he had shown that he was well aware of what had been required of him and of his ministerial colleagues:¹⁰⁴

The government fully subscribed to good government principles. We are ... committed to proper functioning of committees of the House of Assembly. As part of our legitimate agenda since the [2007 UK National Audit Office] Report was published, we have taken steps to ensure disclosure of interest by public officials, including members of the House of Assembly. In this regard you would be pleased to note that we are in the process of piloting an Integrity in Public Office Ordinance through the House of Assembly....

2.30 The Hon McAllister Hanchell, whose disclosure was, and remains deficient, maintained in his oral evidence that he had completed his declarations over the years to the best of his ability based on his interpretation at the time of what was required. He acknowledged that, in the glare of the spotlight thrown on the matter by the Commission's Inquiry, he had erred, in particular in his routine failure to account for any financial gifts or sponsorship.¹⁰⁵

2.31 The Hon Jeffrey Hall, Minister of Communications and Works, whose returns were among the worst examined by the Commission, adopted a similar stance. He did not pray in aid any cross-party culture or group thinking excuses; he simply said in relation to each deficiency put to him that it was an error or carelessness on his part.

2.32 It may assist, before I leave the generality of this topic, to set out what the Commission was asking for by way of disclosure from the Ministers. Following, and in reply to, the disappointing responses from Ministers to the Commission's initial letter, to which I have

referred, 106 sent to all Members of the House of Assembly in mid August, the Commission wrote second letters, explaining what it sought by way of disclosure. Here is a specimen of the information sought in those letters, provision of which should have been within the understanding and capacity of any reasonably diligent public servant:

Any and all payments, emoluments, salaries, wages, commissions, honoraria and benefits in money or in kind, or entitlements to such, from all sources, received since coming to office as a Member, whether or not associated with your role as a Member or Minister, and those received by your spouse and any child.

Any sponsorship, presents, gifts, services, commissions or payments, including travel, accommodation, food, drink, clothing, holidays, entertainment and

104 op cit 54, Ev 351

105 Transcript, Day 7, p 79 and pp 86 - 94

106 See paras 1.53 – 1.71 above

62

hospitality provided to you, your spouse, family or friends during your office as a Member of more than nominal value (i.e. over \$100) whether or not explicitly related to your position as a Member or Minister.

All land and property owned by or held on your behalf, your spouse or any child, whether freehold, or leasehold, or any entitlement to the same, anywhere in the world. This to include details of the location, valuation on purchase and now, its state of development, stamp duty paid, any planning permission sought or granted and the identity of any agent acting on your behalf in relation to it.

All bank accounts held in the TCI or elsewhere, by you, your spouse and any child, or held on your or their behalf in trust.

All personal and corporate credit cards held by you, whether in sole or joint names.

All shareholdings, debentures or commercial interests in any company, partnership or firm, and any contracts entered into whether in your own name or that of an intermediary, including options to purchase, franchises, licences, or contracts with any bodies corporate.

Any directorships or positions of authority, whether remunerated or not, in relation to any commercial enterprise.

All liabilities in excess of \$10,000 in money or money's worth including mortgages, loans, debts, guarantees, indemnities or warranties given.

2.33 The clear and undisputed picture is thus of acknowledged widespread failure on the part of Ministers and other Members of the Legislature over many years to comply with their constitutional obligation to provide full and accurate declarations of their financial interests. Whatever their individual reasons or subsequent rationalisation for their failure, there is no doubt that they ignored - certainly since 2005 - the strictures of the Territory's Chief Auditor in her Audit Reports about it.

Politics and Political Donations

2.34 The all pervading impact of politics on people's lives and livelihoods in the TCI and the seemingly imperceptible line between political payments or donations on the one hand and bribes on the other has become a canker in the economic and social life of the TCI. It takes a number of forms. First there are payments made by potential or well-established developers and other businessmen to PNP funds or to PNP Ministers individually, purportedly as political donations. These are sometimes made direct, but are also often

63

made through and held by a third party, such as an attorney or close business or family associate. Wealthy developers and other businessmen usually made their donations on terms of strict anonymity and with no restrictions as to use, political or otherwise. Why the secrecy? Why no strings attached to its use?

2.35 Mr Norman Saunders Jr, when seeking on the PNP's behalf to persuade the Commission not to hear evidence about such donors - or not to do so in public - could not have answered the first of those questions more plainly. They were afraid that it would become common knowledge that they had been donating large sums to one party or to individual members of that party while in power, lest it damage their access to and possibility of influencing their political opponents if and when they came to office:107

... donors to a party are ... highly sensitive about the disclosure of information. The fact that the details of donations are going to be made public to this Inquiry is going to send a shivering effect down the spines of the donors ... There is an environment that – there is a feeling that if you donate and you are a strong supporter of a particular party, whether or not that is actually real or imaginary, if you are a strong supporter of a particular party and you are engaged in business that with the flows and ebbs of political fortune, when the party you strongly support is in opposition, that very few of your calls will be answered, very few of your applications will be considered. there is that perception and donors do not like their information to be made public. ...

and108

... The problem and concern is that public discussion about the identity of the donors or even one or two donors and even if those donors are somehow involved with criminality or conduct that is inappropriate, that even in those instances public discussion about those donors will irreparably damage the ability of the party in the future – the ability for party in the future to raise money, to collect money, which is absolutely essential for its function. That is the major concern that the party has: that future donors to be petrified about donating to the party.

Q Why should they be petrified if their intentions are good and in the public interest? What have they got to be frightened of?

A They are afraid of their details being made public ... when there is a change in political parties, they fear that their applications, their telephone calls, their proposals may go unheard. ...

2.36 As to my second question - Why no strings attached? – it applied, not only to payments made by developers and the like, but also to payments made by the PNP to each of its candidates, known as “Candidate’s Stipend”. Such payments were for them to spend as they wished and without any requirement to account for its use for political purposes. The answers are found, first, by examining, as the Commission has done, a large number of relationships between, on the one hand, PNP Ministers and, on the other, developers and others, and transactions-in-the-making about the time the donations were made. Chapter 4 of this Report contains a number of clearly evidenced instances of very large payments, direct or indirect, to, in particular, the Hon Michael Misick, the Hon Floyd Hall, the Hon McAllister Hanchell and the Hon Jeffrey Hall, whose Ministerial portfolio included responsibility for the award of public works and other government contracts.

2.37 It looks from the evidence before the Commission that donors did not care how their political recipients spent the money, as long as they stayed in power or had the prospect of it and remained amenable to their commercial proposals. The Party had no system – the Hon Floyd Hall, its Treasurer and a certified public accountant, seemed oblivious to the need for - requiring individual recipients, whether of sums direct from donors or from the Party to account for their use of such monies. Most of the donations or payments appear to have been at the disposal of individual Ministers to spend on what they liked, free from any requirement to account for their expenditure. The following extracts from oral evidence of the Hon Michael Misick, the Hon Floyd Hall and the Hon McAllister Hanchell, in examination by Senior Counsel to the Commission give a flavour of what was going on. First, the Hon Michael Misick: 109

Q ... On 3rd November 2006 ... [y]ou got a donation, so you tell us, of \$100,000 from Caicos Construction Management and Development Limited. What was that for?

A It was a political donation for me. ...

Q ... what is the purpose of a political donation?

A The purpose of a political donation in the Turks & Caicos might be different from the purpose of a political donation in the UK, so you have to put in those two different perspectives. The purpose of a political donation in the Turks & Caicos is to assist the person receiving it with his or her political ambitions but

also in most cases when donations are given to individuals, it is to use your discretion, because you use your personal money to advance your political ambition, and so donations is sort of help to supplement that.

Q What is political about that, Mr Misick? What is in the least bit political about that? Here is some money to use for yourself. That is not a political donation. It is a gift possibly.

A You are obviously not a Caribbean politician.

Q ... I am still waiting to hear from a Caribbean politician, with respect sir, what it is about \$100,000 from a construction company that has a political angle to it when it is put into his wife's company so she can go and spend it in the USA. Explain it to me again please.

A I have explained it to you, to the best of my knowledge. And I stand by my explanation.

Q [Commissioner] ... Why did this company pay this money to you? Why?

A The company, as I explained, paid this money to me as a political contribution to me for the political donation/gift.

Q [Commissioner] But why should they do that?

A This was months before the February 2007 election. Certainly in the Turks & Caicos a number of political contributions are given sometimes to a party, political contributions/gifts to parties and to individuals. There is no campaign finance laws that regulate strictly how that is spent. So when you get a campaign contribution, just like how you spend the contribution that you get on yourself. It is all intertwined. ...

2.38 The Hon Floyd Hall, when asked, by reference to his credit card expenditure, whether he could account for his use of political payments made to him personally, said:110

To some degree but not any degree of specificity ... this is the area where it could get a bit muddy in the sense that ... in my case, I have been using personal funds for political endeavours as well, including loan proceeds to enforce my political endeavours throughout the Turks & Caicos Islands. So it is quite conceivable that some of those political [sic] would end up being con-mingled at the end of the day when it reached my bank account or my credit card. ...

Q ... Did you not regard it as being slightly messy that there would be con-mingling of personal funds and political funds when it would be a relatively simple exercise to separate and account for those to avoid the possibility of interpretation later on?

110 Transcript, Day 5, pp 22 - 24

66

A ...you have to appreciate ... that here in the Turks & Caicos Islands, we don't have any campaign finance laws. So I didn't feel it an obligation to treat the procedure or the disbursements and the income of those funds in the fashion ... you have just described. ...

2.39 The Hon McAllister Hanchell had the same difficulty when asked by Counsel to the Commission to account for his expenditure of a large sum of money given to him, which he claimed to have spent on a series of election parties at about the time of the February 2007 election.

2.40 There was also movement of political donations the other way, from PNP politicians at or about election time to their voters, in some cases, given the small constituencies and the

limitation of the franchise to Belongers, to relatively few of them. As Counsel to the Commission observed in his closing submission,¹¹¹ the remarkable aspect of such funding was the sheer volume of money washing through the system, with an electorate of just under 7,000 spread across 15 constituencies. From the PNP papers before the Commission alone, it can be seen that in the six months spanning the February 2007 election a figure approaching \$4 million went in and out of the PNP Party's main bank account.

2.41 There was much other evidence before the Commission of wide-spread largesse by Ministers and the PNP party machine amongst their constituents before the February 2007 elections. Ms McCoy-Misick gave a first-hand account¹¹² of his apparent personal generosity in the form of substantial cash handouts to those whom he saw as potential supporters on his election visits. The Hon Floyd Hall spoke of a large number of round-sum payments spent by him, including \$5,000 at Royal Jewels in August 2007, which he said he had used for the purchase of presents for mothers in his constituency in celebration of Mothers' Day.¹¹³ He added that he had spent about \$15,000 each year on Mothers' Day presents for about 200 mothers in his constituency.

2.42 It is true, as the Hon Michael Misick and other Ministers reminded the Commission, that the TCI has no statutory provisions specifically restricting the amount or use of election campaign finance expenditure. However, sections 68 and 69 of the Elections Ordinance, reproducing or replacing the common law, make it an offence to engage in corrupt election

111 Transcript, Day 22, p 44

112 Transcript, Day 14, p 106

113 Transcript, Day 15, p 194

67

practices of bribery and treating, whether before, during or after an election, by seeking to influence or persuade a person to vote or to refrain from voting by the offer or giving of a reward of any sort.

2.43 In summary, the PNP political presence and machinery appear to have been a well-used channel for the passing of considerable sums of money one way or the other, and with no accountability at all on the part of the Party or its Ministerial Members and others as to what they did with it – an all too easy mechanism for corruption by those minded to take advantage of it.

Belongership

2.44 Put at its broadest, Belongership in the TCI stems from birth there and/or by descent from a Belonger or a spouse of a Belonger of five years standing, or exceptionally where the Governor, acting on the advice of the Cabinet, considers that a person has made an outstanding contribution to the economic and social development of the Islands.¹¹⁴ Belongers, by right of that status, have two main privileges in the TCI that are not enjoyed by those with a right of permanent residence or other less permanent entitlement to remain. They are the only ones with a right to vote, and they are only ones to whom, as a matter of policy, Crown Land may be disposed, either in their own right or as the majority shareholder in a corporate purchaser, and at a substantial discount. They also benefit from a policy of

empowerment espoused by both main political parties. One of its avowed aims is to enable every TCI Belonger to buy a small plot of land for himself and his family.

2.45 There is no legal restriction, however, on the number of plots each Belonger may acquire, and the same privileges are accorded to prominent and wealthy persons, including developers and others who have been accorded Belongership on exceptional grounds. Nor is there any restriction in practice on a Belonger immediately flipping, that is, quickly selling on to a developer a parcel of Crown Land granted to him, or from fronting for a developer in the transaction, so as, in either transaction, to enable the developer to acquire the land at a substantially discounted price. Sometimes, Belongers flip in unison with other Belongers to

114 Immigration Ordinance, s 3

68

the same developer, thereby enabling him to acquire a large acreage of land on advantageous terms. Sometimes, it appears, the flipping Belongers are only informed by government authorities shortly before or afterwards. In that event they are to be or have been used as intermediaries in this way - possibly or possibly not - with a small profit for themselves.

2.46 Such transactions can be initiated at Ministerial level and their product approved in Cabinet in the form of grants of large areas of land to developers coupled with conditional development approval. The Commission's examination of Executive Council and Cabinet minutes over the last decade revealed an increasing pattern of such proposals put by one or other Minister before the Governor in Council or Cabinet for urgent decision, often with no Cabinet paper and with minimal information. If the Council or Cabinet, with the agreement of the Governor, approved such a proposal, it was often, as the Minutes record, for rapid communication to the developer concerned.

2.47 In many such cases, the claimed justification for such urgency was the need, in a highly competitive international market for tourists and tourist development, to secure the investment in the interest of the people of the Islands. That was certainly how such proposals were often put to the Governor in Cabinet – speed was of the essence or the developer would go elsewhere. That was also the justification given to the Commission by a number of PNP Ministers and others for such high level proposals and the developments to which they led.

2.48 On the other hand, there are indications, increasing in frequency and scale during the PNP Administration, of other possible motives as well. There is information before the Commission of transactions in which the Minister concerned has, with the approval of the Cabinet, secured for a developer a lower price than that advised by the Government Chief Valuation Officer or other exceptionally favourable terms, including relaxation of development conditions and/or intervention in his favour in the planning permission process and/or a substantial reduction in duties to be paid. As Chapter 4 of this Report demonstrates, such favourable treatment might have been part of an agreement or understanding for the Minister and/or others close to him - perhaps a relative or a complicit Belonger-intermediary, perhaps a lawyer acting for both sides - to be rewarded with a

69

substantial cash payment or other favour. If a payment, it might have been represented as a loan with no formal agreement or provision for repayment or for payment of interest. Or it might have taken the form of a finder facilitation fee, or realtor's commission, or share of the equity in the development when built, or a condominium. Or it could have been a favour, say by way of arrangement of a well-paid employment or allotment of a share in a corporate interest or other benefit to a member of the Minister's family.

2.49 Thus, the laudable and much vaunted Policy of Empowerment of Belongers may have had uglier manifestations in its application. It may, in some instances, represent an un-earned benefit or privilege – even an informal prospective interest in Crown Land, by virtue only of that status and regardless of any personal need for land. It may include already affluent newly minted developer/Belongers as one media commentator has recently put it.¹¹⁵ Any such misuse of the Policy suggests the possibility of abuse by Ministers and others of their public office for the purpose of corrupt reward.

Constitutional Watch Dogs

Chief Auditors' Reports

2.50 Of the two species of constitutional watch dogs, the Government Chief Auditors and Parliamentary Oversight Committees, the former barked, loudly and repeatedly, the latter barely showed any signs of life. I have referred briefly in Chapter 1 of this Report¹¹⁶ to the comprehensive and penetrating reports of Cynthia Travis, the Chief Auditor from 2005 and 2006, in which she identified many recurring issues of serious concern, including growing budget deficits for want of proper control of expenditure. The difference between actual and budgeted figures for receipts from Crown Land sales was a major mismatch between estimated and actual figures in the 2005-06 Budget, but it was not the only one. The many others no doubt contributed to the Chief Auditor's conclusion that the budget process was ineffective and that there was a lack of fiscal openness.¹¹⁷ As she reported elsewhere, there has been throughout successive governments an excess of expenditure over that

¹¹⁵ Equitable Empowerment, TCI Journal 26th February 2009; Unearned Privilege 6 March 2009 TCI Journal

¹¹⁶ See para 1.40.

¹¹⁷ Audit Report on the Financial Statements of the Government of the Turks and Caicos Islands for the year ended 31 March 2006, p 22

70

appropriated. In the financial year ending in March 2006, the actual expenditure exceeded the budgeted, or approved, expenditure by 15.9%.¹¹⁸

2.51 This is not a new problem in TCI. Nor is it unimportant. As the UK National Audit Office recognised, in their 1995 Report, Contingent Liabilities in the Dependent Territories,¹¹⁹ realistic estimates of revenue, expenditure and borrowing requirements or increases in reserves are a key element of any government's financial planning. The UK National Audit Office found that lack of commitment from the TCI Government to firm budgetary management and public sector reform had resulted in continuing budgetary difficulties.¹²⁰ More recently, in their 2007 Report, they recorded that expenditure was consistently and

repeatedly being incurred in excess of annual budgets, across most government departments and without prior statutory authorisation, and that financial controls designed to prevent this were routinely overridden.¹²¹ Astonishingly, as one Acting Permanent Secretary told the TCI Public Expenditure Committee: ¹²²

You must realise that the Ministry can budget but it is still left to the Ministry of Finance to give us what we budgeted for. In many cases our budgets are slashed and we operate knowing that we are going to go over budget and the Ministry of Finance knows this also. That's the position we are put in as we have no control over the final figures.

Parliamentary Oversight Committees

2.52 The 2006 Constitution provides in a largely permissive way for the appointment of Standing Committees of the House of Assembly to monitor the way in which government conducts its business. For some years there have been three such bodies, the Public Accounts, Expenditure and Administration Committees. However, the Constitution leaves much to the initiative of the House itself to determine by Standing Orders how they should be composed, and how they should conduct their business. A political party with a clear majority in the House is thus able, through the medium of Standing Orders, to neutralise the work of such Committees in monitoring the conduct of the Government. This has certainly been the case since at least 2003, while the PNP has been in control. There is thus no

118 *ibid* page 38

119 UK National Audit Office (1997), *Contingent Liabilities the Dependant Territories*, HC 13 1997 - 1998, page 29

120 *ibid*, page 47

121 *op cit* 42

122 Public Expenditure Committee Minutes, 10 February 2004

71

effective constitutional underpinning of the public safeguards that such Committees should provide – a serious weakness given the chaotic state of the Government's long-standing financial management and control of public finances repeatedly identified in national and other audit accounts to which I have referred. In short, there has been no parliamentary oversight of any significance; and the power of the PNP has been largely unchecked, given its overwhelming and, until recently loyal, parliamentary majority.

2.53 Such machinery as the 2006 Constitution¹²³ requires is the establishment by the Legislature of at least two Standing Committees of the House, each with responsibility for monitoring the conduct of the business or a ministerial department or departments. In addition, it empowers the House, with the approval of the Governor, to make Standing Orders, which may provide for the establishment of additional Standing Committees of the House.¹²⁴ Each Standing Committee is to consist of Members who are not Ministers and to correspond proportionately, so far as possible, to numerical strengths of political representation in the House. At least one of the Committees must be presided over by an opposition Member. Under the Constitution, the Committees may, but are not required, to

summon Ministers or any public officer for examination and provide information about their departmental responsibilities. They may, but again are not required to, report on their work to the House of Assembly. If a Committee does report, the House is required to publish their reports, but not within any specified time-scale.

2.54 As in the case of other institutions of public governance and administration in the TCI, the Commission has had great difficulty in extracting from those who should be most familiar with the system, what, if any, effective machinery these constitutional provisions have provided for public oversight of government conduct. Standing Orders of the House,¹²⁵ which have been amended from time to time, provide for Standing Committees to be re-appointed at the commencement of each Parliamentary Session. Under the Orders, the Expenditure and Administration Committees are required to meet at least once per month in

123 as in the 1998 Constitution

124 ss 60 and 61

125 See Legislative Council (Powers and Privileges) Ordinance, Rev Ed 1998, consolidating Standing Orders of the Legislative Council 1990 as amended by legal notices September 2003 and December 2004.

72

every Session, and all three Committees are required to report to the Legislature at least once in every session.¹²⁶

2.55 From information obtained by the Commission, albeit with considerable difficulty, it looks as if all three Standing Committees met infrequently. Sometimes they could not meet because they were inquorate due to non-attendance of PNP Members. For example, four – possibly five – meetings of the Public Accounts Committee scheduled in the first quarter of 2008 were cancelled for want of a quorum; I believe that it only met twice in the whole of 2008. Although all three Committees are required by Standing Orders to report upon their activities to the House of Assembly, and the House was required to publish their Reports,¹²⁷ compliance with both requirements has been distinctly patchy. Unless reports are presented to the Legislature and tabled, the exercise is pointless. Even when Committee Reports were tabled before the House, Ministers often did not make themselves available to answer questions arising from them, and, on occasion, have refused to answer questions.¹²⁸

2.56 Even in less troubled times for the governance of the TCI, these Committees do not appear to have met regularly or reported to the House promptly, or at all. Since the early nineties, and throughout, there has been concern about their ineffectiveness. In 1993 a consultant engaged by the Foreign & Commonwealth Office identified a number of areas of concern, such as widespread laxity in adopting financial procedures and a failure to administer government finances with due respect for the law and legislature.¹²⁹ Thereafter eight technical officers were appointed to senior financial posts in the TCI to encourage improvements in financial control and reporting, and separate arrangements were made for training finance and audit staff.

2.57 But there was little change for the better. The UK National Audit Office expressed concern in 2005.¹³⁰ These concerns include Committee hearings being held in private, failure to achieve quora, especially in sensitive areas where back-benchers wished to avoid

an appearance of disloyalty, perceived politicisation because the Chairman in the case of two of the Committees is the leader or a member of the Opposition, and a lack of experience and

126 2006 Constitution, s 37 and Standing Orders 57.3.1 and 57.3.2

127 s 61(5)(c) and (6)

128 op cit 54 Ev 336, para 5.4

129 TCI National Audit Office (1997), TCI National Audit Report, p 30

130 ibid, p 32

73

expertise in scrutinising accounts. All of those deficiencies, as I have said, continued until any possibility of Standing Committee scrutiny of the Government was completely denied to the people of the TCI when, at the end of 2008, at the Hon Michael Misick's instigation, the House of Assembly was prorogued for over three months. None of the Committees had in fact sat or reported since the House of Assembly had been previously prorogued at the end of July 2008. They had been briefly re-established in mid December 2008 in the dying moments of the Misick Administration, just before the House was again prorogued. When Parliament re-opened on 14 April 2009 under the stewardship of the Hon Galmo Williams as the Premier, he expressed himself unready to consider the establishment and composition for the Session of any of the Standing Committees. A further month passed before, on 15th May 2009, he announced in the House of Assembly that they had then been established.

2.58 The Public Accounts Committee - This Committee's statutory role is to examine accounts showing the appropriation of the sums granted by the Legislature to meet public expenditure and such other accounts laid before the Legislature as the Committee may think fit.¹³¹ It must consist of the Leader of the Opposition as Chairman and five other members of the Legislature and be established at the commencement of each parliamentary session. For a number of years the Hon Floyd Seymour, as leader of the PDM, has been the Chairman. Its role was two-fold. First, it was to examine the financial performance of the Government, in the main by examination of its annual financial statements laid before the Legislature and by questioning those responsible for them. Secondly, it was to report on its work to the Legislature, making recommendations where necessary for improvement. It thus formed a vital part of the financial accountability mechanism of the Government, as Cynthia Travis, when Chief Auditor, observed in her annual Audit Reports to the Legislature for 2004-2006. Yet, as she reported in the second of those Reports, submitted to the Legislature in November 2007, there was a huge back-log, going back to 2003-2004, of annual financial statements and audit reports that the Committee had not examined, and it had not submitted any reports to the legislature for a number of years.

2.59 The Committee appears to have met twice in December 2007. Perhaps stung by the Chief Auditor's criticisms, one of the meetings was to consider the Government's Financial

131 Standing Order 4

74

Statements for 2005-2006.¹³² However, it did not produce a report to the House on those accounts - this time seemingly for want of a Chief Auditor in post with whom it could confer, and it has not done so since. Secondly, it met to discuss the Tourist Board's accounts for 2005-2006, a matter that I mention only by way of example because the Commission has seen a transcript of the proceedings, chaired by the Hon Floyd Seymour. The transcript indicates an appropriately vigorous and thorough examination of the Director of the Tourist Board, Mr Lindsey Musgrove and its accountant, Mrs Pauline Saunders, revealing a very unsatisfactory picture of the Board's system, or lack of it, of financial management and control. Yet the Committee does not appear to have reported to the House on the matter; nor, from the Commission's examination of the Hon Wayne Garland, the Chairman of the Board, Mr Musgrove and Mr Ralph Higgs, Director of Tourism (Marketing),¹³³ does the Board appear to have taken any concerted steps to put matters right. As will appear in Chapter 4 in relation to the Hon Michael Misick's dealings with the Tourist Board, which was within his portfolio of ministerial responsibilities, what had passed for the Board's management and control of its financial affairs has deteriorated from bad to chaotic.

2.60 In 2008 the Public Accounts Committee appears to have met only twice, once in late June and once in mid July 2008, but at neither did they consider the Government's Accounts,¹³⁴ whether those for the years 2004 – 2006, or for 2007 (which, seemingly, have yet to be completed and presented to the House). The last scheduled meeting of the Committee, which was for the end of July 2008, like others earlier in the year, was cancelled.

2.61 The Expenditure Committee - This Committee's statutory function is to examine expenditure of sums granted by the Legislature or otherwise allocated to Ministries to meet public expenditure. It consists of six Members of the Legislature, all appointed at the commencement of each Parliamentary Session, and its Chairman is elected by the Committee.¹³⁵ It is required by Standing Orders to meet at least once per month in every Session. The role of the Committee was described by its Chairman, the Hon Wendal Swann, in the course of a meeting on 13th November 2007, as being to review the accounts of Ministries, including the Ministry of Finance. He added that its mandate was to investigate

132 See para 1.38 above

133 Transcripts, Day 19

134 26th June 2008: CARIFTA Games and Fire & Rescue Services; 17th July 2008: Disaster Management

135 Standing Order 57.1

75

and report to the House of Assembly areas for improvement of the management of government expenditure with a view to securing value for money.¹³⁶ It does not appear to have met very often over the last five years. Notwithstanding requests by the Commission to Mrs Ruth Blackman, the Clerk to the House of Assembly and to Mr Dudley Been, now the Acting Clerk, for information on the role and activities of the Committee, and for sight of any of its reports to the House of Assembly, very little has been produced - only the minutes of six meetings over a three year period, three in 2004, two in 2006 and one in 2007.¹³⁷ There is, therefore, no information before the Commission that the Committee has turned its

attention, for example, to the escalating cost of the two new hospitals under construction by Johnston International, or to the disastrously expensive contract entered into with Southern Health Network (SHN) for referral of TC Islanders to overseas health care at favourable rates.

2.62 The Administration Committee - This Committee's statutory function is to monitor the conduct of the business of the Government and to report on the implementation, administration and development of policies of the Government in every Ministry, except for matters referred to the Expenditure Committee.¹³⁸ It is appointed in the same way as the other Committees at the start of each parliamentary session, and consists of eight Members of the Legislature, with a Chairman who must be the Leader of the Opposition or his nominee. The Hon Floyd Seymour was also the Chairman of this Committee. In the course of a meeting of the Committee on 27th March 2008, he described the Committee's mandate as to investigate and monitor the conduct of the Government's business, to review areas of concern and to report on both to the House of Assembly. The response of Mr Dudley Been, to requests from the Commission about the role and work of this Committee was simply to produce four meeting agendas and one set of minutes. Three of the agendas were for 2005, and one was for 2006; the single set of minutes was for a meeting in March 2008. Nothing was produced to the Commission to show any other meeting or activity of this Committee, in particular presentation of reports to the House of Assembly.

2.63 Thus, such protection as the Standing Committees were designed by the Constitution to give the TC Islanders has not been provided for many years. It is an additional affront that

136 Minutes of meeting on 13th November 2007

137 Mr Been is new to his post and is not to be blamed for what has gone before,

138 Standing Order 57.2

76

such records as there are, are unavailable when a public body appointed in their interest comes knocking on the door asking to see them.

2.64 In conclusion on this and the other issues considered in this Chapter, the information before me indicates that those who had responsibility and were best placed to establish and maintain systems to secure good and honest governance for the TCI Islanders, the leaders of the Government and their fellow Members of the Legislature, have fallen far short of their responsibility. They were also best placed to set an example and to prevent or reduce the scope for corruption in public life, simply by: 1) following basic tenets of honesty; 2) avoiding conflicts of interest; 3) observing the law as to declarations of financial interests, and 4) effectively using the constitutional tools provided to secure good governance. The clear signs are that they chose not to do so.

77

3 - CONTEXT FOR POSSIBLE CORRUPTION

Abuse of office and political and electoral process

3.1 Elections in the TCI are governed by the Elections Ordinance 1998, a revision largely reproducing earlier legislation. As emphasised by a number of legal representatives for Ministers at the Commission's oral proceedings, it does not deal with election campaign financing. That is to say, it does not limit or control the sources of funding for or amount of lawful expenses on elections, which it defines in predictable forms,¹³⁹ as long as they are incurred in good faith at or concerning an election.¹⁴⁰ It does, however, in sections 68 and 69 of the Ordinance, make it an offence to bribe or treat voters. Section 68(1), in its definitions of various forms of election bribery, could not be in broader terms. By way of example, I set out the first and most general of the seven forms specified:

(a) every person who, directly or indirectly by himself or by any other person on his behalf, gives, lends, or agrees to give or lend, or offers, promises, or promises to procure, or to endeavour to procure any money or valuable consideration to or for any voter, or to or for any person on behalf of any voter, or to or for any other person in order to induce any voter to vote or refrain from voting, or corruptly does any such act ...on account of any voter having voted or refrained from voting at any election;

Treating is equally broadly defined in section 69:

The following persons shall be deemed guilty of treating ... –

(a) every person who corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly, gives or provides or pays, wholly or in part, the expenses of giving or providing any food, drink, entertainment, or provision to or for any person for the purpose of corruptly influencing that person or any other person, to vote or to refrain from voting at such election, or on account of such person or any other person having voted or refrained from voting at such election;

(b) every voter who corruptly accepts or takes any such food, drink, entertainment or provision.

3.2 The trouble is that there appears to have been a long-standing tradition of wide and open disregard of those provisions, most blatantly in the February 2007 election when vast

139 s 68(1)

140 s 68(2)

78

amounts of money were spent by or on behalf of PNP candidates, in cash, procurement of ghost jobs on the Government payroll and entertainment. There appear to have been little or no official system or resources to monitor or police corrupt conduct on such a scale. Even if there had been, and it had led to prosecution, the maximum penalty would have been modest in financial or custodial terms, \$5,000 or one year's imprisonment or both.

3.3 I have already referred to evidence before the Commission, including that of the Hon Michael Misick, the Hon Floyd Hall and the Hon McAllister Hanchell¹⁴¹ – also to the first-hand evidence of the Hon Michael Misick's wife, Ms McCoy-Misick.¹⁴² She said that she

had been on the campaign trail with him just before the election and that he had been very generous on the campaign. She spoke of him giving a hundred dollar bill here and there when they were campaigning in his home island, North Caicos. She also spoke of organising a carnival for children over Christmas just before the announcement of the election, for which the Government paid, but that when she sought to repeat it the following Christmas, he said that he had only done it before because of the election, and would not do it again.¹⁴³

3.4 Earlier in this Report, I have also touched on the relative smallness of the TCI electorate and of individual electoral constituencies, ranging from 190 to 882.¹⁴⁴ There is a single national electoral register divided into 15 parts corresponding with the 15 electoral districts. A person is entitled to be registered and to vote only in the district in which he normally resides,¹⁴⁵ a test frequently the subject of uncertainty and dispute in the TCI with many instances of people living on more than one island, and constant movement between islands for temporary employment purposes or otherwise. In addition to the widespread allegations of election abuse in the form of largesse to electors, there are also strong indications of rigging of individual electoral district rolls, not just in the February 2007 elections, but also more generally.

3.5 All of these matters have been recently authoritatively and carefully considered by a UK organisation, Electoral Reform International Service (ERIS) in a Report commissioned by Governor Tauwhare, entitled *Turks & Caicos General Elections 9 February 2007 Election*

141 See para 2.40 above

142 See para 2.41 above

143 Transcript, Day 14, pp 106 - 110

144 General Election Returns, February 2007 – 190 Middle Caicos, 882 Blue Hills

145 Elections Ordinance, s 11.2

79

Observation Report (the ERIS Report). The authors of the Report, were, as its title indicates a team of persons who observed the election. Their assessment and recommendations, including early review of the Elections Ordinance, are of a piece with many submissions made to the Commission. An Executive Summary of the Report begins as follows:

... the elections were technically sound, and run in accordance with the applicable law of the islands. However, a number of significant shortcomings were found in the electoral process and in its legal framework, where it did not meet international standards, some of which were exacerbated by the actual Election Law and the new constitution.

3.6 Among the shortcomings identified by ERIS were:

1) suffrage limited to less than half of the adult population of the TCI and the need to consider an enlargement or possible replacement of Belongership with a more inclusive form of citizenship as the basis for entitlement to vote, a suggestion already made by another review body in 2004.¹⁴⁶

2) an imbalance in the number of registered voters between different electoral districts that may affect the quality of the votes cast;¹⁴⁷

3) potential for rigging of electoral constituency rolls, or as ERIS put it, [v]oter registration procedures that undermine the credibility, finality and accuracy of voter registers,¹⁴⁸ including: i) the short deadlines provided by the Ordinance for the preparation of electors' lists and procedures for claims and objection to and publication of the Register of Electors;¹⁴⁹ and ii) uncertainty as to the exact criteria for residency in an electoral district qualifying for inclusion on the district voter register and as to provision of a voter's qualifying address;¹⁵⁰

4) the need to prohibit political parties from placing tents at the entrance to polling stations for the issue to supporters of refreshment (presently left to an instruction by the Governor);

¹⁴⁶ 2004 Immigration Review, See below paras 3.70 – 3.75

¹⁴⁷ Executive Summary, p i

¹⁴⁸ *ibid*, p i, provided for in s 49(1) of the Elections Ordinance

¹⁴⁹ *ibid*, p iii

¹⁵⁰ *ibid*, p iii

80

5) the need to dispense with [s]erially numbered ballots rendering them potentially traceable, compromising secrecy and confidence of the vote; and

6) [t]he legal exclusion of domestic and international observers from polling stations.¹⁵¹

3.7 The main concern of ERIS was lack of legislative provision for campaign financing and the potential for bribery and other electoral malpractices in the present system.

The biggest concern during the process of campaigning was the insufficient legislation dealing with campaign financing. Currently there is no requirement to publish campaign accounts, nor is there any limit on spending imposed. This can be considered a serious breach of good practice, and is not in line with UK or international standards, which impose strict rulings on campaign finance to guard against bribery and corruption. Furthermore, no safe-guards exist to prevent use of Government resources as part of an election campaign, which gives the incumbent party an unfair advantage over Opposition parties.

Whilst it is accepted that political parties and candidates cannot conduct campaigns without funds, and it is internationally accepted that donations are a legitimate source of campaign funding, there is a risk that such finance may come with strings attached to the candidate or the donor. In order to prevent legitimate campaign funding transgressing the line and becoming a non-legitimate method of influence, legal safeguards must exist. Although the TCI Elections Ordinance has specific rulings and definitions on what constitutes corruption and bribery, there seems to be no way to enforce or audit campaign expenditure, specifically to protect against bribery or treating. The high levels of campaign spending, and the advantage that a more wealthy party has over their opposition are apparent and of concern.

It is questionable whether the current legislation in the TCI meets the requirements as set out in the UN Human Rights Convention, general comment number 25 which states:

'Reasonable limitations of campaign expenditure may be justified when this is necessary to ensure free choice of voters is not undermined or the democratic process distorted by the disproportionate expenditure on behalf of any candidate or party.'¹⁵²

3.8 ERIS accordingly recommended legislation to regulate party campaign finance, either by prohibiting the use of public funds and resources for election campaigning or to make them equally available to all candidates.¹⁵³ They also recommended legislation to require political

¹⁵¹ *ibid*, p i; provided for in s 49(1) of the Elections Ordinance

¹⁵² *ibid*, pp 10 - 11

¹⁵³ *ibid*, p v

81

parties to publish their income and expenditure on election campaigns.¹⁵⁴ It seems to me, particularly in the light of all that I heard about PNP funding during the oral proceedings,¹⁵⁵ as to its substantial amounts, its diverse and secret sources, and how it was spent, that reform of the law is now necessary. As ERIS reported:¹⁵⁶

There is great scope for change in the Ordinance governing elections. Both to reduce the unnecessary amount of administration and bureaucracy, and also to introduce democratic safeguards, including personal and financial accountability, which will bring the election legislation in line with UK and international standards.

This is, as in other areas of TCI public life, not the first time that such recommendations have been made. On 7th August 2003, a team of UK Election Observers were invited to assess that year's two by-elections. Their report, submitted in October 2003, contained 26 recommendations for electoral law reform, only two of which were acted upon. In this instance, I understand that the delay was attributable to a shortage of draftsmen. However, by the time of the ERIS report, the drafting was reported to be complete. So far as I know, the changes first recommended in 2003, and re-affirmed in 2007 by ERIS, still await implementation.

Crown Land

3.9 To a newcomer to land tenure in the TCI, it is startling to learn that, while Crown Land is the most valuable resource of its people, there is no constitutional or, so far as is relevant to issues thrown up by this Inquiry, other statutory provision defining the incidents of its status or providing any requirements or safeguards as to its management or disposal. The only constitutional provision is in section 94 of the 2006 Constitution, which states that Crown Land may be disposed of by the Governor or any person authorised by him in writing.¹⁵⁷ That provision has proved to be readily susceptible to ministerial abuse, and has failed to provide an effective means of ensuring effective stewardship of the Territory's most valuable resource. Crown Land, as Ian Fuller, the TCI Chief Auditor and author of a Special Report for

¹⁵⁴ *ibid*, p v

155 See para 2.37 above

156 *ibid*, p 17

157 See, in terms of similar generality, clauses 16 to 19 of the Bill presently in draft for the proposed Crown Lands Ordinance, discussed in paras 3.51 - 3.52 below.

82

the TCI Government, entitled *The Administration of Crown Land*, in 2004 (the Fuller Report), put it, is:158

... an extremely valuable but finite public asset. It is also, a crown resource, a resource that properly belongs to the public, and over which government should be exercising a stewardship role. Stewardship implies an appropriate level of transparency of action and accountability to the public. ...

3.10 Such provision as there is for disposal of Crown Land is to be found in the Crown Land Policy. This Policy was originally devised in the 1980s with the aim of empowering Belongers to play an active role in the economic and social development of the Islands. More particularly, its aim was to ensure that all Belongers would have affordable access to Crown Land for their needs, by permitting them to purchase it at a substantial discount from its market valuation. There appear to have been a number of changes in the Policy over the years, some written, some not, some published some not.¹⁵⁹ It has never had any statutory basis, and its legal status is not clear.

3.11 Disposals of Crown Land for residential use were initially in the grant only of the Executive Council by means of a conditional purchase lease for three years. The condition required completion of the proposed home within that period or, if extended by the Council, a further two years, when the lease could be converted into a freehold. The initial rent was to be 10% of the discounted freehold purchase price, and the freehold purchase price was set at only 25% of the market valuation at the time of signing of the lease – thus, an over-all discount of potentially well over 75%. However, a further condition of the lease was that the Belonger could not dispose of the land to a non-Belonger within 10 years without repayment to the Government of the discounted sum.

3.12 Following the PNP's election victory in 2003, the new Administration, with the Hon Michael Misick, as Chief Minister, and the Hon McAllister Hanchell, as Minister for Natural Resources, reaffirmed the Policy. But, as to allocation of Crown Land for residential use, they made changes to give more power to individual Ministers in the process. Allocations and extensions of conditional purchase leases henceforth required approval only by an individual Minister, not the Executive Council, or the Cabinet as it was to become. The

158 Fuller, Ian (2004), *TCI Crown Land – Review of Administration – Interim Report*, Executive Summary, p 1

159 For a discussion of the policies and their various manifestations, See *ibid*, pp 11 – 16.

83

enormous scope for corruption entailed in the assumption by Ministers of such power was immediately recognised and robustly addressed in the Fuller Report.¹⁶⁰

3.13 As to disposal of Crown Land for commercial use, the Policy had been less consistent, save that it too had been intended to empower Belongers who might otherwise be deterred or disabled by the costs of development. The Policy took different and sometimes overlapping forms according to whether the land for disposal was small or large-scale commercial development. The new PNP Administration introduced changes to the Policy in March 2004, shortly after assuming power. In future: 1) grants were to be subject to the approval of the Executive Council; 2) no grant could be made unless a Belonger had a minimum of 51% in the grantee entity; and 3) a Belonger was to pay no more than 50% of the open market value of the land in Providenciales and no more than 25% of the value in the other Islands. Conditions 2) and 3) were to give rise to a new species of empowerment of, or of the possibility of abuse by, Belongers in the form of substantial unearned rewards from flipping and/or fronting and otherwise by virtue only of their status.

3.14 The Policy did not limit the number of leasehold grants of Crown Land per individual Belonger, whether for residential or commercial use. Nor did it identify any social or economic criteria for the grant, for example, equality of opportunity, or any over-all objectives as to what proportion of the population should be afforded such opportunities. Whatever the original well-intended purposes of the Policy, it had not by 2004, and may not yet have – as a generality - resulted in grants of land to TCI Belonger families to meet their own needs. On the contrary, as Fuller noted,¹⁶¹ the Policy made no specific provision for equitable distribution of Crown Land. Many Belongers acquired several plots, some of which they quickly disposed of for profit to others, including foreign developers. And, as he added,¹⁶² whatever the wording of and intentions for the Policy, it was, in any event, overreached by leaving to a single Minister the allocation of residential plots for the grant of conditional purchase leases and to the Executive Council the allocation of commercial leases.

3.15 The evidence before the Commission indicates that such overreaching of the Policy has continued up to and since its appointment. There is much anecdotal information about it in

¹⁶⁰ *ibid*, pp 17 - 20

¹⁶¹ *ibid*, p 4

¹⁶² *ibid*

84

the written submissions I have received of personal interference by the Hon McAllister Hanchell, the Minister of Natural Resources and other Ministers in the allocation of Crown Land and as to related matters, including valuation and planning permission. It was also put beyond doubt by records produced by the Permanent Secretary of the Ministry of Natural Resources in response to a written enquiry from the Commission following oral evidence from the Minister. In his evidence,¹⁶³ he gave an account of the system, which, according to him, was operated by his Department for allocation. He said that there was a review process, operated by a group of staff workers, who considered on a daily basis representations of applicants for the grant of Crown Land. He said that that the group consisted of the Permanent Secretary, the Commissioner of Lands, the Deputy

Commissioner of Lands, the Assistant Commissioner of Lands and, sometimes, also himself. He emphasised that normally he only came into the process very late in the day when decisions as to allocation had been made and letters to successful applicants had been prepared for him to sign. He signed them, he said, mechanically. His evidence was that no minutes were made of such meetings and that the only record of them consisted of the actual recommendations.

3.16 The Commission's written enquiry to the Permanent Secretary about membership of the review group and its meetings as described by the Minister elicited the following written reply from her on 31st January 2009, making plain that there was no such review group and no such process, and attaching documentary examples from the Ministry's records of how allocations were in fact made:

... In regard to Sir Robin's inquiry re the 'review group', no such arrangement exists in the Ministry of Natural Resources.

Since 2006, once Cabinet approves a subdivision, the procedure for allocating land has been handled in one of three ways:

- i. On instructions from the Minister of Natural Resources, Hon McAllister Hanchell, primarily to me, but also to the Commissioner and Deputy Commissioner of Lands, [t]his would either be verbally or in the form of an e-mail – ...
- ii. Instructions and requests from other Ministers of Government and Elected members. This would be either verbally or in writing. This exercise

163 Transcript, Day 9, pp 28 - 32

85

is more prevalent when a subdivision is created in their respective constituencies - ...

- iii. Finally, the Land Commissioners or I would compile names of persons who have continuously called and lodged applications with the Ministry. These names would be given to the Minister for his approval. ..

Pursuant to either one of the above methods, Land Commissioners would draft a provisional letter of offer of a Conditional Purchase Lease for the Minister's signature. It is at this stage that the person preparing the letter would ensure that the applicant is in compliance with the Crown Land Policy or a 'review process' occurs (i.e. age, Belongership, number of parcels currently in possession). This letter primarily commits a particular survey lot to the applicant, but omits specific details of the parcel.

Following the survey, registration and valuation of the subdivision, a final letter of offer ... is issued to the recipient.

Regrettably much of the instructions are informal and not systematically filed. Therefore [sic], requires time to search emails and for staff to search their files. In this regard, the attached instructions by no means represent all subdivisions over the past two years. However, I believe it demonstrates the methods outlined above.

...

3.17 Attached to the Permanent Secretary's letter were, first, several e-mails from the Hon McAllister Hanchell, in his capacity as Minister for Natural Resources, including, by way of example: 1) instructions to her to allocate a large number of lots in West Caicos, in each case identifying the lot number and the person to whom it was to be allotted, including, as it happens, a brother of the Hon Michael Misick, Marvin Misick; 2) advice to her of the grant by Cabinet of 16 lots in another part of West Caicos in an effort early revenue (sic), and asking for the letters for his signature to be ready the following morning. The list included Chal Misick, another brother of the Hon Michael Misick, and Olinia Missick, the Hon Michael Misick's personal assistant.

3.18 Also attached to the Permanent Secretary's letter were: 1) an e-mail in 2007 from the Hon Floyd Hall, instructing her to issue 22 plots of land on West Caicos to five named companies and one individual. The instruction reads Below is the list of Companies with attached shareholders that I would like to have the following parcels on West Caicos issued to; 2) letters in late 2007 and early 2008 from the Hon Lillian Boyce putting forward a number of names of persons for grant of land in Five Cays; 3) letters from the Hon Lillian

86

Boyce listing persons who need relocation from the low land in Five Cays, including her brother, Earlon Robinson; and 4) an e-mail from the Hon Royal Robinson, Member for North Caicos West and now Deputy Premier, listing a number of people who should benefit from ... 12 three acre commercial lots in Kew, North Caicos.

3.19 The final attachment to the Permanent Secretary's letter contained, by way of example, a long list of names submitted by her to the Hon McAllister Hanchell of people who had continually called and lodged applications, accompanied by e-mails from him selecting those to whom land should be granted.

3.20 In short, the information provided by the Hon McAllister Hanchell's Department showed no sign of the departmental review process followed by his mechanistic signing of letters that he had described in his evidence to the Commission.

3.21 Hands-on ministerial involvement with Crown Land extended to its valuation for disposal, of which there are examples in Chapter 4 of this Report. The same is true in the context of planning permission, examples of which are also to be found in Chapter 4.

3.22 Perhaps the nature and dangers of ministerial involvement, as it has been practised in the TCI for the last few years, is best summed up in the following thoughtful and objective observations of Mr Ariel Misick QC in his closing submissions on behalf of the Hon McAllister Hanchell:164

... the allocation of Crown land. This of course is an area in which Mr Hanchell has to accept responsibility because he was the minister of land. Much of the movement in Crown land took place under his watch. I think he ... does accept that ... the whole system for Crown land allocation and disposition is in need of reform. He has also conceded that himself and other ministers have played a direct role in the process of distribution. It is clearly not appropriate for ministers to be involved at that level and they really ought to confine themselves to making policy. ... The last words are my submission, but certainly his stance is

that he accepts that the ... system is in need of reform and he accepts that in an ideal world, ministers ought not to be involved in the allocation and distribution.

...

He seeks to explain it by the fact that there is a tremendous demand on himself, his Cabinet colleagues and other elected members to get involved in the process in that Members are effectively used as messengers between applicants and the

164 Transcript, Day 21, pp 179 -181

87

Permanent Secretary and others who are involved in the administration of Crown land. ... [He says]... that he has never received or asked for any kind of financial reward for his involvement in this process, and his involvement has not been out of any desire to be corrupt or dishonest. ... he ... said ... that the system as it operates leads or may lead to favouritism .. in the allocation.

3.23 Thus, there were and are still a number of well-evidenced and acknowledged flaws in this ill-defined Policy and its application. Also for consideration are the complexity given to the process by the involvement of a multiplicity of Government departments, and the scope for abuse and profiteering at the expense of the public in dissipation of its most priceless asset for inadequate return. There was and still is little effective co-ordination between the various departments responsible for administration of the system and ensuring compliance with the terms of individual grants of Crown Land. This includes, in particular, compliance with eligibility criteria, with conditions of development and of repayment to Government of undeserved discounts where land was not retained and/or not developed by the Belonger.

3.24 It was plain by the time of the Fuller Report in 2004, if not well before, that the administration and allocation of Crown Land should be governed by statute, not policy, and that it should be administered by an independent Crown Land Commission, not Ministers inside or outside of Cabinet.¹⁶⁵ Mr Fuller, in his Report, made many and detailed recommendations to that end, including the removal of Ministers from the process of granting of land for residential use and marginalising their role in the case of grants for commercial purposes. His concern about possible ministerial corruption, both in relation to past possible abuses by Ministers in the Taylor Administration¹⁶⁶ and the future potential for it, was explicit. Among his many recommendations were the following:¹⁶⁷

3.2 Crown land is an immensely valuable public asset; its strategic importance to the economy and stability of the country, and the opportunities for improper advancement that poor or corrupt management offer, mean that its management should be governed by specific legislation (and not often informal policy and regulatory statements).

...

3.12 ... *Specific legislation (as opposed to various statements of uncertain legal standing) is needed concerning land allocation and usage; *Specific regulations should be in place to prevent those with decision-making authority

165 For a powerful critique of the system, See op cit 158, Executive Summary, pp 1 - 10

166 *ibid*, See pp 9, 17 and 18

167 *ibid*, pp 17 - 19

88

being able to benefit directly from their decisions;* Clear accountability is needed through the publication of details of all beneficiaries, and more importantly, of all discounts given, to those allocated such land; * Details must be made available of all transactions involving Ministers, or companies with which Ministers have an involvement, in a publicly available document, and review of such transactions should be undertaken by an independent body such as a sub-committee of the Legislative Council; ...

3.25 Unfortunately, the Fuller Report gave rise to little of practical benefit to the people of the TCI over the next four years. I say that, in the main, because of the continuing vulnerability of the system to Ministerial corruption and other abuses. His recommendation for a formal inquiry into transactions of Crown Land involving Ministers and/or their close family members was ignored by the Hon Michael Misick, then Chief Minister, and his Ministerial colleagues. Indeed, a letter emanating from his Office expressed strong disagreement with many of the Chief Auditor's recommendations, the main burden of his argument being that matters of policy and decision-making should remain with the elected Government rather than be devolved to independent bodies.

3.26 There were also broad concerns expressed in the Fuller Report about the failure of the Crown Land Policy to enable, as originally intended, all Belongers to advance themselves, and of the Government to introduce a properly conceived land use and planning policy, many of which gave rise to similar governmental response.

3.27 However, the Fuller Report was followed by a number of other authoritative Studies and Reports, all in much the same concerned and critical vein, and all meeting with a similar lack of response or disregard from the Misick Administration. The first was an interim comprehensive study on Crown Land Management by Kevin Barthel in association with Terra Institute Ltd, a study sponsored by the TCI Government in 2004-2005, and funded by the UK Department for International Development (DFID). This led in the first instance to an Interim Report published in May 2005 (the 2005 Barthel Report), making a number of recommendations, many of a piece with those contained in the Fuller Report.¹⁶⁸

3.28 The first and principal recommendation of the Barthel Report was for the preparation of a new and modernised Crown Land Policy. Other recommendations of particular relevance to the Commission's Report were for: preventing Belongers illicitly transferring

¹⁶⁸ Terra Institute (2005), *Crown Land Policy and Management for the Turks & Caicos Islands*, pp 6 – 15, paras A 1.7 – 1.32

89

their conditional purchase lease discounts to non-Belongers;¹⁶⁹ limiting empowerment of Belongers by the acquisition of Crown Land to one transaction only;¹⁷⁰ requiring publication of information on Crown Land allocations to make the Policy and process open and accountable;¹⁷¹ replacing the system of regulation by non-statutory policy by enacting Crown Land Legislation and Regulations;¹⁷² preparation of a Crown Land Application,

Allocation and Management Procedures Manual;173 establishment of an effective and responsible Crown Land Department as a statutory body for land administration;174 rationalisation of Crown Land Lease application and approval processes;175 establishment of a Crown Land Advisory Panel to review and advise on allocation approvals and a Crown Lands Appeals Tribunal;176 and creation of readily accessible land information systems.177 The first of those recommendations, prevention of illicit transfer of discounts to non-Belongers, is particularly relevant to the Commission's work. It lies at the heart of most of the possibly corrupt transactions mentioned in Chapter 4 of this Report. Barthel stated:

1.11 ... One of the major concerns of the current Crown Land policy is that discounts given to Belongers on Conditional Purchase Leases for large-scale commercial development are eventually transferred to Non-Belongers. It is clear that under the current policy, no discounts should be given to foreigners as they ... are not eligible to receive Crown Land. The issue is the passing on of these discounts to foreign owners, a practice which is simply prohibited in the former Crown Land Policy and now requires that the Belonger pay the discount back if transfer is made to a non-Belonger. This process can only be prevented with specific legislation, enforcement of the legislation and establishment of a system to monitor the compliance with the legislation.

1.12 Crown Land policy should be revised so that no discounts are given for large scale development on commercial land. All allocations for large-scale commercial development on Crown Land should be done through long-term leases. Previous allocations ... and discounts given ... should be monitored and audited over the years by the Crown Land Unit so as to avoid the transfer of the discount to non-Belongers ("fronting") ...

3.29 In part as a result of the 2005 Barthel Report's recommendations, and possibly also the earlier Fuller Report, the TCI Government, on 2nd November 2005, approved a new Crown

169 *ibid*, pp 7 – 8, para A 1.11

170 *ibid*, p 8, para A 1.13

171 *ibid*, p 9, para A 1.16

172 *ibid*, p 10, paras 1.21 – 1.22

173 *ibid*, p 11. para 1.23

174 *ibid*, p 11, paras 1.24 and 1.25

175 *ibid*, p 13, para 1.28 – 1.29

176 *ibid*, pp 12 – 13, paras 1.26 – 1.27

177 *ibid*, pp 14 – 15, para 1.32

90

Land Policy, setting out 21 key principles and proposals.178 The avowed purpose of the Policy in the first of those statements was that:

TCIG will not actively seek to sell off large areas of Crown Land, but it reserves the right to do so, if deemed necessary. The proceeds of such sales will be paid into the Government Reserves Fund or used directly for a major specific development project.

In fact, as has been well documented and publicly acknowledged, the TCI Government has since become increasingly dependent on the proceeds of large disposals of Crown Land to fund recurrent expenditure, including, most recently, to meet its monthly payroll bill when short of funds.

3.30 In the briefest and somewhat selective outline, the new Policy Statement provided for transfer of Crown Land to Belongers for residential or commercial purposes at market price, subject to non-transferable discounts. This was to apply, initially, to Conditional Purchase Leases for specified periods appropriate to the size and nature of each proposed development. The maximum discount for purchase of residential land was to be 50% of the full open market price, and available only in respect of one property per island and not in respect of any other property on another island at the same time. The maximum discount on Crown Land required for commercial use, which was to be limited to a first purchase only of up to 10 acres, was again 50%, except on Providenciales where it was limited to 25%. And, for large developments, for example, a major tourism project, two or more Belongers were to be permitted to combine their 10 acre entitlements to enable Belonger participation in the project. In the event of the land being sold within five years, the discount would be repayable in full; a sale more than five years after acquisition, but before ten, would require repayment of half the discount. Information on Crown Land allocation was to be published in the Gazette. Crown Land Legislation and Regulations were to be introduced. A Crown Land Department was to be established within the Ministry of Natural Resources, and the system of application for and approval of grants of Crown Land was to be rationalised and based on uniform, rational and objective criteria.

3.31 In mid 2007, the TCI Government requested Terra Institute, comprising a team again led by Kevin Barthel, to assist the Ministry of Natural Resources to implement the new

178 Terra Institute (2008), Final Report - Consultancy for the Implementation of the Turks and Caicos Crown Land Policy, pp 90 – 98, para 1.5

91

Policy. The ensuing work involved the establishment of a Crown Land Management Unit within the Ministry, the preparation of a Crown Land Procedures Manual and of material for a draft Crown Land Ordinance. The TCI Government also embarked on work on the design, development and installation of an integrated management information system, but with another body.

3.32 By February 2008 Terra Institute Ltd produced a Final Report in which it had fashioned its proposals to give effect to the November 2005 Crown Land Policy, The Report, which was described as that of the Consultancy for the Implementation of the Turks and Caicos Crown Land Policy (the 2008 Terra Institute Report), comprised: 1) proposals for establishment of a Crown Lands Department;179 2) a Manual of Crown Land Administration and Management Procedure;180 3) a discussion of Legal Issues Arising from the Crown Land Policy;181 and 4) Drafting Instructions for the Proposed Crown Land Ordinance.182

3.33 The proposed Manual and Drafting Instructions for the Ordinance are of particular importance to the Commission's Report. The Manual sets out the law, policy and procedures for administration and management of Crown Land in the TCI, and is designed to guide, in accordance with the law and the November 2005 Policy, the day-to-day work of the staff of the Crown Lands Department (already established in 2006 as a separate department of the Ministry of Natural Resources). It should be noted that the proposed Ordinance was not intended to replace the Policy, but to give effect to it, proposal 14 providing what the Consultancy described in its Report as:¹⁸³

a central guiding principle for the proposed legislation, namely "to ensure that the current policy of equitable allocation and sustainable use of Crown Land is effective in the long-term, and not easily modified by future Cabinet decisions or future political mandates.

3.34 That proposal, in my view, is questionable, merely framing the Ordinance's provisions around the Crown Land Policy of the day, rather than incorporating into the proposed new Ordinance the essential criteria for administration, management and allocation of Crown Land for disposal, variable only by legislative amendment. Another proposal described as

179 *ibid*, Cap 2

180 *ibid*, Cap 3

181 *ibid*, Cap 4

182 *ibid*

183 *ibid*, Cap 5, pp 94 and 206

92

key, is fine as far as it goes, namely that the Crown Land Department, would be responsible for the administration and management of Crown Land, in particular its allocation for lease or sale, with the Governor retaining responsibility for legal grant at the request of the Government. As will appear later in this discussion, it is important that the Bill, in the drafting, excludes any Ministerial interference in the work of the Crown Land Department in allocating land to persons for lease or sale. The Bill, as presently drawn does not, in my view, do that.¹⁸⁴ A further and entirely proper assumption was that development of Crown Land, like that of any other land, requires development permission from the Physical Planning Board pursuant to the Physical Planning Ordinance,¹⁸⁵ a requirement that Ministers sometimes simply ignore or, on occasion, exert pressure to influence, under the present statutory regime.¹⁸⁶

3.35 The meat of the proposed Manual concerning prevention of corruption and other abuse in the allocation of Crown Land is in sections 3 and 4.¹⁸⁷ As to disposition and eligibility for disposition, section 3.3 preserves broadly the existing scheme, restricting grants of Crown Land, whether for residential or commercial purposes, to Belongers, usually by leases for three years. The lease conditions relate mainly to completion of approved development within that period, which would qualify the lessee to apply for freehold title. Priority would be given on any one island to Belongers who own no land on that island and have not previously benefited from any Crown Land disposition there.

3.36 As to allocation, section 4 of the Manual introduces an entirely new and closely controlled scheme to be operated by the Crown Lands Department and in which Ministers would have no involvement. It provides, in order of preference, for four methods of allocation, in the main to Belongers only, namely: 1) public invitation for applications for developed land, with selection to be made, where there are more applicants than available parcels of land, by ballot weighted in favour of those who have never before received Crown Land; 2) public offer for sale by tender, available for both residential and commercial use, principally applicable to large residential or commercial developments; 3) public auction, though not expected to be much used; and 4) private treaty, following public notification,

184 See paras 3.51 – 3.52 below

185 See paras 4.183 – 45.189 below

186 See submissions of Mr Ariel Misick QC on behalf of the Hon McAllister Hanchell, Transcript Day 22.

187 pp 46 - 77

93

where Crown Land has not been sold by use of any of the other three methods, or in other exceptional cases.

3.37 Section 5 of the proposed Manual deals with discounts as set out in the November 2005 Policy. It begins by identifying their purpose:188

... to assist Belongers to purchase freehold land, recognising that the law of TCI does not prevent foreign ownership of land and that many non-Belongers may have an advantage over Belongers with respect to access to capital for land purchases. In the absence of statute, the policy levels the playing field, ... and makes access to land more realistically achievable for Belongers. Moreover, the policy seeks to empower Belongers through their ownership of land and the capital that is inherent in the ownership of a tangible asset.

Section 5 also clarifies how the discount is to be calculated where the grantee is a Belonger-owned TCI company, namely it must be 100% owned by Belongers or Belonger-owned companies or organisations and at least 51% of its income must be earned from activities undertaken in the TCI. The section also provides that where a company or organisation is less than 100% Belonger owned, the discount shall apply to the portion that is Belonger-owned, and, if a company, is less than 51% Belonger owned, no discount will be given.

3.38 Importantly, the proposed Manual also provides in Section 7 for monitoring and enforcement of Crown Land leases and grants,189 and in Section 9 for appeals to the Commissioner of Crown Lands, and thence to an Appeals Tribunal to be constituted by the proposed Crown Lands Ordinance.190

3.39 In March 2008, shortly after presentation of the 2008 Terra Institute Report, Mr Martin Robinson, who had, as the Acting Chief Auditor, temporarily succeeded Cynthia Travis, presented a Special Report to the House of Assembly (the 2008 Robinson Special Report),191 which Governor Tauwhare had specifically requested. Mr Robinson concluded that the TCI Government's implementation of its 2005 Crown Land Policy over the previous

two years had been unsatisfactory and, on current arrangements, could not properly be implemented. Whilst he acknowledged the value of the recommendations of the Terra Institute, he considered that improvements in any aspect of Crown Land management in the intervening

188 p 161

189 pp 170 - 171

190 p 173

191 Robinson, Martin (2008), Special Report on the Management and Disposal of Crown Land, Report No S/08/052/07R

94

period were barely discernible and that arrangements might worsen, particularly in the short term. His criticisms and concerns are much the same as, and as forcefully expressed as, those of his predecessor over three years before. He set them out under ten headings,¹⁹² making as an early point the failure of the TCI Government to keep to its first stated aim of the Policy, namely to confine the proceeds of Crown Lands sales to bolstering the Government Reserves Fund or for major specific development projects. Instead, as Mr Robinson recorded:

Government finances are now heavily dependent on income from Crown Land sales, which amounted to over \$55 million in 2006/07 and 2007/08. There is a danger that this will become the key determinant of future policy on land disposal.¹⁹³

3.40 I summarise his ten headings of concern: 1) weak to non-existent compliance with the Policy; 2) blatant speculation in Crown Land, particularly on Salt Cay warranting independent review;¹⁹⁴ 3) misuse of Belongers' entitlements to discounts on dispositions of land for commercial purposes and an inequality in allocation of commercial land, with 40% of such sales in the previous two years being to companies in which present or past Members of the House of Assembly and/or their immediate families had a direct interest; 4) failure of compliance in the system of allocation, which was determined in large part by personal contacts, pressure and influence; 5) inadequate and deteriorating systems of Crown Land data and data management; 6) general lack of openness and accountability in allocations of Crown Land; 7) reliance by decision-makers on out-of-date valuations and the potential for improper pressures on the TCI Valuation Office; 8) lack of an up-to-date development plan for the Islands and of any adequate inventory of Crown Land; 9) insufficient provision of affordable housing on Crown Land; and 10) mounting arrears of rentals because of inadequate collection arrangements.

3.41 The Robinson 2008 Special Report, which Governor Tauwhare saw in draft, caused him great concern, particularly as to recent disposals of land in Salt Cay. He expressed those and wider concerns in the following passage in a letter to the Foreign & Commonwealth Office of 22nd February 2008:

192 *ibid*, Executive Summary, pp 3 - 6

193 *ibid*, Executive Summary, p 3 194 See, in particular as to the Salt Cay transactions, pp 3 – 4 and 19 – 20, Section B2 (a) and (b), expressing particular concern about a number of recent transactions.

95

There appear to have been up to 12 grants in a short space of time, shortly before a significant hotel development there was announced. Most of those receiving land are related to one another; one is a former PS/Natural Resources, another is the Director of Medical Services and brother in law of Hon Galmo Williams. Most subsequently sold the land to the developer at an average profit of 750%, with individuals making between \$300–950k profit each. The total profit to them (and therefore loss to TCIG was over \$4m). The valuation used when the land was sold to them dated from 2001 and had not been subsequently updated. Few if any of them appear to have fulfilled the normal terms for being granted freehold. The land sold to the developer himself was also valued on the basis of 2001 valuation. The draft report strongly recommends that there should be a thorough and independent review of the background and history of these grants. For the first time I have been here, we at last have a properly-researched account of exactly the sort of abuse which is traditionally complained of, in what appears to be a particularly blatant example. Whether anyone has actually broken the law is unclear. ... But questions should certainly be asked of why the Minister for Natural Resources proposed these land grants to these people at this time and if so why. Questions should also be asked about how these decisions got through Cabinet with an old valuation. ... It must be highly likely that any serious review will confirm what the Acting Chief Auditor has found, recommend rapid reforms to the procedures (albeit these are mostly in-hand in the Crown Land Bill, but to the extent that they are not, they should be added) and recommend that a wider review is required to check whether the problems found in Salt Cay are replicated elsewhere (as they almost certainly are). This could provide the basis for a wide-ranging Commission of Enquiry into Crown Land deals

3.42 It is clear from those remarks that, at Governor level at least, there had been mounting concern for some time about abuses in relation to Crown Land management and disposals, and that the UK Foreign Affairs Committee, which had yet to publish its Report in June 2008, was not the first in the field to consider the need for a Commission of Inquiry.

3.43 The 2008 Robinson Special Report, which had also been submitted as a matter of routine in draft to the Hon McAllister Hanchell, did not seemingly cause him the same concern. Following discussion of the draft with Mr Robinson, he commented on it by letter to him 9th March.¹⁹⁵ In the letter, the Minister accepted that certain parts of the November 2005 Crown Land Policy had not been implemented and that certain parts of it needed revision, which, he stated, the Ministry would put in hand following Cabinet's acceptance of the 2008 Terra Institute Report. He also acknowledged the need to ensure that the beneficiaries of Crown Land transactions would be majority Belonger owned and controlled entities, especially where discounts were given. However, he challenged that there had

¹⁹⁵ set out by Mr Robinson with his responses in a letter to the Minister of 14th March 2008.

96

been abuse of the Policy in respect of sales of land on Salt Cay for commercial purposes, and urged Mr Robinson to reconsider his recommendation for a further independent review.

He also urged him to reconsider his initial implication that present and past Members of the House of Assembly had improperly benefited from Crown Land sales. And he strongly refuted Mr Robinson's criticisms on the issue of valuation. The Minister made many other detailed comments, which I do not attempt to summarise, or the response from Mr Robinson in which, for the most part, he robustly stuck to most of his criticisms. However, the following extended comment from the Minister is interesting in the light of the TCI Government's delay in implementing the recommendations of the 2008 Terra Institute Report and of the information that has emerged in this Inquiry:

... I agree that the present system for allocation of residential land is not perfect, any system will have the same experience (personal contacts, influence and direct pre-application and 'application chasing pressure') This is attributed in large part to the culture of people of the TCI, 'people want to see the person/persons in charge' and the access that persons have to elected officials. In this regard I reiterate that it is important to take into account the culture and history of the people of TCI when assessing issues surrounding Crown Land.

Foremost, the Ministry takes the position that this report might be premature since the majority of criteria on which the assessment and the overall effectiveness and conformation to the Crown Land Policy was based is premised on its full implementation and by the full establishment of a Crown Land unit/department.

3.44 There is one further Report to which I should refer, if only briefly. It is a curious and opaque document, seemingly prompted by Mr Robinson's expression of particular concern in his Special 2008 Report about a number of recent disposals of Crown Land **in Salt Cay** for commercial purposes. It is a report by Deloitte of June 2008 entitled Agreed Upon Procedures Report **on Salt Cay Development**, prepared on the instruction of Governor Tauwhare in consultation with the Premier, on behalf of TCI Government.

3.45 The title and opacity of this Report reflect the restricted nature of Deloitte's terms of engagement. In submitting the Report to the Governor, it expressly disclaimed that it bore the status of either an audit or a review in accordance with internationally recognised standards or any assurance on the TCI Crown Land Policy or the transactions surrounding **the Salt Cay Development**. Its declared sole purpose was to carry out certain procedures to assist the Governor in evaluating the Crown Land transactions surrounding **the Salt Cay**

97

Development, namely to document and detail certain transactions in Crown Land **on Salt Cay** and other related matters as listed in Schedule 1 to the Report. That, the authors did in a document consisting mainly of a few brief statements of fact, combined with several lengthy schedules of transactions respectively described as Background and Analysis.

3.46 Analysis is certainly what was – and still is - required, though not provided in any meaningful or readily understood form from Deloitte. But, on their understanding, what they had provided was to form the basis for an evaluation by the Governor with, presumably the assistance of the TCI Government. As far as I have been able to discover, no such evaluation has been undertaken, much less completed, and the Commission has had neither the time nor the resources of a forensic accountant or auditor to attempt it. In submitting its Report to the Governor, Deloitte tantalisingly observed that, had it performed additional procedures or had it performed an audit or review of the Crown Land Policy or the

transactions in question in accordance with recognised international standards, matters might have come to their attention that would have been reported to ... [the Governor].

3.47 I was and remain puzzled why Deloitte was instructed to report on Mr Robinson's concerns in so restricted a way. I have asked Governor Tauwhare and have corresponded with and spoken to those responsible at the Foreign and Commonwealth Office about it. The former Governor told me that he had compiled the terms of reference in a joint exercise with the Hon Michael Misick, having taken advice from the Foreign and Commonwealth Office in London and, notwithstanding his unease, deferred to their judgment. I can only say that I share the unease of Mr Robinson and Governor Tauwhare about these transactions - an unease accentuated by an absence of information before me as to any or any expert evaluation of the factual information gathered and tabulated by Deloitte in its Report, save that the current Chief Auditor has considered it. **Such an evaluation, coupled with the results of other investigations in relation to the Salt Cay project, is clearly a matter that a special prosecutor, if appointed as a result of this Report, may wish to consider.**

3.48 In the meantime, there has been very slow progress on the part of the TCI Government in implementing the proposals in the 2008 Terra Institute Report, in particular, for the Manual and the draft Ordinance. In the meantime too, the abuses of the Crown Land Policy chronicled by Fuller in 2004, Barthel in 2005, the Terra Institute in 2008 and latterly

98

Robinson have continued apace. If anything, Ministers have increased the number of proposals brought to Cabinet for grants of Crown Land for substantial commercial use and other major commercial projects, still in many cases at short notice and with no or no tabled supporting Cabinet papers. What is more, many recent transactions have involved the disposal of Crown Land, not by way of Conditional Purchase Lease, but by absolute disposition of the freehold.

3.49 On 3rd April 2008 the TCI Cabinet approved a number of the Terra Institute's recommendations, including drafting instructions for the proposed Crown Land Ordinance. As the Hon McAllister Hanchell had surmised in his objections to Mr Robinson's Special Report, it did not, however, approve the Manual of Crown Land Administration and Management, and deferred it for further consideration towards the end of April. The Cabinet did not consider it again in April, and it surfaced next in one or more discussions between the Governor, the Hon Michael Misick, the Hon McAllister Hanchell and the Attorney General. Those discussions gave rise to an undated paper proposing, inter alia, that the Attorney General should: 1) formally advise as to who might make allocations and disposals of Crown Land; and 2) check what, if any, powers the Chief Auditor had to investigate Crown Land transactions and review valuations, with a view, if necessary, to making provision for those powers in the proposed Ordinance. The Attorney General did not formally advise on the power to allocate and dispose of Crown Land, taking the view that it was adequately dealt with in section 94 of the Constitution, which accords the power to the Governor or any person authorised by him to do so. However, with respect to the Attorney General, that provision does not resolve the vexed question whether the Governor should leave the power with the Cabinet and/or Ministers or transfer it to an independent body as has been firmly recommended by Fuller, Barthel, the Terra Institute and Robinson. He did, however, advise that the Ordinance should provide for review and investigation by the Audit Department. In

my respectful view, that would be an inadequate remedy, coming as it would, long after the occurrence of possible harmful conduct that intervening activity may have rendered irremediable.

3.50 Towards the end of August 2008 the Permanent Secretary at the Ministry of Natural Resources wrote to the Attorney General about some unresolved matters in the Crown Land Policy and urging progress on the proposed Ordinance. In early October there was a further

99

letter from the Permanent Secretary to the Attorney General referring to her August letter, attaching a copy of the Drafting Instructions for the Ordinance taken from the Terra Institute's 2008 Report, and again urging expedition in its preparation. The Attorney General did not reply to that memorandum. His Chambers were about to commence drafting the legislation. But no-one told the Permanent Secretary that. At the end of October she sent a memorandum to the Hon McAllister Hanchell making various further proposals to hurry matters along, including implementation of the Manual or of some comparable system, stating that the Cabinet's failure to approve it in April had left ... the same flawed system for allocation of land. The Minister does not appear to have responded to her memorandum.

3.51 However, in early February 2009 when the Commission was approaching the end of its oral proceedings in Providenciales, the Attorney General informed me that drafting instructions for the Ordinance were nearly complete and that they included provision for issuing the Manual, thus giving it legislative authority. I trust this includes provision for placing allocation of Crown Land under the independent control of a Crown Land Unit. However, clauses 16, 18 and 19 of the incomplete first draft, establishing such a Unit, and setting out the duties of a proposed Commissioner of Lands responsible for its administration, still leave that matter open - it seems to me - to the whim of the Governor or the Minister of Natural Resources of the day:

16. For the purpose of this Ordinance there shall be established a Crown Land Unit within the Ministry of Natural Resources.

...

18. There shall be in the public service a Commissioner of Lands, who shall be responsible for administering the Crown Land Unit and who shall perform his functions in accordance with this Ordinance.

19. The Commissioner shall have the management of all Crown land and shall superintend the allotment of Crown lands and laying out residential lots as the Governor/Minister from time to time directs.

3.52 On 14th April 2009, shortly before submitting this Report to the Governor, a new Cabinet under the Premiership of the Hon Galmo Williams, tabled a number of Bills for consideration by the recently recalled House of Assembly. The Crown Lands Ordinance Bill was not included in the list. It may be that consideration is being given to more fundamental

100

reform of the law as to Crown Land so as to give it direct statutory imprint rather than one, as seemingly proposed to date, merely supportive of governmental policy of the day.

Public contracts

3.53 In the field of public works contracts, as in other fields of commercial activity, there is a gradation from public inefficiency, enabling abuse by one or other party of the potential or established contractual relationship, to mutually accepted behaviour that lubricates the wheels of business and is not generally stigmatised as dishonest, and on to mutual dishonesty amounting to corruption. Contracting in the public or private sectors is prone to abuse of one sort or another unless strong control measures are established and enforced. The potential for abuse is undoubtedly greater where an urgent and obvious need for infrastructure is coupled with contractual access to substantial public finances that are, and are known to be, largely uncontrolled.

3.54 In the TCI over recent years the budget for spending on public works has risen steadily, but, there has been a significant overspend of at least 10% in each of the financial years for which the TCI Government has produced audited accounts, 2003 – 2006. In the year 2005/2006, it was some \$400,000 over the budget figure of \$3,380,000.¹⁹⁶

3.55 All government tender procedures should conform to Financial Instructions issued by the Ministry of Finance¹⁹⁷ and to generally accepted tendering procedures. Those Instructions, since 2006, have required all contracts for work valued at between \$15,000 and \$75,000 to be the subject of public tendering unless the Permanent Secretary, the Attorney General, the Financial Secretary or the Commissioner of Police approved limited tendering, that is, from an official list of previously approved contractors.¹⁹⁸ All contracts for work worth more than \$75,000 should be the subject of public tender unless the Cabinet approved limited tendering.¹⁹⁹ Responsibility for issuing invitations to tender lay with Permanent Secretaries or Heads of Departments. The Cabinet could waive public tendering requirements where the national interest required the contract to be issued earlier than the

¹⁹⁶ TCI Audit Office (2006), Audit Report on Contract Tendering & Expenditure Systems, Engineering & Maintenance Services, p 4

¹⁹⁷ WSP International Management Consulting (2005), Ministry of Communications, Works & Utilities, Department of Engineering & Maintenance Services: Project Management Division – Road Design Manual, Chapters 17 - 18

¹⁹⁸ *ibid*, Part IV – Annex I: Financial Instructions Chapters 17 & 18, Financial Instructions 1707 applies

¹⁹⁹ *ibid*, to which Financial Instruction 1702 applies

101

normal tender process would allow, or where the works and/or services or the materials to be procured were of a specialist nature for which only a limited number of sources of supply could reasonably be identified. Capital projects were normally governed by the Government Development Budget, but the Cabinet could additionally approve expenditure on new projects not contained in the Budget for emergencies or to meet emerging and unforeseen developments during the year.

3.56 The two main purposes of public tendering requirements for major capital projects were and are: 1) to promote open and competitive tenders to enable those considering them on behalf of the TCI Government to determine, in the public interest, in terms of quality of work and value for money, the bidder to whom the contract should be awarded; and 2) to ensure honest dealings between those responsible for the award of public contracts and those bidding for them – in short to minimise the scope for corruption and/or unnecessary cost to the public. However, the increasing pattern in the TCI over the last few years has been to disregard these requirements in a number of large and small scale public works and other contracts – many potentially questionable as to value for money and/or because of possible corruption of Ministers and public officers involved in their award.

3.57 The Commission has not seen the Audit Report on Contract Tendering Systems in the TCI of November 2004, but it raised issues that were still present in 2006, as shown in a like Audit Report for that year.²⁰⁰ They included a number of recommendations designed to improve the accountability, openness and independence of tender procedures, and drew attention to specific contracts, some involving significant sums, where such procedures had not been followed, or at least were not evidenced.

3.58 In late 2004 the TCI Government had engaged a consulting engineer, Simon Bradfield,²⁰¹ to undertake a Department for International Development (DFID) funded project to create an inventory and condition survey of all public infrastructure on the Islands and to reorganise the Public Works Department. He had made detailed and urgent proposals for reorganisation, new methods of working and greater accountability. He had presented these proposals to the Executive Council and to various Government

200 (2006) Contract Tendering and Expenditure Systems, Engineering and Maintenance Services Department, Appendix D

201 of WSP International Management Consultants

102

Departments, but to no avail. In 2008, in a submission to the UK Foreign Affairs Committee, he described the lack of response to his work:

Throughout my work I received minimal cooperation from the various Department Heads, and PWD [Public Works Department] staff were, largely, unwilling to divulge or discuss detailed information on their current practices of implementing Public Works projects. Project information and records were haphazard, incomplete and/or lacking and I found it impossible [to] conduct any adequate audit of project histories or expenditure. My overall impression during my time there was that the reorganisation project had been imposed on the Department and that they had no interest in our objectives – considering us to be merely an interference with their existing methods of working.

He added that, on a subsequent visit at the beginning of 2006 to check on progress of implementation of his proposals, he found that nothing whatsoever had been achieved.

3.59 The UK 2007 National Audit Report²⁰² indicated widespread departures from competitive tendering in the TCI, a report echoed in many allegations to the UK Foreign Affairs Committee and to the Commission. These allegations included the award of major contracts at an over-price and/or without tender and/or or as a result of failure properly to

observe the tender process. Common features of such allegations have been disregard of lowest or lower bidders, Ministers' advancement of personal or family or associates' interests, involvement in the successful bidders and/or potential receipt from them of bribes as rewards for award of contracts, also awards of small contracts to Ministers' relatives, associates or supporters, or their engagement in projects for reward in return for little or no work.

3.60 As I have indicated, none of these criticisms was new. They have been identified time and again in official and independent reports in different contexts, often commissioned and funded by DFID or other outside bodies, but to little result. As Simon Bradfield said, when he contacted the UK Foreign Affairs Committee in relation to the project to reorganise the Public Works Department:203

It seems a great pity that the large expenditure made by DFID on the project has produced practically no results or improvements.

202 See para 1.39 above

203 Op cit

103

3.61 The material before the UK Foreign Affairs Committee, supplemented by similar information in evidence to the Commission, has suggested a number of areas of business and transactions for concern. For want of time and resources, I have not been able to investigate all, or even most of them, so as to equip myself to form a view of possible criminality and need for further investigation. Where I have been able to examine specific allegations, and to form views as to potential criminality, I have done so in Chapter 4 of this Report in relation to individual Ministers and others.

3.62 My main area of concern in this context is the grant of untendered and/or possibly over-priced contracts to persons or corporate entities with connections with PNP Ministers and/or financial supporters of the PNP. I set out in the next paragraph some examples of types of transaction that give rise to that concern. However, I should emphasise that the Commission has not had the time or the resources to investigate individual instances in any depth or other similar contracts or matters, for example, by questioning public officials and/or representatives of persons or corporate entities concerned. It may well be that further investigations would yield information that would point to the possibility of corruption and/or other serious dishonesty, or would allay widespread concerns that have been expressed in the TCI about such matters over the last year or more. My lack of specific mention of them among the following examples should not be taken as an indication or recommendation not to investigate them. It is, of course, open to any investigators instructed by the TCI Government following my submission of this Report to examine such transactions and relationships as they see fit.

3.63 The examples are:

1) major contracts for services, such as that made in November 2006 with Southern Healthcare Network (SHN) for referral of TCI Islanders for overseas medical treatment and air evacuations at discounted rates, which quickly proved to be a financial disaster in its cost, service, financial management and control;204

2) major construction contracts, for example: a) PFI contracts awarded to Johnston International for two new TCI hospitals, said to have been over-priced

204 op cit 24, pp 57 – 58, paras 154 – 155

104

and awarded without any or any appropriate tender process, with an initial budget of \$40million and costs to date of \$125 million;

3) major road-building and other public works contracts, for example: a) the Lower Bight Road, Providenciales – said to have contracted to Johnston International at a significantly higher price than some other bidders had offered, and built, it is said, to a low standard; and b) road works in North and Middle Caicos, contracted to Herzog;

4) rental of property by Ministers, their relatives or supporters, including the Hon Michael Misick and his wife and the Hon Floyd Hall, for Government use at above-market rents;

5) sale by Ministers of property to Government at above market value;

6) making or approval of agreements for hotel/condominium and other tourist developments in which Ministers had or were granted interests;

7) the grant of franchises or licences, some in the form of effective monopolies; and

8) purported employment and actual payment of ghost workers, that is, of persons in various public posts or offices for whom there was little or no work.

Immigration and permission to work

3.64 The Immigration Ordinance²⁰⁵ and subsidiary legislation provide a comprehensive system for regulation of immigration in the TCI. The Ordinance has established three levels of immigration status in a descending order of entitlement and security to remain in the Territory.

1) The legislation provides²⁰⁶ a status of full citizenship, called Belongership, acquired by descent from a Belonger or a spouse of a Belonger of five years standing, or exceptionally where the Governor in Cabinet, considers that a

²⁰⁵ Revised Ed 1998, Cap 51, as amended

²⁰⁶ ss 3 and 4

105

person has made an outstanding contribution to the economic and social development of the Islands. As I have already indicated, only this status carries with it the right to vote.

2) The legislation provides for the grant by the Governor in Cabinet of Permanent Residence Certificates,²⁰⁷ which as the name indicates are valid for life and grantable to persons of good character and health, who have established a long-term living and working connection in the Territory, and with a demonstrated ability to support themselves and their dependents there. Such long-term connection may take any one of several prescribed forms, including

having a home or principal home in the Islands coupled with a work permit as a self-employed or employed person, or investment in and active running of a business there, or investment of a substantial sum in a business or a home there.²⁰⁸ The status is also revocable by the Governor, but only for specified reprehensible conduct and/or failure to comply with the statutory requirements of grant. Any decision of his to revoke it is appealable to the Supreme Court.²⁰⁹

3) The legislation provides for a less secure form of permission to remain in the form of a temporary and conditional Residence or Work Permit,²¹⁰ made or revocable for cause by the Immigration Board established by the Ordinance, and subject to an appeal to the Minister responsible for Immigration. The Minister's decision on appeal is not required by the Ordinance to be reasoned, and is expressly declared by it to be final and unreviewable or enquired into by any court.

3.65 It is apparent from Executive Council and Cabinet minutes that the initiative for putting and supporting applications to the Governor for Belongership on exceptional grounds or for Permanent Residence Certificates is that of a Minister, usually the Minister responsible for Immigration. Although applications for Residence or Work Permits are determinable by the Immigration Board, a majority of its Members are appointed by the

207 ss 14 - 22

208 Immigration Regulations, Revised 1998, reg 15 and Schedule 2, para 3

209 ss 20 - 22

210 Immigration Ordinance, s 23 – 35

106

Governor, acting on the advice of the Minister,²¹¹ and, as I have said, any appeals from the Board's decision are made to and determined by the same Minister, whose decision is final.²¹²

3.66 Even from that short summary of the statutory scheme, it is clear that Ministers wield very considerable discretionary power over non-Belongers, including those not entitled to permanent residence, but who have established a home and place of work in the Islands. There are two aspects to their vulnerability, one at the stage when grant of a higher immigration status is sought and the other where, if granted, revocation is threatened.

3.67 The application for grant stage was canvassed in evidence put before the UK Foreign Affairs Committee,²¹³ and has been a frequent subject of information given – almost always in confidence – to the Commission. The complaints are of grant of Belongership or Permanent Resident Certificates in breach of the legal requirements in return for bribes to Ministers or officials, and also of Belongerships to questionable individuals, with financial clout or ministerial connections, via the exceptional grounds route. The Commission also received many complaints, including accounts of long delays in the regularisation of their immigration status and of seemingly arbitrary and unexplained decisions on applications for grant or in revocation of existing status.

3.68 Many residents who have not attained Belongership or Permanent Residence, or who do not qualify for it, live in a state of constant insecurity lest they are compelled at short notice and at the whim of a Minister or one of his public officials to leave their home and/or employment. The Commission has received submissions from numerous persons in the TCI, given in confidence for fear of losing their homes and livelihoods as a result of arbitrary revocation of their fragile permissions, and allegations of corruption on the part of immigration staff at various levels able to exercise such dominance.

3.69 Such a system and/or abuse of it is not acceptable in what purports to be a modern democracy.

211 *ibid*, s 48

212 *ibid*, s 35

213 *op cit* 24, paras 161 – 165; and *op cit* 54, Ev 335, para 5.3

107

3.70 However, in 2003 – 2004, the immigration system had the benefit of a wide-ranging and comprehensive review, by an Immigration Review Commission appointed by the Hon Jeffrey Hall, whose ministerial portfolio included responsibility for immigration matters. The Commission was chaired by the Hon Don-Hue Gardiner, its Secretary was Leo Selver, the Under-Secretary in the Ministry of Immigration, and the other members were drawn from the public sector, the professions and the world of business.²¹⁴ Its task was to review the statutory framework, policy and procedures, and to make recommendations for more efficient and effective methods of managing and controlling immigration. As part of that task, it undertook a review of the statutory grounds for the grant of Belongership and the grant, refusal and revocation of Permanent Residence Certificates and Residence and Work Permits. It also considered possible mechanisms for greater efficiency in the handling of applications for each of those statuses and for computerization of immigration records.

3.71 The Commission consulted widely throughout the TCI and beyond, and reported within five months, in February 2004.²¹⁵ In doing so it identified abuses of the statutory system of the sort to which I have referred, including instances of Belonger status given blatantly in return for political favours²¹⁶ and of applications for Permanent Residence Certificates ignored or delayed for months and even years.²¹⁷

3.72 In an early section of the Report in which the Commission set out its approach, it spoke of the need to attract and retain people with specialised skills and expertise to secure the success of the Islands as a tourist destination and financial centre. In the following passage it diagnosed, in terms that are as apt today as then, what was required: 218

Over time, the people who have come to live here feel more and more attached to the country and begin to look for more security of residence. Firms who have employees who have become valuable to their business naturally want those employees to remain. It is inevitable then that the proportion of indigenous Turks & Caicos Islanders in the country's permanent population will continue to decrease. In order to be able to set and adjust immigration policy, it is vital that we have a system that facilitates the identification and differentiation of those residents who need or deserve to be integrated as long-term members of the

214 Including also the Chairman of the Public Service Commission, Wendal Swann, and the then President of the Bar Association, Richard Savory

215 Immigration Review Commission (2004) Report of the Immigration Review Commission

216 *ibid*, p 8, para 1.4

217 *ibid*, p 17, para 2.1

218 *ibid*, p 2

108

community, those who should not qualify as long-term residents, and those who for whatever reason have no intention to become long-term residents.

Such a system, the Commission emphasised, required open, clear, fair and consistently applied mechanisms.²¹⁹

3.73 To those ends, the Review Commission recommended the establishment of a new statutory body to be known as the Citizenship Commission.²²⁰ It was to be appointed annually and so constituted that, to the extent practically possible, it would not be susceptible to the pressures and influence of interested individuals, and not subject to any overriding power of the Government of the day as to grant of Belongership. The Review Commission also made a number of detailed recommendations as to criteria for grant and revocation of immigration status at different levels, and for clear public expression and consistent application of them and for other reforms of the system.

3.74 Unfortunately, little or nothing came of the Immigration Review Commission's work. The evidence before the UK Foreign Affairs Committee and this Commission suggests that the abuses it identified continue, and that the remedies it recommended lie unattended.

3.75 As foreshadowed in my Interim Report, I consider that there is urgent need for removal of ministerial involvement in the exercise of discretionary or other powers concerning the grant or revocation of immigration status. As recommended in Chapter 5 of this Report, such decisions, whether by a body such as the Citizenship Commission suggested in the 2004 Review, or by public servants in the Immigration Department, should be made with regard to clearly defined and well-publicised statutory criteria. Such decisions should be explained and explicable, and be susceptible to a merits appeal to the Supreme Court or an independent tribunal established for the purpose.

Revenues and Exemptions

3.76 The power to levy taxes in the Islands is reserved specifically to Ministers, for it is they who control the introduction before the House of Assembly of Bills designed to impose or to

219 *ibid*, p 3

220 *ibid*, p 10, para 1.5

109

increase taxes.²²¹ Likewise, it is only Ministers who can recommend to the House of Assembly, those Bills that provide for imposing or increasing any charge on the revenues or other funds of the Islands, or for compounding or remitting any debt due to the Islands.

3.77 The TCI is regarded by many as a tax haven.²²² This is hardly surprising. TCI imposes no income, capital gains, corporation, or inheritance taxes. During the oral proceedings, the Premier, had recourse to this fact in response to requests for written details of his financial means, saying that there was no need for anyone to keep records of their income or expenditure. In response to a question from Senior Counsel to the Commission about the dramatic increase in his net worth between his appointment as Chief Minister and the present day, he stated:²²³

I have been working from the time I was 18, selling real estate on Providenciales since 1984, and by the time I became Chief Minister, had already been involved in a lot of businesses and had established myself in our community not only as a business person but also as a politician. In this jurisdiction there is no requirement for accounting purposes. We have no taxes or income tax. So there is absolutely no way that – and ... in relation to the declaration, the declaration of interests there is no requirement to put a dollar amount on anyone's net worth. What you are required to declare is assets and in some case liabilities in terms of the (inaudible) figure. So there's absolutely no way that I would have known or others would have known what my net worth would have been in 2003.²²⁴

3.78 But tax haven status brings with it, especially in the current global financial climate, certain responsibilities, even for a British Overseas Territory. The TCI is but one player, amongst many, having to look to its laurels in this regard. Pressures are being applied, not least from the USA, now armed with the Stop Tax Haven Abuse Act, passed by the US Senate on 2nd March 2009.

3.79 The Companies Ordinance provides for the establishment of exempt companies, of which there are more than 10,000 registered in the TCI. An exempt company is one the objects of which are to be carried out mainly outside TCI,²²⁵ but for 20 years from

221s 67 of the 2006 Constitution

222 The Organisation for Economic Development (OECD) identifies four key factors to be used to determine whether a jurisdiction is a tax haven: 1) no or only nominal taxes; 2) whether there is a lack of openness; 3) whether there are laws or administrative practices that prevent the effective exchange of information for tax purposes; and 4) whether there is an absence of a requirement that the activity be substantial.

223 Transcript, Day 1, p 27

224 *ibid*

225 s 180 of the Companies Ordinance, Chapter 122

110

incorporation, it is exempted from tax on profits, income, capital gains, estate duty or inheritance tax payable on its shares.²²⁶ In addition, it is not subject to many of the normal procedural formalities of TCI company registration.²²⁷ All that must be filed with the

Registrar of Companies is a Memorandum of Association with details of the company's registered office, details of its share capital (or guarantee),²²⁸ a declaration that operations will be conducted mainly outside TCI,²²⁹ and the name of its representative within TCI. In particular, the subscribers are not required to inform the Registrar of the identity of the company's beneficial owners. The attraction of exempt companies thus lies in a combination of their tax-exempt status and the minimal disclosure and administrative requirements.

3.80 Instead, the TCI must look to revenue from many other sources, including: 1) tourists and other visitors, in the form of accommodation tax, air and sea ports departure taxes, and landing fees; 2) from land sales in the form, not only of stamp duties, registration fees and survey fees, but also in recent years from Crown Land rentals and freehold purchase sales; 3) businessmen in the form of export and import duties and cargo dues, business Licences, vehicle licences and gaming machine tax; and 4) from immigration-related sources, in the form of visas, permanent residence and other residence and work permits.

3.81 In the Audited Financial Statements for the year 2005/2006,²³⁰ the most recent available, stamp duty on land transactions accounted for almost 20% of recurrent revenue, work permits and other immigration fees, and accommodation tax for almost 10% each, and Import and other Customs duties for almost 40%. The TCI Government can, and does, also raise revenue from borrowing, although its scope for borrowing is constrained,²³¹ and the Foreign & Commonwealth Office monitors the level of its indebtedness. The Annual Economic Update Report 2008²³² shows that the TCI Government has used up its reserves, and cannot therefore presently extend its borrowing.

226 s197

227 *ibid* Section 185

228 *ibid* Section 182

229 *ibid* Section 183

230 TCI Audit Office (2006), Government of the TCI, Financial Statements for the year ended 31st March 2006, Grand Turk, Graph 1, p 30. (The Financial Statements for the year ended March 2007 remain, as yet, unaudited.)

231 The borrowing ratios currently are that Total Net Debt should not exceed 80% of Government revenue; principal and interest payments for Government debt should not exceed 8% of Government revenue; and Reserves should be no less than 20% of gross debt stock.

232 Compiled in May 2008 by Oxford Policy Management on behalf of the FCO.

111

3.82 There is, of course, great difficulty for those attempting to monitor the financial state of the Territory when its Financial Statements are unaudited and are otherwise unreliable. For example, as the UK National Audit Office reported in its 2007 Report, in 2006-2007 the Foreign & Commonwealth Office consented to \$10 million of further borrowing by the TCI on the basis that its liquid reserves amounted to \$14.6 million. However, when the 2004-05

Accounts were audited in July 2006, it was revealed that cash reserves had been overstated by \$ 6.6 million.²³³

3.83 Given the dire state of the economy, it is all the more important that all revenues are collected. But if some or all of these revenues are subject to concessions made by Ministers, for example when grants of Crown land at less than market value are made or when development agreements are being negotiated, the impact on TCI revenues may be considerable. Cynthia Travis, the Chief Auditor from 2005 to 2007 reported similar concerns about the lost opportunity for the TCI Government resulting from significant, and potentially unwarranted, concessions.²³⁴ According to her Report, some US \$32 million was given away by the Customs Department in the year 2005/2006 through concessions made to developers.

3.84 The information from many sources before the Commission suggests that such forgone revenue has in large part been the product of over investor-friendly development policies, often presented by Ministers to the Governor in Cabinet to be absolutely and imminently necessary to secure the particular inward investment under discussion. The real possibility is that individual Ministers have often sold the pass in pre-Cabinet negotiations with developers, by undertaking to secure for them favourable prices, exemptions, discounts and concessions of one sort or another. Such negotiations, often conducted privately, in haste and without recourse to advice from TCInvest or other professionals, are a ready source of fixing on financial advantages between developer and Minister not presented to the Governor in Cabinet or intended ever to become public. However, signs of it may later surface when developer recipients of such ministerial largesse are discovered to have made large, and usually secret, donations to or for the benefit of a particular Minister or to the PNP. There is a clear need for timely publication of full details of all grants of Crown Land

233 TCI Audit Office (2006), Turks & Caicos Islands National Audit Report, Audit Report and Financial Statements, For the year ended 31st March 2005, p 14

234 *ibid*, page 55

112

and development agreements, including the name of the proposing Minister, the beneficial recipient of the grant and the type and value of any exemptions granted.

3.85 Quite apart from such direct loss or revenue there may be associated loss of capital or revenue on the proceeds of sale of the TCI's principal, valuable but fast diminishing, asset – Crown Land. In the year-ended 31 March 2006, receipts for land sales exceeded \$11 million²³⁵ (a reduction of approximately \$4 million from the previous year's total), although the Government had budgeted for receipts of \$17 million.²³⁶ As I have already mentioned in this Report, the Government has not maximised its income from land sales. Very generous discounts have been given to Belongers, and indeed to others, when Crown Land is sold. There have been cases involving Ministers, their families or associates and some high ranking civil servants where Belongers and developers have secured separate and substantial benefits on the rapid turnover of Crown Land by the former to the latter. The noble principle of Empowerment, under which Belongers are offered land at a huge discount to give them a stake in the country, has thus been hi-jacked for other ignoble purposes. The Commission has itself discovered allocations that can only be categorised as the result of

greed, favouritism and/or cronyism.²³⁷ The corollary of such Belongers' and developers' benefit is, of course, significant loss of revenue for the TCI.

3.86 Aside from the obvious difficulties of collection of government revenue, where revenues are derived from indirect taxes, such as stamp or import duties and visa/permit fees, there is massive scope for corruption among those charged with the task of collection. The Commission received a substantial number of reports, almost invariably from anonymous sources, of unwarranted demands for money being made to applicants or extra fees and charges being levied, to ensure their application or matter received favourable treatment.

235 TCI Audit Office (2007), Financial Statements of the Government of the TCI for the year ended 31st March 2006, Grand Turk, Statement No 2, p 2

236 *ibid* Statement No 3-1, p 3

237 See paras 3.17 and 3.18 above and paras 4.134 – 4.135 and 4.166 – 4.168 below.

113

4 – INFORMATION OF POSSIBLE CORRUPTION AND/OR OTHER SERIOUS DISHONESTY

and

RECOMMENDATIONS

Introduction

4.1 I now turn to the issues which have arisen in relation to individual elected members, in the course of evidence presented to the Commission. The Commission has not, and does not make definitive findings of fact; it is vital to bear in mind that the Terms of Reference of the Commission were only ever to establish whether there was information that corruption or other serious dishonesty may have taken place. The more exacting tests of proof as might be applied in a trial could not be employed by the Commission, nor were they required to be.

4.2 This Chapter necessarily considers other persons beyond simply the elected officials involved. It would be wholly artificial to produce a Report that did otherwise. In so far as there is information indicating corruption, that corruption does not exist in a vacuum (e.g. if an official receives a possibly corrupt payment, it must have come from someone else and they must be identified in order to show why and how it may be is corrupt.

4.3 Several parties have sought to argue before the Commission that to consider or even to name parties, apart from elected officials, takes the Commission outside its Terms of Reference. Related arguments were also raised that no comment should be made upon those who provided no evidence or who only gave written evidence before the Commission. I do not accept those arguments. I have endeavoured to ensure that, in every case where I was minded to make an adverse finding leading to a recommendation of criminal investigation in respect of any person whose conduct is the subject of, or who is implicated or concerned in the subject matter of the Inquiry, that person should have an opportunity to

comment ahead of the Report, by means of responses to Salmon letters.²³⁸ All have responded.

238 See para 1.86 above.

114

4.4 In reporting upon what I have found, I have simply related what emerged from the evidence, and identified areas of conflict, contradiction and information pointing to possible corruption. Further investigation will be required in every case, but to do less than this, at this stage, would have been a dereliction of my duty under the Terms of Reference, and would have risked presenting a less than full picture.

4.5 Any final assessment made, may or may not, bear out my initial assessment on the material available. That assessment will be a task for those who come after me, and may or may not involve criminal proceedings. What should also be clear is that the process of inquiry, which this Commission has begun, is far from complete. The fact that an individual is not named or criticised should not be taken as any form of endorsement of their behaviour; the fact that particular misdeeds are not explored in detail here, does not mean they will not be given attention at a later stage.

The Hon Michael Misick

Background

4.6 Because of the Hon Michael Misick's central role in Government in recent years, and therefore in the Inquiry, I turn first in this first section of the Chapter to my findings concerning him, findings which, in the context of corruption, may have implications for some of those with whom he dealt. He made written submissions before the oral proceedings, he gave evidence over four days during those proceedings, at which he was represented by a strong legal team led Mr Edward Fitzgerald QC, and he has since provided a number of written documents and submissions.

4.7 According to his biographical notes on the TCI Government website,²³⁹ the Hon Michael Misick was born in 1966 and was educated locally and in the USA before taking a degree at the University of Buckingham in the UK, and being called to the Bar of England and Wales. His use of the title "Doctor" derives from an honorary doctorate awarded to him by a University in the Bahamas. He worked in real estate sales in the TCI with Prestigious

²³⁹ TCI Government (2008), Honourable Dr Michael Eugene Misick, Premier [online], Available at: <http://tcgov.tc/info--ID--181.html> [Accessed 4th May 2009]

115

Properties Ltd, a company established by his family, between 1984 and 1988, and then became Chairman and Chief Executive Officer of Paramount Group of Companies, a property and financial services company.

4.8 He was first elected to the Legislative Council in 1991, when he became Minister of Tourism, Transportation and Communications, and was re-elected in 1995. In March 2002 he was elected Leader of the then Opposition Progressive National Party (PNP). Following the

April 2003 General Elections and the successful petitioning and winning of by-elections in two constituencies, he was sworn in as Chief Minister of the Turks and Caicos Islands on August 16th 2003. The information before me indicates that at that time he was a reasonably successful businessman. He was also an associate at Saunders & Co, a firm of attorneys in the TCI, and still had connections with real estate sales through his family company Prestigious Properties Ltd. He also owned some properties in his own right. Several sources have quoted him as having said that he was worth only \$50,000 prior to his election to the Legislative Council in 2003. He denies having said that, and there is no firm information before me to support the assertion. It may have been a comment taken out of context.

4.9 He was, at all relevant times after August 2003, first Chief Minister and then Premier. He has also held the portfolios for Tourism, Trade, Investment and District Administration, and was the leader of his party, the PNP. During the latter part of his period of office he married the American actress, LisaRaye McCoy in a high profile wedding in April 2006. The couple subsequently separated and, during the Inquiry, were engaged in divorce proceedings.

4.10 I should state straightaway that the Inquiry has produced much information of possible corruption and/or other serious dishonesty in relation to – that is, involving – him. In the following paragraphs I summarise the information that has led me to that conclusion in relation to a number of matters, and I express findings and, where appropriate, recommend criminal investigations with a view to possible prosecution. In reaching those findings and making those recommendations, I have taken into account all relevant written and oral information, including evidence in the oral proceedings in Providenciales, all the various written and oral submissions made on behalf of witnesses, including responses and

116

other correspondence in the Salmon exercise. As I have indicated, there may be other matters worthy of such investigation, which, for want of time and resources, I have not been able to undertake in sufficient detail.

4.11 There is much information to show that he adopted a lifestyle and spending habits once in office that far exceeded his salary and allowances as a Minister and politician and that which he had previously enjoyed. He spent lavishly and extravagantly, indulging in international travel by privately leased jet, and adopting what was referred to in the Islands as a Hollywood lifestyle. It was this, as much as anything, that attracted public comment, opprobrium and eventually investigation.

4.12 During a period when his duties and responsibilities as a Minister and a politician should have engaged most, if not all of his time and efforts, his business interests appeared to prosper and expand exponentially. Those interests were intimately connected to his role as Chief Minister and later as Premier. The principle that a politician should scrupulously avoid any danger of an actual or perceived conflict of interest between their Ministerial position and their private financial interests was not one that he observed, or encouraged his Cabinet to observe.²⁴⁰

4.13 He appears to have benefited on several fronts, apart from his salary and allowances:

1) The PNP continued to fund him with Candidate's Stipends amounting to about US\$900,000 following his election in 2003. His assertion that these represented salary is

largely a matter of semantics; none of the payments bore the hallmarks of a salary. I have been shown no documentation to support his contention.

2) He was also at liberty to spend the Party funds at will: examples of hundreds of thousands of dollars going out to his wife's US stylist and to pay for his household decorations have been found. His assertions that he was entitled to treat these as reimbursements of personal outlays by him on political matters were not supported by the Hon Floyd Hall, in his capacity as Treasurer of the Party, or by any documentation. It is noteworthy that he controlled, or helped to control at least one of the Party's main bank accounts.

240 Cap 2, para 2.7 et seq

117

3) Party funding of him in the form of Candidate's Stipend was supplemented by personal donations to him, largely made in the first instance on a confidential basis to his brother, the attorney, Chal Misick, who disbursed them or forwarded them on his behalf. These were for large amounts of money, and, in one instance, included **\$500,000 from a businessman involved in a major development project, who was in the process of negotiating a further large development project with the Government, and who received Belonger status the same year.**

4) His spending of government funds was extensive. As Chief Minister and Minister for Tourism, he funded worldwide travel on the Government budget. This extended in due course to the provision of a Gulfstream III jet which he treated as his own. He also ensured that his wife received contracts for promotion of the TCI, which resulted in payments to her of hundreds of thousands of dollars.

5) The Cabinet voted to provide him with, not just one, but two official residences, and covered much of the household running expenditure on his main, Providenciales, property from public funds.

6) He was the beneficiary of a number of land grants, including one of 18 acres in the North West Point area in April 2007, for which he did not pay. His partners, overseas developers, paid the entire purchase price of over \$1.9 million, but he received 50% ownership in the project.

7) He received a number of payments whilst in office representing finder's fees or commissions from developers seeking land, including half of a fee charged by the Hon Floyd Hall, to the developer Richard Padgett. He does not appear to have regarded such actual or perceived conflicts of interest as an obstacle to acceptance of such financial benefits. Similarly he received a sum of \$325,000 for having introduced Mr Alden Smith of Ashley Properties Ltd to a developer named Mr Peter Wehrli, leading to a sale of land.²⁴¹ The Hon Floyd Hall also benefited from this transaction.

8) Whilst promoting development in the Islands, he held a financial interest in projects considered by the Cabinet that benefited from Government grants of permission, without

²⁴¹ See paras 4.33 - 4.39 below

118

disclosing that interest. An example was the Casablanca Casino, where he held a share in the company that owned and rented its building. The Casino paid for the renovation of the building, thus indirectly enriching him and two Cabinet colleagues. He did not declare those interests when they were discussed in Cabinet.

9) He received large sums of money, which he and his brother, Chal Misick, were to characterise as loans. Many of those receipts were undocumented and not the subject of any agreed terms for interest or repayment. In several instances they have still not been repaid, despite the passage of years or his apparent ability to repay them. He received one of such loans a matter of days before the lenders (the same overseas developers who later paid for the North West Point land) received a favourable decision from the Cabinet approving conversion of land from residential to commercial use and the grant of development permission.

10) He received payments described as loans from or with the assistance of two Cabinet colleagues, the Hon Floyd Hall and the Hon Lillian Boyce when relatives of those two Ministers used their Belonger status to purchase freehold Crown Land for immediate onward sale to an overseas developer. Each of the parties received \$1 million; each was then pressed to, and did, make a substantial loan to him, none of which he has yet repaid. A further loan was also taken from his colleague Hon Jeffrey Hall, who also profited from the deal.

11) He received millions of dollars in transactions formally documented as loans, one of which was of a sum of \$6 million on advantageous terms from the overseas backers of a development project on Salt Cay. The collateral on the loan was the 50% share in the Salt Cay Golf Club Ltd agreed by Mr Mario Hoffmann, the developer of Salt Cay, to a company controlled by the Hon Michael Misick's brother, Chal Misick, following the grant of development permission promoted by the Hon Michael Misick himself. The pattern of a relative or close friend receiving a large unearned stake in a development company was also demonstrated in the case of Joe Grant Cay. This convenient fiction of loans appears in another context: that of never-to-be repaid loans to constituents, described below.

119

Declarations of Interests to the Registrar of Interests

4.14 I have already set out in general terms²⁴² the evidence of the Hon Michael Misick's disregard for his obligations under the Constitution and the Registration of Interests Ordinance to make full and accurate declarations of his financial interests to the Registrar of Interests. In addition the evidence of no or inadequate declarations revealed by the Register of Interests and his own acknowledgment in evidence of these breaches, there are many matters to which I refer in the following pages of this Chapter that illustrate that disregard in abundance.

1 – I find that he failed repeatedly throughout his period of membership of the Legislature of the TCI to make full and accurate declarations of his interests as required by the Registration of Interests Ordinance 1993.

Such breaches are punishable under the Ordinance only by the Legislature,²⁴³ and not by the Courts, save possibly by recourse to some other more general provision of the criminal

law such as the common law offence of misfeasance in public office. For that reason and because there is much else of importance to investigate in relation to him, I make no recommendation arising out of this finding.

Disclosure of Interests to the Commission

4.15 As is well illustrated throughout this section dealing with the Hon Michael Misick, he failed repeatedly for some months to respond adequately, or sufficiently to instruct his attorneys to enable them to respond adequately, to the Commission's requests under the Commissions of Inquiry Ordinance request for information and supporting documentation of his financial interests. It was only as the Inquiry reached the point of the oral proceedings in January of this year that he became more forthcoming. However, as appears in the following paragraphs, he had still failed to disclose much that was highly relevant to the Commission's Inquiry and continued to do so in his oral evidence until confronted by other information and material available to the Commission and by evidence from others following

242 See paras 2.27 – 2.28 above

243 Registration of Interests Ordinance, ss 7 - 10

120

his. To this day, he has still not disclosed much of the information that the Commission sought from him.

2 - I find that the Hon Michael Misick has failed in several important respects to make adequate disclosures in response to the Commission's requests, pursuant to its powers under the Commissions of Inquiry Ordinance, for full and accurate disclosure of his financial interests.

4.16 Whilst the Commissions of Inquiry Ordinance gives power to the Commission, while it is in being, to take procedural steps to enforce such disclosure by contempt or by reference to the Supreme Court for sanction, I have not considered it necessary or appropriate in the circumstances. He and his attorneys, Misick & Stanbrook, whom I commend for their assiduity and speed in responding to the Commission's many requests as best they could, eventually produced, on his instructions, much disclosure. That disclosure, in conjunction with much other evidence and information before the Commission, is sufficient to enable me to make findings and recommendations relevant to my Terms of Reference, which is my main concern.

Political donations or 'loans'

4.17 Substantial political donations and other payments characterised as loans, often with no terms as to interest or repayment, appear to be readily and widely used means of making covert payments to politicians in power in the TCI.

4.18 I have discussed in Chapter 2 of this Report, under the heading Politics and Political Donations,²⁴⁴ the relaxed attitude of the Hon Michael Misick and other PNP Ministers to what constituted political donations to them and what use they could make of them, coupled with the lax or non-existing accounting controls of the PNP. Such a combination was a clear recipe and camouflage for corruption. The evidence, oral and written, given to the

Commission has demonstrated beyond doubt the absence at all material times of any effective control or accounting within the PNP to act as a restraint or means of disclosure of donors and their possible non-political reasons for making such large donations or the

244 See paras 2.34 – 2.40 above

121

personal use to which the recipients put them. Massive sums of money from wealthy individuals and companies passed through its bank accounts with minimal over-all Party control or even record keeping. The Hon Michael Misick and the Hon Floyd Hall – respectively the Leader and Treasurer of the Party – acknowledged in evidence that there was little practical distinction between monies given for political purposes and monies given for personal use.

4.19 This picture was reinforced by many examples in documents eventually disclosed to the Inquiry of the use of Party accounts for payment of personal debts. He used Party funds for the decoration of his house and for his wife's stylist. The Hon Floyd Hall used them to pay his credit card bills. Both sought to attribute this application of the funds as a means of reimbursement of personal outlays by them on behalf of the Party. But neither was able to identify or document with anything approaching precision what they had paid out calling for such reimbursement.

4.20 Whether this behaviour may have amounted to theft from the Party is less material than its illustration of casualness to the treatment of and accounting for supposedly political funds and possible carry-over into their ministerial roles. Either man could have established a proper system of controls and checks had he wished to do so. The conduit of money from rich individuals or companies via the Party to them for personal use inevitably invites serious questions over any large donations to the Party from those doing business with, or hoping to do business with the Government. The need for such questions is not lessened by the open conflict between the Ministers in evidence before me as to which of them controlled the Party's bank account with the Belize Bank, one of its two bank accounts, and as to whether the Hon Michael Misick was paid a salary.

4.21 Quite apart from the provision of funds to the Hon Michael Misick and the Hon Floyd Hall via the Party, the information before me shows a pattern of anonymous donations direct to the Hon Michael Misick as an individual politician, or via his attorney and brother, Chal Misick. He and others explained in the course of the oral proceedings that donors on

122

occasion might wish to advance the political career of an individual, but without any publicity. In his evidence, he said:245

This is primarily because, particularly the small nature of our Territory, persons giving political contribution would have preferred to be not named

He added:246

I received contribution from political supporters to further – in relation to political support and also in relation to some personal political support. The culture of – again of the political, and I

think you have to put it in the context of islands where politicians are not only help their party to win an election but also we are expected to help our constituents when they have problems.

This is essentially the same argument as that advanced by the Hon Floyd Hall²⁴⁷ that party politicians must dispense money to constituents as well as pay for the usual political expenses.

4.22 What constituted individual political contributions proved to be somewhat elusive. The Hon Michael Misick had made no mention of political contributions in his declarations of interests under the Registration of Interests Ordinance over the years or in his submissions to the Commission prior to the start of the oral proceedings. He mentioned them for the first time in the following passage from a written statement presented to the Commission at the start of those proceedings:

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

He provided no details of monies spent on helping Islanders any more than he did of personal monies that he had spent on PNP activities or of any correlation of sums received by him with such expenditure. On his own belated account, set out in a schedule to the statement, and the light of PNP accounts also produced at the last moment by the Hon Floyd Hall, he had much political largesse to explain. He disclosed two payments into his accounts,

245 Transcript, Day 1 p 49

246 *ibid*, p 56

247 Transcript, Day 5, pp 5 - 26

123

described as Funds from PNP, one of \$18,000 in May 2004 and another of \$100,000 in February 2005. The PNP accounts showed payments to the Hon Michael Misick from 2004 to 2008 totalling about \$900,000.

4.23 Even when he left the witness box, there was no evidence before the Commission of undisclosed political donations received on his behalf by his brother Chal Misick. When the latter gave evidence the following week, he disclosed, after having been ordered to do so, the identities of five contributors who had chosen to make donations to the Premier via his office. These totalled a further \$1,030,000. The largest was for **half a million** dollars in **January 2007**, purportedly for election campaigning expenses, **from Turks Ltd, the company of Dr Cem Kinay, the developer of Dellis Cay and the proposed developer of Joe Grant Cay**. In a further written statement to the Commission, he stated that he had omitted to mention those sums because he had been concentrating on his own accounts.²⁴⁸

4.24 Other previously undisclosed donations to the Hon Michael Misick continued to emerge. Chal Misick, in his oral evidence to the Commission, spoke of \$50,000 from Sarawak Ltd (Paola Sepe); \$30,000 from Windsor Enterprises Ltd (Russell Garland); \$300,000 from Valentine Grimes, and \$150,000 in two payments from Cherokee Ltd.²⁴⁹ Chal Misick also spoke of a number of loans from other sources, some from large financial institutions and documented, others small and undocumented from individuals and some from himself. His method of lending, on at least two occasions, was to place funds into his client account on behalf of his brother, who would then draw upon the account. In July 2006 he credited \$325,000 to his client account and made equivalent payments out to two accounts operated by or on behalf of his brother; in November 2006 he placed a further \$130,000 into the client account, and dealt with it in the same way within a few days. In all he loaned his brother some \$455,000 in that way, none of which had been repaid when he gave evidence to the Commission in January this year. The Commission had no time to investigate the legitimacy or otherwise of the payments from this company or individuals.

4.25 There is no obvious reason why personal loans to the Hon Michael Misick would need to be put through Chal Misick's client account, the latter's ledger record of which is seemingly the only basis for his assertion that they were in fact loans. It is at least open to

248 See also in paras 4.172 – 4.182 in relation to the Hon McAllister Hanchell

249 Chal Misick bundle p 380

124

question whether the reason was to obscure the connection between the source of the funds and the Hon Michael Misick, especially when he has never repaid them even when apparently in funds to do so, and he has seemingly not been pressed by his brother to do so. Without examining the full banking records of Chal Misick, the Commission could not identify the source or establish any audit trail for these funds.

4.26 A further source of large scale funds to the Hon Michael Misick, wholly undisclosed by him in the course of correspondence with the Commission or in his oral evidence, was \$500,000 allegedly borrowed from his brother Philip. These sums only came to light in the ledger of Chal Misick, and were said to be loans made in November 2005 and February 2006. As with the Chal Misick loans, they were devoid of supporting documentation and, on the face of the client account, have not been repaid. **At the very least, these raise questions as to their purpose.**

3 - I find from the above and other material before the Commission that there is information that the Hon Michael Misick may have abused his position as Premier and as Leader of the PNP Party by using PNP funds for his own purposes in that: 1) if and insofar as he may have been entitled to reimbursement from the Party for monies expended on its behalf, he failed to account for such expenditure; and 2) that the level of his personal expenditure was disproportionate to any expenditure on the Party he may have incurred.

I, therefore, recommend criminal investigation by police or others in relation to him into possible corruption and/or other serious dishonesty in relation to such and other similar matters in recent years.

4 – I find that the Hon Michael Misick accepted and failed to declare to the Registrar of Interests many gifts of money via the client account of his brother and attorney, Chal Misick, which were not, and could not reasonably be interpreted as being, political in nature, and which he appears to have applied to his personal expenditure without disclosure to the Registrar of Interests or to the Commission.

125

I, therefore, recommend criminal investigation by police or others in relation to him of possible corruption and/or other serious dishonesty in relation to such and other similar matters in recent years. 5 - I find that the payment of \$500,000 by Dr Cem Kinay, through his company, Turks Ltd, to the Hon Michael Misick was a possibly corrupt payment because: 1) the Hon Michael Misick did not declare it in Cabinet when Dr Kinay's proposals for development were under discussion, or to the Registrar of Interests or to the Commission; 2) it was paid to him through a third party account, namely the client account of his brother and attorney, Chal Misick; 3) it was wholly disproportionate to its stated purpose, namely for political campaigning, and was not, for the most part, spent on such campaigning; and 4) it was received from a developer who had a continuing relationship with the Government, with whom further development agreements were under consideration or being negotiated, and who benefited from Cabinet decisions generous to him. I, therefore, recommend criminal investigation by police or others in relation to the Hon Michael Misick into possible corruption and/or other serious dishonesty in relation to such and other similar matters in recent years.

Other Payments

4.27 There were many other undeclared, undisclosed and still not satisfactorily explained substantial payments to the Hon Michael Misick.

4.28 One was the Caltagirone 'Loan' of \$250,000, information of which first emerged in the course of Chal Misick's oral evidence. The sum had been had been paid into his client account on 29th July 2005 for the benefit of the Hon Michael Misick.²⁵¹ The loan was said by Chal Misick to be from Inazio & Gataen Caltagirone.²⁵² The Hon Michael Misick had made no mention of this in documentation provided before the hearings or during his oral evidence; ²⁵⁰ See also [Finding and Recommendation 32, at para 4.182 below](#)

²⁵¹ Chal Misick Schedule

²⁵² Transcript, Day 10, p 69

126

the Commission was unaware of it at that stage, and so did not question him about it. There was no indication of any formal documentation or of any repayment having been made in the intervening four years.²⁵³

4.29 The attorneys for the Hon Michael Misick have since provided the Commission with a copy of a written agreement of a loan granted in the name of a company called Marlie Jordan Inc, dated 29th July 2005. The loan agreement does not name the individuals behind the company, but the funds, passed to Chal Misick, were recorded by him with the names of the Caltagirones, and not the company. The agreement was for repayment in July 2010, and - documented or no – the timing of the loan is interesting. Three weeks after it was made,

the Hon Michael Misick (then Chief Minister) placed a paper before the Executive Council proposing re-zoning of certain parcels of land²⁵⁴ from Low Density Residential Development to Tourism Related Development, and asked the Council to approve an outline development plan for the site.²⁵⁵ Approval would have significantly increased the commercial value of the property. The Hon Michael Misick did not inform his colleagues in the Council of the Caltagirone Brothers' ownership of the land and interest in the proposal or of any link between them and him. The Director of Planning, who was present at the meeting, appeared to be unhappy with the proposal, which was for 76 units as opposed to the maximum of 36 permissible under the existing zoning. The Council approved the plan, in outline, without apparent alteration. Very shortly afterwards, on 31st August 2005, the Hon Michael Misick wrote, as Chief Minister, to Ignazio Caltagirone at Ericson Investment Ltd, which was evidently the beneficiary of this decision, confirming the change of use and grant of outline approval.²⁵⁶

4.30 The story of this matter does not end there, because the Physical Planning Board rejected certain aspects of the application, only to have their decision overturned in December 2005 by the Hon Michael Misick. The circumstances surrounding this loan, like some of those others that I have mentioned, clearly raise serious questions calling for further investigation, but in particular here: the amount and timing of the loan, the Hon Michael Misick's piloting and endorsement of the re-zoning and development proposals, the

253 Transcript, Day 10, p 119

254 Parcels 60904/509, 510 and 511

255 Minute 05/812 of Cabinet Meeting 24th August 2005

256 Core Volume 6, section 3 letter & appeal

127

covert nature of the payment, through a company and not named individuals, and his non-disclosure of the loan to the Executive Council, to the Registrar of Interests or to the Commission.

6 – I find that the receipt by the Hon Michael Misick of \$250,000 on 29th July 2005, purportedly by way of loan from Inazio & Gataen Caltagirone, via the client account of Chal Misick, was possibly a corrupt payment in the light of: 1) the Hon Michael Misick's non-declaration to the Cabinet of his receipt of the money three weeks earlier or of his links to the Caltagirone Brothers and their interest in the proposed development under consideration; 2) the Cabinet's decision in favour of the proposal, followed by the Hon Michael Misick's subsequent decision on appeal in favour of it on planning matters; 3) his failure to disclose the payment to the Registrar of Interests and non-disclosure of it to the Commission; 4) the absence of any documentation identifying the Caltagirone Brothers as the source of the money or any terms for repayment or interest; and 5) the absence of any evidence of repayment.

I, therefore, recommend criminal investigation by police or others in relation to the Hon Michael Misick of possible corruption and/or other serious dishonesty in relation to such and other similar matters in recent years.²⁵⁷

4.31 The Saunders & Co loan of \$275,000 - Another loan to the Hon Michael Misick that deserves comment was the provision in 2008 of \$275,000 from the law firm of Saunders & Co, of which he had been an associate. He had declared no earnings from the firm in his returns to the Registrar. He initially stated to the Commission through his attorneys that he had been paid for work done in 2003, but not since. He then produced a list showing a commission payment in 2002, salary payments in 2004, 2005 and 2006 and loans in 2004 and 2008, the latter being the \$275,000 loan. In oral evidence to the Commission, he said that he had been paid as a consultant by the firm throughout his period as Premier. His attorneys, clearly on instructions, had informed the Commission on 18th November 2008 that he had not been employed by Saunders & Co since 2003. The precise nature of his consultancy work for Saunders & Co was, however, obscure, as he could not name any of their clients in respect of whom he had provided consultancy services.

257 The Commission did not serve a Salmon letter on the Caltagirone brothers because it not find them.

128

4.32 The loan from Saunders & Co was not supported in the Hon Michael Misick's submissions to the Commission with any documents. During the course of the oral proceedings the Commission was informed that the funds had been used to make a payment to a jewellers company to which the he had owed money, and a receipt from the jewellers was produced. Since then, Saunders & Co have produced further documentation, insisting, mistakenly, that the Hon Michael Misick must have previously produced them to the Commission. According to this further documentation, Saunders & Co did not make the loan but arranged it. The source of the funds remains unclear. The oral evidence of the Hon Michael Misick was that he had still not repaid it, in common with almost all his other loans. Saunders & Co had not taken security themselves, but apparently a caution had been placed on property owned by the Hon Michael Misick on behalf of a nominee company run by the firm. In the result, this loan, like the others raises serious questions that remain unanswered and merit further investigation.

4.33 The North West Point Loans of \$450,000 – The Hon Michael Misick said that, in June and July 2006, he had received a total of \$350,000 in three loans, \$150,000 from the Hon Floyd Hall and \$100,000 each from the Hon Jeffrey Hall and the Hon Lillian Boyce. The money for these loans was generated by the sale of land at North West Point by a company called Urban Development Ltd to a company controlled by an overseas developer called David Wex, and the loans were made to the Hon Michael Misick following the transaction. I examine this matter in more detail later in this Chapter in relation to the Hon Jeffrey Hall.²⁵⁸ The beneficiaries of the transaction, which involved flipping,²⁵⁹ of Crown Land, were the Hon Jeffrey Hall and three other Belongers. The three others were respectively the brothers of the Hon Floyd Hall, and the Hon Lillian Boyce, and the former husband of Hon Lillian Boyce. The Hon Floyd Hall and the Hon Lillian Boyce each insisted in evidence that their siblings, not they, had loaned the monies, but the Hon Michael Misick disagreed, saying the Ministers had been the lenders.

4.34 The transaction, as a whole bears the hallmarks of a flagrant exploitation of the Crown Land Policy, in which three Cabinet Ministers may have been complicit. Both the Hon Floyd

258 see paras 4.196 – 4.209 below

259 see paras 3. 9 – 3.15 above - purchase by Belongers of land at a discount and immediate onward sale to overseas developers at large profits.

129

Hall²⁶⁰ and the Hon Lillian Boyce²⁶¹ admitted that they had benefited personally from the profits made by their brothers. The Hon Michael Misick seems to have known enough of the transaction and the profits made, to regard it as an opportune time to approach them for money. There is no sign of any attempt to repay, or even pretence at attempts to repay the funds, despite his later acquisition of much greater funds from a Slovakian Bank, J&T Banka.²⁶² The fact that the money was being taken from those who had made windfall profits without the need for investment or risk on their parts suggests that the Hon Michael Misick took a cut from the profits from each. If that proves to be the case, it would be shameless exploitation of the Crown Land Policy, and represent his personal enrichment at the expense of the TCI Islanders.

4.35 As with all or most of the other loans that I have mentioned, the receipt of multiple sums never repaid suggests that – like the loans to constituents – the idea of eventual repayment is a convenient fiction. This is at its most obvious when it is remembered that they were made to an ostentatiously wealthy Premier by colleagues in the Cabinet (or the relatives of the two of them), none of whom enjoyed at the time his trappings of wealth or influence and whom he has made no attempt to repay.

7 - I find that the undocumented and un-repaid, North West Point 'loans' to the Hon Michael Misick, collectively amounting to about \$350,000 from Hon Jeffrey Hall, the Hon Floyd Hall or his brother and the Hon Lillian Boyce or her brother, were possibly corrupt payments to him for favours given in relation to the North West Point transaction, which engendered the money to facilitate such payments.

I, therefore, recommend criminal investigation by police or others in relation to the Hon Michael Misick of possible corruption and/or other serious dishonesty, including misfeasance in public office, in relation to these payments and the North West Point transactions giving rise to them.

4.36 The Third Turtle Club – Finders's Fee of \$161,000 - Another major payment to the Hon Michael Misick was to emerge for the first time after he had completed his oral testimony.

260 Transcript, Day 15, p 50

261 Transcript, Day 13, p 125

262 See para 4.99 below

130

The Hon Floyd Hall, in his oral evidence, informed the Commission that he had received what he termed a finder's fee in respect of his dealings with a developer named Richard Padgett, who ran a company called Oceanpoint Development Ltd. This sum was \$375,000 in total, and the property was later to be developed as the Third Turtle Club.²⁶³ The Hon Floyd Hall acknowledged that he had not declared the payment to the Registrar of Interests. He had not only provided a finding service but had also done some consultancy work for Mr

Padgett, and had billed him for the sum half of which, between \$161,000 and \$165,000, he had given by way of bank transfer to the Hon Michael Misick. He characterised it as a wedding present since, he said, the money had been a windfall for him. As I have said, the Hon Michael Misick had not mentioned this transfer. In fact a sum of \$161,618.92 was later disclosed by Chal Misick as having gone into his client account for the benefit of his brother from Paradigm Corporate Management Ltd (Paradigm), the Hon Floyd Hall's company, on 20th February 2006, some two months before the Hon Michael Misick's wedding.

4.37 The characterisation by the Hon Floyd Hall of this money as a windfall, and having passed half of it on as a gift is unconvincing. The precise amount of the transfer and medium of payment through Chal Misick's client account, rather than direct to the Hon Michael Misick do not readily suggest a personal wedding gift. Moreover, the circumstances of the Hon Floyd Hall's receipt of the \$375,000, including his failure to declare it to the Registrar of Interests and his late disclosure of it to the Commission, raise serious questions about the probity of the payment. The more suspect the deal on the part of the Hon Floyd Hall, the more questionable is the division of it between him and the Hon Michael Misick. The circumstances giving rise to the payment, and the Hon Michael Misick's failure to declare it clearly require further investigation.

4.38 The Alden Smith payment of \$325,000 – The Hon Michael Misick received a payment of \$325,000 in February 2006 from a man named Alden Smith, which he had paid into his Belize Bank account. He did not declare it to the Registrar of Interests, and he disclosed it to the Commission only at the start of the oral proceedings after having been asked to account for previously unexplained credits to his bank accounts. He said that he had been approached by Mr Smith, who had a company called Ashley Properties Ltd, to assist with a sale of land. The land was on Water Cay, and the purchaser was Mr Peter Wehrli, who was a

263 Transcript, Day 6, p 113

131

friend of the Hon Michael Misick, and had loaned him money.²⁶⁴ He claimed that he had been asked by the Hon Floyd Hall to intervene, but did not know whether the latter had received any money from the transaction. He also denied that the land in question had been Crown Land at the time.

4.39 In due course the Hon Floyd Hall was to tell the Commission that Mr Smith was a friend of his and he had loaned Mr Smith \$75,000. He said that Mr Smith had had an option to purchase 10 acres of Crown Land on Water Cay for \$750,000 and had evidently sold the land on for \$2 million, making a substantial profit. This allowed him to repay his debt to the Hon Floyd Hall and to pay him a further \$125,000. On that account, the total commission of \$450,000 allegedly paid by Mr Smith on the \$2 million sale would have amounted to 22.5% in comparison to most realtors' commission rates in single figure percentages. The evidence of the Hon Floyd Hall is clearly at odds with that of the Hon Michael Misick, as the transaction described by the former was a purchase and sale on ('flipping') of Crown Land and not simply a private sale of private land. If that were so, the Hon Michael Misick, who profited from the deal, must have known of it.

4.40 The Janette Varella Deposit of \$95,000 – A further payment to the Hon Michael Misick without proper explanation, was made into his account with the First Caribbean International Bank of \$95,000 in January 2007. He told the Commission that it had been a deposit by a friend, named Janette Varella, for a private land purchase. He said that although they had later jointly bought property, this money had been intended as a deposit on land she had been going to buy on her own account. He said she had sent it to him to pay the deposit. He was not able, however, to point to the money being paid out of his account for that purpose. The discrepancy remained unexplained during his oral evidence, and in later submissions.

8 – I find that the Hon Michael Misick in recent years accepted and failed to declare to the Registrar of Interests many gifts or purported loans of money via the client account of his brother and attorney, Chal Misick, which were possibly corrupt on account of possible favours given by him in his capacity as Premier.

264 See para 4.13 above

132

I, therefore, recommend criminal investigation by police or others in relation to the Hon Michael Misick of possible corruption and/or other serious dishonesty, including misfeasance in public office, in relation to such and other similar matters in recent years.

9 - I find that there is information that the Hon Michael Misick may have promoted the abuse of the Crown Land Policy on a number of occasions, and benefited personally from that abuse: 1) in his receipt of \$161,618.92 from the Hon Floyd Hall via the client account of Chal Misick on 20th February 2006, a possibly corrupt payment derived from a purported finder's fee of \$373,000 in respect of the Third Turtle Club paid by Mr Richard Padgett, a developer, to the Hon Floyd Hall in the circumstances summarised above;²⁶⁵ 2) in his facilitation of the sale of former Crown Land by Ashley Properties Ltd for which he received a commission, as described above; 3) in his participation in the profits of Urban Developments from the sale of land at North West Point to a company controlled by David Wex, an overseas developer, as described; and 4) in fronting the sale of Crown Land to overseas developers, specifically in his involvement in the company, MIG Investments Ltd, by which he enabled overseas developers to purchase 18 acres of land entirely at their expense, but in which he acquired a 50% interest by virtue only of his status as a Belonger.²⁶⁶

I, therefore, recommend criminal investigation by police or others in relation to the Hon Michael Misick in respect of the above matters of possible corruption and/or other serious dishonesty, including misfeasance in public office.

Tourism

4.41 Over the last decade the main source of income and development for the TCI has been, and remains, the promotion of the Islands as a tourist destination. They have been deliberately marketed to attract what are termed high-end tourists, those prepared to spend extensively on luxury accommodation. From the formation of this Government in 2003, the

265 See paras 4.36 – 4.37 above; See also paras 4.121 – 4.124 and Recommendation 19 below

266 Transcript, Day 2, pp 127 - 133

Hon Michael Misick also held the post of Minister of Tourism. In recent years, he has shared responsibility for tourism with Tourist Board with some full time paid officials, including the Director, Lindsey Musgrove, and Deputy Director, Ralph Higgs. Both of these men gave evidence to the Commission, as did the Chairman the Hon Wayne Garland, a PNP Member of the House of Assembly. Although a Board member, the Hon Garland's post is an executive one, making him also a paid member of the Board.

4.42 As Minister for Tourism, the Hon Michael Misick has presented himself as the main ambassador for the Islands abroad. The Hon Floyd Hall has commented that this was a successful strategy, and the Hon Michael Misick displayed no false modesty in vaunting his own success. The evidence of the Hon Wayne Garland to the Commission was that tourist numbers had been rising since 2003, but had dipped during the financial year 2007-2008. The Commission has not seen figures for tourist numbers, and no evidence was presented to it as to the effectiveness of different approaches. In fact, the Chief Auditor, Cynthia Travis, in her Audit Report on the Tourist Board for 2005-2006, stated that the Board had been unable to compile accurate statistical data on tourist arrivals by air, and had been relying on estimates. The Report made depressing reading. The Chief Auditor described the Tourist Board as being in a poor financial state, with a pattern ad hoc spending and a large deficit because of much unbudgeted expenditure in the previous financial year. She pointed out that, of 13 issues raised with the Board, six had also been raised the previous year, suggesting an unwillingness or inability on the part of the Board to address identified problems. She did not attribute the deficits to fraud, but seemingly to incompetence and poor leadership.

4.43 The Hon Michael Misick, when asked in the oral proceedings about the Chief Auditor's criticisms, responded with a personal attack on her as being anti-government, alleging that she was in cahoots with the Opposition. As the Commission learned, he had previously berated her publicly on at least one occasion. The Commission has seen much of her work in her audit reports. Nothing in them suggests her to have been anything other than objective and professional in her work, rightly seeking to address the Government's incompetent and chaotic management of public finances.

4.44 The division or sharing of responsibilities between the Ministry of Tourism led by the Hon Michael Misick and the Tourist Board led to confusion. The Board's job was to promote tourism, and it had been voted a generous budget for that purpose. However, the Hon Michael Misick increasingly acted on his own initiative, undertaking projects and committing the Board to contractual obligations without consulting them in advance or in disregard of its advice. There was confusing evidence before the Commission as to who was responsible for what and who had done what in undertaking some of these commitments. From April 2007 the marketing budget of the Board was apparently hived off to allow for a special budget for marketing. Board officials understood that this was to be managed or channelled through the Office of the Premier. In a written submission to the Commission he denied that.²⁶⁷ The Hon Wayne Garland said that, on occasion, he had signed documents on behalf of the Hon Michael Misick rather than Board, the legal questionability of which may yet have to be tested.

4.45 The only reason for this new budgetary arrangement seems to have been to give the Hon Michael Misick an opportunity to intervene personally in marketing decisions for the Islands' tourism industry, more particularly as to advertising. I do not doubt the Hon Michael Misick's enthusiasm for promotion of the TCI, but cannot avoid the conclusion that he wished to circumvent governmental bureaucracy and make his own decisions, usually involving high-profile and determinedly up-market advertising. Although, his special budget for the purpose was generous, he spent almost all the sum budgeted for the first two years in the first year. Meanwhile the Board had overrun its own budget in the previous year, leading to an accumulated deficit in March 2006 of over \$2 million. This resulted – according to the evidence of its Director and Deputy Director – from the Hon Michael Misick's directions that it should undertake projects for which there were no budgeted funds.

4.46 Kerwin Communications – Of particular concern was an agreement between the Board and Kerwin Media LLC, a New Jersey agency working under the name of Kerwin Communications. Until about 2006 advertising of the TCI in the USA had been handled by a company named Blur Advertising, working on a relatively modest budget. In 2006 Kerwin Communications emerged as a bidder for the work. The Commission was shown a formal

267 Hon Michael Misick, fourth statement, dated 19th January 2009

135

contract between the agency and the Board dated 10th March 2007. It was daunting in its scope, seemingly authorising the agency to act on behalf of the Board in the placement of contracts for Print-Media and Broadcast-Media advertising without prior agreement. The bills were to go to the Board; Kerwin Communications would be held free of any liability, and would receive commission on all advertising placed; and the contract placed no restriction at all upon the amount of advertising or number of contracts placed by the agency. It was, it appears, in Kerwin Communications' interest to place as much advertising as possible, as it received a straight percentage of every dollar committed.

4.47 The contract, on the face of it, had been signed by the Hon Wayne Garland, as Chairman of the Board and on its behalf. On being shown the contract in the course of his evidence to the Commission, he said that he had taken no part in its negotiation, all of which had taken place before his appointment. He agreed that the contract bore his signature, but, paradoxically and without explanation, denied that he had ever seen the document before. He agreed that it amounted to a blank cheque in favour of Kerwin Communications, and informed the Commission that the Government was being sued for a series of unpaid debts incurred on its behalf by the agency. He said that the contract would have been referred to Saunders & Co as attorneys for the Board before signature.

4.48 In fact, Kerwin Communications had already begun to place advertising for the Government before the purported signing of the contract with the Board in March 2007. At around this time they had engaged the services of the Hon Michael Misick's wife for advertising purposes from late 2006. Photo-shoots had been arranged, for which she appears to have been paid nearly \$300,000 through her company My Way Productions 2 Ltd. The evidence before the Commission on this matter was, however, unstructured and poorly documented.

4.49 The Tourist Board's minutes of its monthly meetings in the Autumn of 2006 confirm that Kerwin Communications had already begun to act de facto as agent for the Board on instructions of the Hon Michael Misick before the March 2007 contract, and had been invoicing it for advertising placed. In his evidence to the Commission, the Director, Mr Musgrove, spoke of a meeting he attended in New York late in 2006 with Mr Kerwin, the

136

Hon Michael Misick and the then Chairman of the Board, Don Gardiner, at which the agency made a presentation of the services it could provide and their price. He stated that that he had left the meeting with the impression that Kerwin Communications was to be the Board's new advertising agency, although no firm agreement had been reached. In cross-examination on behalf of the Hon Michael Misick, he disagreed with the suggestion that it had been the Board's decision to engage Kerwin Communications and that the Board had decided how the funds provided by the special budget were to be spent. Evidence to the Commission by the Board's Deputy Director, Mr Higgs, was to like effect, though he differed as to detail. According to him,²⁶⁸ the Hon Michael Misick's wife's involvement had already been decided.

4.50 Thus, the thrust of the evidence from all three Tourist Board officials was that the Hon Michael Misick, not the Board, had chosen Kerwin Communications as the advertising agency for the TCI, and that the Board had effectively been instructed or asked to accept that choice. Their evidence in that respect is of a piece with that of Ms McCoy-Misick, who said that her husband had played a role in negotiating the Kerwin Communications contract. She said that her husband had told the agency that she was going to be the face of the TCI, and had made the appointment of the agency dependent upon it.

4.51 The Hon Michael Misick, on the other hand, told the Commission that the Board had selected and appointed Kerwin Communications²⁶⁹ and that he had played no part in the selection or in their choice of his wife to be the advertising face of the TCI.²⁷⁰ He maintained that it was a coincidence that the agency chose his wife. Mr Kerwin sought to support his stance, in a letter to the Commission asserting that the contract had been negotiated solely by the Hon Wayne Garland on behalf of the Board, and that his agency had negotiated separately with Ms McCoy-Misick as to the terms of her engagement. However, he acknowledged that Kerwin Communications had been instructed in mid 2006, about the time it had engaged her to advertise the TCI, long before the Hon Wayne Garland became the Board's Chairman, and, on his own evidence, first met Mr Kerwin, namely in May or June 2007.

268 Transcript, Day 20, p 220

269 Transcript, Day 3, p 73

270 Transcript, Day 3, p 76

137

4.52 Even if the Hon Wayne Garland did sign the March 2007 contract document, it looks as if it was well after the agreement had been struck by the Hon Michael Misick and Kerwin Communications, and that the latter's work had begun with the promotion of Ms McCoy-Misick's lucrative work as the face of the TCI. The Hon Michael Misick and Mr Kerwin had

been on friendly terms since at least early 2006, long and close enough for Kerwin to have been invited to the Misicks' wedding in April 2006. In addition, the Hon Michael Misick's involvement in the operation of the agreement, once made, is also telling. In response to an expression of concern by the Deputy Director, Mr Higgs, about the level of expenditure to which Kerwin Communications was exposing the Board under the contract, he wrote to Mr Higgs instructing the Board to abide by the agreement he and the agency had made about expenditure.

4.53 In my view, if, as appears likely, the proper view of this conflicting evidence is that the Hon Michael Misick engineered the Government's advertising contract with Kerwin Communications and the agency's engagement of his wife for high financial reward, it suggests at the very least abuse by him of his official position. In expressing that view, I do not criticise Ms McCoy-Misick, who performed the duties asked of her, or the quality of the advertising purchased via Kerwin Communications.

10 – I find that the Hon Michael Misick behaved in a possibly corrupt manner and/or in misfeasance of his public duty, by securing highly paid advertising contracts for his wife with the TCI Tourist Board and with Kerwin Communications purportedly acting on behalf of the Tourist Board, thereby potentially abusing his ministerial responsibility for the tourism in the Territory with a view to enriching his wife and himself.

I, therefore, recommend criminal investigation by police or others in relation to the Hon Michael Misick of possible corruption and/or misfeasance in public office, in relation to him to his exercise of his responsibility as Minister responsible for tourism in this matter.

138

Use of Government and leased aircraft

4.54 One of the most contentious and hotly debated issues before the Commission was the use by the Hon Michael Misick of privately leased aircraft and of Government funded aircraft. He and his wife gave evidence to the Commission about their use of private aircraft. After they met in mid-2005 they conducted a courtship from afar, flying between Los Angeles and the TCI, initially on scheduled aircraft. They quickly decided that a privately leased aircraft would give them more time together. He provided the funds; she said that she did not, at first, know the cost, but later learned that each one-way trip cost about \$50,000. They adopted this mode of travel from about July or August 2005, and continued, with two or three round trips per month, up to and beyond their marriage in April 2006. Assuming private leases were always at the level and rate mentioned by Ms McCoy-Misick, the Premier would have spent between \$200,000 and \$300,000 per month between August 2005 and March 2007, when they began to consider a different arrangement. This represents expenditure of between \$4 million and \$6 million. Conspicuous and lavish expenditure of this nature is precisely the reason why there was such widespread public concern at the behaviour of the Premier, and a legitimate concern as to how he could possibly afford it.

4.55 In 2007 the Government acquired a 1976 King Air 200 aircraft²⁷¹ for local and regional transport. It bought the plane for just over \$1 million from a company called TCI Export LLC based in Boise, Idaho with a mailing address in Chicago.²⁷² The only named manager on the corporate documents is a man named Paul Brassington, whose likely relative, Michael Brassington, became its regular pilot, once the Government had purchased it. The Hon

Michael Misick proposed the purchase at Cabinet Meeting on 30th May 2007.²⁷³ Cabinet approved the purchase, and the following week, 6th June, they approved payment for the employment of two pilots.

4.56 The aircraft of greater interest, however, was a Gulfstream III jet aircraft, capable of international and trans-Atlantic travel. From about the middle of 2007 they began to use

271 Registration number N884PG.

272 The Hon Michael Misick Bundle 3, pp 1077 - 1081

273 Core Volume 6, tab 1, p 114 - 116

139

another Gulfstream III Jet.²⁷⁴ Their evidence differs as to how that came about. He said that he had been interested in leasing a plane to save the government money. She recalled that she had jokingly said to him that they needed a plane and he started looking into it and eventually they acquired one, and she used it. She recalled that on one occasion they had borrowed **Mario Hoffmann**'s private aircraft for a trip to the USA. Michael Brassington suggested he look at a jet being offered for sale by Wealth Aviation of Las Vegas. It was flown to Los Angeles whilst he was there on a visit, for him look at. Although an Offer to Purchase was drawn up in his name with a view to outright sale of the jet for \$6.25 million, his interest, he said, was only in leasing, so he did not continue with the transaction. However, Jeffrey Watson, a US citizen, a friend of his and Washington DC lawyer, knew of his interest, and bought the plane in the name of Indigo Transportation Partners, a company based in Miami. That company then offered to lease it to the TCI Government for \$165,000 per month based on a total of 400 hours flying time. In July 2007 the Cabinet, before whom the matter was raised by the Hon Floyd Hall, approved the purchase on those terms. In evidence to the Commission, the Hon Floyd Hall maintained that he had at the time disagreed with the purchase, but had not spoken out against it. He told the Commission that the deal had been done by the Hon Michael Misick without reference to him as Minister for Finance. The Hon Michael Misick was unable to explain to the Commission how it was that Mr Watson had bought the aircraft he had been looking at in Los Angeles. Soon after, in October 2007, Mr Watson was given Belonger status.

4.57 Ms McCoy-Misick remembered the details of the acquisition somewhat differently. She had been shown the Offer to Purchase document whilst on board the aircraft from Miami to Providenciales. They had, she said, bought the plane; she knew that because her husband had told her so. She and he had made arrangements to personalise or customise the inside of the aircraft, to the extent of her designing a personal crest to be woven into the carpet. They had also chosen colours and fabrics for the interior design; she provided the Commission with documentation from a designer, quoting for work on the aircraft which had been faxed to Captain Mike. She knew Jeffrey Watson as a friend of her husband, who would stay at the house with them in TCI, but was unaware of his connection with the aircraft. At no stage during her marriage did she suspect that they did not own the aircraft.

274 Registration number N165G

140

She had accompanied her husband in it on a working trip to Dubai for a tourist conference, but most of her use of it was personal, including many trips to the USA, including Los Angeles, Europe, including Switzerland to visit her daughter in school there, Milan, Prague, and a holiday in Africa. Her husband would send the plane to collect her from the USA, if she could not make scheduled flight connections.275

4.58 The Hon Michael Misick, in his written statement at the outset of the oral proceedings, maintained that Jeffrey Watson had leased it to the Government and others for government use for set periods of time, and to himself for personal use. However, there is no doubt that the Hon Michael Misick had almost exclusive use of the aircraft. The Hon Floyd Hall told the Commission that he had not travelled on it and had never even stepped on board. I have seen no evidence of other ministerial or other governmental use of it. Nor have I seen any evidence of payments made by the Hon Michael Misick to Indigo Transportation Partners for his personal use of the plane, nor any evidence of reimbursement by him to the Government for that use.

4.59 These circumstances of the acquisition and the Hon Michael Misick's use of the Gulfstream raise a number of matters, worthy of criminal investigation as to possible corruption and/or other serious dishonesty in the form of misfeasance in public office and/or dishonest misappropriation of public funds, namely:

1) the fact that Mr Watson, a friend of the Hon Michael Misick, purchased the jet and then leased it to the Government after the Hon Michael Misick had viewed the same jet, which suggests a much closer involvement of the Hon Michael Misick in its acquisition and/or beneficial ownership than he has admitted to the Commission;

2) the fact that he made no mention of Mr Watson in Cabinet or to a possible conflict of interest, when the government leased the jet at a very high rental, which suggests a desire to keep his connection secret;

3) If the Hon Floyd Hall is correct, the transaction was completed without advance reference to the Cabinet, and its approval was a mere formality, and

275 Transcript, Day 14, p 87

141

4) the exclusive use of the aircraft by the Hon Michael Misick and his wife, for the most part, for their personal use.

4.60 By way of postscript, there is conflict as to whether the leasing charges for the aircraft were still being paid and, if so, by whom at the time of the oral proceedings in January and February of this year. The Hon Floyd Hall, who was still Minister of Finance at the time, was under the impression that the Government was paying for it. The Hon Michael Misick's evidence was that the contract had been terminated and that payments had ceased. I still do not know the truth of the matter.

11 – I find that the Hon Michael Misick behaved in a possibly seriously dishonest manner, including misfeasance in public office and dishonest misappropriation of public funds, by his possible misuse of government funds and facilities for his personal purposes in his use of aircraft chartered or leased by the Government for official purposes.

I, therefore recommend criminal investigation by the police or others in relation to him of possible serious dishonesty, including misfeasance in public office and/or dishonest misappropriation of public funds in relation to his personal use of such aircraft.

Casablanca Casino and the Windsor Investment Group Ltd

4.61 The Commission received undocumented information suggesting that the Hon Michael Misick and Mario Hoffmann, the Chief Executive Officer of Salt Cay Development Co Ltd, both had an interest in the Casablanca Casino. The Hon Michael Misick had declared no such interest in his declarations to the Register of Interests. But evidence given to the Commission was to suggest that he, the Hon Floyd Hall and the Hon McAllister Hanchell each owned 10% of Windsor Investment Group Ltd, the holding company of the land on which it stood, and that Chal Misick owned the other 70%.

142

4.62 By a letter of 27th October 2008,²⁷⁶ the Hon Michael Misick's attorneys informed the Commission, for the sake of completeness, that he owned 10% of a company properly described as Windsor Investment Group Ltd,²⁷⁷ of which Chal Misick was the sole registered director, company secretary and shareholder. Windsor Investment Group Ltd owned 50% of Hydrinox Ltd, a holding company which owned the land upon which the Casino was built. The other 50% of Hydrinox Ltd was owned by Terrapin Investments Ltd. The beneficial ownership of Terrapin Investments Ltd or the other shareholders in Windsor Investment Group Ltd were not specified.

4.63 Terrapin Investments Ltd, it emerged, was held by or on behalf of Mario Hoffmann, as an asset holding company. The Hon Michael Misick's attorneys stated in the letter that the corporate documents for Windsor Investment Group Ltd would be forwarded to the Commission; they have not been. In the letter they also stated that Hydrinox Ltd had generated no profits and there had been no drawings on it, and that Windsor Investment Group Ltd had no income.²⁷⁸ Searches of the Companies Register show that, since April 2008, Windsor Investment Group Ltd and Terrapin Investments Ltd became joint equal shareholders and the only two directors of Hydrinox Ltd, and thus the effective owners of the Casino land.

4.64 Chal Misick acknowledged in his evidence to the Commission that the Hon Michael Misick owned 10% of Windsor Investment Group Ltd, but refused to identify the other shareholders. When I ruled against his refusal, he said that the Hon Floyd Hall and the Hon McAllister Hanchell each held 10% and that he held the other 70%. I should mention that neither the Hon Floyd Hall nor the Hon McAllister Hanchell had disclosed these interests to the Registrar of Interests or to the Commission in written or their oral evidence. ²⁷⁹ He said that when Windsor Investment Group Ltd had acquired the land upon which the Casino now stood, there was a property on it which the Casino operators converted into the Casino.²⁸⁰ The initial arrangement between the company and the Casino operators was that, as a reflection of their borrowing of some \$1.8 million for construction of the new building, they were to pay a nominal rent of \$2,500 per month. But soon the company took over the

²⁷⁶ Hon Michael Misick Bundle 1, page 320

277 registered on 21st April 2004, with Chal Misick as the sole registered director, company secretary and shareholder.

278 Hon Michael Misick Bundle 1, page 323 (T/S ref to Correspondence Bundle p 65)

279 Transcript, Day 10, p 17

280 *ibid*, p 20

143

servicing of the loan in return for a monthly rental of \$40,000 per month, which was paid direct to the lender and mortgagee to cover the cost of the loan. Chal Misick was unable to identify the lender.

4.65 Chal Misick had set up the Casino company, Casablanca Casinos Ltd, in April 2006, allocating shares in equal amounts to Washington Misick, a brother of the Hon Michael Misick, and to a man named Andy Stephens, both of whom became directors. Chal Misick later produced to the Commission what purported to be board minutes at which they authorised the company to borrow \$1.3 million from M&S Trust Company Ltd.

4.66 When asked about the possible involvement of Mario Hoffmann in the Casino operation, Chal Misick said he did not know. He maintained that he had no idea if Mr Hoffmann was behind the other 50% share in Hydronox Ltd, or whether he had been behind the loan of money for the redevelopment of the Casino. In fact, as Mr Hoffmann was later to make clear in written submissions to the Commission on 20th February 2009,²⁸¹ he was behind both. Included in those submissions, Mr Hoffmann stated that on a visit by the Hon Michael Misick to Bratislava in October 2005, he, Mr Hoffmann, introduced him to Andy Stephens who ran a casino there. At the suggestion of the Hon Michael Misick, Mr Stephens visited the TCI with Mr Hoffmann and viewed the Casino site and its former building, which he decided to convert into the present Casino, with the help of funding from or facilitated by Mr Hoffmann.

4.67 Mr Hoffmann stated in those submissions that he had always thought that Chal Misick owned Hydronox Ltd, the owners of the land. He is technically correct about that. Terrapin Investments Ltd is described by Mr Hoffmann as my TCI asset holding company, which he used to purchase 50% stake in Hydronox Ltd in 2007. He added that he had sold his investment in the company to Schomer Ltd owned by another, unnamed, Slovakian. The Company Registry records Terrapin Investments Ltd taking up shares and a directorship in April 2008, although their information would only be as accurate as that which Chal Misick gave to it. As Mario Hoffmann believed Hydronox Ltd was owned by Chal Misick, he must presumably have dealt with him. Chal Misick's assertion, that he did not know who lay behind the other 50% shareholding of Hydronox Ltd, is unconvincing.

281 Mario Hoffmann statement paras 14.1 - 14.6

144

4.68 Mr Hoffmann also confirmed, in written submissions to the Commission in February 2009, that he had loaned the money to Casablanca Casinos Ltd and to BK Partners Ltd (the latter, apparently a partner in managing the Casino, initially owned by Washington Misick,

and later jointly by him and Mr Stephens). Accordingly it appears that, whilst Chal Misick manages Hydronox Ltd, 50% owned by himself on trust for others, he claims not to know the identity of the person behind the other 50% share, even though this was Mario Hoffmann, a man with whom he has been involved later in a number of transactions. He also does not know that the money loaned to the company formed by him for renovation of the Casino (encouraged by his brother, the Hon Michael Misick, and 50% owned by his brother Washington) was also from Mr Hoffmann.

4.69 Whether there is any wrong-doing in the establishment of the Casino does not emerge from the material we have seen. Mr Hoffmann, in his written evidence to the Commission, insisted that it was a standard business deal, but even he expressed surprise that Chal Misick claimed not to recall the details of it, completed, as it was, only a few months earlier. In my view, Chal Misick is almost certainly lying about his recollection. It defies belief that he would not know with whom he was dealing.

4.70 The two Cabinet Ministers, in addition to the Hon Michael Misick, who had been investors in Windsor Investment Group Ltd, the Hon Floyd Hall²⁸² and the Hon McAllister Hanchell,²⁸³ both returned to give further evidence in the oral proceedings. Both then remembered their investment, \$40,000 each, in the Casino project in about 2004.

4.71 The Hon Floyd Hall said that he had not known that the Windsor Investment Group Ltd had been the company involved or that his shareholding had amounted to 10%. He said he had paid \$40,000 from his own account, but had received no paperwork evidencing his investment. He said that he had not thought it necessary to declare his interest in this investment to the Registrar of Interests or to disclose it to the Commission. He also said that, whilst he believed Ministerial colleagues had also invested, he had not known who or in what sums. He added that the Hon Michael Misick, the Hon McAllister Hanchell and he had never discussed their joint investment, despite all being in a similar position, and he had

282 Transcript, Day 15, p 4

283 Transcript, Day 19, p 94

145

never asked Chal Misick how the investment was doing, despite the high profile and apparent success of the Casino.

4.72 The Hon McAllister Hanchell, unlike the Hon Floyd Hall, knew the company name and its borrowings, that the Hon Michael Misick and the Hon Floyd Hall were his co-investors, and that Chal Misick had co-ordinated their respective investments. Indeed, he recalled when the four men had met together to discuss the project and had agreed that it would be good investment.

4.73 All this information and evidence about the Casablanca Casino suggests a joint venture by the four men, through Windsor Investment Group Ltd, to develop the Casablanca building. That in itself is unremarkable. However, no formal shares were ever issued in Windsor Investment Group Ltd, and the Commission has not been able to establish what, if any, investment they respectively made, or when or where the money from the investment came from. The company said to own the land, Hydronox Ltd, although it existed before Casablanca Casinos Ltd, was not acquired by Windsor Investment Group Ltd until late 2007,

which is over 18 months after Casablanca Casinos Ltd had been established, and after the Casino, with the financial involvement and support of Mario Hoffmann, had begun to operate. It is hard to see how the claimed investment in 2004 could have been used to redevelop the building.

4.74 I cannot say that the circumstances giving rise to this establishment and investment in the Casino by three former Government Ministers and Mario Hoffmann were, on their face, possibly corrupt or otherwise seriously dishonest. However, the contradictions and evasiveness exhibited by the three Ministers suggest a possibility of some venality that calls for further investigation. I have in mind, in particular, the following circumstances: 1) the non-declaration by the Ministers of their respective interests in the Casino to the Registrar of Interests, and their tardy and patchy disclosure of them to the Commission; 2) contradictory accounts of the Hon Floyd Hall and the Hon McAllister Hanchell; and 3) their common accounts of investing without any form of documentation and apparent lack of curiosity about the value of and returns from their investment, despite its apparent obvious success. I am strengthened in the suspicion of such possibility of venality by the contradictions inherent in the evidence of Chal Misick.

146

4.75 An interesting side issue and footnote arises from the involvement of Chal Misick in the Windsor Investment Group Ltd. It concerns a payment into one of the companies that Chal Misick had established for Ms McCoy-Misick, My Way Productions 2 Ltd. One of the items listed by the Hon Michael Misick on the schedule, Schedule 5, that he provided to the Commission at the start of the oral proceedings in January 2009 purporting to show the sources of various funds,²⁸⁴ was the receipt of a payment from Windsor Investment Group Ltd by My Way Productions 2 Ltd, of a sum of \$300,000 made in March 2007. When asked about it, the Hon Michael Misick referred to his interest as a shareholder in Windsor Investment Group Ltd,²⁸⁵ and initially suggested that it was a dividend payment to him. However, he was unable to explain why or how he could have acquired \$300,000 as dividend from a company that had earned nothing.

4.76 Chal Misick was to suggest in a later statement that he thought his brother was mistaken and that the \$300,000 came from a share sale option on a North Caicos property.²⁸⁶ In fact the client account ledger provided by Chal Misick did not support either explanation. The client account had received almost exactly the same sum about six weeks before the transfer to My Way Productions 2 Ltd, by way of a political contribution from Valentine Grimes, believed to be a Bahamas-based lawyer and politician.

Joe Grant Cay

4.77 The issue of the development of Joe Grant Cay has arisen before the Commission in different contexts, and has given rise to various concerns. Joe Grant Cay (sometimes referred to as Joe Grant's Cay) is a small island of about 740 acres (1.16 sq miles) situated between Middle Caicos and East Caicos. The earliest documentation seen by the Commission relating to a proposed development of this island is a letter of 1st September 2006 to the Hon Michael Misick from a local firm of attorneys, Miller Simons O'Sullivan, on behalf of Arturo Malave, a Venezuelan national known to him. The letter contained a proposal for development of the Cay through a company in formation named East Caicos Ltd, and sought Government approval.²⁸⁷ The letter also mentioned your recent discussions

284 Hon Michael Misick, Bundle A, Appendix 5

285 Transcript, Day 2, p 51

286 Chal Misick statement, p 6

287 Core Volume 7, tab 2, p 3

147

with our client. The Hon Michael Misick, when asked about this, agreed that he may have had earlier discussions with Mr Malave on the subject.²⁸⁸

4.78 The proposal was raised in Cabinet on 18th October 2006.²⁸⁹ The Cabinet decided to approve in principle what was termed a high end resort project on Joe Grant Cay to be developed by Arturo Malave or a designated company. Various elements of the likely agreement for the project were included in the Cabinet minute, including acceptance of an offer from Mr Malave to pay \$5 million to the Government on completion of the Development Agreement. TCI Invest, which is the Government agency responsible for encouragement of inward investment into the Islands, wrote to Mr Malave's attorneys on 6th November to that effect.²⁹⁰ However, a due diligence report on Mr Malave prepared in late 2006 painted him in less than glowing colours. The Hon Michael Misick, who agreed in evidence that he was a friend of Mr Malave, correctly pointed out that the report confirmed that he had no criminal convictions. The Hon Michael Misick told the Commission that he had been introduced to Mr Malave by an executive from the Carnival Corporation, and had had no cause to be suspicious about his past business dealings.²⁹¹ He added that eventually, however, the Government did not enter into agreement because of the due diligence report and its perception of his inability to perform.

4.79 An internet search against the name of Arturo Malave quickly reveals a number of adverse references alleging his involvement in fraudulent activity. There may be nothing in these allegations; the Commission has not received any information to suggest that his involvement in Joe Grant Cay was not above board. It is clear, however, that he was attracting criticism in his own name over some period of time, and his continuing association with the project might have been embarrassing for the TCI Government.

4.80 Chal Misick also knew Mr Malave. In his oral evidence to the Commission, he said that he had acted for him in the establishment of a company called Caicos Platinum Company Ltd²⁹² for the purposes of this project. The company was incorporated on 30th October 2006

288 Transcript, Day 3, p 115

289 Core Volume 6 tab 1 p 88

290 Core Volume 7, tab 2 p 20

291 Transcript, Day 3, p 119

292 Transcript, Day 10, p 152

148

in the TCI, and had only ever had one issued share, which was held by Chal Misick's nominee company, Windsor East Ltd. Chal Misick's other nominee company, Chalmers Management Ltd, was the sole director.²⁹³ Chal Misick told the Commission that since Miller Simons O'Sullivan represented Mr Malave in his development ambitions, his only role had been to incorporate the company.

4.81 Chal Misick went on to say that, because Arturo Malave could not pay some money by late November 2006 to the Government, the offer of a development agreement lapsed. This is not reflected in the Cabinet minutes or in the TCInvest letter, but Chal Misick may not have had full access to that information at the time. What is clear is that in the following year, 2007, the Cabinet set a deadline of 30th November 2007 for action, a deadline that the then proposed developers did not meet. This failure may have been confused with the events of late 2006. By then, according to Chal Misick, Mr Malave had dropped out of the picture, and he, Chal Misick, had retained Caicos Platinum Company Ltd for use by other clients.²⁹⁴

4.82 What Chal Misick said about Arturo Malave is demonstrably wrong on the basis of other evidence. In mid-March of 2007 Mr Malave had not dropped out of the proposed project. In that month Miller Simons O'Sullivan wrote to the Premier²⁹⁵ and to TCInvest by emailed letter under the heading Caicos Platinum Company Ltd, copied to Mr Malave and his associates, stating that funds were now in place to start development.

4.83 However, as Chal Misick acknowledged in evidence to the Commission, there had also been another potential and short-lived competing developer for Joe Grant Cay, Paola Sepe and three associates, each of whom was a nephew of the Hon Michael Misick and Chal Misick, for whom he had formed a company called Oceanic Development Ltd.²⁹⁶ He did not seem to think there had been any conflict of interest in his assistance to two separate contenders for the prize of the Joe Grant Cay development. However, Paola Sepe and the three nephews dropped out of the race by the end of 2006.²⁹⁷

293 Chal Misick bundle p 143 - 153

294 Transcript, Day 10, p 154

295 Core Volume 7, tab 2, pp 37 - 38

296 Paolo Sepe featured in a different context in that he was said to have provided a donation from a company called Sarawak Ltd of \$50,000 to the Premier via the accounts of Chal Misick on 8th December 2006.

297 Transcript, Day 10, p 174

149

4.84 Chal Misick told the Commission that at that stage a third potential developer for Joe Grant Cay appeared and for whom he acted: Don Gardiner, a real estate agent with Prestigious Properties and former Chairman, now Deputy Chairman, of the TCI Tourist Board. He was joined by a fourth potential developer of substance, Dr Cem Kinay, the developer of Dellis Cay, using for this purpose a company known The Star Lions Ltd.²⁹⁸

4.85 As a result of the instructions received, Chal Misick wrote to the Government about the proposed development agreement for Joe Grant Cay. His proposal was that the original

development agreement in the name of Arturo Malave / Caicos Platinum Company Ltd should be amended to describe the developers as Oceanic Development Ltd and Star Lions Ltd.299 The Cabinet considered and approved this proposal on 16th May 2007.

4.86 However, five days later, on 21st May 2007, Dr Kinay wrote to the Premier informing him that his hotel group, The O Property Collection, was working with Caicos Platinum Company, the company originally destined as the vehicle for Mr Malave's proposed development of Joe Grant Cay. In the letter, he referred to a letter sent by the Government to Caicos Platinum Company on 1st December 2006 as a starting point, a letter not produced to the Commission. One possible inference that could be drawn from the letter and the change of name of the developer is that Mr Malave was still involved, even though his name had been taken off the development agreement. The public controversy surrounding his other activities might well be the reason why the Government would not wish to be seen to be doing business with him. If another developer was the public face of the deal, that would have made the process less controversial.

4.87 For any criminal investigator who might hereafter have to look at the story of what happened to the Joe Grant Cay proposal there is much perplexing detail. Who was acting for which potential developers at different stages? Why the differences in account between Chal Misick and Dr Kinay and as to who owned exactly what in the various corporate vehicles circling the proposed development? That detail has been closely examined and analysed by the Commission, and its analysis will be available if required. I am not going to burden the

298 Transcript, Day 11, p 3

299 Core Volume 7, tab 2, p 42

150

readers of this Report with it. It is enough for me to say that, given the sharply conflicting and/or inexplicable accounts proffered by the various players at different stages of the story and to the Commission, someone must be lying, and there is a possibility of other serious dishonesty. The proposed development moved forward slowly, with extensive negotiation between the Government and the consortium headed by Dr Kinay. The sale of the land on Joe Grant Cay to them was not finalised until 2008. When the Commission began its work in mid 2008 the proposals for development were still in their early stages.300

4.88 Political interference in the allocation of the Joe Grant Cay development permission, particularly by the Hon Michael Misick, the sudden changes in developers and in the identity of the Belonger partners associated with them, the close links between the Hon Michael Misick and those individuals, and the coincidence of a large political contribution to him around the time of the initial development grant, all point to the possibility of a corrupt deal involving the Hon Michael Misick. This is a topic which clearly requires close investigation.

4.89 The heart of the matter and its history illustrates to the full the systemic weaknesses of the way in which the Crown Land Policy in recent years may be open to abuse by developers, Ministers and Belonger partners, or fronters, and those skilled in pairing the fronters with the Ministers and developers, and documenting the latter's corporate relationship. All such players in the chain can and do make undeserved profits at the expense of the TCI public. The various possibilities for abuse here are to be found in the

chain of events leading to the Government's approval in the early Summer of 2007 for the sale of the land at Joe Grant Cay at well below market price to a consortium led by Dr Cem Kinay for development, to which I shall return in this Report when looking at the Hon McAllister Hanchell's involvement in that transaction. 12 – I find, for the reasons set out above, that there is a possibility of corruption and/or other serious dishonesty, including misfeasance in public office, in relation to the Hon Michael Misick in the chain of events leading to the eventual disposal of land at Joe Grant Cay at well below market price to a consortium led by Dr Cem Kinay, following the secret payment by Dr Kinay of

300 See also paras 4.172 – 4.181 below

151

\$500,000 to him in January 2007, followed by the approval by Cabinet on 16th May 2007, to which the Hon Michael Misick was a party.

Accordingly, I recommend criminal investigation by the police or others of the possibility in relation to the Hon Michael Misick of corruption or other serious dishonesty, including misfeasance in public office, in relation to this matter.

Salt Cay

4.90 The issue of Salt Cay is a recurring theme in the submissions received by the Commission. It is clearly an area of great concern to the inhabitants of the TCI, in particular those of Salt Cay, its renowned natural beauty, the fragility of its environment and the historical significance of the Island make any attempt to develop the island a topic of serious debate. I do not seek to intrude on that debate, but I must consider the handling of the proposed development, in so far as it may cast light upon the issues at the heart of the Inquiry.

4.91 The development of Salt Cay has been contemplated for a long time, but only became a real possibility in recent years with the proposals advanced by Salt Cay Development Company Ltd (DEVCO), which is ultimately owned and controlled by the Slovakian businessman, Mr Mario Hoffmann. Mr Hoffmann, in extensive written submissions to the Commission, described his involvement with the project, beginning with his purchase of land on the Island held by the Caribbean Islands Investment Company Ltd in 2001, in total about 11 acres of mixed freehold and leasehold property. Over the following years he bought further land adding about six acres more to his holding.

4.92 From 2005 onwards proposals for the development gathered pace and grew in land take. Mr Hoffmann reached an agreement in principle with the Government to obtain 41 further acres of land to build a hotel and residences. At around this time the Hon Michael Misick and the Hon Galmo Williams made a trip to Bratislava at the invitation of Mr Hoffmann.

152

4.93 In early 2006 a feasibility study was prepared by KPMG on behalf of DEVCO envisaging a far wider reaching development of the island. This document floated, for the first time, the idea of a golf course. In May/June 2006 Mr Hoffmann also reached agreement with his then Belonger partners to buy out their shares in the business.

4.94 One particular aspect of the development that has caused concern to the Commission was the handling of the proposal for the Salt Cay Golf Club. Following informal consideration and discussions about the possibility of a golf course, Mario Hoffmann wrote formally, on behalf of DEVCO, on 1st August 2006 to the Hon Michael Misick seeking a parcel of land for a golf course. He sought, in formal terms, a long term lease of 222 acres for 99 years. The letter of 1st August stated that Salt Cay Golf Club Ltd would be established to run the course.³⁰¹ It made no mention of who would be involved beyond that.

4.95 The Hon Michael Misick showed the letter to the Cabinet meeting scheduled for the following day, 2nd August. There had clearly been no possible chance for any formal governmental assessment of it in the intervening 24 hours, and there is no indication that there had been beforehand. Nonetheless, Cabinet immediately approved it in principle,³⁰² and the Hon Michael Misick wrote to Mr Hoffmann telling him the good news on 8th August.³⁰³ TCInvest instructed the Chief Valuation Officer, Mr Shaaban Hoza, to undertake a valuation of the site. He placed a freehold value on it of \$7.76 million.³⁰⁴ By 29th November 2006 the Cabinet had decided – following a request for a relatively small increase in acreage – that they would grant 238.72 acres for the proposed golf course, at a peppercorn rent of \$1 per acre per year. At the same time they approved the grant of Belonger status for Mr Hoffmann. The effect of this grant was to avoid the need for Mr Hoffmann to engage any other Belonger partner in the project, since he was now, himself, the Belonger.

4.96 From the viewpoint of Mr Hoffmann this was a very good deal. He had his full golf course for a tiny initial outlay, and his Resort development would be a valuable extra resource that would make the marketing of the development far more attractive. Even so, the Commission has received several representations that the deal was vulnerable to failure

³⁰¹ Core Volume 7, tab 3, p 1

³⁰² *ibid*, pp 2 - 3 ³⁰³ *ibid*, p 4

³⁰⁴ *ibid*, p 5

153

without adequate and timely ancillary facilities such as those proposed. And, it has been pointed out, given the vast development costs, land for golf courses is frequently provided by way of long term lease and at low or nominal rates.

4.97 If long-term leasing at a nominal sum had been anticipated by the Government when first considering the proposal in August 2006, it is surprising that TC Invest, in November 2006, sought a market valuation of the land from the Chief Valuation Officer. Having received the freehold valuation of \$7,760,000, TC Invest had, on 14th November 2006, prepared a memorandum for the lease suggesting a commercial rent of \$194,000 per annum, calculated at 2.5% of the freehold value.³⁰⁵ However, the Cabinet did not even seek to negotiate on the strength of that valuation. They chose to forego the \$194,000 rental (worth over \$19 million over the term of the lease) and let the lease go for a peppercorn rent.

4.98 Salt Cay Golf Club Ltd had been incorporated by Chal Misick on 4th August 2006, two days after the August 2006 Cabinet approving the initial proposal in principle and before the receipt of the letter from the Hon Michael Misick informing Mr Hoffmann of it. On 15th

December 2007 Windsor East Ltd, a nominee company of Chal Misick, was appointed company secretary and a director, and Stefan Kral of DEVCO became the second director. More importantly, at that time the shares of the new company were split 50-50. Half went to Mr Hoffmann's Cyprus based holding company. The other half went into a company with the innocuous title of Business Ventures Ltd. This was another holding company, based in the British Virgin Islands, but it held shares for Chal Misick. In essence, he had been given half of Salt Cay Golf Club Ltd, and thereby owned half of its assets.

4.99 The following year, 2007, the Hon Michael Misick approached J&T Banka in Prague, to which he had initially been introduced by Mario Hoffmann, for a loan of \$6 million. The Bank agreed to grant the loan to him and his wife. Ms McCoy-Misick told the Commission that she had signed a form presented to her by her husband, but had not queried its contents. She told the Commission she had not understood what she was signing, had not appreciated that he needed to borrow money, and would not have consented to it had she

305 *ibid*, p 8

154

been known. The loan was secured on the shares held by Business Ventures Ltd in the Golf Club, suggesting that in the eyes of the Bank – if it was treating the \$6 million as a genuine loan – a 50% share in Salt Cay Golf Club Ltd was good security for it. Chal Misick signed the documents for this security. When asked by the Commission about the figures involved, he expressed no surprise, and seemed unperturbed by the value of his new asset.

4.100 The Hon Michael Misick was asked whether he knew about his brother's involvement in this project when he and the Cabinet approved the lease to the new company. He said that he had not.³⁰⁶ He said that he could not recall when he had become aware of it.³⁰⁷ He suggested, and has argued since, that his brother must have become involved at a later stage. Chal Misick's evidence to the Commission was I was invited by the proponents to get involved,³⁰⁸ referring, as he explained, to Stefan Kral. He said that he had been involved as an attorney, and had negotiated with the architect on behalf of Salt Cay Golf Club Ltd; and that those activities had led them to invite him to become further involved in about November or December of 2006, shortly before allotment to him of 50% of its shares on 15th December 2006.

4.101 Chal Misick said that he had had no dealings with Mr Hoffmann, only with Mr Kral. This is contradicted by a letter from Mr Hoffmann to the Commission of 12th January 2009, addressed originally to the attorneys for the Hon Michael Misick, stating: ... I've applied for lease of additional 239 acres of Crown land for golf course and infrastructure with my partner Chal Misick in 2006 as well. In a statement to the Commission, provided after the oral proceedings, on 20th February 2009, Mr Hoffmann gave more detail. He stated that, having started out on the development of Salt Cay with two local partners, in May to June 2006 he had bought out the interest of one, Ben Walkin, and had reached agreement with another, Simon Wood who was to continue simply as the architect of the project. He continued:³⁰⁹ In July/August 2006 having not having or applied (sic) for Belonger status and knowing there was a policy established by Michael Misick's cabinet that Crown land would be transfer (sic) only to Belongers or companies with at least 50% Belonger ownership, I asked Stefan to involve another Belonger to meet the rules.

306 Transcript, Day 3, p 137

307 Transcript Day 3, p 139

308 Transcript, Day 11, pp 43 - 45

309 Mario Hoffmann statement para 2.17

155

We were looking for someone who could be helpful, not just because they had Belonger status.

4.102 The evidence of Chal Misick, and to some extent the Hon Michael Misick, that he had not been invited to become a partner until November or December 2006, is therefore contradicted by Mr Hoffmann. If Mr Hoffmann is correct about July/August 2006, then the Hon Michael Misick should have known at a much earlier stage than he has admitted, that his brother was involved. Clearly, Mr Hoffmann regarded Chal Misick as his partner at the time of the approach in early August. If Mr Hoffmann is right, it also meant that Chal Misick lied on oath to the Commission.

4.103 Mr Hoffmann's assertion that, in selecting Chal Misick as his partner, he had been concerned to have a Belonger partner is also unconvincing. DEVCO was the main company working on the project as a whole, and it did not have any Belonger element on its books. The involvement of Mr Walkin and Mr Wood in the Golf Club project had been advertised prominently to the Government in the submissions made at earlier stages (see for example the Agreed Upon Procedures Report of February 2006 attached to Mr Hoffmann's written evidence). However, by the summer of 2006 he had removed them as Belonger partners without replacing them.

4.104 In any event, Mario Hoffmann, on his account, had been approached to become a Belonger as early as May 2006. He had made written application for the status. The Commission has seen a faxed copy of that application, which bears the transmission date of 29th September 2006,³¹⁰ two days after the Cabinet had already granted it to him on the suggestion of the Premier.³¹¹ It is plain from this and much other evidence before the Commission that Premier had been on friendly terms with Mr Hoffmann for some time, and it is reasonable to assume that he would have told him of his new status soon after the vote.

4.105 Accordingly, well before the division of the Salt Cay Golf Club Ltd shares on 15th December 2006, Mr Hoffmann already knew he did not need any Belonger partner for the new company, and he had dispensed with his partners on the main company. And Chal Misick was remarkably vague as to the special skills he had brought to the early negotiations,

310 Hon Michael Misick bundle 3, p 1099

311 *ibid*, p 1098

156

beyond mentioning that he had a qualification in engineering. As to his claimed value in negotiations with the architect for the project at that time, he was unable, when asked, to

identify either the architect or the firm involved.³¹² Subsequently, by letter, Chal Misick identified the architect as being Arthur Hills of Steve Forrest & Associates, Golf Course Architects.³¹³ The Commission has not seen any other reference to this firm in any of the documents presented to it, and has not seen any correspondence with this firm. Such correspondence as has been presented by Mr Hoffmann suggests that Troon Golf LLC of Scottsdale Arizona (who corresponded with Mr Kral) would have been the contact with the golf course architect, Simon Wood.

4.106 Mr Hoffmann, by contrast, makes no reference to Chal Misick having negotiated with the architect. His only recollection is of having set a condition that he should not negotiate with the Government. Even the legal work was taken away from him, and placed with the regular lawyers for Mr Hoffmann, Miller Simons O'Sullivan.³¹⁴ The only demonstrable contribution he made was to form the company, which is a low level task usually delegated to paralegal staff.

4.107 Chal Misick's explanation is therefore that he performed a role that nobody else describes him performing, with such skill that, although he had had no direct dealings with the overall developer, the developer chose to give him a 50% share in the enterprise. Mr Hoffmann says he made Chal Misick a partner principally because he was a Belonger, when he did not need a Belonger, and because he wanted a contributor, but he does not say what Chal Misick ever contributed. Finally, when the latter was asked if he was concerned that, having provided it as collateral, he might now stand to lose it if his brother could repay the loan secured, he said that he was not concerned.

4.108 The submissions from the Hon Michael Misick and Mr Hoffmann as to the relative lack of worth of the golf course are meaningless. The willingness of J&T Banka to lend \$6 million plus interest against the security of the shares tells one all one needs to know about how valuable an asset was given away by the Cabinet at the behest of the Premier.

312 Transcript, Day 11, p 68

313 Chal Misick bundle p 381

314 Mario Hoffmann statement, para 2.20

157

4.109 There is, in my view, information and evidence before the Commission suggestive of the involvement of the Hon Michael Misick in corrupt dealings in relation to the Government's transactions with Mario Hoffmann on behalf of DEVCO and of Chal Misick's knowing assistance and complicity in it. Whatever the value and worth of the Salt Cay development as a whole, the Commission is unable to accept the account of Mr Hoffmann in relation to the appointment of Mr Chal Misick as a partner in the project.

13 – I find that there is information of possibly corrupt and/or otherwise seriously dishonest involvement, including misfeasance in public office, of the Hon Michael Misick in relation to the Government's transactions with Mario Hoffmann of DEVCO for the development of Salt Cay: 1) in respect of his participation in that development with Chal Misick's knowing assistance and complicity in it, as described above; 2) in the potential abuse of his public office by accepting lavish and disproportionate hospitality from Mario Hoffmann, including the use of private aircraft, the provision of international flights and other hospitality in the

course of developing business relations between DEVCO and the Government; and 3) in potential abuse of his public office by seeking and accepting a loan of \$6 million from J&T Banka when that Bank, on its own account,³¹⁵ was in negotiation with the Government over funding and participation in the development of Salt Cay.

I, therefore, recommend criminal investigation by the police or others of the possibility of corruption and/or other serious dishonesty, including misfeasance in public office, in relation to the Hon Michael Misick in respect of those matters.

315 See J&T Banka web-site

158

The Hon Floyd Hall

Background

4.110 The Hon Floyd Hall was at all relevant times either Deputy Chief Minister or later Deputy Premier of the TCI. He was also the Minister of Finance, having also responsibility for National Insurance and Economic Planning, and was the Treasurer of his political party, the PNP. He is a Certified Public Accountant. Before becoming a Government Minister he had worked in Barclays Bank and then in Charter Trust as Chief Accountant.

4.111 Owing to his central role in Government for many years, I have had to examine his conduct in some detail, having regard to a number of allegations made against him within my Terms of Reference. He made written submissions prior to the Commission's oral proceedings in January and February of this year, and gave evidence over two days in those proceedings, when he was represented by Mr Oliver Smith. He has provided a series of written documents and submissions subsequent to the hearings.

Declarations of Interests

4.112 The Hon Floyd Hall, in common with his Cabinet colleagues, failed to comply with the statutory requirements requiring declarations to the Registrar of Interests.³¹⁶ The most striking and consistent omission in this respect was of his receipt of gifts or contributions, including so-called political contributions. In particular, he did not mention Party contributions to him in any of his returns to the Registrar of Interests. In oral evidence to the Commission, he produced a ledger showing payments in his favour from an account of the Party held with the First Caribbean Bank totalling \$355,500 over three years. He also admitted receipts, largely undocumented, of further Party funds from a second account, held with the Belize Bank.

4.113 He also failed to declare to the Registrar any of his overseas visits during the period covered by the Inquiry, of which there were several. He has admitted in evidence to the Commission that he was flown from London to Slovakia in the private jet of Mario

316 See para 2.29 above

159

Hoffmann,³¹⁷ and from Slovakia on to Dubai to see motor-racing. He sought to draw a distinction between the requirement under the Registration of Interests Ordinance to declare every visit relating to your membership of the Legislative Council undertaken...the cost of which has not been wholly borne by yourself...or by public funds, and his role as a member of the executive branch of government by virtue of being Minister of Finance. I do not regard this as a meaningful distinction so as to constitute an exemption from the Ordinance. The office of Minister of Finance derives from his elected membership of the Legislature, of which he remains a member when acting as Minister. At the very least the trip should have been declared, so that the Registrar could determine its relevance. It was said by Mario Hoffmann that its purpose was to enable him to see his, Mr Hoffmann's, operations in Slovakia, none of which, according to him, was tourism-related. Their relevance to Salt Cay was not explained. The trip to Dubai, similarly, had no overt connection to Ministry of Finance work, and could be described as a junket.

14 – I find that, throughout his period of membership of the Legislature of the TCI, the Hon Floyd Hall repeatedly failed to make full and accurate declarations of his interests to the Registrar of Interests as required by the Registrations of Interests Ordinance.

15 – I find, as an important example of his failure to make full and accurate declaration of interests to the Registrar as required by the Registration of Interests Ordinance, his failure to declare his interest in the Casablanca Casino in Providenciales, through his investment in Windsor Investment Ltd.³¹⁸

As in the case of the Hon Michael Misick, the breaches of the Registration of Interests Ordinance are punishable only by the Legislature, and not by the Courts (save possibly by recourse some more general provision of the criminal law such as the common law offence of misfeasance in public office). In his case too, there is much else of substance worthy of criminal investigation. I, therefore, make no recommendation arising out of either of those findings.

317 Transcript, Day 6, pp 161 - 163

318 See paras 4.61 – 4.74.above

160

4.114 Further matters that the Hon Floyd Hall should have declared to the Registrar, and which he did not, include loans or purported loans to him, with which I deal with below.

Disclosure to the Commission

4.115 In addition to the Deputy Premier's failure to make adequate declarations of his interests to the Registrar, he did not make full and accurate disclosure of his financial affairs to the Commission prior to his attendance on summons to give evidence in the oral proceedings. For example, he did not disclose until he was in the witness box a political contribution of \$150,000 paid by Jak Civre, a major developer on the Islands, into the bank account of his company, Paradigm on 8th February 2007, the day before the election. Mr Civre has confirmed in writing to the Commission that this was a political contribution and that he had paid it into the account of Paradigm on the instruction of the Hon Floyd Hall. He also stated that he had made such payments to political parties and individuals in the past. He insisted, however, that he did not seek or receive any favours in return for the payment.

4.116 Another instance of the Hon Floyd Hall's non-disclosure to the Commission, to which I have already referred, emerged only after he had completed his initial oral evidence. Chal Misick, who gave evidence after him, spoke of his 10% interest, through the Windsor Investment Group Ltd, in the Casablanca Casino in Providenciales, along with the Hon Michael Misick,³¹⁹ the Hon McAllister Hanchell and Mario Hoffmann. When the Hon Floyd Hall was recalled to the witness box, said that he had forgotten this investment, which he said was of \$40,000, but claimed ignorance of the percentage of his share in the project. In addition to his non-declaration to the Registrar and non-disclosure to the Commission of this interest, he never disclosed it at Cabinet meetings when the Casino project was the subject of applications for various approvals. As I have mentioned,³²⁰ his evidence was that he only had a vague idea that some of his ministerial colleagues might be involved in the venture, and that they had not discussed their involvement.³²¹ The Hon McAllister Hanchell's

319 See paragraph 4.71 above

320 *ibid*

321 Transcript, Day 15, p11

161

evidence, on the other hand, was that he had known who the other two were, and that they had discussed it as an investment between them.³²²

16 – I find that the Hon Floyd Hall has failed in several important respects to make adequate disclosures in response to the Commission's requests, pursuant to its powers under the Commissions of Inquiry Ordinance, for full and accurate disclosure of his financial interests.

Whilst the Commissions of Inquiry Ordinance gives power to the Commission, while it is in being, to take procedural steps to enforce such disclosure by contempt proceedings or by reference to the Supreme Court for sanction, I do not consider it necessary or appropriate in the circumstances, especially as he was apparently acting on the misjudged advice of his attorney, Mr Oliver Smith, of Stanfield Greene. Moreover, the Hon Floyd Hall made up in some part for his previous non-disclosure to the Commission by his frank disclosure when giving evidence of many matters in examination by Counsel to the Inquiry.

Political Party Finances

4.117 The Hon Floyd Hall, in response to close questioning by Counsel to the Commission about his role of Treasurer of the PNP, spoke of three bank accounts of the Party. Again, I have referred to these matters under the general heading of Politics and Political Donations in Chapter 2 of this Report. For convenience of reference in this context, I return to them here. The first, and main, account was with the First Caribbean International Bank, from which, he said, bank statements could be obtained, and in respect of which he kept a ledger account at his home. In the course of his evidence the ledger account and partially supporting bank statements from the First Caribbean International Bank were, with his consent,³²³ provided to the Commission. It appeared to come as a surprise to other senior members of the Party that he had maintained such a ledger. The accounts revealed that, as Treasurer of the PNP, he had presided over a chaotic system. Even allowing for the absence of any legal requirement in the TCI for political parties to keep and publish accounts, his

323 The Commission rejected a subsequent challenge by Mr Norman Saunders on behalf of the PNP to the Commission retaining or taking any account of those records, which he then modified to an application that the names of any political donors identified in the accounts should not be publicly revealed, a challenge that the Commission also rejected; See also para 2.35 above.

162

were a travesty of what could have been expected from a certified public accountant in his role as Party Treasurer. They were inaccurate, incomplete and potentially misleading. In addition, he had prepared only one formal and misleading Treasurer's report for the party in 2006 covering the previous five and half years – misleading because it reflected only the Party's account with the First Caribbean International Bank. Seemingly, he has not prepared any further reports on the Party's finances.

4.118 The second and third accounts of the Party were with the Belize Bank, a current account and a supporting loan account with an overdraft of \$1.5 million. From these accounts, the Hon Michael Misick and the Hon Floyd Hall spent Party funds at will and without accounting for their use of the funds to anyone, even to other senior Party members. The Hon Floyd Hall described the current account at the Belize Bank as a clearing account for its main account there, by which he presumably meant the supporting Party Loan Account. He maintained that the Party Executive had known of the Belize Bank accounts, but that their existence had been kept from party members because full disclosure of the Party's financial affairs was a sensitive issue and not all of its membership had the Party's best interests at heart. He added that the Party's Secretary-General, the Hon Don-Hue Gardiner, knew of the accounts. However, Mr Gardiner gave two differing accounts about this. The first, in his oral evidence to the Commission, was that he had not known of them until the Hon Royal Robinson told him about them in November or December 2008, that is, very shortly before the Commission's oral proceedings.³²⁴ The second, in a written statement sent to the Commission on 18th February 2009, he maintained that he had subsequently remembered having signed a resolution authorising the opening of a Belize Bank account for the Party, and produced an unsigned document purporting to be a resolution of the Party of 5th June 2002 mandating the opening of the current account.

4.119 The Hon Floyd Hall acknowledged to the Commission his failure to maintain and present to the ruling Party proper accounts of its financial affairs. Such failure, of which he, the Hon Michael Misick and possibly a few others in the Party leadership were potential beneficiaries, smacks of dishonesty in keeping to themselves the existence and use of the second and third Party bank accounts with the Belize Bank.

163

4.120 Of major concern also, must be the scope that such secrecy may have given to the passage of funds from wealthy individuals with business relationships with the Government, and who stood to gain from its decisions, to fund on a lavish scale extravagant lifestyles of the Party's representatives in the Cabinet. Information received by the Commission from

various sources indicates that PNP Party fund-raising consisted in large part of demands by the Hon Michael Misick and the Hon Floyd Hall on overseas developers to provide large cash donations to the Party. The message implicit in those demands - true to the fears voiced by Mr f Jnr when trying, by way of submission on behalf of the PNP, to keep its bank accounts from the Commission and the TCI public³²⁵ was that failure to pay up would or could have had an adverse effect on the Government's view of the acceptability of their projects.

17 - I find that the Hon Floyd Hall, in his capacity as Treasurer of the PNP Party: 1) failed to administer and keep proper accounts of the funds of the PNP so as to allow party monies to be disbursed for his personal use and that of the Hon Michael Misick and other senior Party Members, without having devised any, or any effective, system for accounting to the Party for such use; and 2) misled the Party as a whole as to the true state of its financial affairs and the purposes to which its monies were being put, by keeping secret from members of the Party, including senior Party officials, the existence of certain Party bank accounts maintained and operated by him, and by producing in 2006 a partial and misleading Treasurer's Report concealing the true state of its finances and the purposes to which its funds were being applied.

I recommend criminal investigation by the police or others in relation to the Hon Floyd Hall of possible corruption in respect of his administration of the Party Accounts and/or other serious dishonesty, including theft and false accounting.

18 – I find that the payment by Jak Civre, the developer of the Seven Stars Resort, to the Hon Floyd Hall of \$150,000 on 8th February 2007, the day before the election, purportedly as a campaign donation, but which the Hon Floyd Hall

³²⁵ See para 2.35 above

164

paid into the business account of his company, Paradigm, and also other unexplained payments, were possibly corrupt payments.³²⁶

I recommend criminal investigation by police or others in relation to the Hon Floyd Hall of possible corruption and/or other serious dishonesty in respect of that payment by Jak Civre and/or other unexplained payments

Links with Richard Padgett

4.121 The Commission became concerned in the course of the Inquiry with the apparent close links between the Hon Floyd Hall and Mr Richard Padgett. Mr Padgett is a well-established developer in the TCI, responsible, through his TCI company, Oceanpoint Developments Ltd, for a project known as the Third Turtle Club, begun in 2004. He was shown on PNP records as having made a series of large contributions to the Party in 2005 to 2007, amounting to \$500,000.

4.122 The project to develop the Third Turtle Club is relevant to the conduct under inquiry of the Hon Floyd Hall. In the course of its planning and development, Mr Padgett applied to the Physical Planning Board for an exemption from the five storeys height restriction on beachfront properties. He sought permission to build a hotel to a level of seven storeys, with

a view to increasing its profitability. The Board refused his application, and, in December 2005, he appealed, as was his entitlement, to the Hon Michael Misick in his additional role as Minister for Development. In the absence of the Hon Michael Misick when the appeal fell to be considered and because it was said to be urgent, the Hon Floyd Hall dealt with it. By a letter of 14th December 2005, he allowed the appeal.³²⁷ In his oral evidence to the Commission, he maintained that he had not made the actual decision, but had simply signed the letter instead of the Hon Michael Misick, as if it were his own decision. Only a week later, on 21st December 2005 the Government announced the grant of Belongership to Mr Padgett. However, Mr Padgett's fair wind faltered, because the decision of the Hon Floyd Hall in his favour on the appeal was struck down in the following year by the Supreme Court on a judicial review challenge. The Court's decision was not on the

326 See [para 4.115 above](#)

327 Core Volume 6, tab 3

165

planning merits of Mr Padgett's application to build to seven storeys, but because, in the absence of the Premier as the responsible Minister, the Hon Floyd Hall had acted ultra vires.

4.123 In February 2006, two months after the Hon Floyd Hall's purported appeal decision in Mr Padgett's favour and before it was struck down by the Supreme Court, Oceanpoint Developments Ltd, made two large payments, totalling just under \$375,000, into the bank account of the Hon Floyd Hall's company, Paradigm. The Hon Floyd Hall revealed those payments in oral evidence after the Commission had asked him to account for unexplained income on a schedule it had prepared from his disclosed bank accounts. He said the payments were for invoiced³²⁸ services he had provided to Mr Padgett, as far back as 2002, for advisory assistance and in helping him in 2004 find the site for the Third Turtle Club. He said that he had paid half of the \$375,000 to the Hon Michael Misick, via Chal Misick's client account. It will be remembered that the Hon Michael Misick had not declared this receipt to the Registrar, or disclosed it to the Commission, even in his oral evidence.³²⁹ The Hon Floyd Hall sought to explain his payment to the Hon Michael Misick as a gift, claiming that he had regarded Mr Padgett's payment to him as a windfall.

4.124 However, the timing of Mr Padgett's payment of \$375,000 to the Hon Floyd Hall, shortly after his seemingly successful planning appeal to the Hon Michael Misick, the Hon Floyd Hall's favourable fielding of it, the years of delay between his purported services to, and his invoicing Mr Padgett, for them, and the former Ministers' common non-disclosure of the payments until the information was dragged out of them by the Commission, suggest at least the possibility of corruption.

4.125 The links between Mr Padgett and the Hon Floyd Hall are also to be seen in Mr Padgett's real estate company, Elite TCI Ltd, which operates under the trading name of Remax Elite. At some point in 2007 this company, evidently incorporated in February 2007, was divided between Mr Padgett and the Hon Floyd Hall's wife, Mrs Lisa Hall.³³⁰ In his declarations to the Registrar for 2006 and 2007, the Hon Floyd Hall declared a 49% shareholding in her name in this company. He indicated in his evidence in the oral proceedings that she had in fact owned only one third of the business and that he had erred

328 Mr Padgett provided the Commission with the invoice on the day the Hon Floyd Hall was asked about the issue in the oral proceedings, stipulating that payment should be made to Paradigm.

329 See also para 4.36 - 4.37, above

330 The Hon Floyd Hall has provided a purported copy of that agreement (undated) to the Commission.

166

in his declarations. Mr Padgett owns the other two thirds. This is the Hon Floyd Hall's account of this arrangement and of how it came into being:331

It came about because Mr Padgett had invited me to start a real estate operation with him and I told him that I could not be involved with any real estate business with him because I am in government, I don't have the time to dedicate to that and I also had a real estate company at the time, Platinum Realty, that wasn't getting my attention and needed my attention. I told him that I know that my wife is interested in the real estate activity and he could very well approach her concerning it and he did.

4.126 It appears that Mrs Hall did not have the funds to purchase the shares (valued at \$228,000), but was allowed an arrangement by which she could pay for them from her dividends when earned. As of October 2008 she still owed \$234,911.20 to Remax Elite. The value to Mr Padgett or Remax Elite of this arrangement is unexplained. However, Mr Padgett has made no complaint about it, and I suppose there is a possibility in the longer term of Mrs Hall bringing something to the company. Nonetheless, it looks like a further instance in which the Hon Floyd Hall potentially exploited his position of governmental influence to obtain a potentially lucrative financial benefit at no real cost to him or his family – a possibly corrupt arrangement.

4.127 Finally in the context of Mr Padgett, on 1st August 2007 he made a payment to the Hon Floyd Hall of \$200,000. Both men have maintained, respectively by attorneys' letter and in evidence, that this was a loan. The Commission has seen a promissory note signed by the Hon Floyd Hall, undertaking to repay the loan with interest at 8% per annum, by 1st February 2009 or, if repayment was not made, at 10% interest per annum. The Hon Floyd Hall did not declare the loan to the Registrar of Interests or disclose it to the Commission until he gave evidence.

19 – I find that the Hon Floyd Hall, in accepting payment from Mr Richard Padgett of \$375,000 in February 2006, purportedly as a finder's fee for services rendered some years before, but shortly after his planning appeal decision in Mr Padgett's favour in relation to his proposed construction of the Third Turtle

331 Transcript, Day 5, p 50

167

Club, possibly acted dishonestly, including by way of misfeasance in public office, and possibly corruptly in accepting such sum, given: 1) the length of time and apparent disproportion in value between the payment of \$375,000 and the services for which it was

said to have been paid; 2) the Hon Floyd Hall's non-declaration of the payment to Registrar of Interests and his late and incomplete disclosure of it to the Commission; and 3) his division of the sum with the Hon Michael Misick, who had had no ostensible connection with the provision of any services in respect of which it was purportedly made.

I recommend criminal investigation by the police or others in relation to the Hon Floyd Hall in respect of potential serious dishonesty, including misfeasance in public office and corruption in relation to Mr Richard Padgett's payment to him of \$375,000 in February 2006

20 – I find that there is information of possible corruption in the Hon Floyd Hall's arrangement with Mr Richard Padgett in or about June 2007 for his wife, Lisa Hall, to be appointed a director of, and made a one-third shareholder in Elite TCI Ltd, a real estate brokerage company controlled by Mr Richard Padgett, the agreed value of her shareholding being about \$280,000, but for which she was to provide little or no consideration.

I recommend criminal investigation by the police or others in relation to the Hon Floyd Hall in respect of this possibly corrupt transaction.

21 – I find that there is information that the Hon Floyd Hall possibly acted corruptly and/or in misfeasance of his public office in failing to withdraw or to declare his links with Mr Richard Padgett, at Cabinet discussions concerning the Government's dealings with Mr Richard Padgett's business affairs, in particular at Cabinet Meetings on 21st March 2007 and 8th May 2008 at which matters relating to Oceanpoint Developments Ltd were discussed.

I recommend criminal investigation of possible corruption and/or misfeasance in public office in relation to the Hon Floyd Hall in respect of those matters.

168

22 – I find that the loan of \$200,000 from Mr Richard Padgett to the Hon Floyd Hall in August 2007, which the Hon Floyd Hall did not declare to the Registrar of Interests, or to the Commission, until he was examined in the Commission's oral proceedings, was a possibly corrupt payment. 332

I recommend criminal investigation by the police or others of possible corruption and/or other serious dishonesty in relation to the Hon Floyd Hall in respect of this loan to him of \$200,000.

'Flipping' of Crown Land

4.128 A further issue arose during the Hon Floyd Hall's evidence in the oral proceedings concerning his undeclared and hitherto otherwise undisclosed financial links. The Hon Michael Misick, in his oral evidence had disclosed for the first time payment to him of a finder's fee \$325,000 for introducing a purchaser to a seller of land on Water Cay, Ashley Properties Ltd, controlled by Mr Alden Smith. According to the Hon Michael Misick, his understanding had been that the land for sale was privately owned. He said he had been approached by the Hon Floyd Hall on behalf of that company to propose a purchaser, 333 which he did, resulting in a sale to Mr Peter Wehrli. 334

4.129 The Hon Floyd Hall gave a slightly different account. He said that Mr Alden Smith was a mutual friend of the Hon Michael Misick and himself, and that Mr Smith had approached

him to ask the Hon Michael Misick for help. He maintained that the land for disposal had been Crown Land, not privately owned. He said that Mr Smith had made an offer to purchase Crown Land for the sum of \$750,000, and wished to do so and sell it on for a quick and substantial profit – to flip it. The Hon Floyd Hall already had a financial link to Mr Smith, to whom, he said, he had loaned money at various times leading to an outstanding debt of \$75,000. When Mr Smith acquired the Crown Land and sold it to Mr Werhli, which he did for \$2 million, he paid the \$750,000 to the Government, \$325,000 to the Hon Michael Misick

332 See para 4.127

333 Transcript, Day 2, p41

334 See paras 4.38 – 4.39 above

169

and \$200,000 to the Hon Floyd Hall, which was to include the loan repayment, leaving him with a profit on the transaction of over \$500,000.

4.130 The Hon Floyd Hall emphasised to the Commission that Mr Smith had been given a provisional offer or option to buy the Crown Land by the earlier PDM administration, and had delayed taking it up. However, even if the transaction was a legitimate sale, it was a clear example of senior ministers facilitating the abuse of the Crown Land regime, whereby quick profits are made by islanders exploiting their option to buy Crown land and sell to overseas developers. The fact that both the Hon Michael Misick and the Hon Floyd Hall made large sums from it shows that they were aware of, and willing to facilitate and benefit from that exploitation in this instance.

23 – I find that the Hon Floyd Hall, in accepting the payment of \$200,000 from Mr Alden Smith, purportedly for services rendered, did so possibly corruptly and/or by conduct potentially amounting to misfeasance in public office, since the payment followed the advantageous sale of Crown Land to Mr Smith's company, Ashley Properties Ltd, which had immediately sold the land on for a large profit to an overseas developer, and had made payments from that profit to the Hon Floyd Hall and the Hon Michael Misick.

I recommend criminal investigation by the police or others of possible corruption and/or misfeasance in public office in relation to the Hon Floyd Hall in respect of this matter

4.131 One of the clearest and most brazen examples of "flipping" is that which arose in relation to four parcels of land at North West Point in which four Belongers – one of them being a Minister the Hon Jeffrey Hall – used the company Urban Development Ltd (Urban Development) to purchase property and then sold it on immediately to a Canadian developer named David Wex. I deal with his transaction in more detail below in relation to the Hon Jeffrey Hall.³³⁵ The funds from Mr Wex were channelled via the TCI attorney Melbourne Wilson to the four Belongers. One of them was Quinton Hall, brother of the Hon Floyd Hall, who, like his three fellow Belongers in the transaction, benefited to the tune of \$1 million without having to lay out any funds or take any risk in the purchase and onward sale of the

335 See paras 4.196 – 4.209 below

170

property. The Cabinet discussed the project on a number of occasions. The Hon Floyd Hall attended all or most of the meetings at which it was discussed, but, on his account, withdrew from the discussion on at least one occasion, presumably because he appreciated his potential conflict of interests.

4.132 Shortly after the transaction there was a transfer of funds to the Hon Michael Misick of \$150,000, which he described to the Commission as a loan from the Hon Floyd Hall. The latter accepted that that sum was paid to the Hon Michael Misick, but said that it came from his brother Quinton.³³⁶ He said that the Hon Michael Misick knew of his brother's \$1 million windfall, and therefore sought a loan from him. Neither the Hon Michael Misick nor the Hon Floyd Hall, when questioned in the oral proceedings, was prepared to concede on this point. It is possible, but unlikely that one or other of them may have misunderstood who made the loan. It is also possible that one or the other has deliberately sought to misrepresent the agreement.

4.133 Although both the Hon Michael Misick and the Hon Floyd Hall characterised the payment to the former as a loan, there was no evidence before the Commission of any documentary record of it as a loan - no terms agreed for repayment or as to interest; no evidence of repayment or even request for or attempt at repayment despite the passage of three years. The Hon Floyd Hall acknowledged that he too had received money from his brother, Quinton, at about the same time, some \$25,000 or \$50,000.³³⁷ Whether or not the money paid to the Hon Michael Misick was a loan, the funds from which it was derived were the proceeds of flipping Crown Land. The Hon Michael Misick and other Cabinet members, including the Hon Floyd Hall, are likely to have been aware of that, despite the Hon Floyd Hall's denial of such knowledge.

24 – I find that the Hon Floyd Hall took part in possibly corrupt transactions by accepting proceeds of the profits made by his brother, Quinton Hall, for sale of part of the equity of Urban Development Ltd involving the disposal of Crown Land at North West Point to an overseas developer at a large profit in that he: 1) purportedly loaned part of those profits to the Hon Michael Misick, or assisted his brother, Quinton Hall, to do so; and 2) failed to declare those

336 Transcript, Day 5, p 89

337 Transcript, Day 15, p 95

171

profits or the purported loan to the Registrar of Interests or to disclose them to the Commission.

I recommend criminal investigation by the police or others of possible corruption and/or other serious dishonesty, including misfeasance in public office, in relation to the Hon Floyd Hall in respect of these matters.

Ministerial Intervention in the Allocation of Crown Land

4.134 During the oral proceedings it emerged that the Hon Floyd Hall had approached the Hon McAllister Hanchell on behalf of certain companies asking for grants of Crown Land to those companies. He acknowledged in evidence that he had put the proposals to his Cabinet

colleague, the Hon McAllister Hanchell, Minister for Natural Resources, and sought to justify them to the Commission, saying that they did not need to follow the normal route for application.³³⁸ He also acknowledged that, having secured grants of land for the companies, they were able to obtain loans totalling \$19 million secured against the land, part of which borrowing, \$1.1 million, he obtained for himself.

4.135 The Hon Floyd Hall did not appear to regard all this as abuse of his Cabinet position. It is, however, arguable that this is precisely what it was, and that by advancing certain companies with his personal endorsement to the Ministry of Natural Resources, he was ensuring that they obtained an unfair advantage in land selection. He in turn benefited by virtue of the finance deal, to which he would not otherwise have had access. The fact that he was obliged to repay the loan, which he suggested was relevant, does not, in my view, diminish the possible corruption suggested by his actions. Closing submissions made on his behalf by Mr Oliver Smith sought to argue that his and others' actions in promoting individual persons or companies for grants of land simply reflected a small society in which everyone knew the politicians personally, and would inevitably seek to use that contact for favours. He also argued the parties receiving land were entitled to it anyway, so no harm was done. These arguments do not meet the adverse implications capable of being drawn from the fact that the companies being promoted were, in some cases, ones in which the

338 Transcript, Day 15, p 105

172

Hon Floyd Hall had a direct financial interest. There was, in any event, a system in place for distribution of land, no matter how flawed, and it was being subverted by the actions of an influential minority in Cabinet.

25 – I find that the Hon Floyd Hall, in making private requests to the Hon McAllister Hanchell, Minister for Natural Resources, for allocations of Crown Land for certain companies to enable them to use the land as security for loans, from which he personally derived a substantial borrowing of \$1.1 million, perverted and/or undermined the Crown Land Policy for and process of allocation of Crown Land, and did so possibly corruptly and/or in misfeasance of his public office.

I recommend criminal investigation by the police or others of possible corruption and/or misfeasance in public office in relation to the Hon Floyd Hall in respect of this matter

Scholarships

4.136 In a similar fashion to his intervention in Crown Land allocation, the Hon Floyd Hall intervened on many occasions to ensure that candidates were advanced for government scholarships outside the procedure established by government for their award. This practice was documented by the Chief Auditor, Cynthia Travis, in an Audit Report on the Scholarships Programme in October 2006, in which she stated: 339

The policy and procedures established by the Ministry have been circumvented, and there is a lack of support from the government to ensure that the policy is fully implemented.

4.137 Allocation of scholarships was the responsibility of the Education Advisory Committee, but the Chief Auditor found that several hundred scholarships had been awarded without it

having properly scrutinised them. Ministers, specifically the Hon Michael Misick and the Hon Floyd Hall, repeatedly intervened to solicit scholarships for particular pupils, thus taking the matter out of the hands of the Committee. Whilst I have no evidence

339 TCI Audit Office (2006), Audit Report - Scholarships Programme, S/22.035/06R, p 8

173

to suggest that such intervention was for the personal benefit of any individual Minister, it was an improper disregard of the proper procedures of government, and yet another example of abuse of ministerial influence. The suggestion by Mr Oliver Smith, in his closing submission on behalf of the Hon Floyd Hall, that this practice was simply one of recommendations for scholarship is unreal; it was in each case effectively an instruction.

Health Care

4.138 A topic of major concern in the TCI for several years has been the provision of health care. The PNP government has, throughout its administration, laid great emphasis on the provision of good quality healthcare for TCI Islanders, and there has been understandable support for the concept. The longer term project to provide hospitals on the Islands is another manifestation of the Government's concern in this area. The medium term approach by the Government was, however, to arrange for transport to the United States for persons requiring health treatment beyond the current medical resources on the Islands. This was known as the Treatment Abroad Programme.

4.139 The Hon Floyd Hall told the Commission that, up to April of 2006, arrangement of such overseas medical care had undertaken by a company named Canadian Medical Network (CMN), in conjunction with an air ambulance provider, Trinity Air Ambulance.³⁴⁰ In early 2006 the Government invited both of them to submit tenders for further contracts, which they did. The tenor of both submissions was that they would organise transport to the mainland USA, and provide case management for the cases referred.

4.140 An internal memorandum from the Ministry of Finance, Health and National Insurance sent by the Permanent Secretary (Health) to the Chairman of the Tender Board on 11th August 2006 sought permission to proceed with a limited tender³⁴¹ between the two bidders. This was sought because, as the memorandum pointed out, the Government had worked satisfactorily with both companies in the past. The memorandum stated clear that the new tenders had been obtained with a view to slowing the growth in costs of medical care for which the Treatment Abroad Programme provided. The Tender Board considered

340 Transcript, Day 15, p 117

341 See para 3.53 above

174

and granted the request. A memorandum from the Board of 15th August 2006 set out the history of CMN and Trinity Air Ambulance, and concluded that CMN's management charges were too high, and that two quotes should be sought to obtain a better price. It also stated that the Ministry had drawn up terms of Reference for the service required and that the quotes should take account of that service requirement. That was followed by a draft

undated and unsigned Cabinet paper for presentation to the Cabinet on behalf of the Minister, the Hon Floyd Hall, the Permanent Secretary and the Director of Health Services, Dr Rufus Ewing. The paper made a careful comparison of the two tenders and invited Cabinet to choose between them.

4.141 However, when the question of continued provision of overseas medical care was raised before the Cabinet at its Meeting on 23rd August 2006, matters took a wholly different turn, as the following extract from the Minutes of the Meeting record:

The Deputy Premier raised this matter informing Cabinet that the contract with C[M]N recently expired, a proposal was received from Southern Health Network which was offering the same services at much better prices. He advised that he was more inclined to enter into an agreement with Southern Health Network as they are a US based Company which would be able to oversee the medical care that patients which were referred to Miami were receiving. They would receive 50% of the savings they achieved.

The Cabinet there and then accepted the Hon Floyd Hall's proposal, subject to the drawing up a suitable contract by the Attorney General's Chambers.

4.142 Not only were the limited tendering procedures not followed in reaching that decision, but the Hon Floyd Hall did not, in the course of the Meeting or thereafter, mention or declare that the person behind SHN was Delroy Howell, a personal friend of his and with whom he had done business. Although he later maintained,³⁴² that he had had no business involvement with Delroy Howell, and that they were merely friends, in his oral evidence to the Commission he described him as a client for whom he transferred funds.³⁴³ And, as the Commission has ascertained, he had indeed made a number of payments on his behalf in respect of Harbour House, a commercial rental company in Grand Turk. The significance of the lack of reference to Mr Delroy Howell in the Cabinet Minutes is underlined by the oral

³⁴²Transcript, Day 5, p 61

³⁴³ Transcript, Day 15, p14

175

evidence to the Commission of the Hon Lillian Boyce, then Minister of Education, who attended the Meeting. She said that, although she had known the two men were friends, she had not known that Howell was behind SHN, and that she should have been told.³⁴⁴

4.143 The Hon Floyd Hall, in the course of his oral evidence to the Commission, said that the Cabinet had at its meeting on 23rd August 2006, considered the tenders of CMN and Trinity Air Ambulance. His evidence was as follows:³⁴⁵

Cabinet was given three options to choose one of the three.

Q. Did they have three presentations placed before them?

A. To the best of my knowledge, I think they would have had information on all three presented. The Cabinet paper would have been structured in such a way that would discuss the three options that were before us.

That representation is not supported by the Cabinet Minutes, which do not refer to either the CMN or the Trinity Air Ambulance tender paper, let alone to any comparison of them. The Hon Lillian Boyce recalled being told of the other tenders only after Cabinet had approved the selection of SHN; her evidence was that she had never seen the other tender documents.³⁴⁶ It looks, therefore, as if the draft Cabinet paper and associated tenders were not put before or discussed by the Cabinet, and that the Cabinet was only given one candidate for selection, SHN.

4.144 The qualifications of SHN for the task were to cause concern. It had been incorporated only a few days prior to the presentation of its proposal to the Cabinet. The Hon Floyd Hall said in evidence that he would have asked how long it had been providing such services, but could not recall the answer. The Hon Lillian Boyce's recollection was of having been left with the impression that SHN was a long established company. An execution of due diligence, if undertaken, would quickly have revealed the truth.

4.145 When asked about the rationale for Cabinet in selecting such a corporate newcomer in the field, the Hon Floyd Hall claimed that those behind SHN had experience of, and could provide access to, reinsurance in respect of exceptionally large claims, that is, claims in excess of \$1 million,³⁴⁷ a resource that CMN or Trinity Air Ambulance could not have

344 Transcript, Day 17, p 19

345 Transcript, Day 15, pp 116 - 117

346 Transcript, Day 17, p 27

347 Transcript, Day 15, pp 126 - 128

176

matched. This does not appear to have been a factor to which weight was given in the draft Cabinet Paper or mentioned in the Cabinet decision. When asked the name of the relevant re-insurance company to which SHN importantly had such access, the Hon Floyd Hall could not recall it.

4.146 In subsequent written submissions, the Hon Floyd Hall contended that SHN was an extension of Mr Howell's insurance brokerage, First Financial Insurance Brokers Ltd. He said that it could provide a number of facilities not provided for in either of the other two tenders, in particular, preparation of a claims history for the TCI to secure adequate reinsurance coverage for the Treatment Abroad Programme. He also sought to make wider points about the comparative offers, and suggested that the SHN offer was much better than the others. He also suggested that he had simply added the SHN tender for consideration at the 23rd August 2006 Cabinet Meeting on the assumption that the Tender Board would have included it if they had seen it. He maintained that it was more comprehensive than the other two proposals, and that they were simply one page letters of expression of interest in the project, and that neither had been vetted as SHN had been – an apparent suggestion that the Cabinet paper and accompanying tender documents from CMN and Trinity Air Ambulance were not even put before the Cabinet.

4.147 The tender from CMN was 10 pages long, based upon its existing experience as in the field of transferring patients abroad, and the Trinity Air Ambulance proposal was nine pages

long, and similarly detailed.³⁴⁸ The SHN proposal, bearing a date after the Tender Board's decision, was also nine pages long, plus a covering letter. The suggestion by the Hon Floyd Hall that there had only been one serious tender is therefore a travesty of the facts. What is more serious is the strong implication from his evidence that the Cabinet paper and the accompanying tender documents of CMN and Trinity Air Ambulance were not put before the Cabinet and the possibility that not even the tender document of SHN, which included the name of Delroy Howell, was shown to them.

4.148 The Hon Floyd Hall's conduct of this matter was, in my view, possibly corrupt in that it suggests subversion of the proper workings of government, in particular its tender

348 Hon Floyd Hall Bundle 2, tab 2, pp 88 - 106

177

processes, to ensure that the only proposal put before the Cabinet for serious consideration was that of a friend and business colleague, Delroy Howell.

4.149 As a post-script, I should mention that the Hon Floyd Hall conceded in evidence that the reinsurance aspect never took effect. He blamed that on lack of support from the Ministry of Health, and suggested that that was the reason for the subsequent catastrophic cost of the SHN contract. An independent analysis of the Treatment Abroad System operated by SHN, carried out in July 2008 by Sterling HSA on behalf of the TCI Government, reported a variety of failings on behalf of SHN and the Government as the causes for the very poor and expensive performance by SHN. The analysis did not mention want of re-insurance as a major factor. Poor management and lack of coordination between SHN and the Government accounted for most of the waste and loss. The Hon Floyd Hall eventually conceded that it was unfortunate and perhaps regrettable that the SHN tender had not been considered by the Tender's (sic) Board. The end of the story came on 1st April 2009 with the Government informing SHN that it was terminating the contract, and with SHN contemplating litigation in respect of claims against the Government in respect of unpaid invoices for services rendered under the contract.

26 – I find that there is information that the Hon Floyd Hall's conduct in promoting in Cabinet the award of the contract for administering the Treatment Abroad system to SHN was possibly corrupt and/or otherwise seriously dishonest and/or amounted to misfeasance in public office, in subverting the proper workings of government, in particular its tender processes, to ensure that the only proposal put before the Cabinet for serious consideration was that of a friend and business colleague, Delroy Howell.

I recommend criminal investigation by the police or others in relation to the Hon Floyd Hall of possible corruption and/or other serious dishonesty and/or misfeasance in public office in his promotion in Cabinet of SHN for the award of the Government contract to administer the Treatment Abroad System.

178

Cabinet responsibility

4.150 The evidence that unfolded before the Commission during the oral hearings did so against a back-drop of constant press speculation and reports as to infighting within the

Cabinet. As political allies over many years, it is likely that the Hon Michael Misick and the Hon Floyd Hall had been, at least at some stage, friendly with one another. The popular view in early 2009 was that any friendship had turned into a rivalry, verging on antipathy between the two men. There were certainly a number of matters on which they gave contradictory evidence, and in which, by implication, each accused the other of lying.

4.151 However, they had served together in Cabinet since 2003, and had been leading lights of the PNP before then. They had clearly worked closely together, and can reasonably be assumed to have known a great deal about each other's attitudes and working practices. If and in so far as either man might be said to have acted improperly in office, it is reasonable to consider whether the other would not have known of it.

The Hon McAllister Hanchell

Background

4.152 The Hon McAllister Hanchell was a Minister from 2003 until his resignation after the Commission's oral hearings in early 2009. He was, at all relevant times the Minister for Natural Resources, and therefore, carried, with other responsibilities, ultimate responsibility for the allocation and distribution of Crown Land. He was the elected Member of the House of Assembly for South Caicos North. In his private life he was, and remains, a wealthy businessman, with a variety of commercial interests. His main private business appears to be AL Services Ltd, a shipping company based in the TCI. He also owns a half share in a company called Caicos Oil Ltd, the other half being owned by his brother, currently proposing to develop oil storage facilities, delivery services and service stations throughout the Islands.

179

4.153 As in the case of the other former Ministers, he has had an important role in the Government for some years, in recent years, in particular, as Minister for Natural Resources. I have had to examine his conduct in some detail, especially the manner in which, in recent years, he has exercised his responsibilities for the direction and oversight of the working of the Crown Land Policy in its various manifestations. Through his attorneys, Misick & Stanbrook, he made written submissions to the Commission prior to its oral proceedings in January and February of this year, and gave evidence over a number of days in those proceedings. He has also since provided, through his attorneys, a number of documents and further written submissions.

Declarations and Disclosure of Interests

4.154 In common with all other Cabinet members the Hon McAllister Hanchell failed to make adequate declarations to the Registrar of Interests of his financial interests. Also in common with most of them, he failed to make full and adequate disclosure of his financial affairs to the Commission. In his written and oral evidence to the Commission, he acknowledged that he had received political donations over the years, and had not declared them. He said that his impression had been that political contributions were not being declared. In addition, he had not declared to the Registrar several parcels of land that he disclosed to the Commission as having been in his ownership for a number of years. As I have already

mentioned,³⁴⁹ he attributed these failures to errors on his own part in understanding and completing the forms, and in responding to the Commission's letters of request for information.

27 - I find that, throughout his period of membership of the Legislature, the Hon McAllister Hanchell repeatedly failed to make full and accurate declarations of his interests to the Registrar of Interests, as required by the Registrations of Interests Ordinance, including his shared interest through Windsor Investment Group Ltd in the Casablanca Casino on Providenciales; and he was also slow and patchy in his disclosure to the Commission.

349 para 2.30 above

180

For the reasons that I have given for similar failures by the Hon Michael Misick and the Hon Floyd Hall, I make no recommendations in respect of these matters for any investigation with a view to possible criminal or other sanction.

4.155 As to non-declarations to the Registrar and non-disclosures to the Commission prior to giving oral evidence, the first for mention is a total of \$90,000 in PNP stipends over a number of years. The second is a much larger political funding purportedly for campaign expenses in the February 2007 election. He effectively controlled and operated the campaign for the PNP in South Caicos. Although one banking form document in his earlier disclosure to the Commission made passing reference to campaign finances, it was only when the Belize Bank statements of the Party were disclosed during the Hon Floyd Hall's evidence,³⁵⁰ that the size of the purported funding for the election became clear, namely \$389,000 donated between late November 2006 and April 2007. The bulk of that figure, over 81%, had been donated by Arlington Musgrove, a friend of the Michael Misick and other Members of the Cabinet. Mr Musgrove is and was then an established Government contractor through his company, JACA Ltd. He was also mentioned in evidence by the Hon Jeffrey Hall as someone who had once paid a credit card bill of \$7,000 for him.³⁵¹

4.156 The funds for February 2007 election campaign in South Caicos were lavish, given that the total number of those on the Island registered to vote at that time was only 547 (318 in South Caicos North, the Hon McAllister Hanchell's constituency, and 229 in South Caicos South). The campaign chest was, therefore, over \$1,223 for every voter in his constituency or \$711.15 for every registered voter on the whole island of South Caicos. And that did not take into account general funds available from the PNP for spending in both constituencies. Although, as I have mentioned,³⁵² there is no statutory limit in the TCI on election campaign funding, the provision by one man of such massive funds for a small single constituency campaign could be considered a strong attempt to buy the election. However - and this may be an alternative and equally serious concern - the lack of accountability by politician recipients of such funds as to their use of them renders them readily available for their personal use.

³⁵⁰ cf UK Parliamentary elections rules that limit political parties' spending to £30,000 (about \$44,000) per constituency. UK constituencies have an average electorate of 68,492 persons, namely over 125 times larger than the total voting population of South Caicos

³⁵¹ Transcript, Day 12, p 128

352 as long as they are incurred in good faith at or concerning an election and do not amount to bribing or treating voters, See para 3.1, above

181

4.157 The PNP ledger for the South Caicos PNP Campaign Fund, produced by the Hon McAllister Hanchell, disclosed some details of the expenditure on the account. Some of the entries appeared to relate to political expenditure, sometimes identified only as sums for reimbursement, but without any reconciliation with items for actual expenditure. There were regular debit entries in large round figures and with minimal detail, for example, a payment of \$60,000 to the Hon McAllister Hanchell on 10th January 2007 for Services. During the five month period, 28th November 2006 to 30th April 2007, between the first and last receipts from Mr Musgrove, the account showed a balancing total of about \$390,000 in receipts and drawings.

4.158 The Hon McAllister Hanchell maintained in evidence to the Commission that much of the money had been applied to meet the cost of travel to and accommodation for his constituency workers at a Convention on Grand Turk. Quite apart from an instinctive scepticism that all or most of the \$390,000 from Mr Musgrove could have been spent on such hospitality, the PNP ledger entries simply do not reflect the type or pattern of expenditure that would be expected in meeting the costs of such a gathering. In addition, the bulk of the monies were received into the account in December 2006, after the holding of the Convention in the previous month, as is shown on the Treasurer's report to that meeting produced by the Hon Floyd Hall. I, therefore, find the Hon McAllister Hanchell's explanation of the purpose and use of the large donations by Mr Musgrove to be unconvincing, and unsupported by the available evidence. All that is a rather roundabout way of saying that there are question marks over Arlington Musgrove's largesse to the Hon McAllister Hanchell over election time in early 2007.

28 - I find that the Hon McAllister Hanchell, in accepting from Mr Arlington Musgrave payments totalling over \$300,000 into the PNP South Caicos account purportedly as campaign funding for the February 2007 election, possibly entered into a corrupt transaction in that: 1) the payments were disproportionately large for the purported purpose of financing an election campaign in such a small constituency; 2) the payments were made by an established and substantial public works contractor; 3) the Hon McAllister Hanchell held a public office in which he could influence the award of such

182

contracts; and 4) he failed to declare this personal and financial link with Mr Musgrave in relevant Cabinet discussions.

I recommend criminal investigation by the police or others of possible corruption and/or other serious dishonesty, including misfeasance in public office, in relation to the Hon McAllister Hanchell in respect of this matter.

Loans

4.159 In written and oral evidence to the Commission, the Hon McAllister Hanchell disclosed that he had borrowed extensively by way of private loans, and on credit cards. These were all loans or receipts of money that he had not declared to the Registrar of Interests, and only

at the last moment to the Commission. Despite being requested in advance of the proceedings to provide details of any credit cards used, he failed to mention until the day before giving oral evidence that he had obtained an American Express Centurion card, following an introduction in 2007 to J&T Banka in Prague by Mr Mario Hoffmann, the principal developer of Salt Cay. He has since used the card extensively. However, he did not always clear the debit on a monthly basis, allowing monthly outstanding balances to accumulate. This, from time to time, engendered chasing letters from the Bank seeking payment of outstanding sums, on occasion, in excess of \$300,000.

4.160 The Minister made late disclosure, in the course of his oral evidence to the Commission, of other loans that he had never declared to the Registrar of Interests. One was a loan totalling \$1.168 million, which he said that he had obtained, with the agreement of Norman Saunders Jnr, from his firm of attorneys, Saunders & Co. He agreed that the only documentation of the loan was a charge in favour of Saunders & Co imposed on a parcel of land. In fact, the loan was from an un-named principal of the firm.

4.161 Another loan, which the Hon McAllister Hanchell disclosed just before he began to give oral evidence, was of \$1 million from the Hon Michael Misick, who had not at that stage disclosed it in his written or oral evidence.³⁵³ The Minister explained that he had asked the Hon Michael Misick for the loan to help pay outstanding sums on his American Express card

³⁵³ which the Hon Michael Misick then promptly disclosed by an e-mailed message to the Commission.

183

bills. The Hon Michael Misick made a series of payments to help out, in at least one case from a line of credit he had from Lichtenstein-based Arling Anstalt institution. According to the Minister, this borrowing was informal, interest-free and undocumented, on the understanding that he would repay it as soon as possible. The Commission is unaware of any repayment by him of the loan or when or how he anticipates doing so. His limited accounts, disclosing an excess of spending over his disclosed ad hoc income streams in AL Services Ltd and Caicos Oil Ltd, do not indicate early repayment.

4.162 Whilst the Minister broke no law in borrowing massively beyond his means to repay, his behaviour raises some worrying questions. His Cabinet salary of \$203,000 per annum could not provide him with funds that would go very far towards repayment of capital, never mind servicing interest obligations when charged. And he seems not to have felt able to make drawing from his company interests to put him in credit. Yet he embarked on and persisted in a lavish spending spree, as the debits incurred on his American Express card show, and which he could only meet in the first instance by further borrowing. It may be that he had expectations of other and substantial sources of revenue.

Caicos Oil Ltd

4.163 One possible source revenue may have been a willingness to use his ministerial position to further his own financial interests, for example in relation to his company, Caicos Oil Ltd. On 8th October 2008 the Hon Michael Misick put a proposal to the Cabinet in support of his interest in obtaining Cabinet approval for the company to build a number of

storage facilities around the Islands. The proposal envisaged the grant of outright freehold ownership of land for service stations, long leases for establishment of storage facilities on an uninhabited island, tax exemption for 15 years and 5% customs duty on materials needed for establishment of the facilities.

4.164 When questioned in the oral proceedings about the need for such a provision, he told the Commission that there had been a long standing problem on the Islands of shortages of fuel. He was unable to point to any supporting documentation for this contention, say in the form of Government Fuel Strategy Papers, and there appears to have been no reference to

184

such a problem at the 8th October 2008 Cabinet Meeting. His proposal, if approved by the Cabinet, would, however, create a valuable commercial opportunity for Caicos Oil.

4.165 The fact that Hon McAllister Hanchell was known to be the owner of Caicos Oil Ltd and that he withdrew from Cabinet discussion on the proposal does not exclude the problem of a potential conflict of interests on his part. It was highly likely, given the Hon Michael Misick's espousal of the proposal that his other close Cabinet colleagues and friends would follow suit while he waited outside the door of the Cabinet Room.

Ministerial allocation of Crown Land

4.166 There was considerable potential for more direct abuse by the Hon McAllister Hanchell of his Cabinet position in his role as Minister for Natural Resources. It has been a common theme of official and other concerns put before the Commission that the system for allocation of Crown Land has been routinely abused in a number of complementary ways, including, critically, ministerial misuse of power. I have detailed these concerns in Chapter 3 of this Report.³⁵⁴ Broadly they fall under two main headings. The first is that allocation is not fair or equitable in that not all Belongers can obtain Crown Land, whilst some are able to profiteer by obtaining it at the discounted rate and immediately selling it to overseas developers. The second is the recent governmental approach of covering recurrent public expenditure from the disposal of valuable capital assets in the form of Crown Land.

4.167 In response to questions posed by his counsel, Mr Ariel Misick QC, the Minister gave an account of the administration of allocation of Crown Land that I have already set out in Chapter 3,³⁵⁵ part of which, for convenience, I repeat here:

The officers try to do their very best to service on a first come, first served basis. After that process is over, then there is a review process with a number of applications where recommendations are made by staff members in the industry based on the representations received to get Crown land...The review process involves the Permanent Secretary, the Commissioner of Lands, the Assistant Commissioner of Lands, the Deputy Commissioner of Lands, and it also involved me. I come in sometimes during the overall discussion of the allocations, or I may

354 Paras 3.10 – 3.50 above

355 Transcript, Day 9, p 29

185

come in very late when the letter is already prepared as a recommendation, and I simply sign them, and the persons are successful in the Crown land application.

As I have indicated, the Permanent Secretary of the Ministry for Natural Resources, Mrs Garland-Campbell, in response to a written enquiry from the Commission about this account, wrote on 29th January 2009 contradicting it.³⁵⁶ She stated that there were no formal procedures for allocating land and that no such arrangement as a review group existed. She stated that applications were handled in one of three possible ways: 1) the Minister gave instructions, orally or in writing as to whom the land was to be allocated; 2) another Minister intervened to do the same; or 3) she or the Land Commissioners provided the Minister with lists of long-standing unsuccessful applicants for his approval. The only review that took place was after allocation had been made simply to ensure that each successful applicant qualified for it as a Belonger, and had not exceeded the maximum number of parcels of land allowable.

4.168 The Permanent Secretary provided the Commission with a number of letters and emails by way of examples of the Hon McAllister Hanchell's practice of unilaterally allocating land, and of other Ministers intervening to do the same for their own preferred applicants. There were even documented examples of him granting land to himself. One of them was the allocation of a number of conditional purchase leases to a company, Akita Holdings Ltd, of which he owned 60% of the equity, which he communicated by letters bearing his signature – effectively writing to himself, as he acknowledged in evidence. He also acknowledged that it did not look good, but defended the use of the discretion granted to him by the Cabinet, to make allocations to himself. Even more striking was a letter he wrote on behalf of the Ministry to Palm Breeze Ltd, a company wholly owned and operated by him, granting it freehold title to a parcel of land at 75% of open market value - said to be in accordance with Cabinet's decision. When asked about it, he claimed that he had declared his interest in Cabinet when the decision was made and that he had not in the event accepted his offer. The Commission has not been able to identify the claimed Cabinet decision, and he did not declare his interest in Palm Breeze Ltd to the Registrar of Interests. In short, the Minister did not appear to regard the use of his ministerial power to grant land

356 See para 3.18 above

186

to himself as presenting him with a conflict of interests, since, as he emphasised, he too was a Belonger.

29 - I find that the Hon McAllister Hanchell, in his office of Minister for Natural Resources, entered into possibly corrupt and/or otherwise seriously dishonest transactions and/or in misfeasance of public office, by offering on behalf of the Government grants of Crown Land to himself and/or to companies that he substantially owned or controlled, thereby creating and ignoring the obvious conflicts of interest to which his offers gave rise.

I recommend criminal investigation by the police or others in relation to him of possible corruption and/or serious dishonesty and/or misfeasance in public office in respect of these matters.

30 – I find that the Hon McAllister Hanchell possibly abused his ministerial position by instructing the Permanent Secretary in the Ministry for Natural Resources to allocate Crown Land to individuals of his choice, or to allocate, or instruct the Permanent Secretary or other of his departmental officers to allocate, Crown Land to individuals identified and notified to him by fellow Ministers, in all or most cases without proper regard to the Crown Land Policy.

I recommend criminal investigation by the police or others in relation to him of possible corruption and/or other serious dishonesty and/or misfeasance in public office, in respect of such actions.

4.169 One associated aspect of the allocation of Crown Land arose from the evidence of Mr Gary Lightbourne, who had been a former bodyguard of the Premier. He said that had been offered a parcel of Crown Land personally by the Hon McAllister Hanchell for which he had not even applied, following a series of unsuccessful applications over the years for other parcels. It was in December 2006, he said that the Hon Lillian Boyce Minister handed him a letter at Providenciales Airport bearing the Hon McAllister Hanchell's signature, informing him of the grant of his application for a commercial lease of a parcel in West Caicos. Mr

187

Lightbourne said that he had never made any such application and had never had any interest in starting a business on West Caicos. He, rightly or wrongly, interpreted the letter as an attempt to placate him ahead of the February 2007 election, as he had left the service of the Hon Michael Misick, for whom he had been a driver and bodyguard.

4.170 On the following day it happened again. This time the Hon Michael Misick personally handed him a letter, again at the Airport and again signed by him, now for a conditional purchase lease of a residential property at Proggins Bay, but again for which he had not applied. He regarded it as a further attempt at an electoral bribe.

4.171 When these matters were put to the Hon McAllister Hanchell, he said that Mr Lightbourne had made many applications for leases over the years, and did not accept that offers had been made to Mr Lightbourne that did not reflect his applications. He suggested that a residential offer might have been made if an existing lease elsewhere was coming to an end, although Mr Lightbourne saw no such circumstance in his case. The Minister was unable to explain why an offer would have been made to Mr Lightbourne for a commercial parcel of land on another island, when Mr Lightbourne's home was established in Providenciales.

31 – I find that the Hon McAllister Hanchell may have participated in possibly corrupt arrangements in which offers of Crown Land were made to individuals, including Mr Gary Lightbourne, who had not applied for the land, with a view to the recipients of the offers selling the land on quickly to developers at a substantial profit for all the parties involved.

I recommend criminal investigation by the police or others in relation to the Hon Michael Misick of possible corruption and/or other serious dishonesty and/or misfeasance in public office in relation to such offers.

Joe Grant Cay

188

4.172 I have summarised earlier in this Chapter,³⁵⁷ the complex issues relating to the proposed development of Joe Grant Cay in relation to the Hon Michael Misick. Following Mr Malave's application in 2006 for permission to develop Joe Grant Cay, the Government sought a valuation of the land on the Cay. The Chief Valuation officer, Mr Shaaban Hoza, prepared, on 7th November 2006, a valuation of the whole of the Cay,³⁵⁸ based on instructions from TCInvest that an investor group was interested in undertaking an ultra high end development. Mr Hoza would evidently have preferred more detail, but made an assessment nonetheless, and indicated that for the purpose of the valuation he had visited the Cay. His put his valuation as between \$230,000 to \$330,000 per acre, stating:

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

There is no evidence to suggest that the Government acted upon or communicated the valuation to the proposed developers. The valuation, as with all such documents, bore the cautionary rider that it was valid for no more than six months from the date of production.

4.173 Some 18 months later, in June 2008, Mr Hoza was again asked to value Joe Grant Cay, but only as to 300 acres, for a hotel, villas and condominiums as described in a letter from Chal Misick on behalf of a new developer, Dr Cem Kinay. Mr Hoza, in a report of 10th June 2008,³⁵⁹ valued the 300 acres at \$75 million. The Hon McAllister Hanchell, on being notified of that valuation, communicated at least twice by e-mail with Mr Hoza requiring him to produce a further valuation. The Commission has been shown some of the email correspondence between the two men. The first was a request by the Minister made at 5:18pm on Thursday 12th June for sight of the 10th June valuation report. Mr Hoza sent it back by email at 8:35am the next morning.³⁶⁰ The Minister wrote back at 8:59am in the following terms:

357 para 4.73 et seq

358 Core Volume 6, tab 9

359 Core Volume 7, tab 2, p 63

360 Hon McAllister Hanchell bundle provided on 9th February 2009, p 15

189

I am in receipt of your valuation report and make reference of the NON-PUBLICATION CLAUSE. We respectfully request the actual market value of the raw land in its present state.

Why the Minister thought it necessary to stress the non-publication clause is unclear. Mr Hoza had inserted, and always inserted, that phrase in valuation reports, and would be aware of the need for confidentiality in his work.

4.174 Mr Hoza replied at 9:13 am indicating his confusion at the request, and stating:

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

He indicated that he awaited further instructions. The Commission has not been shown any correspondence to suggest he received any. The request made by the Minister was a tall order, as it sought a fresh valuation the same day. Mr Hoza apparently complied, producing two reports on the 13th June. One set out to value the land as if for agricultural use³⁶¹ and the second on the basis of commercial use.³⁶² In each case, at the specific request of the Minister, he addressed four specific parcels of land. For agricultural use he valued them collectively at \$26.76 million. For commercial use he valued them collectively just over \$89 million.

4.175 The remarkable difference in the two valuations clearly demonstrates the professional truism of a valuation officer, that the perceived use to which land may be put is critical to its value.

4.176 The Hon McAllister Hanchell was later to say that he had not seen the report referring to agricultural use, although Mr Hoza had clearly prepared it at the same time as the other report of the same day, and one would have expected them to be sent together. The Minister's complaint in evidence to the Commission was that he had not requested any assessment based on agricultural use, which was true. He seemed to assume, however, that

361 Core Volume 7, p 67

362 *ibid*, p 71

190

an assessment for a value of raw land was one that Mr Hoza, as a valuation officer would understand and respond accordingly.

4.177 Correspondence disclosed to the Commission towards the end of its oral proceedings on 9th February 2009³⁶³ showed that at 8:27am on 13th June 2008, before he had even received Mr Hoza's valuation of 10th June, the Hon McAllister Hanchell had sought a further valuation on a basis of raw land from a firm of surveyors in Providenciales, called BCQS. His email asked for a response by close of business the same day. Unsurprisingly BCQS were unable to provide a report in the space of a few hours. They provided one four days later on 17th June, indicating a valuation of \$7.7 million.³⁶⁴ BCQS acknowledged in their report that they had not even had time to visit the site, given the rushed nature of the instructions. Their valuation approach was to make comparisons with other islands, and the rates achieved on those other islands per acre. This echoed the approach of Mr Hoza. However, BCQS chose as comparators prices achieved in 2007, 2006 and as far back as 2004. Mr Hoza's comparators were for prices achieved in April and May 2008, a matter of weeks before the current valuation.

4.178 The Hon McAllister Hanchell, as I have said, maintains that he had only Mr Hoza's commercial valuations of just over \$89 million and that of BCQS at \$7.7 million. **The remarkable divergence between the two figures might have caused him enquire why there was such a difference, but there is no evidence that he did. One might also have expected that he would have wished at least use Mr Hoza's valuation as a negotiating tool in the**

proposed sale to Dr Kinay; but he did not. On the following day, 18th June 2007, the Cabinet approved the sale to him at BCQS' valuation of \$7.7 million, under 9% of the value advised to Cabinet by their own valuation officer. A valuation moreover, arrived at by a surveyor who had not visited the site, who had been given no significant details of the proposed use, and who used demonstrably out-of-date comparators for the valuation exercise. For good measure, the Hon Michael Misick chose to criticise the Mr Hoza in Cabinet for inconsistency.

4.179 The Hon McAllister Hanchell was later to say that he had just wanted a simple valuation for the land. His attitude appeared to be that land must have a single intrinsic

363 *ibid* 360, p 28

364 Core Volume 7, tab 2, p 78

191

market value. The advice and practice of professional valuers, in this case the Government's own experienced valuation officer, and common knowledge as to the variability of land valuations according to the perceived potential use of land for valuation would demonstrate to most informed people that there is no such thing as intrinsic land value. One might have expected the Hon McAllister Hanchell, as Minister for Natural Resources to know that, or at least to trust the Government's own professional advice, and, as it was in its strong commercial interest, to do so with gusto. But when asked in the course of his oral evidence about his public duty to negotiate the best price for Crown Land, he said:365

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

The Hon McAllister Hanchell also claimed that there had been complaint by lawyers for the purchaser, Dr Kinay, about the valuation.³⁶⁶ He said: In this particular case, when the valuation would have been communicated to the developers, at some point in time developers will have challenged the evaluation, saying that they thought it was too high. My instructions would have come from Cabinet to ask Mr Hoza to kindly review his evaluations.

4.180 This was wholly misleading. There is no evidence that the November 2006 value had been disclosed to Dr Kinay; it was in any event confidential. The 10th June 2008 valuation was only communicated to the Minister in the early hours of 13th June, and, before it even reached him, he was seeking a second opinion. The Commission has seen no Cabinet minute requiring the Minister to seek a second opinion. When it met on the day following BCQS' valuation, it simply accepted it. There is, moreover, no evidence of any complaint by Dr Kinay about the validity of Mr Hoza's 10th June 2008 valuation; if there had been it would have featured in the correspondence. And why the Government should have been so fearful of such a complaint, if it had been made, so as to deter it from negotiating the best available price for the disposal of Crown Land is inexplicable on any normal considerations of good governance and commercial dealing.

4.181 When the matter came before Cabinet it was the Hon Michael Misick who raised the transaction as an oral mention,³⁶⁷ in which he appeared to have a personal interest. The fact

365 Transcript, Day 19, p 155

366 [ibid, p 153](#)

192

that the land was being sold to a consortium led Dr Kinay, a man who, through his company, Turks Ltd, had given him an undeclared and unpublicised political donation of half a million dollars on 9th January 2007,³⁶⁸ may or may not have influenced his view of this matter – it did not influence him enough to declare that link or to withdraw from the discussion. In the result, the Government sold the land to Dr Kinay’s consortium for a relative pittance.

4.182 In my view, in the circumstances, the Cabinet’s decision to sell the land to Dr Kinay at well below market price raises a possibility of corruption and/or other serious dishonesty, including misfeasance in public office, on the part of its Members, in particular, the Hon Michael Misick and the Hon McAllister Hanchell. In short, there is information of a possibly corrupt transaction calling for further and closer investigation.

32 – I find for the reasons set out above, that there is possible corruption and/or other serious dishonesty and/or misfeasance in public office, in relation the Hon McAllister Hanchell in respect of the chain of events leading to the secret payment by Dr Cem Kinay of \$500,000 to the Hon Michael Misick in January 2007, followed by the approval in principle by the Cabinet on 16th May 2007, to which the Hon McAllister Hanchell was a party, of the sale for development to a consortium led by Dr Kinay of land at Joe Grant Cay, followed by the agreement in 2008 to sell it to the consortium at well below market price.³⁶⁹

Accordingly, I recommend criminal investigation by the police or others of the possibility in relation to the Hon McAllister Hanchell of corruption and/or other serious dishonesty and/or misfeasance in public office, in relation to this matter.

33 – In addition, I find that the Hon McAllister Hanchell possibly abused his ministerial position and/or acted corruptly or otherwise seriously dishonestly and/or acted in misfeasance of his public office, by deliberately undermining the authority of the Chief Valuation Officer, in relation to the valuation of land

367 [Core Volume 6, tab 1, p166](#)

368 See [para 4.23 above](#)

369 See [in relation to the Hon Michael Misick, para 4.23 above, and Finding and Recommendation 5; and paras 2.34 – 2.35 as to secrecy of such payments.](#)

193

at Joe Grant Cay, by rejecting the valuations undertaken by him, with a view possibly, to ensuring a swift completion of sale of the land to the consortium led by Dr Kinay at a very large undervaluation.

I recommend criminal investigation by the police or others in relation to the Hon McAllister Hanchell of possible corruption and/or other serious dishonesty and/or misfeasance in public office, in relation to this matter.

Salt Cay Dock

4.183 The Hon McAllister Hanchell also played a role in the political intervention into the affairs of the Physical Planning Board (PPB) in late 2008 and early 2009. The PPB had been asked to consider an application for the establishment of a dock on Salt Cay, an important precursor for the proposed development of the Island. There was general agreement that a dock was necessary, but not as to its location.

4.184 The two alternatives for the dock were considered to be the town centre, near to the historic White House on the north of the Island or on its south side. The PPB at a meeting on 15th December 2008 received a comprehensive and thorough advice from the Director of Planning, Mr Clyde Robinson. He was trenchant in his assessment of an earlier Environmental Impact Statement relating to the site for a dock. He felt that the assessment was incomplete and needed further consideration before the PPB could recommend approval of a site. The PPB, after discussing Mr Robinson's advice, decided to recommend the Hon McAllister Hanchell not to approve the application. That meeting was the last one for 2008. There would in due course have been a further meeting in January 2009.

4.185 Before the next scheduled meeting could take place there was an impromptu gathering called at the Hon Michael Misick's office on the morning of 9th January 2009. He and the Hon McAllister Hanchell had apparently issued requests to members of the PPB and Mr Robinson to attend the meeting. Mr Robinson was later to describe how, when he attended, he found the Hon Michael Misick with the Hon McAllister Hanchell, Stefan Kral of DEVCO and a colleague. Mr Kral took several minutes explaining the importance of the dock

194

to the overall development of Salt Cay, and he and his colleague then left. There was then a heated discussion, the general content of which, Mr Robinson indicated, consisted of the Hon Michael Misick berating him for daring to reject a government proposal.

4.186 The Hon McAllister Hanchell, in his evidence to the Commission, said that that he had called the various members of the PPB to the meeting, and that it was his meeting. He explained his concern for the early construction of a dock for the people of Salt Cay, and said that the issue had been dragging on since 1991. Mr Robinson evidently defended his position vigorously, and there was no meeting of minds.

4.187 Later that day a further meeting of the PPB was hastily convened to reconsider the matter. This was called by the Deputy Chairman of the Board. The Chairman Mr Earl Handfield, had been notified of the further meeting, and decided not to attend. Mr Robinson also decided not to attend, though he made clear that he held to his position. Mr Handfield, in his evidence to the Commission, argued that this meeting was unlawful because the Deputy Chairman was not entitled to convene a meeting of the Board. In addition, he maintained, the Board had no power to reopen discussion about a project on which it had taken a decision for a recommendation to the Minister.

4.188 Those present at the meeting reconsidered the issue discussed in December and concluded this time in favour of locating the dock on near the White House, as had been sought by the Hon Michael Misick and the Hon McAllister Hanchell. Mr Handfield, on learning of their decision, resigned his post in disgust. He was later to say in a press conference and before the Commission that this was the latest in a series of attempts by

Ministers to pressurise him into hurrying decisions along, and by implication to reach conclusions that they wished to see.

4.189 The relevance of all this to the Commission's Inquiry is that it casts some light on the attitude of the Cabinet to development projects. The machinery of government is not designed to move slowly for the sake of doing so; it is designed to debate, test and check ideas before there is a rush to judgement and thereby to avoid ill-thought out projects being undertaken at public expense. The Cabinet's response to being questioned on its decision

195

on development – even when those decisions are made on the hoof and without the benefit of proper consultation – appears to have been to apply pressure to those individuals to bend to its will. This small saga appears to be an example of just such an exercise in pressure by Hon Michael Misick and the Hon McAllister Hanchell. Ironically, the latter could, had he wished, simply have rejected the PPB's first recommendation. Instead he was party to an attempt to extract a dubious endorsement for the Government's position from the PPB.

The Hon Jeffrey Hall

Background

4.190 The Hon Jeffrey Hall became an elected member of the former Legislative Council in 1999, representing Middle Caicos, and served as a PNP Member of the Legislature and in Government, when the PNP was in power, from that time onwards. In the Misick Administration, he was Minister for Housing, Agriculture, Works and Telecommunications. Prior to his entry into politics and elected public office, he had been a Customs Officer, and rose to the rank of Deputy Collector.

Declaration and disclosure of interests

4.191 In his evidence to the Commission, the Hon Jeffrey Hall said that he had known of the existence of the Registration of Interests Ordinance, but not its terms because he had never read it. In common with all his fellow Cabinet members, his compliance with the requirements of that Ordinance was poor in the extreme. Such annual declarations of his interests as he made were patchy, inconsistent and strewn with errors, failures that he attributed, in his evidence, to carelessness. He failed to declare interests that he had held in companies. He had declared interests, in particular in relation to a company called Alliance Realty Ltd, that he told the Commission he had not had at the time. He failed to declare Interests concerning land that he and his wife owned and from which they had derived

196

substantial rental income, suggesting that he had thought it only applied to government land, an absurd suggestion given the plain terms of the required declaration.³⁷⁰ And, he had failed to declare receipt of a total of \$153,000 from the PNP in respect of Candidates' Stipend, an interest that he only disclosed to the Commission following its examination of the PNP accounts obtained from the Hon Floyd Hall. However, he did disclose to the

Commission a single Campaign Contribution of \$10,000, which, it later emerged, came from a Canadian property developer, Mr David Wex, of whom more below.

4.192 Examination of the account of the Hon Jeffrey Hall, with the ScotiaBank – the only disclosed bank account in his own name³⁷¹ - revealed that between 2004 and 2008 (the statements from 2005 were missing) unexplained credits were paid into his account. These payments totalled over \$560,000. Only \$36,000 of the PNP money can be identified as the likely source of those sums. The sources of over half a million dollars remain unexplained, save for his suggestion that some of the credits might have been lump cash payments of rent and some payments of PNP Stipend. ³⁷²

4.193 There were other very large omissions from the Hon Jeffrey Hall's declarations to the Registrar and in his disclosure to the Commission.

4.194 The first related to his account with ScotiaBank, the partially disclosed statements of which show unexplained credits of over \$550,000, unexplained that is, save for \$36,000, part of the declared total of PNP Stipend of \$153,000 referred to above. As to the balance of that Stipend, \$117,000, it does not appear in the ScotiaBank account, and he has disclosed no other account into which it might have been paid.

4.195 There were also substantial deficiencies of disclosure about the source of funds used by him to settle his credit card bills, identifiable in statements that he had disclosed to the Commission. A number of those credits came from his ScotiaBank account where the Commission found corresponding debits, and similarly a number from Alliance Realty Ltd, the company referred to above. But there remained over \$334,000 unexplained credit card account credits, money to which he had had access, but did not declare to Registrar or

370 See para 2.21 above

371 save for a joint account with his wife

372 As those payments have been taken into account in the preceding paragraph , any further political contributions must be in addition to the only payment actually declared to the Commission of \$10,000

197

disclose to the Commission. His only attempt at an explanation was that a number of repayments, which he could not identify, had been made on his behalf by a man called Rhynie Campbell who had owed him money. He told us that Mr Campbell had borrowed \$200,000 from him, drawn on the account of Alliance Realty Ltd,³⁷³ in September 2006. The Commission has seen a copy of a cheque drawn on that company's account and copy of a promissory note from Mr Campbell to Alliance Realty Ltd, but has seen no evidence to support the assertion that all of the untraced credits came from him. The Hon Jeffrey Hall maintained that he had kept no record rental payments or repayments by Mr Campbell.

34 - I find that the Hon Jeffrey Hall failed repeatedly to make any or any full or adequate declarations of interests to the Registrar of Interests, in breach of the Registration of Interests Ordinance, and also failed adequately to disclose his financial interests to the Commission, pursuant to the Commissions of Inquiry Ordinance

For reasons that I have given in relation to the Hon Michael Misick and other Ministers, I make no recommendation for criminal investigation with a view to any sanction in respect of those failures.

35 - I find that the Hon Jeffery Hall has failed to account: 1) for his receipt and expenditure of funds in excess of \$800,000 credited to his accounts, as set out above; 2) for his receipt of \$200,000 from Mr Evan Harvey, as set out above; and 3) for a gift to him of \$10,000 from David Wex.³⁷⁴

I recommend criminal investigation by the police or others of possible corruption and/or other serious dishonesty and/or misfeasance in public office in relation to the Hon Jeffrey Hall in respect of the above matters.

Melbourne Wilson and the First North West Point transaction

4.196 Any analysis of Hon Jeffrey Hall's position must necessarily include business links between him and his attorney, Mr Melbourne Wilson. Mr Wilson initially represented him in

373 See para 4.214 below

374 See para 4.191 above and paras 4.196 – 4208 below

198

the Commission's Inquiry, but eventually withdrew on the grounds of possible conflict of interest. Mr Wilson was then called before the Commission as a witness to speak about his own involvement in transactions that he had helped to broker for his former client and others.

4.197 One such transaction was the sale of a number of parcels of Crown Land in the North West Point area of Providenciales, to which I have already referred in relation to the Hon Michael Misick and the Hon Floyd Hall, and will refer in relation to the Hon Lillian Boyce. The Hon Jeffrey Hall had applied for a commercial conditional purchase Lease for a parcel in that area in May 2004. He did not indicate the precise plot for which he was applying, and, in the event, he did not take up any plot that may have been unofficially allocated to him. However, in 2005 a Canadian businessman, David Wex, expressed interest, eventually, to Mr Wilson, then a partner in McLeans, a firm of attorneys practising in the TCI, in purchasing 20 acres of land in the TCI. On Mr Wilson's account in evidence to the Commission, he discovered from the Land Registry that the Hon Jeffrey Hall had an interest in land at North West Point. Mr Wilson, still on his account, identified three other persons each of whom had also applied for a parcel of land in that area and, therefore, had an interest in it. They were Quinton Hall, brother of the Hon Floyd Hall, Earlson Robinson, brother of the Hon Lillian Boyce, and Samuel Been, former husband of the Hon Lillian Boyce, and a Member of the House of Assembly. Quite what the nature of the interest was that each of them had in the land is unclear, since I have seen no documents indicating any of them had form of title or entitlement to acquire a title to land in that area.

4.198 As Mr Wilson acknowledged in his evidence and submissions to the Commission, following Mr Wex's approach, he orchestrated an application by the Hon Jeffrey Hall and the other three to apply for four contiguous parcels at North West Point to make up the 20 acre plot sought. Why? Because, they, as Belongers, could apply for a conditional purchase lease of the plot and at greatly discounted prices, Mr Wex, as a non-Belonger, could not, and they

and he, Mr Wilson, could profit from the deal. He clearly took the role of coordinator and did all or most of the arranging of the acquisition by the four Belongers of the land and their onward sale of it to Mr Wex. His evidence in the oral proceedings was that he had been involved in all aspects of the transaction, acting for both sides and taking a percentage of the deal as a commission.

199

4.199 The arrangements and negotiation for the deal with Mr Wex progressed apace. In June 2005 Mr Wilson drew up 'Offer to Purchase' documents in the four Belongers' names, in trust for a yet-to-be incorporated company. That company was, in turn to transfer all 20 acres to Mr Wex for a total of \$7 million, the amount he had apparently agreed to pay. In July 2005 the Executive Council approved the grant of freeholds of the four parcels of land to the four men for a total of about \$2.7 million less their Belongers' substantial, 50%, discounts, for the purpose of pursuing their tourist related development in accordance with the terms of the Crown Land Policy.³⁷⁵ On the face of the Executive Council Minute, this was to be their development to be conducted through the vehicle of a company, already identified in the name of Urban Development Ltd, but not yet formed. There was no suggestion that the ultimate developer would be an overseas entity, and there is no record of the Hon Jeffrey Hall withdrawing from the Cabinet discussions at that stage concerning the role of Urban Development Ltd.³⁷⁶ On the strength of that approval, Mr Wilson in August 2005, formed the Company, the sole shareholder of which was a nominee company of McLeans, Windsor Nominees Ltd. At about the same time he arranged for Urban Development Ltd to resolve to issue share certificates to the four Belongers, but never registered them. The Hon Jeffrey Hall told the Commission in evidence that the company was set up on his behalf, so he clearly knew of the link with the other three Belongers from the start.

4.200 Having established Urban Development Ltd, Mr Wilson negotiated on its behalf with the Government a development agreement in the name of the company. That document was signed by the Governor on 7th February 2006. The nominee directors of Urban Development Ltd signed for the company. Whether the development agreement was placed before Mr Wex for his approval is not clear. Mr Wilson maintained that the Belongers, apart from the Hon Jeffrey Hall, had each intended to remain involved in the project in some way. In the event, in April 2006 all four sold their shares in Urban Development Ltd for \$7 million to a company established by Mr Wex shortly before the Governor signed the transfer of land to them on 2nd May 2006 for \$1.367 million. Thus, the gross profit on the deal for the four Belongers was about \$5.5 million. Whether or not that amounted to empowerment, it was certainly enrichment.

375 Minute 05/426 of Cabinet Meeting

376 Though he did in later discussions.

200

4.201 Mr Wex paid the \$7 million to Mr Wilson at McLeans. Mr Wilson placed it on deposit with Temple Securities, an associated finance company, which, in due course made the following payments by way of cheques: about \$1.5 million to the Government for the freehold and associated fees and duties; \$1.8 million to Alliance Realty Ltd, which had also been established by Mr Wilson, \$1 million of which was for the Hon Jeffrey Hall, and \$800,000 for

Mr Wilson; \$1 million to each of the other three Belongers; and \$500,000 to a Mr Tim Smith, an estate agent, who at an early stage had had a hand in introducing Mr Wex to Mr Wilson. There was some uncertainty about the involvement, if any, of the Hon Jeffrey Hall in Alliance Realty Ltd. This has relevance to: 1) Mr Wilson's payment of the Minister's \$1 million into that company's account instead of into his client account, as one might have expected; 2) the Hon Jeffrey Hall's use of that account as a medium for lending Mr Rhynie Campbell 200,000;³⁷⁷ and 3) Mr Wilson's claimed and incomplete list of payments approaching \$800,000 made on the Minister's behalf, including that loan and some credit card bills.

4.202 The shares in Urban Development Ltd having been sold on to Mr Wex's company, Blue Resort Developments (TC) Ltd, the four Belongers dropped out of the picture. Mr Wex's lawyer by this stage was Mr Hugh O'Neill, a partner in the firm of Hugh G O'Neill & Co. He sought and obtained an indemnity from the four Belongers in favour of Urban Development Ltd and Blue Resort Developments (TC) Ltd in the event of the Government seeking to reclaim the Belonger's discount on the sale of the land. The Commission has seen no evidence that it has done so, or that it has been offered by any of the four Belonger participants.

4.203 Interestingly, and it is hard to know if this was a deliberate attempt to avoid any liability to repay the discount, Cabinet persuaded itself that there was no necessity to impose a charge on the land in respect of the discount. The Commission has seen that normally, the Government protected its position in relation to discounts by creating a first charge over Crown Land disposed of. This would ensure that on any subsequent sale, if it was within ten years and to a non-Belonger, the Government would be in a position to force repayment. In respect of this transaction - and said to be so as not to inhibit condominium sales in due course - the Cabinet agreed to no charge in meetings at which all the four

³⁷⁷ See para 4.195 above

201

Belongers were represented in the persons of the Hon Jeffrey Hall, the Hon Floyd Hall and the Hon Lillian Boyce.³⁷⁸

4.204 The Commission invited comment from each of the Belongers involved in the transaction. Only Samuel Been acknowledged that he had known the transaction was to be a coordinated one of four separate applications for contiguous plots of land to be acquired and sold as one. Quinton Hall and Earlson Robinson each suggested that he was acting alone and that Mr Wilson approached him to join an existing project. However, their accounts are consistent in a number of important respects: 1) that Mr Wilson arranged everything; 2) that they had known little or nothing of the mechanics of the transaction; 3) they had had no involvement in the negotiations; 4) they had expected a substantial reward in money or money's worth for their participation; and 5) that they had signed an indemnity in favour of Urban Development Ltd and Mr Wex's company, Blue Resort Developments (TC) Ltd in respect of any liability they might incur if the Government were to seek repayment of the discounts Belonger discounts granted.

4.205 The outcome of this complicated tale is that these four Belongers each received large sums of money for the sale of freehold property that they had never actually owned. Their title to shares in Urban Development Ltd had been transferred before the land was

transferred by the Crown. At no stage did they have to make any outlay with their own funds. They took effectively no risk, and profited at the expense of the Islands. Of course, the Government could have valued the land closer to the true market value (Mr Wex was clearly able and willing to pay \$7 million for a plot, which Cabinet was content to value at \$2.7 million), and this failure contributed to the big margin that was available to be exploited.

4.206 A sequel to these transactions, one to which I have already referred,³⁷⁹ were the loans from three of the four Belongers to the Hon Michael Misick. He told the Commission that he had been lent the money by the Hon Jeffrey Hall, the Hon Floyd Hall and the Hon Lillian Boyce. The Hon Jeffrey Hall agreed that he had loaned \$100,000 to the Premier, drawing on the money in the Alliance Realty Ltd bank account. The Hon Floyd Hall and the Hon Lillian Boyce deny making him any loan, each saying that the money came from his/her

378 Hon Jeffrey Hall Bundle 1, pp 546 - 561

379 See above, paras 4.28 – 4.30

202

brother. As I have said, on the information before the Commission the Hon Michael Misick has not repaid any of these loans, seemingly without interest or terms for repayment, and has not been pressed by the lenders to do so.

4.207 It may be a coincidence that the four Belongers involved in this transaction were all intimately connected to the Cabinet; one of them a Member of it, two the brothers of serving Ministers, one the ex-husband of a Minister. It may be a coincidence that the Premier seemed to know a great deal about exactly who profited, and when, to the extent that he felt able to ask for a loan from the three Cabinet colleagues – a loan apparently unreturned in each case. The Hon Floyd Hall and the Hon Lillian Boyce maintained that had no part or interest in the transactions. However, the Hon Floyd Hall acknowledged that he might have had something from them, but only because he had been generous to his brother in the past. The Hon Lillian Boyce certainly benefited. She told the Commission that she had used some of the money from her brother as collateral for a loan, and some for building work on her mother's house. These benefits too may simply be attributable to coincidence.

4.208 There is a possible alternative interpretation. It could be suggested that the Hon Michael Misick and his three Cabinet colleagues involved took the opportunity to get an inside track on a land transaction, which they allowed Melbourne Wilson to orchestrate so as to enable all involved to profiteer from abuse of the Crown Land Policy.

36 - I find that the Hon Jeffrey Hall promoted, and personally benefited from abuse of the Crown Land Policy in relation to the sale to a non-Belonger of Crown Land by participating in a possibly corrupt transaction in respect of the sale ('flipping') of land at North West Point, Providenciales, to an overseas developer, David Wex by: 1) knowingly participating in the transaction as one of the flippers and sharing in the large profits made from the sale; 2) loaning or giving part of the proceeds of those profits to the Hon Michael Misick; and 3) failing to declare to the Registrar of Interests or to the Commission his share of the profits or the making of the loan or gift of part of the profits to the Hon Michael Misick, or to declare his involvement in the sale of the land to David Wex when it was before the Cabinet for discussion.

I recommend criminal investigation by the police or others in relation to the Hon Jeffrey Hall of possible corruption and/or other serious dishonesty and/or misfeasance in public office, in respect of the above matters.

4.209 I have dealt with the North West Point land transaction in some detail, because it is a good example of apparent abuse of Crown Land Policy

Melbourne Wilson and the Second North West Point transaction

4.210 The Hon Jeffrey Hall, in a written statement to the Commission after he had completed his oral evidence, disclosed for the first time that he had received a substantial payment for political purposes from a Mr Evan Harvey arising out of a further land transaction at North West Point in late 2006. It is not clear what triggered his recollection. This contribution, one of \$200,000, was far greater, and received more recently, than the political contribution he had received from David Wex. He said that he had put Mr Harvey in touch with Melbourne Wilson at the latter's request about a potential property deal at North West Point, and that Mr Harvey had offered to make a contribution to his impending re-election campaign if the deal went through. Seemingly it did go through, because Mr Harvey, having made a profit on it of \$800,000, paid him \$200,000. He maintains that he had agreed to give Mr Wilson half of that sum. But Mr Wilson has denied that, saying that Mr Harvey had merely asked him to hold the money on his behalf, which he did by lodging it in the bank account of his company, Alliance Realty Ltd. It was a transaction in which Mr Wilson had apparently again acted for both the sellers and the purchaser, with the result that Alliance Realty Ltd received a handsome commission of \$320,000.

4.211 The conflict between the Hon Jeffrey Hall and Mr Wilson as to whether the former had given \$100,000 to the latter or had merely asked to hold it for him is not resolved by examination of their respective bank accounts and that of Alliance Realty Ltd. The movements of monies in those accounts are a bit convoluted, like the transaction giving rise to them. Undoubtedly both merit further investigation. For what it is worth, it looks me as if the Hon Jeffrey Hall had the benefit of the whole \$200,000 commission paid by Mr Harvey. But whether it was \$200,000 or \$100,000, he did not disclose it to the Registrar of Interests.

The Hon Lillian Boyce

Background

4.212 The Hon Lillian Boyce became an elected member of the former Legislative Council in 1999, and has continued as a Member of the House of Assembly to this day. She is the Member for Five Cays, a constituency on Providenciales. She became a Member of the Cabinet in 2006, serving first as Minister of Education and, from February 2007, as Minister of Health. She lives in Chalk Sound and is a business woman as well as a Member of Cabinet, being the Managing Director of KSK – a managing company that operates the Airport Inn in Providenciales and a linked car rental company. She is the ex-wife of another Member of the House of Assembly, the Hon Samuel Been, who is now a Minister in the

recently formed Administration of the Hon Galmo Williams. She is now married to the Editor of the TCI Sun Newspaper, Hayden Boyce.

Declarations to the Registrar of Interests

4.213 The annual declarations provided by the Hon Lillian Boyce to the Registrar of Interests, like that of her colleagues, were incomplete and otherwise inadequate, ignoring the statutory obligations set out in simple terms in the Registration of Interests Ordinance. In 2004 she did not file a declaration at all, an omission that she was unable to explain to the Commission. She never declared receipts of any financial sponsorship, although the PNP records show that she received \$72,500 from the Party between 2005 and 2007 in payments of Candidate's Stipend. She did not declare any overseas trips, although it is clear from the material she disclosed to the Commission, that she has travelled widely in her successive roles as Minister for Education and Minister for Health and Human Services.

205

Disclosure to the Commission

4.214 The Hon Lillian Boyce also failed to disclose to the Commission the substantial sum she had received by way of Candidate's Stipend over a disclosure exercise that spanned many months. The Commission's requests to her attorneys for full and accurate disclosure of her financial interests, pursuant to the Commissions of Inquiry Ordinance were specific and clear as to the information required. It was not until the Commission came into possession of various PNP records in the course of the Hon Floyd Hall's evidence in the oral proceedings that the existence of payments by way of Candidate's Stipend came to light. When questioned, she said that she regretted not having told the Commission about it. She received the vast bulk of the money, two payments totalling almost \$70,000, very close to the date of the February 2007 Election.

4.215 Having said that, the Hon Lillian Boyce made up for her poor record of declarations of interest to the Registrar in the course of the long disclosure exercise undertaken by the Commission. Apart from her silence about the Candidates Stipend payments, she co-operated with its requests for information. She disclosed large volumes of bank account and credit card statements for the relevant period, along with correspondence and title documents in relation to her interests in land. She provided the Commission with details of her involvement with companies, including a full set of company accounts dating back to 2003.

37 - The Hon Lillian Boyce failed to declare to the Registrar of Interests, or initially to the Commission, her receipt of payments of Candidates' Stipend, totalling \$72,000.

No Recommendation

Allocation and 'Flipping' of Crown Land

4.216 As detailed in earlier sections of this Chapter relating respectively to the Hon Michael Misick, the Hon Floyd Hall and the Hon Jeffrey Hall, the Hon Lillian Boyce's brother, Earlson Robinson, was one of the four Belongers who were effectively granted an option to purchase adjoining parcels of Crown Land in North West Point, Providenciales, which they sold on,

through the company formed for the purpose by Melbourne Wilson, Urban Development Ltd, to the Canadian developer, David Wex. She acknowledged in her oral evidence to the Commission that she had not withdrawn from Cabinet discussions when the matter was considered, including the mention of her brother's involvement in it. As I have mentioned, her brother received for his involvement a cheque for \$1 million. \$600,000 of that sum was paid into a bank account operated by her, linked to her company so that she could use it as security for a loan to her car rental company, as she explained in evidence. She acknowledged, when the matter was put to her, that the security deposit did not appear in the company's accounts.

4.217 The Hon Lillian Boyce also acknowledged in evidence that, by way of a personal cheque, she had paid \$100,000 of the \$1 million to the Hon Michael Misick, which, she maintained was a loan from her brother, Earlson Robinson. As I have already mentioned in this Report, this purported loan of \$100,000 was one of three identical loans, the other two made by the Hon Jeffrey Hall and the Hon Floyd Hall, whose brother Quinton, and had also received \$1 million in the transaction. She confirmed in evidence that the Hon Michael Misick has not repaid the money, and, when asked whether it had been a kick back to him, she said that she had not at the time considered it as such.

38 - The Hon Lillian Boyce participated in a possibly corrupt transaction in relation to the sale (flipping) of Crown Land by : 1) accepting the proceeds of profits made by her brother, Earlson Robinson, from the sale of a share in the interest of a company, Urban Development Ltd, which had involved the disposal of Crown Land at North West Point, Providenciales, for large profits to an overseas developer, David Wex; 2) loaning or giving part of those profits to the Hon Michael Misick, or assisting her brother in doing so; and 3) failing to declare those profits to the Registrar of Interests or to disclose them to the Commission, and failing to declare her brother's connection to the transaction in related Cabinet discussions.

I recommend criminal investigation by the police or others in relation to the Hon Lillian Boyce of possible corruption and/or other serious dishonesty and/or misfeasance in public office, in respect of the above matters.

Award of scholarships

4.218 During her time as Minister of Education, her Ministry of Education was the subject of heavy criticism from a number of people. There was particular criticism of the award of overseas scholarships outside the strict merit criteria of the Scholarships Policy, as a result of Ministers requesting the grant of scholarships to particular students. This was highlighted by the Chief Auditor in her 2006 Audit Report on the Scholarships Programme,³⁸⁰ in the preparation of which she found little cooperation from the two most senior officials of the Ministry, namely the Permanent Secretary and Under Secretary:

Our audit highlighted that the policy and procedures established by the Ministry have been circumvented, and there is a lack of support from the government to ensure that the policy is fully implemented. ... In particular, we noted a large number of scholarships were awarded outside of the scrutiny of the Committee. Several problems arose out of this. The majority of

such recipients did not apply through the prescribed application process; not all awards met the predetermined criteria set by the policy; in most cases, the awards did not focus on priority areas; and were not based on merit. ...

... With regard to the administration of the scholarships, unless there are clear breaches of government policy, ministerial involvement in individual cases can only hinder the efficient operation of Ministry and the Committee, in implementing policy in a cost effective, transparent and equitable manner. ...

4.219 The Hon Lillian Boyce, as Minister of Education, clearly set the tone for disregard at the highest level of the Scholarships Policy, for the administration of which she was responsible. One of the students who awarded a scholarship outside the Policy for the year 2005/2006 was her own daughter, noted as Minister Awarded in Appendix D to the 2006 Audit Report,³⁸¹ under the heading Awards issued outside of Committee scrutiny for 2005/2006.

4.220 In the course of its information gathering, the Commission received reports of cheques made payable personally to the Hon Lillian Boyce from overseas universities when TCI students who were holders of such scholarships had failed to complete their courses.

380 TCI Audit Office (2006), Audit Report - Scholarships Programme, S/22.035/06R, p 3

381 *ibid*, p 29

208

The Commission found no hard evidence of this having occurred, but owing to the lax way in which the Scholarships Programme was operated, there was scope for it.

39 - The Hon Lillian Boyce abused her ministerial position by: 1) assisting or permitting her fellow Cabinet Ministers, specifically the Hon Michael Misick and the Hon Floyd Hall, to interfere in and override the Scholarships Policy for nominating according to set criteria, in particular merit, candidates for overseas scholarships, thereby by-passing the control of the Scholarships Committee; and 2) granting a scholarship to her own daughter without referring her candidature to the Scholarships Committee for scrutiny.

No Recommendation.

Profit making from government contracts

4.221 The Hon Lillian Boyce's company, KSK Ltd, rents space in the Airport Inn to two quasi-governmental departments, the Tourist Board and the Kidney Foundation. When it was put to her in the course of her evidence to the Commission that it could be considered inappropriate for a member of Cabinet to profit from government business she said that her brother, Phillip Robinson, had arranged the contracts with those two entities, that accommodation is limited in TCI and the tenants chose their premises and were happy with them.

Southern Health Network

4.222 The Hon Lillian Boyce became Minister for Health in February 2007, shortly after the contract with SHN had been signed. Her evidence to the Commission was that she had not

known of any other company that had tendered for the contract as she had not been the responsible Minister at the time.

209

The Hon Galmo Williams

Background

4.223 The Hon Galmo Williams was an elected Member of the House of Assembly from 2003, and was appointed to the Cabinet in 2004. He was Minister for Social Services and Natural Resources, and later Minister for Immigration and Labour, before becoming Minister for Home Affairs, including Immigration and Labour, in 2006. Following the interim Report of this Commission at the end of February 2009, and the resignation of the Hon Michael Misick as Premier, he was elected leader of the PNP and sworn in as Premier of the TCI at the end of February 2009.

4.224 During the Commission's investigations, the Hon Galmo Williams submitted extensive documentation in response to its requests for disclosure of his financial interests. It is plain from that disclosure and from what the Commission has otherwise learned of him, that he is a successful and wealthy businessman, who has had a prominent business profile on the Islands for a number of years. He has a substantial private income from his extensive interests in the restaurant trade and from the sale of beers, wines and spirits. He and his companies own several plots of land. He also owns some companies jointly with his wife Althea, most notably Provo Travel Ltd, which appears to have a near-monopoly on the provision of travel services to the Government. The couple also hold in equal shares Creeker Investments Ltd, a property holding company that controls a five acre commercial lot in North Caicos. In all, he is involved, both as a Director and beneficial owner, in some 18 companies.

Declarations to the Registrar of Interests

4.225 Regrettably, the Hon Galmo Williams' annual declarations to the Registrar of Interests did not match the quality of his disclosure to the Commission. Like the majority of his parliamentary and Cabinet colleagues, he made wholly inadequate declarations. In doing so, he ignored his constitutional obligations so simply expressed in the Registration of Interests Ordinance. Given his willingness to seek and use professional accounting advice for

210

the preparation of his many company accounts, it is unfortunate that he did not seek similar advice in respect of his obligations of disclosure of his financial interests to the public.

4.227 In 2003, he signed his return and delivered it the Registrar, leaving it blank under every heading of disclosure required, causing the Registrar to record in the Register nothing to declare throughout. In 2004 he made no return at all to the Registrar, not even in blank. In 2005 he declared directorships in only four companies and employment in one of them (Gilley's Enterprises Ltd), but did not declare any shareholdings or overseas visits. In relation to land and property, he declared only a dwelling house and Commercial Properties on

Providenciales. His 2006 declaration was in almost exactly similar terms. In his 2007 return, submitted in March 2008, he failed to declare any directorships, although he did declare paid employment in three of his businesses. He also declared his ownership of shares in Discount Liquors Ltd, but mentioned no property. In this latter regard, the Commission has seen a subsequent letter of apology on his behalf to the Registrar on 28th July 2008 for his failure to declare details of his properties, and setting them out. The letter followed my public opening of the Inquiry just over a week earlier, on 15th July 2008 in Providenciales, in which I indicated that I would seek, and if necessary resort to my powers under the Commissions of Inquiry Ordinance to enforce production, specific information and records from those possibly implicated in the subject matter of the Inquiry.

4.228 In none of the Hon Galmo Williams' declarations did he disclose any financial sponsorship or gifts, although the PNP records the Commission has seen show that he received \$63,500 from the PNP between 2005 and 2007 in payments of Candidate's Stipend. Nor did he declare any overseas trips, although we now know that he travelled to Europe with the Hon Michael Misick in 2005, returning early from the trip without the Premier, owing to flooding in the TCI.³⁸²

4.229 Mr Carlos Simons QC, in his closing submissions on behalf of the Hon Galmo Williams, characterised his failures over the years adequately to declare his interests to the Registrar as technical breaches committed inadvertently. From the history of those failures that I have attempted to summarise above, I could not possibly regard them as merely technical or inadvertent failures, however engagingly Mr Simons put the matter on his behalf. Nor do I

382 Transcript, Day 19, pp 65 - 66

211

accept that any of the failures, as was subsequently suggested in correspondence to the Salmon letter to the Hon Galmo Williams, are attributable to loose procedures on the part of the Registrar.

Disclosure to the Commission

4.230 As I have said, the Hon Galmo Williams provided the Commission with much documentation about his financial interests, mainly in the form of audited accounts of his principal companies. However, for a variety of reasons, the Commission only received all the accounts in late November, by which time it did not have the time or the resources to examine them as it would have wished.³⁸³ However, I note that international accountants, Price Waterhouse Coopers, had audited some of them.

Conflicts of Interest

4.231 The ownership by the Hon Galmo Williams and his wife of Provo Travel Ltd is well known on the islands, and, of course to those in the Government. The effective monopoly of their company in making almost all government travel arrangements creates a potential for conflicts of interest, in that, as member of Cabinet, and now the Premier, he and his wife benefit personally from income derived from those travel arrangements.

4.232 Similarly, the grant of Crown Land to family members whilst Hon Galmo Williams was a Minister creates a further possibility of conflict of interests. His and his wife's company, Creeker Investments Ltd, was granted a parcel at Bottle Creek, North Caicos by a decision of the Cabinet at a meeting on 20th July 2006. Although he was not present at the meeting, and his interest in Creeker Investments Ltd was disclosed at it, the Commission has been unable to trace any reference in the Cabinet papers it has seen to an earlier grant of land in East Cays made to his wife in March 2006.

383 See paras 1.68 – 1.171 above

212

First Financial Caribbean Trust Company

4.233 Records disclosed to the Commission show that the Hon Galmo Williams was a shareholder of First Financial Caribbean Trust Company (First Financial), from which a short-term loan is recorded in the accounts of Discount Liquors Ltd for 2004. His ownership of these shares was never declared to the Registrar, and never mentioned to the Commission. His ownership of them emerges from the First Report of the Liquidator of Leadenhall Bank & Trust Company Ltd, (Leadenhall) to First Financial of 9th December 2005,³⁸⁴ to which Leadenhall had transferred \$14 million in trust assets in 2002, and was claiming \$19 million.

4.234 The Liquidator's report, which was prepared for the central Bank of the Bahamas, the Supreme Court of the Bahamas and others, reveals that First Financial had been jointly owned by Delroy Howell, the Hon Galmo Williams and Christopher Donnachie. Dr Jospeh Marzouca, who was to become the Deputy Chairman of Southern Health Network (SHN), acquired Mr Donnachie's shares. In the time available to the Commission, it has been unable to establish whether the Hon Galmo Williams' financial links to Mr Delroy Howell were still in place in 2006 when the Hon Floyd Hall first proposed SHN as the Administrator for the TCI Treatment Abroad Programme. Certainly, the Hon Galmo Williams has not declared any current connection with First Financial, and he was not present when the Cabinet, on 23rd August 2006, approved the grant of the contract to SHN.³⁸⁵ But if he appreciated that Mr Howell was behind SHN, he did not make any reference to his connection with him in subsequent Cabinet discussions.

Immigration

4.235 The Commission has not been able to undertake a detailed study of the operation and management of the Immigration Department. However, it has information in the form of numerous complaints about its inefficiencies, and possible departmental corruption. The only recent audit of practice was an Internal Audit Report by the then Chief Auditor, Cynthia Travis, in May 2006,³⁸⁶ in which she found that control of expenditure systems within the

384 Core Volume 5, tab 2 p 83

385 See paras 4.155 – 4.165 above

386 TCI Audit Office (2006), Expenditure Systems: Immigration Department, S/12/061/06R

213

Department was very unsatisfactory, and that several changes were required as a matter of high priority. Much more recent information provided to the Commission suggests a continuing pattern of gross inefficiency in administration and petty corruption amongst its officials.

4.236 The Commission has also been alerted to the provision, or the wholesale waiver, of work permits for major developers who bring in large numbers of overseas labourers to the TCI for work on their building projects. There are linked allegations that such workers are accommodated in poor conditions, and paid low wages. This raises several issues: 1) the lack of protection for the rights of immigrant workers, as demonstrated by recent high-profile protests; 2) the undermining of the local labour market by the use of foreign low-wage employees; and 3) the willingness of the Government to waive statutory requirements for work-permits for favoured developers, any or all of which is likely to create unfairness, to undermine competition and also to engender corruption on a large scale. These are in large part attributable to the previous Cabinet's attitude of development at any cost, a readiness to cut corners and to make or change policies on the hoof.

4.237 These are all areas in which the Hon Galmo Williams would have been intimately involved as Minister with responsibility for Immigration. The Commission has no basis, on the information before it, for suggesting corruption on his part, but it does suggest a willingness to go along with the general attitude of the then Cabinet without demur. It also reflects a lack of control over, or sufficient awareness of, the running of his own Department, which has allowed inefficiencies and the possibility for corruption to thrive.

214

5 – SYSTEMIC LEGISLATIVE AND GOVERNMENTAL WEAKNESSES

Some general fault-lines

5.1 Under my second and third terms of reference, I am to consider, in the light of all the information before me, whether to make findings as to any systemic weaknesses in legislation, regulation or administration and/or on any related matter. As I indicated in the Interim Report, I have interpreted any related matter as one that bears in a fundamental way on any statutory, regulatory and/or administrative reform or changes that I recommend. That includes the Franchise, the Constitution, the Criminal and Civil Justice Systems and other areas of law and procedures, the over-all system of governance and financial control, any relevant codes of professional conduct, and, electoral and party political finances.

5.2 As shown in earlier Chapters of this Report, the information I have gathered in the ten months of this Inquiry points at least to a possibility – but more realistically a high probability – of systemic corruption and/or other serious dishonesty involving past and present elected Members of the Legislature in recent years. The information leading to those conclusions and, where I have expressed them, preliminary findings in relation to individuals, has highlighted many weaknesses in the law and its administration, all or most of which I have touched on in different contexts in the Report. In this Chapter I shall refer to, but not rehearse in detail, systemic weaknesses or failures that I have already identified, and, where I think it may be helpful, venture recommendations for remedying them.

5.3 Before doing so, I should like to mention some general fault-lines, as I now see them, in the governance and different cultural attitudes giving rise to the troubles that brought me to these beautiful, hurricane prone, friendly and potentially prosperous Islands in the sun. I do not claim any originality in this exercise because, after ten months of this absorbing Inquiry, I am little more than a sounding board for all that I have read, heard and seen.

5.4 First, there is the phenomenon so well described by Sir Louis Blom-Cooper QC - a largely single economic base at different stages of the Islands' history, from which a small, comparatively diverse and widely spread population has had to make a living. Initially, and

215

for some time, there was production of salt on some of the Islands combined with subsistence farming and fishing on others. There were fleeting periods of settlement by American loyalist settler/planters at the end of the 18th century, the establishment of American military bases in the Second World War and then slow opening of the Islands to tourism, accelerating in the 80's and 90's to the overriding economic dominance that it has now. The Territory's population is still comparatively small, diverse and widely spread. But with an economic power and potential derived from its geographical attractions, it is capable, if properly led and governed, of punching well above its weight in world terms. Such economic power in a small population, where money-making combines so naturally with politicking, demands a special sophistication and discipline if an efficient and fair system of governance is to be achieved. For whatever reasons, such sophistication and discipline have not been evident in the TCI for some time. In the result its democratic traditions and structures have been tested almost to beyond breaking point.

5.5 Such problems are bad enough for any small state with strong economic potential. But they are compounded by the tripartite system of governance that is a feature of many British Overseas Territories. First, there is the Foreign & Commonwealth Office with a general oversight and responsibility for the people of the Islands and ultimate control over the Governor of the day. Yet it has only partial financial input to the governance of the country. Secondly, there is the Governor, usually of broad and deep experience of many overseas jurisdictions, but a stranger for a while to the Islands, and here only for a few years. He has general oversight over an Executive of which he is part and in accordance with whose advice he is bound to act save in certain reserved matters or when instructed from London. For him, there are political and financial pressures in Cabinet from the front, distant, albeit experienced, guidance or instruction from London from behind, and all around, expectations from many of those who live here that he will stand up for them. And thirdly, there is an Executive in the form of the Cabinet consisting of a third or more of the members of a politically polarised Legislature of locals closely involved with the commercial and social sinews of their society and their constituents, representative at best of less than half of the long-term residents of the Islands.

5.6 The pressures, good or bad, upwards on Ministers and onward to the Governor, and the limited financial clout and immediate authority he can bring to bear on matters, possibly or

216

possibly not, calling for reference to his superiors on the other side of the Atlantic, are the stuff of the weekly Cabinet Meetings over which he presides. It is at those meetings – calling

I should think for the skills of a seasoned poker player - that he is often pressed by Cabinet Ministers to approve matters of great public and private consequence proposed by them. They are inevitably matters in respect of which they know more than he does – the approaches have been made to them; most of the talking and the deal-making have been done before they put it to him in the Cabinet Room. As Cabinet Agendas and Minutes show – his approval for proposals is frequently sought as a matter of urgency and on inadequate information, with the clear implication that, if he does not approve, the fleeting opportunity of securing a valuable investment for the Territory will be lost.

5.7 The Constitution does not, it seems to me, assist as well as it might in balancing the countervailing interests and inputs in this tripartite system decision-making. Perhaps such tensions are unavoidable. The 2006 Constitution, to a far greater extent than its 1988 predecessor, leaves individual Cabinet Ministers with a wealth of discretions, by way of grants, exemptions, concessions, discounts etc to override or side-step matters of principle or orderly and fair administration. Nor has there been for some time a culture of probity in governance at the highest level, or openness in the management and control of public finances, to engender what democracy should be there to deliver, an efficient system of governance and financial order that is honest and fair to all. Put at its narrowest, there is a dearth of effective checks and balances to prevent ministerial and other official abuse of the system of governance and its financial management.

5.8 Behind all of these problems lies the power and poison of politics, since it is through the largely secret and publicly unaccountable donations to politicians direct or through the medium of their political parties – notably in recent years the PNP - that corruption of individual ministers by developers and other investors may have been enabled to flourish unseen. This possible corruption may prove to be, not only a feature of personal enrichment of Ministers, and in some instances, their officials or families or associates, but also of corresponding losses to the people of the Islands in the bad governance to which it reduces the country and the diminution of its natural assets and revenue returns.

217

5.9 In the findings and recommendations that follow I have attempted to keep the focus on possible/potential corruption and other allied serious dishonesty - what encourages or aids it and how best to prevent or deter it. I have tried, not always successfully, to keep in mind the imperative expressed in my Interim Recommendation 9, Keep it simple, which I think worthy of repeating, not so much as a recommendation, but as a reminder:

Those conducting reviews of governance and governmental financial management and control, and any subsequent review for, say a Constitutional Commission, should keep in mind the smallness of the Territory's population. While allowing for the size of an economy disproportionately large for the population, the Territory should not be burdened with unnecessary governmental or administrative trappings more appropriate to a larger nation.

Inevitably, however, I have had to look at the broader constitutional and other statutory framework of governance that provide the institutional setting and climate for venality – systemic as it probably is – in these Islands. The nature and Terms of Reference of the Inquiry are such that I can only aim to express my views in the broadest, and sometimes, most tentative terms. And, even if it were within my competence – which it is not – such

recommendations that I make cannot be regarded as a panacea for all or even most of the ills of the country's governance that now urgently need attention.

5.10 In turning first to my individual findings of systemic weaknesses and related matters and to my associated recommendations, I should start, as I did in my Interim Report of 28th February 2009, with the most urgent, namely suspension or partial suspension of the 2006 Constitution.

Partial Suspension of the Constitution and Interim Direct Rule from Westminster, acting through the Governor

5.11 My publicly expressed view at the end of the oral hearings in Providenciales on 11th February 2009 was that the TCI were in such dire constitutional, political and economic

218

straits that I should submit an Interim Report by 28th February 2009,³⁸⁷ which I did – see Appendix 3 to this Report. In the Interim Report I adhered to that view, and made 24 Interim Recommendations for later development and elaboration, some of which, I indicated, I regarded as:³⁸⁸

of great urgency to meet what I consider chronic ills collectively amounting to a national emergency. The others are for the middle and longer terms, but require early consideration with a view to making ready for their timely introduction in due course.

I continued:³⁸⁹

... I am ... satisfied on the information before me ... of a high probability of systemic corruption and/or other serious dishonesty involving past and present elected Members of the House of Assembly and others in recent years. However, I am not ready to formulate provisional findings for institution of criminal investigation in relation to any individual or any such interests he or she may have. When I am ready to do so, I shall ... give each individual concerned an opportunity to make representations. ...

5.12 Nothing that has happened since then has prompted me to take a different view. Certainly not the new Administration established under the leadership of the Hon Galmo Williams after much delay and bumpy internal PNP political manoeuvring, and now functioning somewhat fitfully under the watchful eyes of the Hon Michael Misick and other former Cabinet colleagues. There has been little apparent legislative activity on the several broad fronts urgently needed for some time, though that is no doubt in part owing to the unsettled conditions to which the Inquiry has contributed, coupled with the wait for this Report. But, perhaps most important of all, my close examination of the information and evidence before the Inquiry driving me to the Preliminary Findings and Recommendations in Chapter 4 in relation to individual Ministers in the Misick Administration has reinforced, not weakened my conviction of the need of a need for urgent and wide-ranging systemic change.

5.13 Accordingly, I confirm my Interim Recommendation 5 for Suspension of the 2006 Constitution, but varied so as to take account of the alternative of partial suspension that I considered, which is now enacted in the 2009 Constitution Order, namely for cessation of

387 See paras 1.79 above

388 Interim Report, para 9

389 *ibid*, para 10

219

ministerial government, dissolution of the House of Assembly and suspension of certain related provisions, initially for two years, subject to possible extension or abbreviation.³⁹⁰ I express that conviction as recommendation 40 so as to continue the sequence of numbering of findings and recommendations in Chapter 4, rather than establish two separately numbered series of recommendations, even though a few Chapter 4 findings are not accompanied by recommendations.

40 - Recommendation: cessation of Ministerial Government, dissolution of the House of Assembly and suspension of certain related provisions, initially for two years, subject to possible extension or abbreviation, as provided in Schedule 1 to the 2009 Constitution Order, yet to come into force.

5.14 Similarly, I confirm my Interim Recommendation 6 for Direct Rule through the Governor and Council, but varied so as to accord with the formula adopted in Schedule 2 to the 2009 Constitution Order of government by the Governor, with discretionary power to make laws for the peace, order and good government of the TCI,³⁹¹ assisted by: 1) an Advisory Council consisting of four *ex officio* members³⁹² and up to seven nominated members appointed by the Governor, of whom at least five must be Belongers, to aid him in the formulation of policy and the exercise of his functions; and 2) by a Consultative Forum, consisting of between 11 and 15 members appointed by the Governor from among persons representative of the TCI community and three *ex officio* members,³⁹³ to make recommendations in relation to legislation and other policy issues.³⁹⁴

41 - Recommendation: direct rule by the Governor with the assistance of an Advisory Council to advise him on the formulation of policy and exercise of his functions and of a Consultative Forum to make recommendations in relation to legislation and other policy issues, as provided in Schedule 2 to the 2009 Constitution Order, yet to come into force.

³⁹⁰ The Turks & Caicos Islands Constitution Order 2009 Constitution Order, Schedule 2, para 3; See Appendix 4(ii) to this Report

³⁹¹ *ibid*, para 8; See Appendix 4(ii) to this Report,

³⁹² The Deputy Governor, the Chief Executive, the Attorney General and the Permanent Secretary, Finance

³⁹³ *op cit* 390, para 9, the *ex officio* members being the Chief Executive, the Attorney General and the Permanent Secretary, Finance;

³⁹⁴ *cf* the *via media* favoured, albeit softly, by Sir Louis Blom-Cooper QC in his 1986 Report *op cit* 26, when recommending, at Cap XX, pp 99 – 100, in response to lesser allegations of corruption, amendment of Part II of the 1976 Constitution to allow the Governor to administer the Territory with the non-binding advice of an Advisory Executive Council consisting of up to

four members nominated by him from the Legislature, which would remain intact, and/or eminent Belongers.

220

5.15 I confirm, with slight variation, my Interim Recommendation 10, for Annual Review of need for continuance of rule through Governor and Council, namely that the Governor should annually, or otherwise as he considers necessary, take the advice of his Advisory Council as to the earliest practicable date on which to seek the revocation by Order in Council 395 of the 2009 Constitution Order and return to ministerial government and an elected House of Assembly.

42 - Recommendation: the Governor should annually, or otherwise as he considers necessary, take the advice of his Advisory Council as to the earliest practicable date on which to seek the revocation by Order in Council 396 of the 2009 Constitution Order and return to Ministerial Government and an elected House of Assembly.

5.16 I confirm my Interim Recommendation 3, Replacement of Public Officers etc., but in the form set out in Schedule 2397 to 2009 Constitution Order, namely giving the Governor power to make appointments to any public office in his discretion.

43 - Recommendation: the Governor to have power, acting in his discretion, to make appointments to any public office, as provided in Schedule 2 to the 2009 Constitution Order, yet to come into force.

5.17 I confirm my Interim Recommendation 1.i), for strengthening the Governor's Private Office. Whilst the advisory and consultative support for the Governor projected by the 2009 Constitution Order may be adequate on an institutional basis for the heavy burdens it puts on him during the period of interim government, he may well benefit from a strengthening of his Private Office both in staff and administrative accommodation and facilities. He will be able to judge far better than I what he will need to meet the additional demands of his post in the interim period and also in the longer period on return to Ministerial Government. My only contribution, which I venture as a recommendation, is that he will need some strengthening of resources and, in any event, he should have the support of an experienced Foreign & Commonwealth Office administrator of the level, in FCO classification, of a First Secretary.

395 op cit 390, Schedule 2, para 3

396 ibid, para 3

397 ibid, paras 6 and 7

221

44 - Recommendation: strengthening of the Governor's Private Office both in the numbers and seniority of staff and administrative accommodation and facilities, including the addition of an experienced Foreign & Commonwealth administrator of the level of a First Secretary.

5.18 I also confirm my Interim Recommendations 1.i) and ii) for strengthening the Attorney General's Chambers. One of the first concerns for the Governor, in the exercise of his interim powers, is likely to be the need to secure adequate and timely advice on the law as it

affects any matter touching the governance of the Islands and the effective enforcement of the criminal and civil law. To that urgent end - and in the medium-to-longer term following restoration of ministerial government – it is vital that the Attorney General’s Chambers are strengthened with adequate numbers of high quality staff of a disposition to withstand political and other inappropriate pressures. They should also be provided with suitable and secure premises to enable them to cope with the surge of legal work likely to flow in the short term and thereafter be required by such acceptance as there is of this Report.

45 - Recommendation: the Attorney General’s Chambers should be strengthened with adequate numbers of high quality staff of a disposition to withstand political and other pressures inappropriate to their role, and suitable and secure premises to enable them to cope with the surge of legal work likely to be engendered in the short term and thereafter required in the medium-to-longer term by such acceptance as there is of recommendations in this Report.

5.19 In addition, both in the short and the medium-to-long term, I believe that there should be consideration of appointment of a Director of Public Prosecutions to have responsibility under the general oversight of the Attorney General for the initiation and conduct of criminal investigations and prosecutions in the Islands. Such an appointment would relieve the holder of the office of Attorney General from the often invidious combination of roles of member of the executive and/or legislature and governmental adviser with that of prosecutor. That is so, notwithstanding the provision in section 39(5) of the Constitution that, in the exercise of his powers in criminal proceedings, he shall not be subject to the direction or control of any other person or authority. Any holder of the office, given his membership of the executive and the legislature as well as his main job, advising the Government on the law and applying and enforcing it in the public interest, is inevitably

222

vulnerable in a closely knit and highly politicised community, such as that in these Islands, to speculative and unfounded perceptions and criticisms. whatever he does or does not do in the exercise of his legal responsibilities. In making the following two recommendations, my intention, therefore is to enhance the authority and reach of whoever holds the office of Attorney General by distancing him a bit from both the political and forensic arenas.

46 - Recommendation: Consideration should be given by way of constitutional amendment re-defining the Attorney General’s principal functions³⁹⁸ and - for as long as the Attorney General remains a member of the executive and legislative arms of government - the appointment of a Director of Public Prosecutions with responsibility under the general oversight of the Attorney General, for initiation and conduct of criminal investigations and prosecutions.

5.20 While on the subject of the Attorney General, and looking ahead to the eventual return of the Islands to ministerial government, I believe, for similar reasons, that, whatever the traditional role of the Attorney General in most British Overseas Territories, consideration should be given to him no longer being ex officio a member of the executive or legislative arms of government. His membership of both bodies is in practice somewhat restricted in function. His presence at the deliberations of both bodies when necessary as independent legal adviser is, however vital to their proper functioning. It is for him to advise the Governor in Cabinet on matters of law and practice when necessary, rather than participate in Cabinet

discussions and decisions on the extra-legal merits or demerits of many matters of Cabinet business under discussion. Similarly, and a fortiori, I believe that the Attorney General should no longer be a Member of the House of Assembly on its resumption. Both positions are, in my view, inimical to the quality, in addition to legal expertise and judgment that, in the public eye, brings stature to the office – independence of the government of the day and associated political pressures. If the Governor in Cabinet and the House of Assembly need his legal advice he can be present at their respective deliberations in his legal capacity, but not as a Member privy to, but conventionally silent on, their deliberations as to policy.

47 - Recommendation: In the interests of preserving and enhancing the independence and stature of the office of Attorney General, consideration

398 See s 39 of the 2006 Constitution, which details his powers, all in the context of criminal proceedings.

223

should be given before return to ministerial government to amending the Constitution to provide that: 1) the Attorney General should be available and entitled to advise the Cabinet and the House of Assembly on the law and practicalities of its form and administration as it affects their deliberations; and 2) for those purposes he or she should be entitled to attend their respective meetings, but to do so in the capacity of independent legal adviser not as a member of either.

5.21 The final matter highly relevant to the proposed period of interim direct rule through the Governor has been well canvassed in many audit and other reports over the last few years, discussed in various parts of this Report. It is the urgent need for a thorough examination – stock-taking - of the Territory's financial state and the introduction of rigour to the management and control in the future of its financial affairs. This is both too broad and too specialised an area of expertise for me to add anything of significance to what has been said by so many objective and expert observers over the years. It is well understood by the Governor and others recently seconded to assist him in his task of financial regeneration.

5.22 My Interim Recommendation 8, Governance and Fiscal Review, and 19, More effective auditing, were both blinding glimpses of the obvious. The Governor, with, I believe, the assistance of the Department for International Development, has already begun to work with experts seconded to the Territory to assist in certain aspects of the immediate task, including recovery from hurricane damage. And there are various initiatives under way within the public service which he, with the assistance of the proposed Advisory Council should be well equipped to lead. But if and to the extent that they are not already planned or in hand, the priorities, it seems to me, are:

1) an urgent assessment of capital and revenue foregone in recent years from possible undervaluation and undeserved discounts on the disposal of Crown land and of revenue in respect of waivers and/or concessions in respect of stamp,

224

import, and other duties, fees and taxes, to which I have referred in various passages in this Report, most particularly in Chapter 3;399

2) a review of public funding, particularly the financing of recurrent public expenditure from disposals of Crown Land; and

3) More generally, an urgent review or otherwise from an International Flying Squad of experts from other Commonwealth Countries and/or appropriate International agencies, with a view to securing, on a temporary basis and/or as appropriate and necessary in the longer term, an efficient and rigorously accountable system of governance and control at all levels, including departmental and island administrations and public boards, commissions etc. In this connection, the words of Sir Louis Blom-Cooper QC in the 1986 Blom-Cooper Report⁴⁰⁰ are as apt today, with a few notable exceptions, as they were then:

The urgent need for financial control within government Departments demands a vast improvement in the quality of senior and middle management. The vital need is to establish an active training programme.

Criminal Sanctions and Civil Recovery

5.23 Whatever the outcome of my recommendation,⁴⁰¹ as proposed in Recommendation 16 in my Interim Report, for suspending a defendant's right under the 2006 Constitution⁴⁰² to trial by judge and jury, criminal investigations undertaken pursuant to all or some of my recommendations in Chapter 4, would be likely to lead to an increase in prosecutions. There would thus be a greater workload on TCI judges, courts and court staffs. Accordingly, I confirm my Interim Recommendation 2, Additional Judges and Courts, for early and contingent preparation for such increase in workload by the appointment of additional judges and court officers of high calibre, probably on temporary secondment, and the provision of additional court premises and supporting resources.

³⁹⁹ See para 3.76 et seq

⁴⁰⁰ op cit 26, recommendation 45, at p 106

⁴⁰¹ s 8 and Schedule 1, para 1

⁴⁰² s 6(1)(g)

225

48 - Recommendation: Make early and contingent preparation for increase in judicial workload that may result from criminal and/or civil recovery investigations undertaken pursuant to this Report, by appointment of additional judges and court officers of high calibre and the provision of additional court premises and supporting resources.

5.24 If there are to be criminal and/or civil or criminal recovery investigations with a view to proceedings, I anticipate that they will need to be conducted by separate but closely liaising specialist teams seconded for the purpose, probably under the general oversight of the Attorney General.⁴⁰³ As a matter of timing, given the generally more speedy processes available in civil and criminal recovery than in criminal prosecutions, and the urgency of taking steps to preserve and/or secure the return of potentially misappropriated public assets, priority should probably be given to establishing machinery for recovery. I accordingly confirm the substance of my Interim Recommendations 3 and 4, Recovery of Public Assets – Special Civil and Criminal Recovery Units, for the establishment of such

Units and of secure accommodation and other resources for them to secure civil redress where appropriate. I have in mind procedures for securing early freezing or recovery of land and/or assets pending recovery and other interim or final relief in support of civil proceedings, pursuant to the Proceeds of Crime Ordinance 2007⁴⁰⁴ and/or for restraint and confiscation orders⁴⁰⁵ in the TCI or worldwide.

49 - Recommendation: The establishment of a Civil and Criminal Recovery Unit or Units and of secure accommodation and other resources for them, pursuant to the Proceeds of Crime Ordinance 2007, for securing early freezing or recovery of land and/or assets pending recovery and other interim or final relief in support of civil proceedings⁴⁰⁶ or for restraint and confiscation orders⁴⁰⁷ in the TCI and worldwide.

5.25 I confirm my Interim Recommendation 17 for the appointment of a Special Prosecutor, operating under the general oversight of the Attorney General to instigate and direct

403 In any event, a requirement of the Proceeds of Crime Ordinance 2007.

404 Proceeds of Crime Ordinance, s 2, ss 59 - 60 and ss 127 - 130

405 *ibid*, ss 42(a) and/or (b) – 53 and 58

406 *op cit* 404

407 *op cit* 405

226

criminal investigations and for any consequent prosecutions resulting from recommendations in Chapter 4 of this Report. She or he should be supported by a specialist team of prosecutors in the field of corruption and fraud and of experienced fraud and forensic accounting investigators, all drawn wholly from outside the TCI, and be provided with adequate and secure accommodation and other resources for the job.

50 - Recommendation: The appointment of a Special Prosecutor and supporting specialist team, to operate under the general oversight of the Attorney General, for the criminal investigation and prosecution of matters that may result from recommendations in Chapter 4 of this Report.

5.26 I confirm my Interim Recommendation 16 for Criminal Trial by Judge alone, and as provided by the 2009 Constitution Order, yet to be brought into force.⁴⁰⁸ I have in mind a provision for the introduction of a special court or courts and/or special procedure of trial by judge alone for cases where trial with a jury would risk impairment of the administration of justice. This would cover, but not necessarily be confined to, cases of possible corruption and/or other serious dishonesty giving rise to this Inquiry. See, for example, the provisions in England & Wales under sections 43 and 44 of Criminal Justice Act 2003 for trial by judge alone in cases respectively of serious and complex fraud and where there is a danger of jury tampering; also, in Northern Ireland under the Justice and Security (Northern Ireland) Act 2007, sections 1 – 9. See also the wide-spread use of bench trials (i.e. trial without jury at the option of the defendant) in common law jurisdictions, for example, in many of the States of the United States, the Commonwealth, including Canada, Australia and New Zealand, the Falkland Islands and St Helena.

5.27 Such a course would involve the removal of the present right to trial by jury contained in section 6(g) of the present TCI Constitution, for suspension of which the 2009 Constitution Order provides,⁴⁰⁹ but ideally leaving it for decision by the trial judge on a case by case basis. But trial by jury is not a pre-condition of the fair trial requirement of Article 6 of the ECHR, which section 6(g) reproduces in substance. Trial without jury is also a feature of a number of jurisdictions throughout the World, including India and Holland. If, as is clearly the case, it is Article 6 compliant in the many jurisdictions that permit trial of even the most serious

408 s 7 and Schedule 1, para 1

409 *ibid*

227

offence without jury, it is not such a big step to take where national and cultural conditions are such, as here, that no fair or effective trial could take place with a jury. There are, in my view, at least seven reasons why such a step should be taken:

1) the stance taken by all attorneys acting for Ministers and/or other Members of the House of Assembly and others in the Inquiry was that their respective clients could not possibly be given a fair hearing by a jury, given the wide adverse publicity to allegations against them before, during and as a result of the work of the Commission; all or most of the attorneys, expressed with some cogency, in my view, the high likelihood that any trial judge, faced with an application for a stay of the prosecution on account of such prejudice, would stay it.⁴¹⁰

2) the contrary consideration, if any prosecution were to survive such a stay application, is that, in this small community of close family political and commercial affiliations, it would, in the event, be well nigh impossible to secure convictions of politicians by jury trial, where the panel is of only seven jurors entitled to bring in majority verdicts by as few as five,⁴¹¹ and where, for so many potential jurors in this jurisdiction, much turns on commitment to party politics and local and family allegiances;⁴¹²

3) the clear risk, in such circumstances, of jury-tampering;

4) the potential complexity of allegations of corruption or other serious dishonesty of the sort canvassed in the Inquiry – taxing for any jury panel, whether in the TCI or any jurisdiction - a strong contributor to the reasoning of Lord Roskill's Committee on Fraud Trials recommending trial of serious and complex fraud without juries;⁴¹³

5) the length and public and private cost of any likely prosecutions if tried with a jury – in some cases of some months – and the concomitant intrusion, burden on the lives and distress, to all trial participants;

410 2006 Constitution, s 1

411 See TCI Jury Ordinance, ss 23 and 36

412 cf Sir Louis Blom-Cooper QC's 1986 Report, pp 58 and 103, para 20; and the Report of the Constitutional Commission 1986 (the Marshall Commission), paras 3.28 – 3.31

413 Fraud Trials Committee (1986), The Roskill Report, London: HMSO

6) the fragility of long and complex jury trials – see e.g. the collapse of the Jubilee Line trial at the Central Criminal Court after many months at a reported cost to the public purse of some £60 million;⁴¹⁴ and

7) the strong public interest in what has become a state of national emergency for those responsible to be brought swiftly to justice and, if found guilty, made to expiate their crimes – an outcome, which, in my view, will be impossible if it is attempted in the Territory by way of trial by jury.

5.28 The same considerations should, in my view, apply to civil issues, which are presently also triable in the TCI with a jury.

5.29 In both criminal and civil cases where the issue of jury trial is raised, it should, in my view, be a matter for determination by the judge assigned to hear the matter whether, in his judgment, there could be a fair and effective trial with a jury, or some such test, and his decision on the issue should be final.

51 - Recommendation: Provision should be made for criminal and civil trial by judge alone, at the trial judge's direction in any case in which he considers no fair or effective trial could take place with a jury, and the judge's direction should be final.

5.30 For reasons that I have given in Chapter 2 of this Report,⁴¹⁵ consideration should be given to introducing, by way of statutory amendment and/or if necessary by way of amendment of Schedule 1 to the 2009 Constitution Order, a partial reversal of the burden of proof, or so called evidential burden, in cases of corruption and other appropriate cases so as to enable a court to convict a public official where there is evidence that he has been living above his present or past official means, for which he has not given a satisfactory explanation. Such a provision is to be found in various forms in a number of jurisdictions, where national and social conditions have been such that it has been necessary to introduce such a provision to provide a proper balance of the public interest against the individual rights of defendants in cases of alleged corruption. I emphasise

⁴¹⁴ R v Rayment & Ors (2005) – there are many other similar examples in England & Wales of lengthy trials aborted for reasons arising from the vulnerability juries to prejudice or other factors requiring their discharge before verdict.

⁴¹⁵ paras 2.18 et seq above

that I have in mind a procedural and evidential change for the existing criminal offences, not the creation of a new substantive criminal offence in the form, say, as in Hong Kong. ⁴¹⁶

52 - Recommendation: Consideration of introduction of a statutory provision partially to reverse the burden of proof or evidential burden in cases of charges of corruption against a public official, so as enable conviction where there is evidence that he has been living above

his or present or past official means and for which he has not given a satisfactory explanation.

5.31 Disqualification from Public Office - There is statutory provision in section 47 of the 2006 Constitution for disqualifying persons from standing for election as Members of the House of Assembly if, within the preceding five years, they have served part or all of a sentence of imprisonment of at least 12 months. Criminal conviction following election does not appear to result in automatic disqualification of an elected Member or require his or her resignation. In my view, consideration should be given to disqualification from Membership of the House for longer periods of up to life where a court considers it necessary, and/or for an enforceable declaration to be made that a such a person, whether a Member or not, is unfit to hold any public office or specified public offices.

5.32 In an Inquiry such as this, even where prosecution for a criminal offence is not recommended or contemplated, as in the first Blom-Cooper Inquiry,⁴¹⁷ it is not unknown for the report to include a finding that the conduct of a public office holder a subject of the Inquiry is so seriously reprehensible that he should be declared to be unfit to hold public office. It is not clear to me what, if any, legal force such a recommendation or action taken in consequence of it in the context of a commission of inquiry; the TCI Commissions of Inquiry Ordinance makes no provision for it. Such a declaration where appropriate, clearly based and sufficiently precise as to time and extent, could be an important protection and reassurance to the public. In my view, consideration should be given to the introduction of a statutory basis, say by amendment of the Ordinance, for such a declaration and for giving effect to it.

416 See, for example, section 10 of the Hong Kong Prevention of Bribery Ordinance (Cap 201) and other examples referred to in para 2.6 above.

417 See para 1.28 above

230

53 - Recommendation: Consideration should be given to providing for: 1) disqualification from membership of the Legislature of those who have been convicted of serious criminal offences, for longer periods than presently prescribed; 2) for an enforceable declaration that such a Member is unfit to hold to hold any public office or specified public offices; and 3) for the provision to a Commission of Inquiry appointed under the Commissions of Inquiry Ordinance of a power to make such a declaration, enforceable if necessary by the court.

Integrity in public life

5.33 Codes of Conduct - The 2009 Constitution Order, so long as it lasts, will remove or neutralise many of the institutional contexts conducive to corruption that I have mentioned in this Report, in particular those going to ministerial discretion. However, steps should be taken in the meantime by legislation and otherwise, including, eventually, constitutional change to minimise the opportunities for recurrence. The first requirement is the establishment of a system of governance that removes or minimises the scope for conflict of interests for those holding public office, and, where such scope remains, ensures full and public disclosure of it. As indicated in Chapter 2, some of the safeguards are already there; but they need considerable strengthening if integrity in public life is to develop and endure.

5.34 The starting point should be a clear and widely publicised statement from the top emphasising the need for probity in public life, not just for its own sake, but for the general well-being and economic health of the Islands. The key-stone of that stance should be formal and public adoption of the Code of Conduct for Ministers of the Turks and Caicos Islands, which has been held, as if in escrow, by the PNP Administration for some two years, and its existence, even as an instrument for the guidance of Ministers, denied by some of them.⁴¹⁸ There is another document, which appears to have been given equally little priority by the PNP Administration, the precise status of which is seemingly unknown by those in the public service who might be expected to know, the TCI Public Service code of

418 See paras 2.7 – 2.14 and 2.27 – 2.28 above.

231

Ethics.⁴¹⁹ Whilst there are professions by the present PNP Administration under the leadership of the Hon Galmo Williams shortly before submission of this Report of doing something about it, nothing has yet been done to convey to the TCI Islanders a change from the culture to the contrary about which the Hon Michael Misick spoke so confidently in evidence to the Commission. I, therefore recommend, as a matter of urgency, formal and wide promulgation of both Codes and any necessary associated revision of General Orders as a clarion call to all in public service of what is expected of them. Promulgation should include an expanded Government web-site.

54 - Recommendation: The Code of Conduct for Ministers of the Turks & Caicos Islands and any other similar code or provision governing those in public office should be formally and widely promulgated, and used as a permanent reminder by provision to all public officers on appointment and published as a permanent feature on the Government's web-site. It should also be strengthened by regular reinforcement and reminder by training and in public educational media programmes.

5.35 Secondly, consideration should be given to the introduction of a Freedom of Information Act

5.36 Thirdly, there should be early implementation of the Integrity Commission Ordinance enacted on 15th May 2008, presumably intended in part as a replacement of the Registration of Interests Ordinance 1993. The latter, though relatively basic as to its requirements for disclosure, could possibly have continued to serve if it had been taken seriously by Ministers and other elected representatives of the Territories. Full and accurate public disclosure under its provisions would have gone a long way to deterring or bringing to light much earlier the rampant conflicts of interest to which Ministers appear to have exposed themselves and of which they possibly took advantage.

5.37 The new Ordinance is more demanding and provides investigative powers and sanctions outside the parliamentary context that should encourage a more rigorous and cooperative approach by persons in public life to the need to avoid conflicts of interest and

419 I understand that the TCI Office of Public Service Management and the Change Manager, rather than the Misick Administration, were responsible for the introduction of this document, and have now circulated it to civil servants in advance of its formal launch.

232

to be open about and minimise them if they are unavoidable. However, the Ordinance could do with some tightening up by way of the following steps, but not so as to delay bringing it into force:

- 1) conducting an early and widely-spread examination under section 13(1)(f) of the Ordinance of the practices and procedures of those in public life and public bodies in order to facilitate the discovery of corrupt practices, if and to the extent that no other person or body has a statutory duty to perform that function;
- 2) instructing, advising and assisting the management of public bodies, pursuant to section 13(1)(g) of the Ordinance, as to changes in practices or procedures that may be necessary to reduce the occurrence of corrupt acts, if and to the extent that no other person or body has a statutory duty to perform that function;
- 3) the Commission itself and/or any other appropriate public body providing early publicity to, and education in respect of, the Ordinance's definition and manifold categories of corruption set out in section 44;
- 4) reviewing the sufficiency of particularity required from person[s] in public life in annual Declarations of their Financial Affairs required of them by section 25 of and Schedule 2 to the Ordinance, and

reviewing the procedures for enforcement by the Attorney General or other appropriate public bodies, pursuant to section 35 of the Ordinance, of the section 25 duty to declare their financial affairs, so as to ensure speedy and otherwise effective proceedings and timely imposition of significant penalties for non-compliance where required.

55 - Recommendation: Early implementation and amendment along the lines indicated above of the Integrity Commission Ordinance enacted in May 2008, in replacement of the Registration of Interests Ordinance.

233

5.38 In the light of the declared ignorance of some Ministers and other Members of the House of Assembly of what was required of them as public servants, and possibly others in public office, and with a view to greater openness about the way in which the Government conducts its business, its web-site should be expanded and kept up to date with, among other information:

- 1) the Code of Conduct for Ministers of the Turks & Caicos Islands and any other similar codes promulgated for those in public office;
- 2) the Integrity Commission Ordinance;
- 3) annual declarations of financial affairs made by Members of the Legislature pursuant to that Ordinance, within a short period – to be prescribed – of their final dates for submission or a notation that no declaration has been submitted;
- 4) details of any sanction imposed for non-compliance;

5) all audit reports prepared by the TCI Audit Office and required to be laid before the Legislature - within a period to be prescribed after the due date for such action – or a statement of explanation for non-compliance;

6) all minutes and reports of the Public Accounts, Expenditure and Administration Committees of the House of Assembly (or cognate bodies in the interim) within a short period - to be prescribed – after their due dates for reporting;

7) a complete and up-to-date set of TCI Ordinances (last revised in 1998), giving prominence to a new Constitution if and when there is one, the Integrity Commission Ordinance and the Crown Land Ordinance when enacted and in force;

8) an up-to-date copy of the electoral roll, by constituency, but omitting addresses and any points of contact; and

234

9) posting, as they occur, all entries in the Gazette, including allocation of Crown Land, grants of Belonger status, Permanent Residence etc.

56 - Recommendation: The Government should expand its web-site with a view to informing and reminding all in public life of what is required of them in the matter of conflicts of interest and declarations of interests, and with a view to greater openness about the way in which the Government conducts its business, so as to provide the above, among other information.

5.39. As discussed in Chapter 3 and as ERIS detailed in its excellent Report on the February 2007 election,⁴²⁰ there has long been much potential for abuse by politicians and their associates of purported campaign funding. First, there is no specific legislative control of election campaign funding. Secondly, such legislative control as there is in the Elections Ordinance, namely prohibitions on bribing and treating voters at or around election time has long been widely disregarded. The ERIS Report deserves attention in their expression of general concern about lack of legislative provision for campaign financing and electoral malpractices, which it has detailed in the present system. I strongly endorse their recommendation for legislation to regulate party campaign finance and to require political parties to publish their income and expenditure on election campaigns. I would go further in the light of the information rehearsed in Chapter 4 as to the use of PNP accounts as a medium for channelling possibly corrupt payments to the Premier and a number of his Cabinet colleagues. I would recommend legislation requiring publication of the amounts of all purported political donations, the identities of the true donors and donees and the medium of payment. There can be no honest reason or legal basis for secrecy about political donations and their sources if the motive for giving and receiving them is in the public interest, as it should be

57 - Recommendation: legislation to:

1) regulate party campaign finance;

2) require public disclosure by contributors to and recipients of election campaign expenses;

420 paras 3.1 – 3.8

3) of details of the true source, recipient, amount of all other purported political donations and the use to which they are put;

4) external and published audit of political parties' accounts, with criminal sanctions for non-compliance; and

5) in general, to remedy the many other electoral abuses identified by ERIS in their Report.⁴²¹

5.40 Abuse of office - Checks and Balances - As I have mentioned in a number of contexts in this Report, there have been serious shortcomings in governmental financial management and accounting systems over the years, including serious inadequacies in internal auditing systems. These have been routinely drawn attention to and criticised in successive audit reports by TCI Chief Auditors and others, and mostly ignored by those Ministers in Cabinet responsible for doing something about it. There is little point in my detailing here even the more important deficiencies and the many overlapping criticisms of them, many of which I have summarised in Chapters 1 and 2.⁴²²

58 - Recommendation: introduction or facilitation of rigorous internal and external audit systems for all governmental departments and public and statutory bodies, where audit reports are promptly published and treated with respect by Ministers and used by them, board chairmen and directors, and other senior public officials to inform budgetary decisions and give effect to necessary financial control.

5.41 As is also apparent from Chapter 2 of the Report, there is endemic lack of effective checks and balances in the system of governance of the TCI, either because of insufficient constitutional or other legislative underpinning and/or because of systematic disregard or neglect of what legislative or other imperatives there are. This is most evident in the total breakdown of the system of parliamentary standing committees – oversight committees or constitutional watch dogs as they are variously called – for which the 2006 Constitution

⁴²¹ See paras 3.5 – 3.8 above

⁴²² See paras 1.38 and 2.50 - 2.51 above

provides, as did the 1998 Constitution.⁴²³ They have been so inactive over the years that neither the public officers responsible for servicing them nor the Members of the House of Assembly to which they should report, or others in the public service, let alone the public, are barely aware of what, if anything, they do. The Commission has had extraordinary difficulties in trying to extract basic information, in the form of records or otherwise, as to what these bodies have done in protection of the public's entitlement to good stewardship by the government and its servants of the day. There have been very few meetings and even fewer reports from them over the last few years, all in breach of their constitutional intention and the House of Assembly's Standing Orders.

5.42 On return to ministerial government, firm steps should be taken, by increasing constitutional underpinning, amendment or replacement as necessary of the Legislative

Council (Powers and Privileges) Ordinance 1988 and Standing Orders of the House of Assembly, and by rigorous oversight and insistence by the House on compliance with its Standing Orders and for provision to the Committees of the necessary support facilities to enable them to do their jobs. In addition to such parliamentary scrutiny, provision should be made for other public scrutiny as to the action or inaction of their watchdogs, by broadcasting and reporting, on the Government web-site and otherwise, their proceedings, including examination of witnesses and their reports to the House. As the Chief Auditor, Cynthia Travis, commented in her 2005 and 2006 Audit Reports with regard to the Public Accounts Committee,⁴²⁴ maintenance of an accountability process can only be achieved if it regularly submits a report of its recommendations to the legislature, followed by a governmental reply in the legislature, and, unless reports are tabled, the exercise is an entirely empty one. Consideration should be given to holding PAC sessions in public, broadcasts on television or on the radio as in other countries, such as in the UK.

59 - Recommendations:

1) On return to ministerial government, constitutional and other legislative or parliamentary instruments should provide for rigorous scrutiny of the financial and other governance of the Territory through parliamentary oversight committees and for a regime of strict and well publicised adherence to their

423 See paras 2.52 – 2.53

424 See paras 3.38 and 2.58 above; 2006 TCI Audit Report, pp 15 - 16

237

duties, including regular presentation of their reports to the House of Assembly and debate by the House of them; and

2) consideration should also be given to amending the 2006 Constitution to enable, on return to ministerial government, appointment to the Public Accounts Committee, if not all three Committees, of one or more ex officio members qualified and experienced to introduce financial management experience into the process.

5.43 Abuse of office – wide and unfettered Ministerial discretion - The absence of checks and balances are complemented and aggravated by the many matters engaging public and private interests that are susceptible to discretionary determination by Ministers rather than regulated by legal and clearly specified criteria.

60 - Recommendation: There is an urgent need for removal, or reduction, by reference to clearly expressed criteria, of ministerial lawful or unlawful exercise of discretionary powers in many and various aspects of government. These include inappropriate interference in and by-passing of statutory, administrative or policy procedures in a number of areas - for example:

1) administration, management and disposal of Crown Land;

2) award of public works contracts and other public contracts, and their fragmentation to evade open tendering requirements;

3) development approval, planning permission and control, the grant or revocation of licences or franchises or effective government-protected monopolies, the grant of exemptions, waivers and discounts of any type, in particular as to stamp duty on the transfer of land, and as to import duties; and

4) in immigration matters, including the grant of Belongerships and the grant and terms of Permanent Residence Certificates; Residence Certificates and Work Permits

238

Crown Land Allocation, Sale and Management:

5.44 I have set out at length in Chapter 3,⁴²⁵ by reference to a number of objective and highly experienced experts, the ills, injustices and possibility for corruption of Ministers their families and associates and public officials in the system in the TCI for administration and disposal of Crown Land. I have also set out the many, often overlapping recommendations for reform made in the Fuller,⁴²⁶ Barthel/Terra Institute⁴²⁷ and Robinson⁴²⁸ Reports, which it would be otiose to repeat by way of summary here, all of which should be given careful consideration for inclusion in the Crown Land Bill, now in preliminary draft, or other new legislation, regulatory or administrative forms as appropriate. The Crown Land Bill, when enacted, should go a long way to removing many of the defects in the present system of Crown Land administration, management and disposal, both as to principle and practicality. Importantly, it should also remove or severely reduce the possible scope for corruption and diminution at great loss to the public of its most valuable asset. But more thought needs to be given to the matters that I have listed in the following recommendation:

61 - Recommendation:

1) devise as part of the proposed Crown Land Ordinance the essential statutory criteria for the administration, management and disposal of Crown Land, in replacement of the Crown Land Policy of the day – a more principled approach to Crown Land Reform;

2) ensure complete independence of the departmental body to be entrusted by the proposed new legislation from ministerial involvement or interference in its individual allocations of Crown Land by way of lease or sale;

3) make the Manual of Crown Land Administration and Procedure, part of the Bill, as was intended by its authors, the Terra Institute;⁴²⁹

⁴²⁵ Cap 3, para 3.9 et seq

⁴²⁶ *ibid*, paras 3.9, 3.24 - 3.26

⁴²⁷ *ibid*, paras 3.27 - 3.28, 3.31 - 3.37

⁴²⁸ *ibid*, paras 3.38 - 3.39

⁴²⁹ in Part III of the Bill, for which drafting instructions were contained in Chapters III and V of the Terra Institute's Final Report of February 2008,

239

4) in the light of March 2008 Special Audit Report of the Acting Chief Auditor, the Hon McAllister Hanchell's evidence to the Inquiry and other information recently received pending enactment and the bringing into force of the new legislation, give immediate effect to the Manual by seeking an instruction from the Secretary of State under section 25(1)(a) and/or (3) of the Constitution not to approve any Crown Land transaction governed by the Manual unless he is satisfied that there has been full compliance with its processes and terms;

5) arrange for secondment to the Governor and/or to the Interim Successor Department of the Ministry of Natural Resources of an independent expert or experts on the management and allocation of Crown Land so as to ensure rapid implementation of the Crown Land Manual and for vetting compliance with it of proposed land grants;

6) at an early stage, enact and implement the Crown Land Bill, amended along the lines I have suggested, including the Manual;

7) strengthen the Crown Land Valuation Office and introduce clearly defined criteria for valuation, and publish all valuations in the Gazette;

8) require all corporate bodies and those acting for others in a trustee or nominee capacity to disclose the true beneficial ownership of or interest involved to any public body required or seeking to exercise due diligence in contemplation of the grant of Crown Land or of development approval - coupled with substantial potential civil (including rescission) and/or criminal sanctions for non-compliance; and

9) publish in the Gazette full details of offers for leases or sale of Crown Land, including the identity of the proposed beneficial owner, and the extent of any discount, full details of all Development Agreements, including the name of the recipient and the type and extent of all concessions granted.

240

A New Constitution

5.45 It will be necessary to consider what, if any changes should be made to the 2006 Constitution in good time before the Territory's return to ministerial government. This is an area into which I trespass with some diffidence, since I have neither experience nor competence for such a task. Clearly a Constitutional Commission should be appointed to consider and draft such amendments, or a new Constitution, as soon as the Secretary of State and/or the Governor, acting on the instructions of the Secretary of State, considers it practicable to do so. However, I invite consideration in any such exercise of the following few, but important matters. Broadly they are designed to correct what I regard as weaknesses in the present Constitution, other legislation and administrative practices, and to ensure good governance and proper financial management and control of the Territory.

5.46 Enlargement of the Franchise - I appreciate that this is a very sensitive area in which, as a stranger to the TCI, I should tread with extreme caution. I do so only for two reasons:

1) The electoral base - Belongers only – is so narrow, well below half of the permanent resident population of the Islands, that it calls in question whether the present House of Assembly is truly a democratically based legislative body. This appears to have been a concern of the Immigration Review Tribunal, chaired by the Don-Hue Gardiner, in 2004,430

albeit softly said, and of ERIS in its 2007 Election Observation Report,⁴³¹ in its expression of the need to consider an enlargement or possible replacement of Belongership, with a more inclusive form of citizenship.

2) As recognised by the 2004 Immigration Review Commission and by ERIS in 2007, the scope for abuse through intimidation of the majority of the Territory's effective permanent residents by those voted into political power by the minority, is an affront to any society with aspirations to calling itself civilised as well as democratic. The evidence before the UK Foreign Affairs Committee of a climate of fear was and is still being replicated in full to this Commission⁴³² – fear that is, of losing their home and place of work in the Islands. Those expressing it

430 *ibid*, para 3.62 et seq

431 *ibid*, para 4 et seq

432 *ibid*, para 56 et seq

241

are not just long-standing TCI Residents who were only prepared to give information to the Committee and/or the Commission in confidence, but also those who are even now unwilling for the same reason to have it passed to any prosecutor who might follow the Commission. It was the acceptance of such vulnerability and insecurity that led the 2004 Immigration Review Commission to recommend the establishment of a Citizenship Commission so constituted that it would not be susceptible to the pressures and influence of interested individuals, and not subject to any overriding power of the Government of the day as to grant of Belongership- a recommendation that I endorse.

62 - Recommendation: Consideration of reform of the Franchise so as to:

1) place its determination in an independent statutory body appointed annually by the Public Service Commission, such as a Citizenship Commission recommended by the 2004 Immigration Review Commission;

2) remove the Governor, the Cabinet and Ministers and their public officials from any involvement in the grant, withholding or revocation of grant of citizenship;

3) introduce clearly defined statutory criteria to widen the Franchise to long-term residents of the Territory to be applied by such independent public body on an individual basis to grant, withholding and revocation of citizenship, subject to appeal only to the Supreme Court by way of judicial review or to a tribunal chaired by a serving or retired Supreme Court Judge; and

4) thereby to enhance democracy and reduce the scope for political patronage, bribery, electoral abuse and intimidation.

5.47 District Commissioners/Island Administrators and Electoral Districts - A number of contributors to the Commission's proceedings have written of the need for a key person for each major Island or group of smaller Islands to act as an official point of local reference and liaison for government matters and local concerns, District Commissioner or Island

Representatives. Such a proposal could perhaps be considered along with a review of the distribution and number of electoral districts so as to produce a more equitable and

242

consistent ratio of parliamentary representation across the Islands. It will be remembered that ERIS, in their 2007 Election Review Report spoke of an imbalance in the number of registered voters between different electoral districts that may affect the quality of the votes cast.⁴³³

63 - Recommendations: Consideration of:

1) strengthening the role of District Commissioners or Island Administrators, subjecting them to appointment by the Public Service Commission in accordance with a public and regulated procedure,⁴³⁴ giving them clearly defined duties and powers; and

2) a review of the distribution and number of electoral districts with a view to producing a more equitable and consistent ratio of parliamentary representation across the Islands.

5.48 Consideration should be given to possible constitutional imbalances and weaknesses in the 2006 Constitution. One possible example is the relationship between the Foreign & Commonwealth Office and the Governor, and of the Governor and the Cabinet. The UK Foreign Affairs Committee's view was that the Governor is too weak and without financial muscle and the Cabinet too strong and not democratically or otherwise accountable.⁴³⁵ Another is to provide greater constitutional underpinning of the role and responsibilities of the parliamentary oversight committees than is now provided by sections 60 and 61 of the 2006 Constitution, as recommended by the TCI Chief Auditor, Cynthia Travis, in her 2005 and 2006 Audit Reports.

64 - Recommendation: Consider possible constitutional imbalances and weaknesses in the 2006 Constitution as between the Foreign & Commonwealth Office and the Governor, the Governor and the Cabinet, and to provide greater constitutional underpinning of the role of the parliamentary oversight committees than is now provided by sections 60 and 61 of the 2006 Constitution.

433 *ibid*, para 3.5(2)

434 If that is not already the case.

435 *Op cit* 24, paras 17, 30, 88 - 98, 112 - 118, 183 - 197

243

5.49 The Legal Profession Ordinance should be reviewed, in consultation with the Bar Association, in particular sections 21 to 23 as to the maintenance and audit of attorneys' accounts, with specific reference to their handling of clients' funds, and keeping them separate from their own monies.

65 - Recommendation: The Government should review, in consultation with the TCI Bar Association, the provisions of the Legal Profession Ordinance, in particular,: 1) Section 21 of the Ordinance, as to maintenance of separate clients' accounts; 2) Section 22, as to the making and effective enforcement by the Bar Council of Rules therefor; and 3) pursuant to

section 23, wider powers to be given to the Supreme Court to secure effective audit of attorneys' accounts, by spot checks where considered necessary in individual cases.

244

6 – Summary of Findings and Recommendations

From Chapter 4 – Information Of Possible Corruption

And/Or Other Serious Dishonesty

The Hon Michael Misick

1 – Finding: The Hon Michael Misick failed repeatedly throughout his period of membership of the Legislature of the TCI to make full and accurate declarations of his interests as required by the Registration of Interests Ordinance 1993.436

No Recommendation

2 – Finding: The Hon Michael Misick has failed in several important respects to make adequate disclosures in response to the Commission's requests, pursuant to its powers under the Commissions of Inquiry Ordinance, for full and accurate disclosure of his financial interests.437

No Recommendation

3 - Finding: There is information that the Hon Michael Misick may have abused his position as Premier and as Leader of the PNP by using PNP funds for his own purposes in that: 1) if and insofar as he may have been entitled to reimbursement from the Party for monies expended on its behalf, he failed to account for such expenditure; and 2) that the level of his personal expenditure was disproportionate to any expenditure on the Party he may have incurred.438

Recommendation: Criminal investigation by police or others in relation to him of possible corruption and/or other serious dishonesty in relation to such and other similar matters in recent years.

4 – Finding: The Hon Michael Misick accepted and failed to declare many gifts of money via the client account of his brother and attorney, Chal Misick, which were not, and could not

436 See paras 2.27 – 2.28 and 4.14 above

437 See paras 2.18 – 2.20 and 4.15 above

438 See paras 4.17 – 4.23 above

245

reasonably be interpreted as being, political in nature, and which he appears to have applied to his personal expenditure without disclosure to the Registrar of Interests or to the Commission.439

Recommendation: Criminal investigation by police or others in relation to him of possible corruption and/or other serious dishonesty in relation to such and other similar matters in recent years.

5 – Finding: The payment of \$500,000 by Dr Cem Kinay, through his company, Turks Ltd, to the Hon Michael Misick was a possibly corrupt payment because: 1) the Hon Michael Misick did not declare it in Cabinet when Dr Kinay's proposals for development were under discussion, or to the Registrar of Interests or the Commission; 2) it was paid to him through a third party account, namely the client account of his brother and attorney, Chal Misick; 3) it was wholly disproportionate to its stated purpose, namely for political campaigning, and was not, for the most part, spent on such campaigning; and 4) it was received from a developer who had a continuing relationship with the Government, with whom further development agreements were under consideration or being negotiated, and who benefited from Cabinet decisions generous to him.⁴⁴⁰ Recommendation: Criminal investigation by police or others in relation to the Hon Michael Misick of possible corruption and/or other serious dishonesty in relation to such and other similar matters in recent years.

6 – Finding: The receipt by the Hon Michael Misick of \$250,000 on 29th July 2005, purportedly by way of loan from Inazio & Gataen Caltagirone, via the client account of Chal Misick, was possibly a corrupt payment in the light of: 1) the Hon Michael Misick's non-declaration to the Cabinet of his receipt of the money three weeks earlier or of his links to the Caltagirone Brothers and their interest in the proposed development under consideration;; 2) the Cabinet's decision in favour of the proposal, followed by the Hon Michael Misick's subsequent decision on appeal in favour of it on planning matters; 3) his failure to disclose the payment to the Registrar of Interests and non-disclosure of it to the Commission; 4) the absence of any documentation identifying the Caltagirone Brothers as

439 See paras 4.24 – 4.26 above

440 See paras 4.23 above and Finding and Recommendation 32, below

246

the source of the money or any terms for repayment or interest; and 5) the absence of any evidence of repayment. Recommendation: Criminal investigation by police or others in relation to him of possible corruption and/or other serious dishonesty in relation to such and other similar matters in recent years. 441

7 - Finding: The undocumented and unrepaid, North West Point loans to the Hon Michael Misick, collectively amounting to about \$350,000 from Hon Jeffrey Hall, the Hon Floyd Hall or his brother and the Hon Lillian Boyce or her brother were possibly corrupt payments to him for favours given in relation to the North West Point transaction engendering the money to facilitate such payments. 442

Recommendation: Criminal investigation by police or others in relation to him of possible corruption and/or other serious dishonesty, including misfeasance in public office, in relation to these payments and the transactions giving rise to them.

8 – Finding: The Hon Michael Misick in recent years accepted and failed to declare to the Registrar of Interests many gifts or purported loans of money via the client account of his

brother and attorney, Chal Misick, which were possibly corrupt on account of possible favours given by him in his capacity as Premier.

Recommendation: Criminal investigation by police or others in relation to him of possible corruption and/or other serious dishonesty, including misfeasance in public office, in relation to the North West Point transaction and other similar matters in recent years.⁴⁴³

9 - Finding: There is information suggesting that the Hon Michael Misick has promoted the abuse of the Crown Land Policy on a number of occasions, and benefited personally from that abuse: 1) in his receipt of \$161,618.92 from the Hon Floyd Hall via the client account of Chal Misick on 20th February 2006 of a possibly corrupt payment derived from a purported finder's fee of \$373,000 in respect of the Third Turtle Club from Mr Richard Padgett, a developer, in the circumstances summarised above; 4442) in his facilitation of the sale of former Crown Land by Ashley Properties Ltd for which he received a commission, as

441 See paras 4.28 – 4.30 above

442 See paras 4.33 – 4.35 and 4.196 – 4.209

443 See paras 4.36 above

444 See paras 4.36 – 4.307

247

described above;⁴⁴⁵ 3) in his participation in the profits of Urban Developments from the sale of land at North West Point to a company controlled by David Wex, an overseas developer, as described;⁴⁴⁶ and 4) in fronting the sale of Land to Crown Land to overseas developers, specifically in his involvement in the company, MIG Investment Ltd, by which he enabled overseas developers to purchase 18 acres of land entirely at their expense, but in which he acquired a 50% interest by virtue only of his status as a Belonger.⁴⁴⁷

Recommendation: Criminal investigation by police or others in relation to him and the above matters of possible corruption and/or other serious dishonesty, including misfeasance in public office.

10 – Finding: The Hon Michael Misick behaved in a possibly corrupt manner and/or in misfeasance of his public duty, by securing highly paid advertising contracts for his wife with the TCI Tourist Board and with Kerwin Communications purportedly acting on behalf of the Tourist Board, thereby potentially abusing his power with a view to enriching his wife and himself.⁴⁴⁸

Recommendation: Criminal investigation by police or others in relation to the Hon Michael Misick of possible corruption and/or other serious dishonesty, in the form of misfeasance in public office, in relation to him to his exercise of his responsibility as Minister responsible for tourism in this matter.

11 – Finding: The Hon Michael Misick behaved in a potentially seriously dishonest manner, including misfeasance in public office and dishonest misappropriation of public funds, by his possible misuse of government funds and facilities for his personal purposes in his use of aircraft chartered or leased by the Government for official purposes.⁴⁴⁹

Recommendation: Criminal investigation by the police or others in relation to the Hon Michael Misick of possible serious dishonesty, including misfeasance in public office and/or dishonest misappropriation of public funds in relation to his personal use of such aircraft.

445 See para 4.38 above

446 See para 4.33 – 4.35

447 See Transcript, Day 2, pp 127 -133

448 See paras 4.41 – 4.53

449 See paras 4.54 – 4.60 above

248

12 – Finding: There is a possibility of corruption and/or other serious dishonesty, including misfeasance in public office, in relation the Hon Michael Misick in the chain of events leading to the eventual disposal of land at Joe Grant Cay at well below market price to a consortium led by Dr Cem Kinay, following the secret payment by Dr Kinay of \$500,000 to him in January 2007, followed by the approval by Cabinet on 16th May 2007, to which the Hon Michael Misick was a party.⁴⁵⁰

Recommendation: Criminal investigation by the police or others of the possibility in relation to the Hon Michael Misick of corruption or other serious dishonesty, including misfeasance in public office, in respect of this matter.

13 – Finding: There is information of possible corrupt and/or otherwise seriously dishonest involvement, including misfeasance in public office, of the Hon Michael Misick in relation to the Government's transactions with Mario Hoffmann of DEVCO for the development of Salt Cay: 1) in respect of his participation in that development with Chal Misick's knowing assistance and complicity in it; 2) in his the potential abuse of his public office by accepting lavish and disproportionate hospitality from Mario Hoffmann, including the use of private aircraft, the provision of international flights and other hospitality in the course of developing business relations between DEVCO and the Government; and 3) in his potential abuse of his public office by seeking and accepting a loan of \$6 million from J&T Banka when that Bank, on its own account,⁴⁵¹ was in negotiation with the Government over funding and participation in the development of Salt Cay. ⁴⁵² Recommendation: criminal investigation by the police or others of the possibility of corruption and/or other serious dishonesty, including misfeasance in public office, in relation to the Hon Michael Misick in respect of those matters.

450 See paras 4.77 – 4.89 and 4.172 – 4.181 above

451 See J&T Banka web-site

452 See paras 4.90 – 4.109 above

249

The Hon Floyd Hall

14 – Finding: Throughout his period of membership of the Legislature of the TCI, the Hon Floyd Hall repeatedly failed to make full and accurate declarations of his interests to the Registrar of Interests as required by the Registrations of Interests Ordinance.⁴⁵³

No Recommendation

15 – Finding: An important example of the Hon Floyd Hall's failure to make full and accurate declaration of interests to the Registrar as required by the Registration of Interests Ordinance, was his failure to declare his interest in the Casablanca Casino in Providenciales, through his investment in Windsor Investment Ltd.⁴⁵⁴

No Recommendation

16 – Finding: The Hon Floyd Hall has failed in several important respects to make adequate disclosures in response to the Commission's requests, pursuant to its powers under the Commissions of Inquiry Ordinance, for full and accurate disclosure of his financial interests.⁴⁵⁵

No Recommendation

17 - Finding: The Hon Floyd Hall, in his capacity as Treasurer of the PNP: 1) failed to administer and keep proper accounts of the funds of the PNP so as to allow party monies to be disbursed for his personal use and that of the Hon Michael Misick and other senior Party Members without having devised any or any effective system for accounting to the Party for such use; and 2) misled the Party as a whole as to the true state of its financial affairs and the purposes to which its monies were being put, by keeping secret from members of the Party, including senior Party officials, the existence of certain Party bank accounts maintained and operated by him, and by producing in 2006 a partial and misleading Treasurer's Report concealing the true state of its finances and the purposes to which its funds were being applied. ⁴⁵⁶

⁴⁵³ See paras 4.112 4.113 above

⁴⁵⁴ See paras 4.61 - 4.74 above

⁴⁵⁵ See paras 4.115 - 4.116

⁴⁵⁶ See paras 4.117 – 4.120

250

Recommendation: Criminal investigation by the police or others in relation to the Hon Floyd Hall of possible corruption in respect of his administration of the PNP Party Accounts and/or other serious dishonesty, including theft and false accounting

18 – Finding: The payment by Jak Civre, the developer of the Seven Stars Resort, to the Hon Floyd Hall of \$150,000 on 8th February 2007, the day before the election, purportedly as a campaign donation, but which the Hon Floyd Hall paid into the business account of his company, Paradigm, and also other unexplained payments were possibly corrupt payments.⁴⁵⁷

Recommendation: criminal investigation by police or others in relation to the Hon Floyd Hall of possible corruption and/or other serious dishonesty in respect of that payment by Jak Civre and/or other unexplained payments

19 – Finding: The Hon Floyd Hall, in accepting payment from Mr Richard Padgett of \$375,000 in February 2006 purportedly as a finder's fee for services rendered some years before, but shortly after his planning appeal decision in Mr Padgett's favour in relation to his proposed construction of the Third Turtle Club, had potentially acted dishonestly, including by way of misfeasance in public office, and possibly corruptly in accepting such sum, given: 1) the length of time and apparent disproportion in value between the payment of \$375,000 and the services for which it was said to have been paid; 2) the Hon Floyd Hall's non-declaration of the payment to Registrar of Interests and his late and incomplete disclosure of it to the Commission; and 3) his division of the sum with the Hon Michael Misick, who had had no ostensible connection with the provision of any services in respect of which it was purportedly made. 458

Recommendation: Criminal investigation by the police or others in relation to the Hon Floyd Hall in relation to potential serious dishonesty, including misfeasance in public office and corruption in relation to Mr Richard Padgett's payment to him of \$375,000 in February 2006.

20 – Finding: The Hon Floyd Hall, in arranging with Mr Richard Padgett in or about June 2007 for his wife, Lisa Hall, to be appointed a director of, and made a one-third shareholder in Elite TCI Ltd, a real estate brokerage company, the agreed value of her shareholding being

457 See para 4.115 above

458 See paras 4.121 – 4.124

251

about \$280,000, but for which she was to provide little or no consideration, was a possibly corrupt transaction.459

Recommendation: Criminal investigation by the police or others in relation to the Hon Floyd Hall of this possibly corrupt transaction.

21 – Finding: The Hon Floyd Hall possibly acted corruptly and/or in misfeasance of his public office in failing to withdraw or to declare his links with Mr Richard Padgett, at Cabinet discussions concerning the Government's dealings with Mr Richard Padgett's business affairs, in particular at Cabinet Meetings on 21st March 2007 and 8th May 2008 at which matters relating to Oceanpoint Developments Ltd were discussed.460

Recommendation: Criminal investigation by the police or others in relation to Hon Floyd Hall of possible corruption and/or misfeasance in public office in relation to those matters.

22 – Finding: The loan of \$200,000 from Mr Richard Padgett to the Hon Floyd Hall in August 2007, which the Hon Floyd Hall did not declare to the Registrar of Interests, or to the Commission, until he was examined in the Commission's oral proceedings, was a possibly corrupt payment.461

Recommendation: Criminal investigation by the police or others of possible corruption and/or other serious dishonesty in relation to the Hon Floyd Hall in respect of this loan to him of \$200,000.

23 – Finding: the Hon Floyd Hall, in accepting the payment of \$200,000 from Mr Alden Smith, purportedly for services rendered, did so possibly corruptly and/or by conduct amounting to misfeasance in public office, since the payment followed the advantageous sale of Crown Land to Mr Smith's company, Ashley Properties Ltd, which had immediately sold the land on for a large profit to an overseas developer, making payments from that profit to the Hon Floyd Hall and the Hon Michael Misick.⁴⁶²

459 See paras 4.125 – 4.126 above

460 See paras 4.116 and 4.121 – 427 above

461 See para 4.127 above

462 See paras 4.128 – 4.130 above

252

Recommendation: Criminal investigation by the police or others of the possibility of corruption and/or misfeasance in public office in relation to the Hon Floyd Hall in respect of this matter

24 – Finding: The Hon Floyd Hall took part in possibly corrupt transactions by accepting proceeds of the profits made by his brother, Quinton Hall, for sale of part of the equity of Urban Development Ltd involving the disposal of Crown Land at North West Point to an overseas developer at a large profit in that he: 1) purportedly loaned part of those profits to the Hon Michael Misick, or assisted his brother, Quinton Hall, to do so; and 2) failed to declare those profits or the purported loan to the Registrar of Interests or to disclose them to the Commission.⁴⁶³

Recommendation: Criminal investigation by the police or others of possible corruption and/or other serious dishonesty, including misfeasance in public office, in relation to the Hon Floyd Hall in respect of these matters.

25 – Finding: The Hon Floyd Hall, in making private requests to the Minister for Natural Resources for allocations of Crown Land for certain companies to enable them to use the land as security for loans, from which he personally derived a substantial borrowing of \$1.1 million, perverted and/or undermined the Crown Land Policy for and process of distribution of Crown Land, and did so possibly corruptly and in misfeasance of his public office.⁴⁶⁴

Recommendation: Criminal investigation by the police or others of possible corruption and/or misfeasance in public office in relation to the Hon Floyd Hall in respect of this matter

26 – Finding: The Hon Floyd Hall's conduct in promoting in Cabinet the award of the contract for administering the Treatment Abroad system to SHN was possibly corrupt and/or otherwise seriously dishonest, including misfeasance in public office, because it subverted the proper workings of government, in particular its tender processes, to ensure that the only

proposal put before the Cabinet for serious consideration was that of a friend and business colleague, Delroy Howell.⁴⁶⁵

463 See paras 4.131 – 4.133 above

464 See paras 4.134 – 4.135 above

465 See paras 4.138 – 4.149 above

253

Recommendation: Criminal investigation by the police or others of possibility in relation to the Hon Floyd Hall of corruption and/or other serious dishonesty, including misfeasance in public office in his promotion in Cabinet of SHN for the award of the Government contract to administer the Treatment Abroad System.

The Hon McAllister Hanchell

27 – Finding: Throughout his period of membership of the Legislature, the Hon McAllister Hanchell repeatedly failed to make full and accurate declarations of his interests to the Registrar of Interests, as required by the Registrations of Interests Ordinance, including his shared interest through Windsor Investment Group Ltd in the Casablanca Casino on Providenciales; and he was also distinctly slow and patchy in his disclosure to the Commission.⁴⁶⁶

No Recommendation

28 – Finding: The Hon McAllister Hanchell, in accepting from Mr Arlington Musgrove payments totalling over \$300,000 into the PNP South Caicos account purportedly as campaign funding for the February 2007 election, possibly entered into a corrupt transaction in that: 1) the payments were disproportionately large for the purported purpose of financing an election campaign in such a small constituency; 2) the payments were made by an established and substantial public works contractor; 3) the Hon McAllister Hanchell held a public office in which he could influence the award of such contracts; and 4) he failed to declare this personal and financial link with Mr Musgrove in relevant Cabinet discussions.
467

Recommendation: Criminal investigation by the police or others of possible corruption and/or other serious dishonesty, including misfeasance in public office, in relation to the Hon McAllister Hanchell in respect of this matter.

29 – Finding: The Hon McAllister Hanchell, in his office of Minister for Natural Resources, entered into possibly corrupt and/or otherwise seriously dishonest transactions by offering on behalf of the Government grants of Crown Land to himself and/or to companies that he

466 See para 154 above

467 See paras 4.155 – 4.158 above

254

substantially owned or controlled, thereby creating and ignoring the obvious conflicts of interest to which his offers gave rise.⁴⁶⁸

Recommendation: Criminal investigation by the police or others in relation to the Hon McAllister Hanchell of possible serious dishonesty, including misfeasance in public office in respect of these matters.

30 – Finding: The Hon McAllister Hanchell potentially abused his ministerial position by instructing the Permanent Secretary in the Ministry for Natural Resources to allocate Crown Land to individuals of his choice, or to allocate, or instruct the Permanent Secretary or other of his departmental officers to allocate Crown Land to individuals identified and notified to him by fellow Ministers, in all or most cases without proper regard to the Crown Land Policy.⁴⁶⁹

Recommendation: Criminal investigation by the police or others in relation to the Hon McAllister Hanchell of possible corruption and/or other serious dishonesty, including misfeasance in public office, in respect of such actions.

31 – Finding: The Hon McAllister Hanchell may have participated in possibly corruption arrangements in which offers of Crown Land were made to individuals, including Mr Gary Lightbourne, who had not applied for the land, with a view to the recipients of the offers selling the land on quickly to developers at a substantial profit for all the parties involved.⁴⁷⁰

Recommendation: Criminal investigation by the police or others in relation to him of possible corruption and/or other serious dishonesty, including misfeasance in public office, in relation to such offers.

32 – Finding: There is a possibility of corruption and/or other serious dishonesty, including misfeasance in public office, in relation the Hon McAllister Hanchell in **the chain of events leading to secret payment by Dr Cem Kinay of \$500,000 to the Hon Michael Misick in January 2007, followed by the approval in principle by the Cabinet on 16th May 2007, to which the Hon McAllister Hanchell was a party, of the sale for development to a consortium led by Dr**

468 See para 4.168 above

469 See para 4.166 – 4.168 above.

470 See paaras 4.169 – 171 above

255

Kinay of land at Joe Grant Cay, followed by the agreement in 2008 to sell it to the consortium at well below market price.⁴⁷¹

Recommendation: Criminal investigation by the police or others of the possibility in relation to the Hon McAllister Hanchell of corruption and/or other serious dishonesty, including misfeasance in public office, in respect of this matter.⁴⁷²

33 – Finding: The Hon McAllister Hanchell possibly abused his ministerial position **and/or acted corruptly or otherwise seriously dishonestly** and/or in misfeasance of his public office, by deliberately undermining the authority of the Chief Valuation Officer, in relation to the

valuation of land at Joe Grant Cay, by rejecting the valuations undertaken by him, with a view, possibly, to ensuring a swift completion of sale of the land to the consortium led by Dr Kinay at a very large undervaluation.⁴⁷³

Recommendation: Criminal investigation by the police or others in relation to him of possible corruption and/or other serious dishonesty, including misfeasance in public office, in respect of this matter.

The Hon Jeffrey Hall

34 - Finding: The Hon Jeffrey Hall failed repeatedly to make any or any full or adequate declarations of interests to the Registrar of Interests, in breach of the Registration of Interests Ordinance, and also failed adequately to disclose his financial interests to the Commission, pursuant to the Commissions of Inquiry Ordinance.⁴⁷⁴ No Recommendation

35 - Finding: The Hon Jeffery Hall has failed to account: 1) for his receipt and expenditure of funds in excess of \$800,000 credited to his accounts;⁴⁷⁵ 2) for his receipt of \$200,000 from Mr Evan Harvey; and 3) for a gift to him of \$10,000 from David Wex.⁴⁷⁶ Recommendation: Criminal investigation by the police or others in relation to the Hon

471 See paras 4.172 – 4.182 above

472 See also in relation to the Hon Michael Misick, para 4.23 above, and Finding and Recommendation 5.

473 See paras 4.173 – 4.182

474 See paras 4.191 – 4.195 above

475 See paras 4.192 – 4.195 above

476 See paras 4.191 and 4.196 - 4.208 above

256

Jeffrey Hall of possible corruption and/or other serious dishonesty, including misfeasance in public office, in respect of the above matters.

36 – Finding: The Hon Jeffrey Hall promoted, and personally benefited from abuse of the Crown Land Policy in relation to the sale to a non-Belonger of Crown Land by participating in a possibly corrupt transaction in relation to the sale ('flipping') of land at North West Point, Providenciales, to an overseas developer, David Wex by: 1) knowingly participating in the transaction as one of the flippers and sharing in the large profits made from the sale; 2) loaning or giving part of the proceeds of those profits to the Hon Michael Misick; and 3) failing to declare to the Registrar of Interests or to the Commission his share of the profits or the making of the loan or gift of part of the profits to the Hon Michael Misick, or to declare his involvement in the sale of the land to David Wex when it was before the Cabinet for discussion.⁴⁷⁷

Recommendation: Criminal investigation by the police or others in relation to the Hon Jeffrey Hall of possible corruption and/or other serious dishonesty, including misfeasance in public office, in respect of the above matters.

The Hon Lillian Boyce

37 – Finding: The Hon Lillian Boyce failed to declare to the Registrar of Interests, or initially to the Commission, her receipt of payments of Candidates' Stipend, totalling \$72,000.478 No Recommendation

38 – Finding: The Hon Lillian Boyce participated in a possibly corrupt transaction in relation to the sale (flipping) of Crown Land by: 1) accepting the proceeds of profits made by her brother, Earlon Robinson, from the sale of a share in the interest of a company, Urban Development Ltd, which had involved the disposal of Crown Land at North West Point, Providenciales, for large profits to an overseas developer, David Wex; 2) loaning or giving part of those profits to the Hon Michael Misick, or assisting her brother in doing so; and 3) failing to declare those profits to the Registrar of Interests or to disclose them Commission,

477 See paras 4.196 – 4.208 above

478 See para 4.213 above

257

and failing to declare her brother's connection to the transaction in Cabinet discussions concerning the transaction. 479

Recommendation: Criminal investigation by the police or others in relation to the Hon Lillian Boyce of possible corruption and/or other serious dishonesty, including misfeasance in public office, in respect of the above matters.

39 - Finding: The Hon Lillian Boyce abused her ministerial position by: 1) assisting or permitting her fellow Cabinet Ministers, specifically the Hon Michael Misick and the Hon Floyd Hall, to interfere in and override the Scholarships Policy for nominating according to set criteria, in particular merit, candidates for overseas scholarships, thereby by-passing the control of the Scholarships Committee; and 2) granting a scholarship to her own daughter without referring her candidature to the Scholarships Committee for scrutiny.480 No Recommendation

From Chapter 5 – Systemic Weaknesses

Partial Suspension of the Constitution and Interim Direct Rule

40 - Recommendation: cessation of Ministerial Government, dissolution of the House of Assembly and suspension of certain related provisions, initially for two years, subject to possible extension or abbreviation, as provided in Schedule 1 to the 2009 Constitution Order, yet to come into force.481

41 - Recommendation: direct rule by the Governor with the assistance of an Advisory Council to advise him on the formulation of policy and exercise of his functions and of a Consultative Forum to make recommendations in relation to legislation and other policy issues, as provided in Schedule 2 to the 2009 Constitution Order, yet to come into force.482

479 See paras 4.216 – 4.217 above

480 See paras 4.218 – 4.220 above

481 See paras 5.11 – 5.13 above

482 See para 5.14 above

258

42 - Recommendation: the Governor should annually, or otherwise as he considers necessary, take the advice of his Advisory Council as to the earliest practicable date on which to seek the revocation by Order in Council⁴⁸³ of the 2009 Constitution Order and return to Ministerial Government and an elected House of Assembly.⁴⁸⁴

43 - Recommendation: the Governor to have power, acting in his discretion, to make appointments to any public office, as provided in Schedule 2 to the 2009 Constitution Order, yet to come into force.⁴⁸⁵

44 - Recommendation: strengthening of the Governor's Private Office both in the numbers and seniority of staff and administrative accommodation and facilities, including the addition of an experienced Foreign & Commonwealth Office administrator of the level of a First Secretary.⁴⁸⁶

45 - Recommendation: the Attorney General's Chambers should be strengthened with adequate numbers of high quality staff of a disposition to withstand political and other pressures inappropriate to their role, and suitable and secure premises to enable them to cope with the surge of legal work likely to be engendered in the short term and thereafter required in the medium-to-longer term by such acceptance as there is of recommendations in this Report. ⁴⁸⁷

46 - Recommendation: Consideration should be given by way of constitutional amendment re-defining the Attorney General's principal functions⁴⁸⁸ and - for as long as the Attorney General remains a member of the executive and legislative arms of government - the appointment of an independent Director of Public Prosecutions with responsibility under the general oversight of the Attorney General, for initiation and conduct of criminal investigations and prosecutions. ⁴⁸⁹

⁴⁸³ op cit 390, s 3; See Appendix 4(ii)

⁴⁸⁴ See para 5.15 above

⁴⁸⁵ See para 5.16 above

⁴⁸⁶ See para 5.17 above

⁴⁸⁷ See para 5.14 above

⁴⁸⁸ See s 39 of the 2006 Constitution, which details his powers, all in the context of criminal proceedings

⁴⁸⁹ See para 5.19 above

259

47 - Recommendation: In the interests of preserving and enhancing the independence and stature of the office of Attorney General, consideration should be given before return to

ministerial government to amending the Constitution to provide that: 1) the Attorney General should be available and entitled to advise the Cabinet and the House of Assembly on the law and practicalities of its form and administration as it affects their deliberations; and 2) for those purposes he or she should be entitled to attend their respective meetings, but to do so in the capacity of independent legal adviser, not as a member of either.⁴⁹⁰

Criminal Sanctions and Civil Recovery

48 - Recommendation: Make early and contingent preparation for increase in judicial workload that may result from criminal and/or civil recovery investigations undertaken pursuant to this Report, by appointment of additional judges and court officers of high calibre and the provision of additional court premises and supporting resources.⁴⁹¹

49 - Recommendation: The establishment of a Civil and Criminal Recovery Unit or Units and of secure accommodation and other resources for them, pursuant to the Proceeds of Crime Ordinance 2007 for securing early freezing or recovery of land and/or assets pending recovery and other interim or final relief in support of civil proceedings⁴⁹² or for restraint and confiscation orders⁴⁹³ in the TCI or worldwide.⁴⁹⁴

50 - Recommendation: The appointment of a Special Prosecutor and supporting specialist team, operating under the general oversight of the Attorney General, for the criminal investigation and prosecution of matters that may result from recommendations in Chapter 4 of this Report.⁴⁹⁵

51 - Recommendation: Provision should be made for criminal and civil trial by judge alone, at the trial judge's direction in any case in which he considers no fair or effective trial could take place with a jury, and the judge's direction should be final.⁴⁹⁶

490 See para 5.20 above

491 See para 5.23 above

492 Proceeds of Crime Ordinance, s 2, ss 59 - 60 and ss 127-130

493 *ibid*, ss 42(a) and/or (b) – 53 and s 58

494 See para 5.24 above

495 See para 5.25 above

496 See paras 5.26 – 5.29 above

260

52 - Recommendation: Consideration of introduction of a statutory provision partially to reverse the burden of proof or evidential burden in cases of charges of corruption against a public official, so as enable conviction where there is evidence that he has been living above his present or past official means and for which he has not given a satisfactory explanation.⁴⁹⁷

Integrity in Public Life

53 - Recommendations: Consideration should be given to providing for: 1) disqualification from membership of the Legislature those who have been convicted of serious criminal offences, for longer periods than presently prescribed; 2) for an enforceable declaration that such a Member is unfit to hold any public office or specified public offices; and 3) for the provision to a Commission of Inquiry appointed under the Commissions of Inquiry Ordinance of a power to make such a declaration, enforceable if necessary by the court.498

54 - Recommendation: The Code of Conduct for Ministers of the Turks & Caicos Islands and any other similar code or provision governing those in public office should be formally and widely promulgated, and form a permanent reminder by provision to all public officers on appointment and published as a permanent feature on the Government's web-site. It should also be strengthened by regular reinforcement and reminder by training and in public educational media programmes.499

55 - Recommendation: Early implementation and amendment along the lines indicated above500 of the Integrity Commission Ordinance enacted in May 2008, in replacement of the Registration of Interests Ordinance.

56 - Recommendation: The Government should expand its web-site with a view to informing and reminding all in public life of what is required of them in the matter of conflicts of interest and declarations of interests, and with a view to greater openness about the way in which the Government conducts its business.501

497 See para 5.30 above

498 See paras 5.31 and 5.32 above

499 See paras 5.33 – 5.34 above

500 See paras 5.35 – 5.37 above

501 See para 5.38 above

261

57 - Recommendation: legislation to: 1) regulate party campaign finance; 2) require public disclosure by contributors to and recipients of election campaign expenses; 3) require public disclosure of details of the true source, recipient, amount of all other purported political donations and the use to which they are put; 4) require external and published audit of political parties' accounts, with criminal sanctions for non-compliance; and 5) in general, to remedy the many other electoral abuses identified by ERIS in their Report. 502

58 - Recommendation: introduction or facilitation of rigorous internal and external audit systems for all governmental departments and public and statutory bodies, where audit reports are promptly published and treated with respect by Ministers and used by them, board chairmen and directors, and other senior public officials to inform budgetary decisions and give effect to necessary financial control.503

59 - Recommendations:

1) On return to ministerial government, constitutional and other legislative or parliamentary instruments should provide for rigorous scrutiny of the financial and other governance of the

Territory through parliamentary oversight committees and for a regime of strict and well publicised adherence to their duties, including regular presentation of their reports to the House of Assembly and debate by the House of them;

2) consideration should also be given to amending the 2006 Constitution to enable, on return to ministerial government, appointment to the Public Accounts Committee, if not all three Committees, of one or more ex officio members qualified and experienced to introduce financial management experience into the process.⁵⁰⁴

60 - Recommendation: There is an urgent need for removal, or reduction, by reference to clearly expressed criteria, of ministerial lawful or unlawful exercise of discretionary powers in many and various aspects of government. These include inappropriate

502 See para 5.39 above

503 See para 5.40 above

504 See paras 5.41 – 5.37 above

262

interference in and by-passing of statutory, administrative or policy procedures in a number of areas - for example:

- 1) administration, management and disposal of Crown Land;
- 2) award of public works contracts and other public contracts, and their fragmentation to evade open tendering requirements;
- 3) development approval, planning permission and control, the grant or revocation of licences or franchises or effective government-protected monopolies, the grant of exemptions, waivers and discounts of any type, in particular as to stamp duty on the transfer of land, and as to import duties; and
- 4) in immigration matters, including the grant of Belongerships and the grant and terms of Permanent Residence Certificates; Residence Certificates and Work Permits.⁵⁰⁵

Crown Land

61 - Recommendations

- 1) devise as part of the proposed Crown Land Ordinance the essential statutory criteria for the administration, management and disposal of Crown Land, in replacement of the Crown Land Policy of the day – a more principled approach to Crown Land Reform;
- 2) ensure complete independence of the departmental body to be entrusted by the proposed new legislation from ministerial involvement or interference in its individual allocations of Crown Land by way of lease or sale;
- 3) make the Manual of Crown Land Administration and Procedure, part of the Bill, as was intended by its authors, the Terra Institute;⁵⁰⁶

4) in the light of March 2008 Special Audit Report of the Acting Chief Auditor, the Hon McAllister Hanchell's evidence to the Inquiry and other information recently

505 See par 5.43 above

506 in Part III of the Bill, for which drafting instructions were contained in Chapters III and V of the Terra Institute's Final Report of February 2008.

263

received pending enactment and the bringing into force of the new legislation, give immediate effect to the Manual by seeking an instruction from the Secretary of State under section 25(1)(a) and/or (3) of the Constitution not to approve any Crown Land transaction governed by the Manual unless he is satisfied that there has been full compliance with its processes and terms;

5) arrange for secondment to the Governor and/or to the Interim Successor Department of the Ministry of Natural Resources of an independent expert or experts on the management and allocation of Crown Land so as to ensure rapid implementation of the Crown Land Manual and for vetting compliance with it of proposed land grants;

6) at an early stage, enact and implement the Crown Land Bill, amended along the lines I have suggested, including the Manual;

7) strengthen the Crown Land Valuation Office and introduce clearly defined criteria for valuation, and publish all valuations in the Gazette;

8) require all corporate bodies and those acting for others in a trustee or nominee capacity to disclose the true beneficial ownership of or interest involved to any public body required or seeking to exercise due diligence in contemplation of the grant of Crown Land or of development approval - coupled with substantial potential civil (including rescission) and/or criminal sanctions for non-compliance;

9) obtain an expert evaluation of the June 2008 Deloitte Report into a number of disposals of Crown Land **in Salt Cay** for commercial purposes in recent years;507 and

10) publish in the Gazette full details of offers for leases or sale of Crown Land, including the identity of the proposed beneficial owner, and the extent of any

507 See paras 3.39 – 3.47 above

264

discount, full details of all Development Agreements, including the name of the recipient and the type and extent of all concessions granted.508

A New Constitution

62 - Recommendation: Consideration of reform of the Franchise so as to:

1) place its determination in an independent statutory body appointed annually by the Public Service Commission, such as a Citizenship Commission recommended by the 2004 Immigration Review Commission;

2) remove the Governor, the Cabinet and Ministers and their public officials from any involvement in the grant, withholding or revocation of grant of citizenship;

3) introduce clearly defined statutory criteria to widen the Franchise to long-term residents of the Territory to be applied by such independent public body on an individual basis to grant, withholding and revocation of citizenship, subject to appeal only to the Supreme Court by way of judicial review or to a tribunal chaired by a serving or retired Supreme Court Judge; and

4) thereby to enhance democracy and reduce the scope for political patronage, bribery, electoral abuse and intimidation.⁵⁰⁹

63 - Recommendations: Consideration of:

1) strengthening the role of District Commissioners or Island Administrators, subjecting them to appointment by the Public Service Commission in accordance with a public and regulated procedure,⁵¹⁰ giving them clearly defined duties and powers; and

2) a review of the distribution and number of electoral districts with a view to producing a more equitable and consistent ratio of parliamentary representation across the Islands.⁵¹¹

⁵⁰⁸ See para 5.44 above

⁵⁰⁹ See paras 5.45 and 46 above

⁵¹⁰ If that is not already the case.

⁵¹¹ See para 5.47 above

265

64 - Recommendation: Consider possible constitutional imbalances and weaknesses in the 2006 Constitution as between the Foreign & Commonwealth Office and the Governor, the Governor and the Cabinet, and to provide greater constitutional underpinning of the role of the parliamentary oversight committees than is now provided by sections 60 and 61 of the 2006 Constitution.⁵¹²

65 - Recommendation: The Government should review, in consultation with the TCI Bar Association, the provisions of the Legal Profession Ordinance, in particular: 1) Section 21 of the Ordinance, as to maintenance of separate clients' accounts; 2) Section 22, as to the making and effective enforcement by the Bar Council of Rules therefor; and 3) pursuant to section 23, wider powers to be given to the Supreme Court to secure effective audit of attorneys' accounts, by spot checks when considered necessary in individual cases.⁵¹³

⁵¹² See para 5.48 above

⁵¹³ See para 5.49 above