

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.

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]

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

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

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 [REDACTED]

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

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 [REDACTED] on advantageous terms from [REDACTED] backers of a development project [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]. The pattern of a relative or close friend receiving a large unearned stake in a development company was also demonstrated in the case of [REDACTED]. This convenient fiction of *loans* appears in another context: that of never-to-be repaid *loans* to constituents, described below.

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

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

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

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

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 [REDACTED] dollars in [REDACTED], purportedly for election campaigning expenses, from [REDACTED].

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

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. [REDACTED]

[REDACTED]

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.

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

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.

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 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.

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

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

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

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

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 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

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

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.

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

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 [REDACTED]'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

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

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%.

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 Hydronox Ltd, a holding company which owned the land upon which the Casino was built. The other 50% of Hydronox 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 Hydronox 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 Hydronox 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

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

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, [REDACTED]. 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

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 [REDACTED] 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.

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

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. TCInvest, 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

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

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, [REDACTED]

4.87 [REDACTED]

²⁹⁸ Transcript, Day 11, p 3

²⁹⁹ Core Volume 7, tab 2, p 42

[REDACTED]

[REDACTED] 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 [REDACTED]

4.89 [REDACTED]

12 – I find, [REDACTED]

³⁰⁰ See also paras 4.172 – 4.181 below

[REDACTED]
[REDACTED]

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. [REDACTED]
[REDACTED]
[REDACTED]

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 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 301 [REDACTED]

4.95 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 302 [REDACTED]
[REDACTED]
[REDACTED] 303 [REDACTED]
[REDACTED] 304 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.96 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

301 [REDACTED]
302 [REDACTED]
303 [REDACTED]
304 [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

4.97 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 305 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.98 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.99 The following year, 2007, the Hon Michael Misick approached [REDACTED]
[REDACTED] for a loan of [REDACTED]
[REDACTED] 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

been known. [REDACTED]

[REDACTED] 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. [REDACTED]

[REDACTED]³⁰⁸ [REDACTED]

4.101 [REDACTED]

[REDACTED]³⁰⁹

³⁰⁶ Transcript, Day 3, p 137

³⁰⁷ Transcript Day 3, p 139

³⁰⁸ [REDACTED]

³⁰⁹ [REDACTED]

[REDACTED]

4.102 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.103 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.104 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] 310 [REDACTED]
[REDACTED] 311 [REDACTED]
[REDACTED]
[REDACTED]

4.105 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

310 [REDACTED]
311 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 312 [REDACTED]

[REDACTED]

[REDACTED] 313 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.106 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 314 [REDACTED]

[REDACTED]

[REDACTED]

4.107 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.108 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

312 [REDACTED]

313 [REDACTED]

314 [REDACTED]

[illegible][illegible]

I, therefore, recommend [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED].

³¹⁵ See [REDACTED]

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 [REDACTED] in the private jet of [REDACTED]

³¹⁶ See para 2.29 above

³¹⁷ [REDACTED]. 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. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. The trip to [REDACTED], 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 [REDACTED]

³¹⁸ See paras 4.61 – 4.74.above

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 [REDACTED]

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

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

³²² Transcript, Day 19, p 96

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.

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.

³²⁴ Transcript, Day 17, p 102

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

[REDACTED]
[REDACTED]
[REDACTED]

³²⁵ See para 2.35 above

[REDACTED]

[REDACTED] 326

I recommend [REDACTED]

[REDACTED]

[REDACTED]

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 [REDACTED]

³²⁷ Core Volume 6, tab 3

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.

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

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.

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

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

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

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

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

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

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

³⁴² Transcript, Day 5, p 61

³⁴³ Transcript, Day 15, p14

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

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

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*.

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.

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

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

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

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, [REDACTED]

[REDACTED]. 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.

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

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

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

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

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

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. He 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

*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

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, [REDACTED]

[REDACTED]. 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.

[REDACTED]
[REDACTED]³⁶⁶ [REDACTED]
[REDACTED]

4.180 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

4.181 [REDACTED]
[REDACTED]³⁶⁷ [REDACTED]

³⁶⁵ Transcript, Day 19, p 155

³⁶⁶ [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED] 368 [REDACTED]
[REDACTED]
[REDACTED]

4.182 [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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 [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] 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 [REDACTED] 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 [REDACTED]
368 See [REDACTED]
369 See [REDACTED]

[REDACTED], by rejecting the valuations undertaken by him, [REDACTED]
[REDACTED]
[REDACTED].

I recommend [REDACTED]
[REDACTED]
[REDACTED].

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

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

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

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

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 – 4.208 below

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.

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.

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

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 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 profiteered 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

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.

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

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.

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

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

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

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 Josphe 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

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.