

VERBATIM NOTES
OF
COMMISSION OF ENQUIRY INTO CIRCUMSTANCES
THAT LED TO THE COLLAPSE OF THE FINANCIAL INSTITUTIONS
IN THE 1990s

HELD AT
THE JAMAICA PEGASUS HOTEL
81 KNUTSFORD BOULEVARD, KINGSTON 5

ON
WEDNESDAY APRIL 13, 2011

PRESENT WERE:

COMMISSIONERS

Mr. Charles Ross
Mr. Worrick Bogle

COUNSEL FOR THE COMMISSION

Hon. Justice Henderson Downer (Retired)

SECRETARY TO THE COMMISSION

Mr. Fernando DePeralto

ATTORNEY MARSHALING EVIDENCE FOR THE COMMISSION

Miss Judith Clarke– Attorney-at-Law

REPRESENTING JAMAICAN REDEVELOPMENT FOUNDATION

Mr. Gavin Goffe– Attorney-at-Law

REPRESENTING MR PATRICK HYLTON

Mr Dave Garcia – Attorney-at-Law

GIVING EVIDENCE

Mr. Anthony Hutchinson

1 Wednesday, 13th April, 2011

2 COMMENCEMENT -- 9:40 A.M

3 COMM. BOGLE: Good morning ladies and gentlemen. This
4 enquiry is now in session and for the
5 records may I have the names of the
6 attorneys present.

7 MISS CLARKE: Good morning Mr. Chairman,
8 Commissioners, my name is Judith Clarke
9 appearing on behalf of the Commission.

10 MR. GARCIA: Dave Garcia, appearing on behalf of
11 Patrick Hylton.

12 MR. GOFFE: Gavin Goffe, instructed by Myers
13 Fletcher and Gordon appearing for
14 Jamaican Redevelopment Foundation Inc.

15 COMM. BOGLE: The last time we were here with this
16 witness which was on the 31st, Mr. Goffe
17 was cross-examining and I think he would
18 be continuing this morning.

19 MR. GOFFE: Yes, Mr. Chairman.

20 COMM. BOGLE: Okay, Mr. Hutchinson.

21 Mr. Hutchinson called and sworn.

22 COMM. BOGLE: Thank you very much. Mr. Goffe.

23 CROSS-EXAMINATION OF MR. HUTCHINSON BY

24 MR. GOFFE CONT'D

25 MR. GOFFE: Good morning Mr. Hutchinson?

1 MR. HUTCHINSON: Good morning.

2 Q: When we were last together we had gone
3 ~~through the letter which was sent to you~~
4 by Miss Janet Farrow?

5 A: Okay.

6 Q: You recall the letter, sir?

7 A: Yes.

8 Q: And there were certain statements in
9 there which you said you didn't disagree
10 with and I want to focus this morning on
11 particularly one of them. I want to
12 focus on...

13 A: Excuse me, could you remind me of the
14 exhibit number.

15 Q: I think it's AH44.

16 COMM. BOGLE: 44.

17 A: Okay.

18 MR. GOFFE: You have it?

19 A: Yes.

20 Q: In particular the part where she refers
21 to requiring a monthly payment and you
22 said that you agreed that if you were to
23 refinance the debt with another
24 institution, that they too would require
25 that monthly payments be made, you

1 remember saying that?

2 A: I remember acknowledging that she said
3 that.

4 Q: No, I think the question I asked is
5 whether you agree and my recollection is
6 that you said you did.

7 A: I can state, yes, that most financial
8 organizations would require monthly
9 payments, yes.

10 Q: But you were not in a position at the
11 time to make any monthly payments, is
12 that correct?

13 A: I am saying that is correct.

14 Q: What was -- when you were making
15 monthly payments, what was the source of

16 those funds?

17 A: Firstly let me state that I was
18 operating a farm and that experience put
19 me into the financial difficulties. I
20 was also teaching in the afternoons.

21 Q: So the source of funding was from the
22 farm and from your job as a teacher?

23 A: That is correct. I am saying at the that
24 time, the point I am making, at that
25 time hardly anything was coming from the

1 farm because the farm having lost a lot
2 of money, the farm was being wound down.

3 Q: What about your employment as a teacher,
4 were you continuously employed?

5 A: Pretty much in the afternoons, just on a
6 part time basis.

7 Q: So you were not able to continue to make
8 the thirty thousand dollars payments
9 that you had agreed to make?

10 A: That is correct.

11 Q: Would you agree with me that your
12 arrangement with Jamaican Redevelopment
13 Foundation was that you would make a
14 thirty thousand dollar payment every
15 month, not only from the source of sales

16 of properties, but from whatever source?

17 A: That is what I said, that when I made
18 that agreement I really made the effort
19 to get that amount and I just couldn't
20 make it.

21 Q: Is it your contention that in spite of
22 your inability to make monthly payments
23 as you had agreed, that Jamaican
24 Redevelopment Foundation should have not
25 exercised its power of sale in relation

1 to your property?

2 A: I am saying that if Jamaican

3 Redevelopment really had an intention
4 for me to settle my debt, they would
5 have appreciated the full circumstances.
6 A debt can be paid by regular earnings,
7 it can also be paid by the sale of
8 assets. Unfortunately, the system that
9 surrounds the sale of assets over which
10 I have no control had broken down and
11 simply is just unrealistic to think that
12 certain things can happen in a given
13 time.

14 Q: But it is correct that you gave your
15 mortgage company a right to sell your

16 property if you didn't make the monthly
17 payments?

18 A: I had no alternative.

19 Q: I know. I am asking you if you did give
20 them that alternative?

21 A: I had no alternative.

22 Q: But you felt that JRF should not
23 exercise that right?

24 A: I thought that JRF was being
25 unreasonable and unprofessional, yes.

1 Q: So you are saying that the banking
2 practice of selling the properties where
3 ~~the loans are in arrear is unreasonable?~~

4 MISS CLARKE: I am objecting to the question.

5 MR. GOFFE: I withdraw the question. If your
6 mortgage company had sold your property
7 under powers of sale, would you have
8 complained that they were being
9 unreasonable.

10 MISS CLARKE: You know I am objecting again and I am
11 objecting on the basis that the witness
12 is now being asked to enter into a realm
13 of speculation retrospective though it
14 be without any set of circumstances
15 being put to him. We are here relative
16 to a particular set of circumstances.
17 As it relates to the JRF, the witness is
18 saying that given the particular set of
19 circumstances, he is of the view that
20 JRF's approach was unreasonable, so to
21 ask the witness a general question, if
22 at any given time, if in what
23 circumstance a mortgage company were to
24 sell under powers of sale, would they be
25 unreasonable, is he asking him, given

1 the same set of circumstances with the
2 same set of events or is it a general
3 question, if in any set of
4 circumstances, if his mortgage company
5 were to exercise a power of sale they
6 would be unreasonable?

7 MR. GOFFE: Mr. Commissioner, the question I have
8 asked is as it is, Mr. Hutchinson is
9 able to answer the question; the fact
10 that he is able to answer the question,
11 I think is sufficient reason for him to
12 be asked to answer it. Now, it goes
13 right to the heart of his complaint
14 here, he has said JRF is unreasonable by
15 seeking to exercise their power of sale,
16 I am trying to understand the basis of
17 saying that, I am using an analogy, and
18 I am trying to find out why would JRF be
19 unreasonable and somebody else is not
20 unreasonable and I think JRF is entitled
21 to know the reason it is being called
22 unreasonable when others perhaps are not
23 being called. I think it is a fair
24 question and even though my friend may
25 not agree, I think he is able to answer

1 it from his own personal knowledge.

2 MISS CLARKE: I would like to respond to my friend.

3 If my learned friend is asking why it is

4 that he would think that JRF is

5 unreasonable whereas another institution

6 would not be unreasonable, perhaps he

7 should put that very question. If my

8 friend is saying that the question as

9 put ought to be answered based on the

10 witness' ability to answer it, I think

11 my friend well knows that that is

12 untenable in any kind of arena where

13 questions are being put. Ability to

14 answer is not the basis on which a

15 question is put. A question is put

16 based upon its relevance, its

17 reasonableness to the witness and the

18 manner in which the question is put so

19 that the witness is not left in an

20 unfair position in his answer. I have

21 indicated that the generality of this

22 question, given the circumstances under

23 which we are here, we are not here

24 investigating whether banks generally

25 are unreasonable in exercising their

1 powers of sale, the witness has given
2 certain answers confined to a set of
3 circumstances and a general question for
4 a general opinion ought not to be put to
5 him.

6 COMM. BOGLE: We will allow the question.

7 MISS CLARKE: Obligated.

8 MR. GOFFE: Thank you, Mr. Chairman. I must admit I
9 have now forgotten the question, but I
10 will try and catch it back. I think the
11 question I had asked was if your
12 mortgage company had sold your property
13 under its power of sale because you had
14 failed to make payments, would you have
15 consider them to be unreasonable?

16 A: Could you repeat the question?

17 Q: If your mortgage company had sold your
18 property under the power of sale which
19 you gave to it after you had failed to
20 make payments to the loan, would you
21 have considered that mortgage company to
22 be unreasonable?

23 A: In the circumstances of this case,
24 absolutely.

25 Q: And those circumstances would be your

1 inability to make monthly payments or
2 other circumstances?

3 A: There are other circumstances, but that
4 being one of them.

5 Q: How many proposals did you put to JRF
6 between the period of 2002 and 2007?

7 A: I don't recall.

8 Q: Was it more than one?

9 A: I don't recall, at least one.

10 Q: It could have been more?

11 A: I don't recall.

12 Q: Each time your attorney spoke with JRF,
13 as far as you are aware, did he tell you
14 what he said to JRF?

15 A: I don't know, I can't say I knew every
16 time that my attorney spoke to JRF.

17 Q: So you are not in a position to deny
18 that there could have been several
19 proposals and extended discussions
20 between your lawyer and JRF over that
21 five year period, between 2002 and 2007?

22 A: Except that my lawyer kept telling me,
23 told me and told me on more than one
24 occasion that he attended the offices of
25 JRF even when there were meetings

1 scheduled and he was not afforded the
2 opportunity to speak to someone.

3 Q: I don't think you have answered my
4 question.

5 A: Ask it again.

6 Q: The question I am asking is whether you
7 are in a position to deny that your
8 attorney was having meetings with JRF
9 and perhaps putting proposals to them?

10 A: As I said I know that he put at least
11 one proposal, I cannot say how many
12 proposals he put or if he put more than
13 one and I cannot say, and as I have said
14 before I know that he went there with
15 intention but did not speak to them so I

16 do not know how many times he actually
17 got the opportunity to speak with them.

18 Q: You can't say with certainty that when
19 JRF was sending a letter to reject your
20 proposal that it was your proposal which
21 had been made four year prior or some
22 other proposal which may have been
23 received during the intervening period,
24 correct?

25 A: All I can say is that the proposal we

1 had made was communicated, we
2 communicated, my lawyer and I, we
3 communicated on that basis and that was
4 the proposal that we were carrying.

5 Q: This is a letter in your hand, sir,
6 could you -- have you ever seen this
7 letter before?

8 A: I don't remember seeing the letter but I
9 remember the meetings that were held
10 with Minister Ennis.

11 Q: Are you prepared to accept that this
12 letter was written to Minister Errol
13 Ennis on your behalf?

14 A: Yes, I would be prepared to accept that.

15 Q: Mr. Chairman, could I ask that this be
16 entered, I forget the exhibit number.

17 COMM. BOGLE: AH45.

18 Q: Thank you, sir. And this is a letter
19 from Richard Bonner and Associates,
20 attorneys-at-law to Minister Errol Ennis
21 dated September 4, 2006.

22 Mr. Hutchinson, could you read the
23 paragraph that begins with 'I had
24 previously explained'?

25 A: **I had previously explained to the**

1 Minister involved that our client was
2 undergoing grave consequences regarding
3 the selling of his property as Joslin
4 Jamaica Limited does not intend to wait
5 any longer for any proposal by our
6 client regarding the sale of the
7 property as they are now under the
8 belief that doing any business with the
9 respective government agencies will not
10 bring any result.

11 Q: Continue please?

12 A: I have tried to explain to Joslin
13 Jamaica Limited the fact that the
14 Ministry involved personally agreed to
15 intervene in this matter and investigate
16 the matter fully with a view to
17 exercising its options.

18 Unfortunately, and very disappointedly I
19 have not been able to convince Joslin
20 Jamaica Limited of our client's serious
21 intention of selling the property
22 because of the lack of performance as
23 they see it meted out in this matter.

24 Q: And that final paragraph there?

25 A: We now leave this matter squarely in the

1 Ministry's hand for a response.

2 Sincerely hoping that it is not too
3 late.

4 Q: Mr. Hutchinson do you disagree with
5 anything in this letter?

6 MISS CLARKE: Could the witness be allowed to read the
7 entire letter since the substance in its
8 entirety is being put to him?

9 MR. GOFFE: I thought that is what he did?

10 MISS CLARKE: A particular portion was put to him.

11 MR. GOFFE: Mr. Hutchinson you need an opportunity
12 to read the entire letter again?

13 A: Yes, let me go through it.

14 (Witness reads letter)

15 And your question.

16 Q: Do you disagree with anything in that
17 letter?

18 A: Yes, I disagree in the context that
19 there was a lack of performance, I
20 disagree.

21 Q: Sorry, where do you see that?

22 A: Second to last paragraph, 'I have not
23 been able to convince Joslin of our
24 client's serious intention of selling
25 the property because of lack of

1 performance as they see it meted out in
2 this matter', and the point is 'as they
3 see it' should be underlined.

4 Q: Sorry, so you are disagreeing with the
5 statement or you want to emphasize
6 something else?

7 A: I would not have stated it that way. I
8 am saying that to me we performed
9 substantially; where my performance was
10 lacking, my argument is that it was
11 always in circumstances outside of my
12 control, for the most part I should say.

13 Q: And there is nothing else in this letter
14 which you would disagree with or which
15 you want to put differently?

16 COMM. ROSS: Mr. Goffe, give a little background of
17 the letter, I am not sure exactly what
18 is being addressed or what was the
19 issue, how the appeal came about?

20 Q: I myself is not sure how the appeal came
21 about, this was copied to Joslin Jamaica
22 Limited, I can't say I know what the
23 first paragraph is referring to but I
24 certainly do know what the other
25 paragraphs are referring to. Perhaps

1 Mr. Hutchinson could assist the
2 Commission by explaining what this
3 notice of appeal and affidavit refer to.
4 A: Yes. There was an issue of whether the
5 remaining lands could have been
6 subdivided because it was allocated for
7 agriculture and he was seeking to get
8 Minister Ennis' approval to release the
9 portion that was being held in that
10 context so that it could have been
11 subdivided for further sale.
12 Q: So this appeal and this affidavit are
13 court documents?
14 A: Court documents?
15 Q: Yes.

16 A: What you mean by that?
17 Q: Is it an appeal in the sense, casual
18 sense of your appealing for his consent
19 or is it a situation where a decision
20 was handed down and you are appealing
21 that decision in the court?
22 A: There was a decision that a certain part
23 of the remainder of the land was to be
24 held for agricultural purposes, so the
25 appeal was against that.

1 Q: It was an appeal filed in a court?

2 A: No, no, that is what I am saying, I did
3 not see this letter but this would have
4 been an appeal to the Minister.

5 Q: That is the Parish Council?

6 A: I don't recall the Parish Council being
7 involved, it was an appeal to the
8 Minister in an effort to reverse that
9 decision.

10 Q: Mr. Commissioner, perhaps that puts it
11 in context, sir. So then given that you
12 have said you don't disagree with
13 anything else in this letter...

14 A: I did not say that.

15 Q: Oh I am sorry, can you tell me if there
16 is anything else that you disagree with
17 apart from that?

18 A: Let me read it again just to be sure.

19 (Witness rereads letter)

20 All I can say is I do not know for a
21 fact that Joslin Jamaica do not intend
22 to wait any longer, I don't know that, I
23 can't comment on that but as to the
24 other parts of the letter, I see no
25 disagreement.

1 Q: So would you then agree that as far as
2 your attorney is concerned at least,
3 Joslin Jamaica Limited in September of
4 2006 was waiting for a proposal from
5 you?

6 A: No, I am saying what this is saying is
7 that to wait any longer for any
8 proposal, I don't know if you are
9 referring to a specific proposal, this
10 is not addressing a specific proposal
11 because a proposal had already been
12 made, I just want to make that point
13 clear, but the point is that we were
14 always trying to sort the situation out,
15 if they wouldn't accept one proposal we

16 had to keep trying to see how we could
17 get this thing straightened out.

18 Q: You are now recalling there might have
19 been more than one proposal?

20 A: As I said before I don't recall
21 precisely, I know there was at least
22 one, I suspect there might have been at
23 least another one, but I really don't
24 recall.

25 Q: Well, I am going to suggest to you that

1 there were several proposals put to JRF
2 and that when you put in the letter
3 referring, in 2006 or seven, saying that
4 your proposal had been rejected, that it
5 was not in reference to the proposal
6 made back in 2000?

7 A: It is however you see it, I know what
8 the truth is. The fact is as I said
9 before, I was talking to Miss Taylor all
10 the way, Miss. Taylor knew precisely the
11 proposal that we were making and they
12 waited for years before coming back and
13 they were referring to that specific
14 proposal that we were talking about from
15 the beginning, it is clear in my mind.

16 Q: So you disagree now with the statement
17 that Joslin Jamaica does not intend to
18 wait for any longer proposal, you are
19 saying there was a proposal which they
20 had, as of the date of this letter and
21 that your attorney was wrong when he
22 said that.

23 A: No, you are putting words in my mouth.

24 Q: I am allowed to.

25 A: I am not allowing you to. I am saying --

1 what I am saying is that this here
2 speaks to -- he says Joslin Jamaica does
3 not intend to wait any longer for any
4 proposal by our client. I don't know
5 specifically what he was referring to,
6 as I said a while ago, it says any
7 proposal and we were in a mode that we
8 were always trying to see how we can
9 get -- this thing is where I live, so
10 every time you stop me I have to try and
11 find a way out, so if you stop me here,
12 I am putting another position there, but
13 I am saying that the proposal that they
14 were referring to and they know it, and
15 I know it, the proposal that they were

16 referring to was that first proposal,
17 that is the first proposal and to this
18 date it still is.

19 Q: Is it true Mr. Hutchinson that you got
20 fed up with the length of time it was
21 taking and that you decided that you
22 were going to put the May Day property,
23 Lot 4 on the open market and that you
24 were not going to proceed with the sale?

25 MISS CLARKE: A lot of questions being put.

1 Q: It's the same question, that you were
2 going to put it on the open market and
3 therefore not going to sell it any
4 longer to the Ministry of Education.

5 MISS CLARKE: So the part of it 'being fed up' is
6 withdrawn.

7 MR. GOFFE: No, I am not withdrawing it, all part of
8 one question.

9 A: Let's leave the fed up out of it, that
10 is another issue. What I am addressing
11 is whether it was an intention to put it
12 on the open market.

13 Q: Sure.

14 A: I would take all reasonable steps to try
15 to settle the situation. As I said I

16 have lost substantially because of the
17 -- in my opinion -- the unreasonableness
18 of JRF and others in this matter and I
19 would be willing to go to almost any
20 step to at least to maintain the basic
21 necessities of life for family members
22 and myself, so I am simply saying that
23 at all times we were trying to find new
24 ways, new ideas if possible but it was
25 always based on the same premise, we do

1 not have the cash and therefore we had
2 to depend on the assets for resale in
3 order to settle this debt and from the
4 debt was with NCB that was clear and I
5 am saying...

6 Q: Mr. Hutchinson I am not speaking about
7 when the debt was at NCB, I am asking a
8 very specific question about your plan
9 to sell this property to the Ministry of
10 Education.

11 A: I never said that I planned to sell the
12 property to Ministry of Education, I am
13 not sure what you mean by putting it on
14 the market; I said that because we
15 approached specific people, specific

16 people with the view to selling the
17 property, specific people, so I don't
18 know if you are calling that putting it
19 on the market, I wouldn't call that
20 putting it on the market.

21 Q: Would you agree with me that in April of
22 2006, you wrote to the May Day High
23 School and said that the plot of land
24 has now been placed on the open market,
25 would you agree with me, sir, that you

1 did that?

2 A: In respect to Lot 6, yes.

3 Q: What about Lot 4?

4 A: No, that was an error.

5 Q: I am asking you about Lot 4 now.

6 A: And I am saying that Lot 4 was sold
7 okay.

8 Q: Let's focus on Lot 6. So you are
9 agreeing with me that Lot 6, you had a
10 plan to sell it to the Ministry of
11 Education through the Ministry of
12 Finance and in April of 2006 you had put
13 it on the open market?

14 A: And I am saying that at that point, I
15 don't remember the specific date, I told
16 the principal of May Day High School
17 that because they were continually
18 delaying this situation and it was
19 constantly costing me that I was left
20 with no alternative but to put it on the
21 open market. Can I say at the same time
22 that while if I had found a buyer I
23 would have sold it otherwise, I
24 recognize that because it was being used
25 as a playfield, it would be more

1 difficult to sell Lot 6 because it was
2 being used as a playfield by students,
3 so in the context that it was, it would
4 have been difficult.

5 Indeed, you were selling it to the
6 Ministry of Education or the Ministry of
7 Finance at more than the appraised
8 market value, were you not?

9 A: At what point you are talking about,
10 because originally the Land Authority, I
11 don't remember the name, anyway the Land
12 Authority, they had valued the lot at
13 \$3.4 Million and the Ministry had agreed
14 to buy at \$3.5 Million. Subsequently it
15 was revalued because the lot was not

16 paid for until 2008 and therefore, there
17 was another valuation done and \$5.5
18 Million was paid, at which time the debt
19 had at least added another 50%.

20 Q: Mr. Hutchinson, you changed attorneys
21 some time between September 2006 and
22 September 2007, is that correct?

23 A: Some time about there, I would think,
24 yes.

25 Q: Mr. Hutchinson, do you recognize the

1 letter which was just placed in your
2 hand?

3 A: Yes. I remember Mr. Pearson telling me
4 about this letter.

5 Q: Did you receive a copy of it, it says on
6 it that it was copied to you?

7 A: I will have to accept, I don't remember
8 precisely, but I know I saw it.

9 Q: Could I ask that this be entered as
10 AH46?

11 COMM. BOGLE: So entered.

12 MR. GOFFE: That's the letter from Pearson and
13 Company Attorneys-at-Law to Mrs. Velda
14 Grant-Taylor at Jamaican Redevelopment
15 Foundation dated the 17th of September,
16 2007.

17 Mr. Hutchinson, could you read the
18 sentence that begins with 'our client
19 is'.

20 A: **Our client is unable to redeem the loan**
21 **full. In consequence of that fact, we**
22 **wish to put forward the following**
23 **proposal.**

24 And this is one of the reasons I am
25 saying JRF have been totally

1 unreasonable in this matter.

2 Q: Continue reading.

3 A: Lot 6 May Day Plantation sold to the
4 Ministry of Education upon terms
5 mutually acceptable.

6 The net proceeds of that sale be used to
7 reduce our client's indebtedness.

8 The remainder of the land; Lots 7 to 16
9 for which there is already subdivision
10 approved by the Manchester Parish
11 Council be sold as individual lots.

12 An offer for lots 9, 10, and 11 has
13 already been received by a prospective
14 purchaser at \$1,5000.00 per lot.

15 The net proceeds of sale be used to

16 further reduce our client's
17 indebtedness.

18 After the sale of these lots it is
19 proposed to go to a mortgage company for
20 a loan to pay out the remainder of the
21 indebtedness as it is believed that our
22 client's resources would then enable him
23 to service such a loan.

24 If your approval is given for the
25 splintering of the parent title into

1 **separate titles for lots 7 to 16, we**
2 **anticipate that process will take six to**
3 **eight weeks at the Titles Office.**

4 Q: Mr. Hutchinson, I suggest to you that
5 this is a another proposal, and a series
6 of proposals which you had made?

7 A: But I don't know if they have shown
8 series of proposals, but I am saying
9 that part of the reason I am saying that
10 JRF is clearly unreasonable....

11 Q: No, I didn't ask you about JRF's
12 unreasonableness, answer the question
13 that I am asking.

14 A: I am answering the question, sir.

15 Q: No, no, the question I have asked you

16 has nothing to do with JRF's
17 unreasonability. The question I have
18 asked you is if this represents another
19 in a series of proposals that you put to
20 JRF?

21 A: And I am saying that fundamentally that
22 represents an offshoot of the same
23 proposal that we have been putting. I am
24 saying that if you know...

25 Q: So this is an offshoot of a series of

1 proposals?

2 A: I am sorry, sir.

3 Q: You have answered my question. Thank

4 you, sir.

5 A: I am not finished answering your

6 question, sir. I am saying if you know I

7 have no income...

8 Q: No, I must object Mr. Commissioner.

9 COMM. BOGLE: Mr. Hutchinson...

10 A: I am sorry.

11 COMM. BOGLE: Your attorney will clarify. Let us try

12 and keep to the question and answer so

13 that we can get some order.

14 A: But there must be some reasonableness. I

15 need to...

16 COMM. BOGLE: You will be allowed through your

17 attorney.

18 A: Yes, sir, thank you.

19 (Document passed to Mr. Goffe)

20 MR. GOFFE: Thank you, Mr. DePeralto.

21 Mr. Hutchinson, have you ever seen this

22 document which has just been handed to

23 you? You remember getting that letter,

24 sir?

25 A: Yes, I remember this.

1 Q: Could I ask that this be entered as
2 AH47, I believe.

3 COMM. BOGLE: Yes.

4 MR. GOFFE: Could you read for me please the final
5 paragraph of that letter.

6 A: **We regret the length of time that it has**
7 **taken to complete this transaction but**
8 **were sure you will accept that much of**
9 **the delay could be attributed to your**
10 **previous legal representative.**

11 Q: Do you agree with that statement, sir?

12 A: No, sir.

13 Q: I should say that this is a letter
14 written to Mr. Anthony Hutchinson by
15 Lauriston Wilson on behalf of the

16 Ministry of Education, dated October 29,
17 2007.

18 A: Can I just say that...

19 Q: No Mr. Hutchinson, please don't. You
20 have your witness statement in front of
21 you, sir?

22 A: Yes.

23 Q: We are wrapping up just now. Turn to
24 page 6 of your witness statement please.

25 A: Yes.

1 Q: You have asked the Commission to help
2 you address some concerns. The first
3 one is:

4 **How was the interest rate of 30%**
5 **compounded daily set/determined?**

6 First of all, do you accept sir, that
7 your interest rate was originally
8 25 percent when it was with JRF?

9 A: You showed a document with 25 percent.

10 Q: You remember what happened which caused
11 it to go to 30 percent?

12 A: No.

13 Q: It was right after the notice was sent
14 to you, the statutory notice was sent to
15 you saying that you were in default and

16 they were going to sell your property,
17 you remember that now?

18 A: I remember a note saying it was at 30%.
19 I don't know if that is what you are
20 referring to.

21 Q: Thank you. Do you accept that JRF was
22 acting reasonably when it reduced your
23 interest rate from - I think you had
24 said between 40 and 50 percent you were
25 paying before down to 25 percent?

1 A: No, I don't accept that.

2 Q: Do you accept that they had the power to

3 reduce the interest rate that they were

4 going to charge to you?

5 A: I can't speak to that.

6 Q: Do you remember giving your banker, the

7 mortgage company the right to increase

8 or decrease your interest rate?

9 A: If I gave them that right?

10 Q: You remember giving them that right,

11 your agreement with them?

12 A: I don't know what you mean 'giving them

13 that right'.

14 Q: You say: **"In any event, was JRF entitled**

15 **to charge me this interest or any**

16 **interest whatsoever after it acquired my**

17 **debt from FINSAC?**

18 Why are you questioning JRF's rights to

19 charge you interest?

20 A: Because I have been told that there is a

21 contrary legal position and that...

22 Q: Who told you that?

23 A: We won't go there but I am just

24 saying...

25 Q: No, no I am asking you a question.

1 A: No, I am serious....

2 MISS CLARKE: I believe I am objecting to the

3 question. The witness in this

4 circumstance can, if there are

5 communications relative to legal advice

6 he had gotten and he feels that he ought

7 not, based on any reason which he may be

8 asked to disclose he may very well have

9 the right not to disclose who told him

10 that. Counsel, respectfully cannot

11 insist, without more, that he indicates

12 who told him that...

13 MR. GOFFE: I think my friend is mistaken.

14 MISS CLARKE: ...having regard to certain privileges

15 that he may have.

16 MR. GOFFE: I think my friend is mistaken in

17 relation to the law of legal

18 professional privilege. It doesn't say

19 that if any lawyer gives you advice or

20 gives you information of a legal nature

21 it is privileged. Legal professional

22 privilege exists only between an

23 attorney and his client. If there is a

24 retainer in place between an attorney

25 and his client, communication passing

1 between those two parties may be
2 privileged.

3 MISS CLARKE: Then perhaps...

4 COMM. BOGLE: Just a minute.

5 MR. GOFFE: I have not asked him any question in
6 relation to whether it was under a
7 retainer or not. That is for him to tell
8 me if he believes that it was a
9 communication between him and his
10 lawyer. He didn't say that was the case,
11 he said a lawyer told him.

12 A: I did not say a lawyer told me.

13 MISS CLARKE: He didn't say that.

14 MR. GOFFE: He said somebody told him that - thank
15 you very much - which is even better

16 because then if somebody who is not a
17 lawyer told him he certainly could not
18 be protected by legal professional
19 privilege. And so on that basis if it
20 is not privileged information, if
21 somebody else told it to him there is no
22 basis for the objection on the ground of
23 legal professional privilege.

24 MISS CLARKE: And I maintain my position. I think my
25 friend is agreeing with me that certain

1 matters need to be laid first before you
2 get to an insistence on who told you
3 that because if it is that he is
4 submitting, which has not been
5 established at all, if it is he that he
6 is submitting that it was given to the
7 witness in the course of legal advice
8 being given in a certain context, then
9 my friend cannot insist that he answers
10 as to who told you that. So my friend is
11 actually agreeing with me that there are
12 prerequisites that he needs to meet
13 before he can insist that the witness
14 answers 'who told you that'.

15 COMM. BOGLE: The witness is free to decide whether or
16 not he wishes to answer the question or
17 not.

18 MR. GOFFE: Thank you, Mr. Chairman.

19 COMM. BOGLE: I will allow the question, but the
20 witness is at liberty.

21 MISS CLARKE: Thank you.

22 A: The fact is that I have spoken to many
23 people in the context of this matter and
24 I really don't recall who told me. It is
25 a general understanding that I have

1 having spoken to several people.

2 Q: Okay. What was the basis that they told
3 you that JRF might not be able to charge
4 you interest?

5 A: I don't know if it was said in the
6 context of JRF. As I said my
7 understanding is that there are certain
8 legal issues after a certain point
9 whether interest can be charged.

10 Q: Did you at any time challenge JRF's
11 right to charge you interest?

12 A: No, I don't recall challenging their
13 right. I don't remember challenging them
14 about that right, no.

15 Q: Isn't it true, Mr. Hutchinson, that this
16 is not an area of dispute which you ever
17 had with JRF?

18 A: It's certainly an area of concern, but
19 what I am saying to you is my primary
20 intention was to find a way to settle
21 the matter, that was my primary issue.

22 Q: I suggest to you Mr. Hutchinson, that it
23 was only when you came to this
24 Commission of Enquiry that you formed
25 the opinion that you had reason to

1 complain about the interest rate?

2 A: Sir, if you knew me, I have very
3 specific beliefs about how a country is
4 to be run, how financial the sector is
5 to be run.

6 Q: Mr. Hutchinson, you are not answering my
7 question.

8 A: I am answering your question. And
9 therefore, I am saying that clearly that
10 rates of that amount....

11 Q: Mr. Hutchinson, answer my question.

12 A: I am answering your question.

13 Q: Let me repeat my question. My
14 suggestion to you sir, is that you
15 didn't have any complaint about interest

16 rate until you got to this Commission of
17 Enquiry.

18 A: I am saying that was not my primary
19 issue. It is just that when FINSAC was
20 charging us 25% and my lawyer was
21 talking them out of the 25% my first
22 issue was to pay off the debt. That
23 interest rate, in my opinion as
24 unreasonable as it was, my concern was
25 to pay the debt. So even if I were

1 to people.

2 Q: Did you ever say to JRF that they have

3 no right...

4 A: No, I am saying...

5 Q: Allow me to finish my question.

6 A: I am sorry.

7 Q: I am asking you, did you ever say to JRF

8 that they should stop undermining your

9 efforts to settle your indebtedness by

10 insisting on the payment of interest on

11 the land bonds?

12 A: I am saying I didn't say that to JRF.

13 Q: And why didn't you say that to JRF then

14 when it was relevant?

15 A: That's what I was trying to answer a

16 while ago. I am saying this is

17 something that I have spoken to, as you

18 know I have spoken to probably about

19 four different lawyers...

20 Q: Okay.

21 A: ...or five different lawyers on this

22 matter trying to find a solution.

23 Q: Did you speak to your two lawyers about

24 it, sir?

25 A: Who are my two lawyers?

1 Q: Mr. Richard Bonner and Associates and
2 Anthony Pearson, did you speak to them
3 about it?

4 A: Yes.

5 Q: Did you instruct them to take this issue
6 up with JRF?

7 A: No, no, I am saying at the point at
8 which I understood that this matter - I
9 was talking to somebody about it and
10 they said to me, but the Government will
11 not accept interest, pay an interest. In
12 other words, that whole conversation
13 with the Ministry of Finance...

14 Q: Isn't it true that the Government agreed
15 to pay interest on the land bonds?

16 A: No, no, that is the point. The Ministry
17 of Education told the Ministry of
18 Finance that this was a requirement,
19 they at no point dealt with that
20 interest.

21 Q: Did they ever disagree, did they ever
22 challenge it and say we are not going to
23 pay interest on those land bonds?

24 A: You mean the Ministry of Finance?

25 Q: Anybody, any government agency.

1 A: You are not understanding the situation
2 you know.

3 Q: I understand. Answer my question first
4 before you explain the situation to me.

5 A: I am saying that all we got - we told
6 them...

7 Q: Answer my question.

8 A: I am attempting to answer your question,
9 Mr. Goffe.

10 Q: The question I am asking you is, did any
11 of the government agencies ever say to
12 JRF, no, we are not going to pay
13 interest on the land bonds?

14 MISS CLARKE: I am objecting to the question, I
15 object. It presupposes that at every

16 stage this witness first knows what
17 government agency...

18 MR. GOFFE: If he doesn't know, he doesn't know.

19 MISS CLARKE: But he is being asked if he disagrees or
20 he agrees. The fact of the matter is
21 even the very basis of the question is
22 questionable because no documentary data
23 has been put. We all agree that it is
24 second hand, in that it is not the
25 witness' direct documentary data. There

1 has been data put relative to the
2 correspondence as proceeding with this
3 matter whether directly to the witness
4 or other persons, data has been put on
5 both sides. I believe they are
6 self-explanatory, the data that is
7 before us. There is therefore no basis
8 upon which the question is now being
9 asked as to whether there was ever a
10 point at which the government disagreed
11 that it would pay interest. The
12 documentary data that is in evidence
13 having come from both sides is
14 self-explanatory if the witness is being
15 asked whether he knows about something
16 else apart from the data that has
17 proceeded so far and the evidence that
18 he can give from his personal knowledge.
19 MR. GOFFE: Mr. Commissioner, if he is able to
20 answer the question from his own
21 knowledge then he should. If he is
22 unable to do so then he can say so.
23 COMM. BOGLE: I tend to believe that the witness can
24 say he doesn't know.
25 A: What I can say is that the Ministry of

1 Finance was told that there was this
2 concern about interest and they never
3 addressed the matter and we waited for
4 years. I tried to call them to find out
5 what was the situation. I do not know
6 whether they communicated with anybody
7 else that they would or would not. I
8 know that we sought to get them to
9 address this interest issue and they
10 never did address it.

11 MR. GOFFE: Do you have any documentary evidence of
12 the Ministry of Finance ever saying that
13 they were in disagreement with paying
14 interest on the land bonds?

15 A: No, I have no documentary evidence.

16 Q: I suggest to you sir, that you had no
17 dispute or complaint over land bonds
18 until you came to this Commission.

19 A: That is a ridiculous suggestion, sir. I
20 am sorry.

21 Q: I will read on. It says:

22 **Based on my negotiations with JRF and my**
23 **actions pursuant to those negotiations,**
24 **why did JRF refuse to release the title**
25 **to me to facilitate the completion of**

1 the subdivision and sale of the lots so
2 that I could pay off my debts.

3 I suggest to you sir, that you were
4 already advised of the reason for this
5 by way of a letter from Janet Farrow in
6 which she told you of the many reasons
7 why JRF would not allow you to sell the
8 property yourself, do you agree with
9 that suggestion?

10 A: No, sir.

11 Q: You agree though that you had no right
12 to receive your title to those lots for
13 the purposes of subdivision until you
14 had repaid the funds owed on the
15 mortgage?

16 A: I can't say I had a right, given the
17 circumstances of the situation. In
18 other words, I think in a more ordered
19 environment I would have had a right.

20 Q: I suggest to you Mr. Hutchinson, that
21 JRF gave you every reasonable
22 opportunity to restructure your account.

23 COMM. BOGLE: Just a minute, Mr. Goffe, the last
24 letter from the Ministry of Education to
25 Anthony Hutchinson, I don't know if we

1 confirmed it is Exhibit AH47.

2 MR. GOFFE: Thank you, Mr. Commissioner.

3 COMM. BOGLE: We will so do now. AH47, that is the

4 letter from the Ministry of Education to

5 Mr. Anthony Hutchinson, letter dated

6 October 29, 2007.

7 MR. GOFFE: The suggestion I am putting to you, Mr.

8 Hutchinson, is that JRF gave you every

9 reasonable opportunity to restructure

10 your debt and that you failed to uphold

11 your end of the bargain, you agree with

12 that sir?

13 A: No, sir, I do not.

14 Q: I suggest to you sir, that the reason

15 that you were not allowed to subdivide

16 your properties and sell them was

17 because you had made several proposals

18 for that same thing to be done each of

19 which had already failed to materialize,

20 you agree with that?

21 A: I think that...

22 Q: Do you an agree with it, sir?

23 A: No, I don't agree.

24 Q: I am suggesting to you sir, that the

25 reason that you changed your attorneys

1 was because you knew that the former
2 attorneys were at least partly to blame
3 for the position that you found yourself
4 in.

5 A: I can state categorically sir, that the
6 reason I changed my attorney was because
7 Mrs. Velda Taylor told me that she would
8 suggest a change of attorneys because it
9 was not in my interest to retain
10 Mr. Bonner as my attorney and that is
11 why I changed my attorneys.

12 Q: And you agreed with her?

13 A: I changed attorneys because I hoped that
14 it would have caused a difference in the
15 situation.

16 Q: I suggest to you, sir, that you were
17 able to make payments to JRF, but it was
18 you who unreasonably refused to make the
19 payments which you had agreed to make.

20 A: I certainly disagree with you.

21 Q: I suggest to you that the amount that
22 JRF was asking you to pay on a monthly
23 basis was less than the amount which you
24 ended up agreeing to pay.

25 A: Could you say that again.

1 Q: I am suggesting to you that the monthly
2 payment that JRF put to you was less
3 than the monthly payment that you
4 suggested that you paid to them.

5 A: That is not true.

6 Q: And finally, I suggest that if you had
7 accepted the agreement to restructure
8 the existing debt that you would have
9 been in a better position today than you
10 are right now in relation to those
11 properties and your debt.

12 A: If I had been able to refinance....

13 Q: Do you agree with that suggestion, sir,
14 yes or no.

15 A: I am saying it is possible.

16 Q: It is possible. I have no further
17 questions for this witness.

18 MISS CLARKE: I have one or two questions, Mr.
19 Chairman.

20 COMM. BOGLE: Mr. Garcia, I think we will have
21 questions from you. I take it you have
22 questions?

23 MR. GARCIA: Yes, but my friend has indicated that
24 she would rather re-examine in relation
25 to evidence given so far in

1 cross-examination before....

2 Q: I would prefer if you finish and then
3 she will do her re-examination.

4 MR. GARCIA: That's is fine with me. That's how I
5 intended to proceed.

6 MISS CLARKE: Very well, sir.

7 COMM. BOGLE: And at the same time we will just have
8 our usual ten-minute break at this time.

9 BREAK

10 ON RESUMPTION

11 COMM. BOGLE: Ladies and gentlemen, this enquiry is
12 now back in session.

13 Mr. Hutchinson, may I just remind you
14 that you are still under oath.

15 Mr. Garcia?

16 MR. GOFFE: Excuse me, Commissioners, I had asked my
17 friend if I could get a moment. There
18 is one document which I forgot to put
19 in. I don't actually have any questions
20 to ask in relation to it but with your
21 permission I would seek to put it in
22 now.

23 COMM. BOGLE: Sure

24 MR. GOFFE: This document is really, is actually a
25 letter which was received by JRF with

1 several attachments enclosed. I wonder
2 if you want to enter them as one
3 exhibit.

4 COMM. BOGLE: Mr. Goffe, I think that in view of the
5 fact that the first letter specifically
6 refers to the other letters then we
7 could take it as one exhibit.

8 MR. GOFFE: I believe so.

9 COMM. BOGLE: So we will take it as AH48.

10 MR. GOFFE: Thank you, Mr. Commissioner.

11 COMM. BOGLE: Letter from the Ministry of Education to
12 Mrs. Valda Grant-Taylor, Jamaican
13 Redevelopment Foundation with
14 enclosures, or attachments if you
15 prefer.

16 MR. GOFFE: Thank you, Mr. Chairman.

17 MR. GARCIA: Commissioner, may I begin?

18 COMM. BOGLE: Just a moment. You may now begin,
19 Mr. Garcia.

20 MR. GARCIA: That you, sir.

21 Good morning, Mr. Hutchinson.

22 MR. HUTCHINSON: Good morning. Could you remind of your
23 name, sir?

24 MR. GARCIA: Dave Garcia. I am representing Patrick
25 Hylton.

1 Mr. Hutchinson, you are in agreement
2 that your facility, the facility you had
3 taken from NCB was outstanding at the
4 time it was taken over by Refin Trust;
5 correct?
6 A: Yes.
7 Q: And it was in arrears at that time, is
8 that correct?
9 A: Yes.
10 Q: Now in 2001 you reached a settlement
11 agreement with Refin Trust; correct?
12 A: Yes.
13 Q: And that is the agreement that is
14 exhibit Anthony Hutchinson 8?
15 A: Yes.
16 Q: Under that agreement your liability was
17 capped at five million dollars; correct?
18 A: Yes.
19 Q: Which is less than the amount that was
20 outstanding at the time; correct?
21 A: Yes.
22 Q: So you agreed in the agreement?
23 A: Yes.
24 Q: The agreement also reflected an interest
25 rate of zero at the time?

1 A: Yes.

2 Q: Which was of course less than the amount
3 that you had agreed to pay NCB when the
4 facility was taken out?

5 A: Yes.

6 Q: What was the rate that you had agreed
7 with NCB?

8 A: I am saying it reached over 70%.

9 Q: Do you recall what the rate was at the
10 time that you had borrowed? Would you
11 like to look at it?

12 A: Because it was always, as I have said
13 before, a capitalization of overdraft
14 interest, the document spoke to interest
15 at 53% - the word slips me now but the

16 failure to pay 50% an additional two to
17 three per cent, other fees which exceed
18 70% so that was the amount stated in a
19 letter from NCB.

20 Q: This is in the commitment letter which
21 is Anthony Hutchinson 3, dated November
22 13, 1995?

23 A: That is correct.

24 Q: That's right, okay. Could we return to
25 the settlement agreement of June 13,

1 2001.

2 A: Yes.

3 Q: Now, under that agreement that lower
4 amount of five million dollars was to be
5 paid by September 30, 2001; is that
6 right?

7 A: Yes.

8 Q: And that represented an extension of the
9 period that had previously been
10 communicated by Refin Trust Limited? Is
11 that also correct?

12 A: Yes.

13 Q: The period previously communicated by
14 Refin Trust Limited was July 31, 2001?
15 Is that right?

16 A: Yes.

17 Q: And this date of September 30, 2001 was
18 later extended to December 31, 2001; is
19 that right?

20 A: Yes.

21 Q: But with that extension came an interest
22 rate of twenty five percent per annum;
23 is that right?

24 A: Yes.

25 Q: But at twenty five percent per annum

1 this was still less than the amount
2 reflected in the commitment letter that
3 you had signed with National Commercial
4 Bank Limited; is that correct?

5 A: Yes.

6 Q: So if there was a basis for you to have
7 been charged forty-three percent per
8 annum, you would agree with me that
9 there would have been appropriate basis
10 to be charged the lesser rate of twenty
11 five percent?

12 A: I don't understand that question, could
13 you repeat?

14 Q: In your evidence-in-chief on the 16th of
15 March 2011 before this Commission you

16 had questioned the basis for the charge
17 of 25 percent per annum, you recall?

18 A: I recall 30 percent. If you are
19 referring to page six of my statement, I
20 recall 30 per cent.

21 Q: Perhaps for the Commissioners' benefit I
22 can just indicate that it is at page 152
23 of the transcript dated the 16th of
24 March, 2011 and that is where the
25 witness said that he wasn't informed of

1 the basis for the charge of twenty five
2 percent per annum. The settlement
3 agreement of June 13, 2001 was
4 negotiated through your then attorneys,
5 is that correct?

6 A: Yes, that is correct.

7 Q: And your attorneys at the time were
8 Ballantyne Beswick and Company?

9 A: That is correct, yes.

10 Q: And Mr. Bonner was the person
11 specifically handling your matter?

12 A: Yes.

13 Q: And their role was to ensure an
14 arrangement was reached that was fair
15 and beneficial to you; is that correct?

16 A: Yes, I would hope so.

17 Q: Now, Mr. Hutchinson, would you agree
18 with me that persons whose loan remained
19 with financial institutions at the time
20 would have had to honour the terms of
21 the facilities extended to them?

22 A: Yes, they would be required to.

23 Q: And those terms would have included an
24 obligation to repay full principal?

25 A: Certainly that, yes.

1 Q: And interest?

2 A: I would say in an ordered society,
3 reasonable interest.

4 Q: According to the terms for repayment,
5 that is, in accordance with the schedule
6 of repayment for those facilities, yes?

7 A: Yes, but sometimes that schedule is
8 forced upon an individual by a system
9 that is obviously stronger than an
10 individual, yes.

11 Q: But at the time that you borrowed from
12 NCB you weren't forced to borrow?

13 A: I wasn't forced to borrow, no.

14 Q: I see. You did appreciate that FINSAC
15 and Refin Trust while owned by the

16 Government of Jamaica were separate
17 companies with their own mandate? Did
18 you appreciate that?

19 A: If you say so. I guess I understand the
20 concept.

21 Q: I thought you would, sir. Now is it
22 that you expected that a FINSAC or Refin
23 Trust would have allowed more time to
24 pay based on the expected source of
25 funds, based on your expected source of

1 funds, the fact that funds were coming
2 from the government?

3 A: Could you repeat that question.

4 Q: Is it that you expected that based on
5 the fact that the source of funds was
6 the government that FINSAC or Refin
7 Trust should have given you more time
8 within which to repay?

9 A: I am saying...

10 Q: Sorry. I wonder if you could answer with
11 a yes or no?

12 A: I can't answer with a yes or no. Let me
13 see if I understand the question. My
14 understanding of the question is whether
15 I would have expected that FINSAC,

16 because the money was coming from the
17 government, would treat that money
18 differently, that process. In other
19 words, if there should have been some
20 difference in the treatment because it
21 was coming from the government. That is
22 what you are asking me?

23 Q: Yes. I think you were about to use the
24 word 'preferential' and that is what I
25 wanted to ask.

1 MISS CLARKE: I don't know that Counsel is entitled to
2 do that.

3 MR. GARCIA: It is my question?

4 A: What I am saying my expectation which is
5 what you asked me, my expectation was
6 that if FINSAC really required that the
7 debt be paid they would face the
8 circumstances that I was in and the
9 situations that were out of my control
10 to facilitate full repayment.

11 Q: Had the facility still been with the
12 bank from which you borrowed you would
13 have been obliged to pay in accordance
14 with the terms; right?

15 A: That is my difficulty, sir, because I
16 think my understanding of functions of
17 the bank is that if my case was bona
18 fides that there were real assets for
19 sale I think in an ordered society the
20 bank would have been on my side saying
21 to the official system, you cannot take
22 so long to process this matter because
23 our client, our customer is suffering
24 thereby and our customer as one
25 individual does not have the authority,

1 does not have the clout, so I would have
2 expected being a customer of my bank
3 that my bank would have taken up my case
4 to say to the government this is not
5 reasonable and therefore I would have
6 been allowed to pay my debt.

7 Q: Okay. I am going to come back to the
8 role of government a little bit later,
9 sir, but before I go there, could you
10 take a look at pages six to seven of
11 your statement; paragraph 38.

12 A: Yes.

13 Q: Now in the last sentence the third
14 bullet on the page you referred to - and
15 the opening paragraph is, "**I seek the**

16 **Commission's help to address the**
17 **following concerns...**"

18 And then you refer to the refusal of
19 Patrick Hylton to facilitate what was
20 clearly a reasonable approach to
21 negotiate a government to government
22 agreement was pivotal in my failure to
23 arrive at a successful conclusion at the
24 level of FINSAC long before the debt
25 went to JRF. So your expectation was

1 that Mr. Hylton was to have dealt
2 specially with your matter because the
3 government was the person to pay, is
4 that right?

5 A: Sir, you see to have a different
6 perspective on the role...

7 Q: Can I ask that you answer yes or no?

8 A: I am just telling you that you seem to
9 have a different perspective from me so
10 it is difficult to answer the way you
11 have the question but I am saying that,
12 despite the fact that FINSAC is a
13 separate legal entity my thinking is
14 that the objective here is to settle
15 this debt in all reasonable

16 circumstances and despite the fact that
17 you are dealing with a separate legal
18 entity I am saying that in my opinion
19 good corporate governance would require
20 that FINSAC understand that this was
21 largely out of my control and therefore
22 seek to really settle the matter
23 realistically in a fair way and I do not
24 think that Mr. Hylton as CEO operated in
25 that manner.

1 that basis I am saying it says we remain
2 of the view; his view that I have not
3 performed in accordance with the
4 agreements. I am saying that taking all
5 the views into consideration I have
6 played my part.

7 Q: I am sorry sir. Let me ask the question
8 again. The statement is - and if I can
9 break out the relevant portion. Your
10 client, meaning you Mr. Hutchinson, has
11 not performed in accordance with the
12 signed settlement agreement and the
13 subsequent extensions. Do you agree
14 that, that statement is correct?

15 A: Yes.

16 Q: Thank you.

17 A: In light of this statement.

18 Q: Mr. Hutchinson, did you have any direct
19 discussion with Mr. Patrick Hylton in
20 relation to your debt.

21 A: No, sir.

22 Q: What is it that occasioned the
23 communication being sent to Mr. Hylton
24 in respect of your matter?

25 A: Could you repeat that.

1 Q: What occasioned the communications being
2 sent to Mr. Hylton on your behalf in
3 respect of this matter?

4 A: Communication by whom?

5 Q: Could you look at Anthony Hutchinson 9.

6 A: Yes, sir.

7 Q: That is a letter from the then Minister
8 of Health, Honourable John Junor to
9 Mr. Hylton?

10 A: Yes, sir.

11 Q: Did you request Mr. Junor's
12 intervention?

13 A: Yes, on several occasions.

14 Q: And I have to ask you one of these other
15 questions that you don't like sir, about

16 your expectation. But is it that you
17 were expecting that Mr. Junor's
18 intervention would have led to a more
19 favourable result for you?

20 A: I was expecting that with Mr. Junor's
21 intervention it would indicate in a more
22 concrete way to Mr. Hylton that this was
23 not a frivolous matter, we were not
24 approaching this thing in a frivolous
25 way. The expectation was that

1 Mr. Junior as the MP at the time, as
2 well as Mr. Whiteman, the expectation is
3 that they would, their communication
4 would indicate that this was quite a
5 feasible situation. That was the
6 expectation.

7 Q: I see that this letter was written on
8 the letterhead of the Ministry of Health
9 but you had sought to engage Mr. Junior
10 because he was your Member of
11 Parliament; that is correct?

12 A: Yes, I spoke to him, I spoke Mr. Junor
13 because he was my Member of Parliament
14 but I understand the Honourable Burchell
15 Whiteman also spoke to him.

16 Q: And Mr. Whiteman was involved because he
17 was the Minister of Education?

18 A: That is correct.

19 Q: Do you recall when it is that you first
20 spoke with Mr. Junor?

21 A: Wow! I can't answer that.

22 Q: I know it is as long time ago.

23 A: We spoke on several occasions.

24 Q: This letter was sent on the 24th of
25 September 2001, it was shortly before

1 this that you had first spoken with
2 Mr. Junior?

3 A: I don't want to say yes or no, I don't
4 recall precisely but I know that the
5 Land Agency had shortly before this done
6 the valuation and we were trying to meet
7 the 31st of December deadline and so we
8 were trying to communicate to Mr. Hylton
9 and FINSAC that we were not just talking
10 out of our hats, this was something that
11 was feasible and deserved reasonable, a
12 reasonable hearing.

13 Q: You will agree with me sir, that this
14 letter is the first letter though that
15 is going to Mr. Hylton from Mr. Junor?

16 A: As far as I recall, yes.

17 Q: And it is dated the 24th of September,
18 2001?

19 A: Yes, sir.

20 Q: And so it comes a few days before the
21 date, the due date for payment under the
22 settlement agreement; is that right?

23 A: Could you repeat. A few days?

24 Q: It comes a few days before the date when
25 payment of the five million dollars

1 under the settlement agreement was due;
2 is that right?

3 A: According to that date, yes.

4 Q: At that time had it already been agreed
5 though that you would have until
6 December, 2001 to make payment?

7 A: Frankly, I can't recall if we had known
8 by that time but just thinking of it,
9 but we, we must have known at that time
10 that it was 31st of December because
11 that was the date that I was really
12 fighting to meet.

13 Q: Now you are aware of course that the
14 debt was sold to Jamaican Redevelopment
15 Foundation?

16 A: Yes.

17 Q: Are you also aware that, that sale took
18 place in January 2002?

19 A: We were told that it would be capped
20 until the 31st of December, only on that
21 basis I am saying that chances are it
22 would have been transferred sometime in
23 January. I do not know the actual date
24 that it was transferred. I don't
25 recall.

1 Q: Can you look for me at, I think it is
2 Anthony Hutchinson 19.

3 A: Yes, sir.

4 Q: That is a letter dated February 5, 2002?

5 A: Yes, sir.

6 Q: To Mr. Hylton, to your attorney?

7 A: Yes, sir.

8 Q: And you had received a copy of this
9 letter?

10 A: I saw this letter sometime afterwards.

11 Q: But these are the attorneys who were
12 acting on your behalf whether or not
13 they were acting on your behalf at the
14 time?

15 A: Yes.

16 Q: Could you on the second page read the
17 penultimate paragraph?

18 A: **Our position remains the same and the**
19 **loan has in fact been sold as part of**
20 **the portfolio of loans we have recently**
21 **divested.**

22 Q: Thank you. So this on February 5, 2002
23 is FINSAC communicating to your
24 attorneys that the debt had been sold;
25 right?

1 A: Yes, but it did not say at what date.

2 MR GRACIA: Now, prior to the sale of the debt
3 Mr. Hutchison, would you agree with me
4 that there would have had to be some
5 negotiations between the seller and the
6 buyer?

7 A: That was what we were trying to achieve.

8 Q: I am sorry, the seller of the debt.
9 Would you agree with me that there would
10 have had to have been negotiations
11 between FINSAC and Jamaican
12 Redevelopment Foundation for the sale of
13 the debts?

14 A: Come now, what date are we speaking of
15 at this point?

16 Q: Prior to the sale.

17 A: Prior to the sale?

18 Q: Prior to sale you would agree...

19 A: Prior to the sale...

20 Q: Prior to the sale of the debts including
21 yours, you would agree that FINSAC and
22 Jamaican Redevelopment Foundation would
23 have had to have been in negotiations?

24 A: Okay. So prior to the sale of the debt
25 of FINSAC to JRF?

1 Q: Yes.

2 A: Yes, I would imagine so.

3 Q: Yes. And it would be expected that JRF

4 as the buyer of the debts would have

5 conducted some due diligence?

6 MISS CLARKE: I am objecting.

7 A: You are asking me about what JRF did

8 about...

9 MISS CLARKE: Mr. Hutchinson, wait a minute, please.

10 It is probable the answer that was about

11 to be forthcoming would ground my

12 objection because for this witness to be

13 asked now to speculate as to what might

14 have proceeded between JRF and FINSAC,

15 would he agree that this would have

16 happened; is he being asked to give some

17 kind of expert opinion on something as

18 to whether the parties would have

19 negotiated; as to whether they would

20 have done their due diligence? I don't

21 think this is something that can be

22 fairly put to this witness in terms of,

23 would he agree that there would have had

24 to be - would there have had to be? Is

25 that what my friend is putting? I don't

1 know that any of us know that the
2 position that is being put to him as
3 being probably an objective position is
4 even so. Would there have to be due
5 diligence? Would there have had to be
6 negotiations? So to ask the witness
7 would he agree that thy would have had
8 to agree and it doesn't even involve him
9 in any way, he is not connected to the
10 relationship at all between the person
11 about whom the question is being asked.
12 So I think when the witness started to
13 say you know, what proceeded between
14 them that would be the basis of my
15 objection, he can't know.

16 MR GRACIA: Commissioner, the witness is a Lecturer
17 in Accounting, I think that it's a fair
18 and reasonable question for him to
19 answer. If it is that his answer is
20 that he does not know what would have
21 happened I would obviously have to
22 accept whatever answer the witness
23 gives.

24 COMM. BOGLE: I think I tend to agree with the
25 objection on this question.

1 MR GRACIA: Very well sir, I will move on.
2 Mr. Hutchinson?
3 A: Yes.
4 Q: I wanted to ask you a question sir,
5 about the payment of \$700,000.00 in
6 October 2001 of which you gave evidence
7 when you were here on the 16th of March.
8 In giving evidence you commented that,
9 that payment had been overlooked in the
10 correspondence from FINSAC at the time,
11 you recall that evidence?
12 A: Yes. Certainly it has been overlooked,
13 yes.
14 Q: Would you agree with me that it was
15 similarly overlooked in the
16 correspondence from your attorneys at
17 the time?
18 A: In the correspondence. I am seeing where
19 my attorneys in their letter dated
20 February 7th wrote to...
21 Q: Mr. Hutchinson, at the time sir, we are
22 talking about October 2001.
23 A: October 2001. Come again with the
24 question, please.
25 Q: So let me see if I can first assist you

1 with the letter concerning which you had
2 complained. I think your complaint at
3 the time was in relation to the letter
4 of November 2, 2001 from FINSAC which is
5 Anthony Hutchison 14.

6 A: Yes. What you are saying about this
7 letter?

8 Q: Yes, and your complaint as I understand
9 it is that this letter made no reference
10 to the payment of \$700,000.00?

11 A: Yes. My letter of February 5th, which
12 you just spoke to.

13 Q: And would you agree with me that neither
14 the letter of November 2, 2001 in point
15 of time followed the letter from FINSAC

16 Limited of November 2, 2001?

17 A: But sir, do you have the letter of
18 February 7? February 7, Ballantyne,
19 Beswick in response to the letter from
20 FINSAC.

21 Q: Sorry, maybe you could answer my
22 question first. Could you look at
23 Anthony Hutchinson 16, letter of
24 November 2, 2001?

25 A: Yes.

1 Q: And this is written on your behalf and
2 you would agree with me that it doesn't
3 make any references to the...

4 A: Hold on. This is dated November 16th you
5 said right, this is a letter to the
6 Minister of Health?

7 Q: Yes.

8 A: Okay. And you are saying that, that
9 letter did not make reference to the
10 payment to FINSAC?

11 Q: It was you and your attorneys who had
12 sought to have Mr. Junor intervene on
13 your behalf, is that not correct?

14 A: Yes.

15 Q: So in this letter to Mr. Junor of

16 November 22, 2001...

17 A: Right. This letter is asking Mr. Junor
18 in respect of that Lot 6 we were selling
19 to the government.

20 Q: Uh-huh. But was the letter not also
21 concerned with your complaints at the
22 time in relation to FINSAC or your
23 request in relation to FINSAC?

24 A: No, no.

25 Q: Really? Could you read the last two

1 paragraphs of the letter sir, the last
2 paragraph on the first page and the next
3 paragraph beginning with: "May we also
4 bring your attention..."

5 A: "May we also bring to your attention the
6 fact that after your representation to
7 FINSAC, FINSAC had agreed to extend the
8 deadline for the repayment of the debt
9 up to 31st of December, 2001 and is now
10 charging interest at 25 percent per
11 annum from 1st of October to 31st
12 December.

13 Please see letter attached thereto dated
14 the 10th of October 2001, which speaks
15 for itself.

16 Our reply to them dated the 23rd of
17 October is attached hereto. Based on
18 our agreement and our arguments in
19 reality we are asking that you use your
20 good offices to have a realistic date
21 projected beyond the 31st of December
22 2001, and it is highly unlikely that the
23 transfer will be completed before then.
24 We further ask that this interest be
25 waived so that the moneys can be repaid

1 to FINSAC without any additional debts
2 which may very well hamper the
3 completion of this matter.

4 Q: Thank you. Now the next thing I wanted
5 to ask you about sir, is the involvement
6 of the Ministry of Education and the
7 Commissioner of Lands and I wanted to
8 find out from you sir, whether or not
9 your complaint is not properly with the
10 Ministry of Education and/or the
11 Commissioner of Lands in relation to
12 this matter?

13 A: You are asking me if whether?

14 Q: Yes.

15 A: I am saying my complaint is on both your
16 houses frankly.

17 Q: Isn't it your complaint that you were
18 unable to meet the timelines that were
19 set because of the delays caused by the
20 Ministry of Education or the
21 Commissioner of Lands?

22 A: But this is my point sir, I am talking
23 to an institution.

24 Q: Mr. Hutchinson?

25 A: Yes, I am answering your question. I am

1 saying FINSAC...

2 Q: You did complain that the Ministry of
3 ~~Education and Commissioner of Lands~~ took
4 too long to complete the transaction, is
5 that right?

6 A: Yes, sir. Yes.

7 Q: Could you look sir, at your statement,
8 paragraph 11.

9 A: Oh! Yes.

10 Q: Could you read that paragraph please,
11 sir.

12 A: Sure.

13 In my effort to meet the deadline of
14 July 31, 2001 I increased my efforts to
15 conclude negotiations which I have

16 started with the government to purchase
17 of the two-acre lot -- that's Lot 6 --
18 which the school had been using as a
19 playfield since the 1970s. I and my
20 attorneys made strenuous efforts to get
21 the Ministry to expedite the transaction
22 so that the sale could be concluded.
23 I had intended to, and in fact indicated
24 to Refin Trust that the proceeds from
25 the sale of the land would be applied

1 towards the settlement of a large
2 portion of the debt.

3 The Commissioner of Lands had valued the
4 property at \$3.4M. We, I and my
5 attorneys were advised that this
6 valuation would be sent to the Ministry
7 of Education. However, the transaction
8 was proceeding very slowly.

9 Q: Can you stop there, sir. Whose fault was
10 that, that the transaction was
11 proceeding very slowly.

12 A: I agree. At that point it was between
13 the Land Agency and the Ministry of
14 Education.

15 Q: Could you turn to paragraph 15 for me,
16 and I am going to ask you to read that
17 paragraph also.

18 A: By letter dated November 6, 2001 Anthony
19 Hutchinson 16, the Ministry of Education
20 informed us that the valuation report
21 had been received.

22 Q: Clearly, given the stage of the
23 Government's process at this time I
24 would not be able to meet the deadline
25 of December 31, 2001, with FINSAC, a

1 government entity because of the slow
2 pace in the interaction between the
3 Commissioner of Lands and the Ministry
4 of Education, also government entities.

5 Q: Thank you. And you also had some
6 difficulties later I believe, with some
7 confusion at the Titles Office and Stamp
8 Office, is that correct?

9 A: That was my understanding from my
10 lawyers, yes.

11 Q: Yes. What was the amount that was
12 anticipated; that you had anticipated
13 receiving from the Ministry of
14 Education for the sale of that?

15 A: The lot of land?

16 Q: Yes.

17 A: 3.5 million.

18 Q: 3.5 million or 3.4 million?

19 A: The valuation was at 3.4 but the
20 Ministry as I recall, it had accepted
21 3.5.

22 Q: Now, had that been received it would not
23 have been sufficient to settle even the
24 reduced amount that FINSAC was claiming?

25 A: It would have been short by \$800,000.00

1 and if you followed even the JRF
2 statement you would have seen where the
3 other two lots were sold and paid over
4 to JRF after the 31st. But even at the
5 31st the point was that, had Finsac
6 accommodated that agreement we would
7 have borrowed the \$800,000.00 and paid
8 it off at that time.

9 Q: The fact is that the payment was not
10 made at the time.

11 A: The fact is that FINSAC didn't...

12 Q: So even if it was available...

13 A: The fact is that FINSAC didn't afford us
14 the possibility of working out,
15 negotiating the position straight

16 between FINSAC and the government.

17 Q: Are you aware of who were the persons at
18 FINSAC Limited who were handling your
19 matter sir, at the time?

20 A: No. I don't know.

21 Q: Prior to Mr. Junor's intervention is it
22 not correct that Mr. Patrick Hylton was
23 not handling your matter?

24 A: I don't know. As far as I knew, even
25 from that time it was Mr. Hylton that we

1 were trying to contact to get the
2 settlement approved.

3 Q: But you never had any dialogue with him
4 about the matter?

5 A: No.

6 Q: Your attorneys provided you copies at
7 the time of the correspondence between
8 themselves and Refin Trust Limited?

9 A: I saw those copies, the ones that I saw
10 I saw after the fact.

11 Q: Can you look at for me sir, Anthony
12 Hutchinson 7.

13 A: Yes.

14 Q: That's a letter dated March 28th, 2001
15 from Refin Trust Limited to Ballatyne,
16 Beswick and Company?

17 A: Yes.

18 Q: Could you tell me who are the persons
19 whose names you see as signing that
20 letter?

21 A: Simone George-Davy Mrs, and Hope
22 Patricia Spence, Miss.

23 Q: And some titles are indicated there?

24 A: Both Loan Recovery Officer and Loan
25 Recovery Manager.

1 Q: Thank you. Can you turn to a letter
2 dated may 29, 2001 from Ballatyne,
3 Beswick and Company.

4 I believe it was admitted on the last
5 occasion when the witness was before the
6 Commission sir, but I don't have the
7 exhibit number.

8 COMM. BOGLE: What's the date of the letter?

9 MR GRACIA: May 29, 2001 from Ballatyne, Beswick
10 Limited and Company to Refin Trust
11 Limited. I wasn't here on that occasion
12 sir, but I believe it was admitted
13 during the cross-examination by
14 Mr. Goffe.

15 MISS CLARKE: If I may assist Mr Chairman, they are

16 actually contained in the Brief and we
17 had basically asked that they be omitted
18 on the evidence-in-chief but they were
19 admitted. So they are actually in this
20 Witness Statement after Exhibit 8.

21 MR GRACIA: I don't know if the witness has found
22 it, I was looking for the number.

23 A: Could you repeat. I have found the set
24 of documents but I just want to know
25 which one you are referring to.

1 Q: I am looking for the letter of May 29,
2 2001 from Ballatyne, Beswick and
3 Company to Refin Trust Limited.
4 A: Right.
5 COMM ROSS: AH 37.
6 MR GRACIA: I think its 37.
7 A: Yes.
8 Q: Thank you, sir. That letter from your
9 attorney is to whose attention?
10 A: Norma Webb-Brown.
11 Q: You know who she was, sir?
12 A: No. I have seen the name but I don't
13 know.
14 Q: Could you turn to the next letter in
15 that same Bundle dated May 29, 2001 from
16 Refin Trust Limited?
17 A: Yes.
18 Q: That is indicating who Mrs Webb-Brown
19 is?
20 A: Yes.
21 Q: And she is writing to your attorney?
22 A: Yes.
23 Q: And she is an attorney-at-law from Refin
24 Trust Limited as she is signing?
25 A: Yes.

1 Q: I am sorry Commissioner, I didn't...

2 COMM. BOGLE: AH/38.

3 MR GRACIA: Thank you. So Mr. Hutchinson, among the

4 documents that you presented, the letter

5 of September 24th, 2001 to Mr. Hylton,

6 in addition to being the first

7 communication in writing to him from

8 Mr. Junor, would you agree with me that

9 it is the first written communication to

10 Mr. Hylton at all in respect of your

11 matter?

12 A: All right, let me get it right. Could

13 you remind me - Okay, the letter AH9 is

14 the letter from Mr. Junor?

15 Q: Yes.

16 A: And you are asking me if that was the

17 first time it was brought to

18 Mr. Hylton's attention?

19 Q: If that's the first letter being sent

20 to Mr. Hylton so far as you are aware in

21 respect of your matter?

22 A: No sir, as far as I am aware Mr. Hylton

23 was contacted as early...

24 Q: The first letter, I have asked you about

25 the first letter.

1 A: Sorry.

2 Q: I don't think I can ask you about

3 anything other than the letter because

4 your evidence is that you have never had

5 any other communication.

6 A: Can I just finish? You are asking if it

7 is the first letter that was

8 communicated to Mr. Hylton on my matter?

9 Q: Yes.

10 A: No, that's not my understanding.

11 Q: Could you point me to what previous

12 letter there was among the documents

13 that you have put in evidence?

14 A: Among the documents that I have put into

15 evidence?

16 Q: Uh-huh.

17 A: All I can say is that - as was said in

18 my statement...

19 Q: Sorry, Mr. Hutchinson, I asked about a

20 previous letter.

21 A: You are asking me if there was a

22 previous letter?

23 Q: Because I understand your answer to be

24 telling me that a previous letter...

25 A: You were asking me if there was a

1 previous letter that was sent to
2 Mr. Hylton and I am saying yes, there
3 was a previous letter earlier in 2001.

4 Q: I am asking you to identify it in the
5 documents that have been put in
6 evidence, okay.

7 A: I am not seeing here the letter that I
8 am referring to.

9 Q: Thank you. Can we turn to the letter of
10 February 5, 2002 the following year;
11 that's Hutchinson 19. That's the letter
12 signed by Mr. Hylton?

13 A: Yes.

14 Q: To your attorneys?

15 A: Yes.

16 Q: And he says: **"I will for the record set**
17 **up the process to which I have dealt**
18 **with this account?"**

19 A: Yes.

20 Q: Can you read the three paragraphs that
21 follow that?

22 A: **Upon being initially informed about the**
23 **circumstances concerning this account, I**
24 **instructed Mrs. Robinson, the General**
25 **Manager and Executive within this**

1 organization to have dialogue with you.
2 You will appreciate that the General
3 Manager for the division within which
4 the non-performing loans fall Mrs.
5 Robinson has responsibility for
6 its affairs.

7 Arising out of your discussions with
8 Mrs. Robinson certain accommodations
9 were agreed and approved by me. These
10 were communicated in writing to your
11 Mr. Ballantyne in a letter dated October
12 10, 2001 under signature of our then
13 Senior Loan Recovery Manager, Diana
14 Davis.

15 Mrs. Robinson has informed me that in
16 her conversation with you she requested
17 as a condition of accommodation an
18 immediate payment to which you agreed.
19 In addition you agreed you started
20 making payments on the debts. These
21 matters are confirmed in the letter to
22 your Mr. Ballantyne yet no payment has
23 been received.

24 Q: Can you turn over and read the two
25 paragraphs at the top of the next page?

1 A: On a number of occasions when you have
2 telephoned me you have been
3 appropriately referred to Mrs. Robinson
4 and you have refused to speak with her.
5 I asked Mrs. Robinson to speak directly
6 with your client, this she did...
7 I will just say, I have had no
8 recollection of speaking to
9 Mrs. Robinson. I don't know what she
10 looks or sounds like.
11 I asked Mrs Robinson to speak directly
12 with your client, this she did on the
13 telephone and in fact recently met with
14 him and suggested to him how to proceed
15 while maintaining our position that the
16 loan had referred to as he had not
17 complied with our agreement.

18 Q: Mr. Hutchinson, you will agree with me
19 that what Mr Hylton is here
20 communicating is that this matter had
21 been delegated to Mrs. Robinson?

22 A: (No answer)

23 Q: Yes?

24 A: I guess that's what he is saying.

25 Q: And that it was within her sphere of

1 responsibility?

2 A: I guess he is saying.

3 Q: He is saying that he had delegated her?

4 A: Yes, that's what he is saying.

5 Q: He is also saying that Mr. Bonner

6 refused to speak with Mrs. Robinson, is

7 that right?

8 A: Yes, sir.

9 But I have to refer you to Mr. Bonner's

10 responsibility.

11 A: Yes.

12 Q: Yes. Very instructive.

13 A: Yes.

14 Q: Mr. Bonner agreed that he refused to

15 speak with Mrs. Robinson?

16 A: (No answer)

17 Q: Yes?

18 A: Yes. Mr. Bonner also said in response

19 to...

20 Q: Thank you, sir. Now in Mr. -- you just

21 in your evidence said you didn't recall

22 speaking with Miss Robinson.

23 A: I don't recall that at all and I don't

24 know what she looks like to this date.

25 Q: So you are also saying you did not meet

1 with her?

2 A: I have no recollection of her.

3 Q: But your attorney responded on your
4 behalf to this letter by a letter dated
5 February 7, 2002 which is Anthony
6 Hutchinson 20?

7 A: Yes.

8 Q: And he did not dispute that such
9 conversation and meeting took place, did
10 he?

11 A: Mr. Bonner in this letter -- sometime
12 later I saw this letter from FINSAC
13 making reference that I had spoken to
14 this lady.

15 Q: I see, but that is -- I have corrected
16 it, actually it seems to have been under
17 the hand of Terrence Ballantyne of the
18 same firm. But at that time they were
19 still the attorneys you had engaged to
20 handle this matter?

21 A: Yes.

22 Q: And so, FINSAC would have been entitled
23 to assume that their communications were
24 on your behalf?

25 A: Yes.

1 approval was in train, knew that the
2 systems around us had been breaking
3 down, that is being charged to me, that
4 has been charged to me and I am saying
5 that NCB is a more -- NCB is much more
6 able to correct that injustice than I
7 was but the charge is made to me. I am
8 saying if NCB simply contacted the
9 Government, I am a customer of NCB, my
10 understanding is that as a customer of
11 NCB, I am going -- all reasonable steps
12 would have been taken to help me to
13 liquidate my position, and they saw that
14 it was feasible, I am saying that NCB
15 from the beginning should have assisted
16 me with the Government, with the
17 appropriate statutory agencies to clear
18 this matter. My position is that NCB
19 was at fault there, I am saying my
20 position is that FINSAC was at fault, my
21 position is that the Minister of
22 Education is also at fault and the Land
23 Agency in their communication. So I am
24 saying -- this is what I mean when I am
25 saying in so many instances here this

1 situation is out of my control and yet
2 still I am to pay all the cost.

3 Q: And in your assertion and your questions
4 in the witness statement as it was put
5 to you that Mr. Patrick Hylton failed to
6 accommodate you, is it -- do you agree
7 with me that you are not in that
8 assertion making reference only to any
9 kind of communication that was written
10 in terms of your approach directly to
11 this person?

12 A: Sure, absolutely. But you see, that is
13 what I meant ...

14 MR. GARCIA: I am sorry, I must object. The first
15 basis of my objection is that the
16 question actually arises from the
17 witness' statement in respect of which
18 he gave evidence in chief, so it seems
19 to me that the witness is being re-
20 examined based on an issue that aroused
21 from his evidence-in-chief in respect of
22 which he was subsequently cross-
23 examined, so I think that goes outside
24 of the proper realm of a re-examination.
25 The second basis Commissioner, of my

1 objection is that the witness is being
2 -- I think the question is actually an
3 unfair one. The witness is being asked
4 about -- the witness was asked questions
5 about the written -- the witness gave
6 his evidence and he is being asked to
7 clarify whether the original evidence
8 that he gave related to more than
9 written communication in circumstances
10 where the witness' own evidence in
11 respect of Mr. Hylton is that he never
12 had any direct communication with him,
13 so I do not see how he can be properly
14 asked to answer that question.

15 MISS CLARKE: Perhaps I want to respond by beginning
16 with the second objection, probably to
17 say, in very short order, that perhaps
18 the witness would allow the Commission
19 to be unfair to him in asking him a
20 question, I don't know if he would
21 complain.

22 MR. GARCIA: When I say unfair, I don't mean unfair
23 to the witness, I mean unfair.

24 MISS CLARKE: Unfair has to be directed somewhere, it
25 cannot be unfair in vacuum.

1 MR. GARCIA: Can I say unfair to my client.
2 MISS CLARKE: Okay, well I don't believe the question
3 is unfair to anybody and if it is, it
4 would not be a basis for objecting. I
5 think I probably really misled my friend
6 into thinking that it arises from
7 examination-in-chief based entirely how
8 I asked it. It does arise on cross-
9 examination because it was put to the
10 witness during the course of cross-
11 examination that Mr. Patrick Hylton did
12 not become involved until a certain
13 stage where certain written
14 communications proceeded from him. What
15 one was seeking to establish with the
16 question is that the assertions relative
17 to Mr. Patrick Hylton which formed the
18 basis of my friend's questions were not
19 limited to the witness' written data
20 only, but his assertions that
21 Mr. Patrick Hylton became involved go
22 far beyond what is shown on the written
23 data, because what was put to the
24 witness is that basically given the
25 stage when Mr. Patrick Hylton became

1 involved, that you know the question as
2 put by him at bullet three, paragraph 38
3 may not be sustainable but the witness
4 in that paragraph 38, bullet three as
5 put to him in cross-examination did not
6 limit his concern to any written data.
7 So I am just trying to clarify from that
8 witness that his concern is not only in
9 informed by such written data as would
10 indicate communication between himself
11 or from his attorney and Mr. Hylton, so
12 it didn't arise in examination-in-chief.
13 It did arise on cross-examination.

14 MR. GARCIA: The difficulty that I would have with
15 that Commissioner is that it seems -- so
16 it seems that my friend is not concerned
17 in respect of this question with the
18 written communication, she's concerned
19 with any communication that may have
20 been oral, but this witness has given
21 evidence that he had no direct
22 communication with Mr. Hylton and so it
23 seems to me that my friend must be
24 seeking to elicit some sort of hearsay
25 evidence in this re-examination in

1 answer to the question.

2 COMM. BOGLE: I will allow the question Mr. Garcia.

3 MISS CLARKE: Thank you very much. So Mr. Hutchinson,
4 perhaps you could assist everybody, look
5 back at paragraph 38, bullet three of
6 your witness statement.

7 A: Yes.

8 Q: In that, you are asking why Mr. Patrick
9 Hylton in his capacity as CEO and as a
10 major stakeholder, an essential
11 stakeholder in facilitating the
12 memorandum refused to accommodate you. I
13 simply asked, whether in posing this
14 question, were you basing your assertion
15 that he refused to accommodate you only
16 on written data?

17 MR. GARCIA: I am sorry, Commissioner, I believe that
18 my friend indicated earlier that she may
19 have misled me by referring to this,
20 into thinking that this was a question
21 that arose from examination-in- chief,
22 yet my friend is back to the statement
23 which formed the basis of his
24 evidence-in-chief in order to ask the
25 question.

1 COMM. BOGLE: I still will allow the question being
2 asked, I think it is reasonable.

3 MISS CLARKE: Yes, Mr. Hutchinson.

4 A: Yes.

5 Q: I was just asking you, looking at that
6 question, that concern that you posed,
7 whether when you posed that concern in
8 terms of Mr. Hylton's refusal to
9 accommodate you, were you only referring
10 or basing that refusal on any written
11 communication that proceeded from
12 Mr. Hylton to you or to your attorney?

13 A: Absolutely not.

14 Q: Okay. And you were -- my friend is
15 saying he is objecting even before I
16 start, I should say that I am
17 sufficiently intimidating, but
18 Mr. Hutchinson, remember in cross-
19 examination when you were asked whether
20 the letter to Mr. Patrick Hylton from
21 your attorney was written on your behalf
22 and you said yes, is that correct, the
23 letter to Mr. Patrick Hylton from your
24 attorney was written on your behalf?

25 A: Yes.

1 Q: Correct?

2 A: Yes.

3 Q: And you had said in cross-examination
4 awhile ago that you happen to know that
5 the letter was not, did not signal the
6 first time when there was direct
7 communication from your attorney to
8 Mr. Patrick Hylton. Are you, based on
9 the information you received from your
10 attorney, are you able to say whether
11 your attorney signalled that there was
12 other communication directly to
13 Mr. Patrick Hylton from your attorney?

14 MR. GARCIA: I object.

15 COMM. BOGLE: State your objection.

16 MR. GARCIA: It is plainly hearsay.

17 MISS CLARKE: The document is hearsay that has been
18 admitted.

19 MR. GARCIA: The document has been admitted.

20 MISS CLARKE: You can question on it.

21 MR. GARCIA: The document doesn't speak to such oral
22 communication.

23 COMM. BOGLE: Which document are we dealing with?

24 MISS CLARKE: This says letter dated November 2001, I
25 don't have the facility with the number.

1 MR. GARCIA: Oh I think you were speaking about the
2 first communication which was

3 September 25, 2001, Anthony Hutchinson
4 10.

5 MISS CLARKE: Yes, thank you, that is it, Anthony
6 Hutchinson 10. Should I respond or is it
7 -- because the witness has said, this
8 would have been my response, the witness
9 has said that in the course of dealing
10 with his attorney certain things were
11 represented to him, one is simply asking
12 whether a certain matter which I have
13 put was represented directly to him by
14 his attorney? Did his attorney say this
15 to him? Certainly the witness can say
16 in the course of dealing with his
17 attorney whether his attorney
18 represented a certain assertion to him.

19 COMM. BOGLE: Mr. Garcia, in view of the fact that the
20 witness did say that there were other
21 communications, but he did not have them
22 with him, I think that the question is
23 fair to find out whether or not those
24 communication or communication that he
25 is referring to was passed on to him or

1 referred to him by his attorney, so on
2 the basis of that I will allow the
3 question.

4 MISS CLARKE: Yes, Mr. Hutchinson.

5 A: It is certain that communication was
6 made with Mr. Hylton from my attorneys
7 early in 2001.

8 Q: Thank you.

9 COMM. BOGLE: How were you made aware of this?

10 A: I remember seeing a copy of a letter
11 that was written to him in the matter, I
12 remember seeing a copy of a letter that
13 was written to him and that was how I
14 determined in my own understanding.

15 MR. GARCIA: I object to that.

16 MISS CLARKE: I am sorry, I doubt whether my friend
17 can object to an answer, a question may
18 be objected to, a response cannot be
19 objected to.

20 COMM. BOGLE: Let me follow up my question with
21 another question first. Do you have a
22 copy of such a letter.

23 A: It is on my file, one moment.
24 (Witness looks through documents)

25 COMM. BOGLE: You do have that letter?

1 A: I am seeing a number of letters to Refin
2 Trust, I am just looking for one
3 specifically addressed to Mr. Hylton.
4 MISS CLARKE: Mr. Chairman, I am again intimidated by
5 the volume of the folder that the
6 witness is looking through, I wonder
7 whether we would return to this if time
8 permits while I proceed because I notice
9 from where I sit he is going through
10 page by page, it might take him some
11 time?
12 COMM. BOGLE: The thing is if he doesn't find it.
13 A: As I said I am not seeing the one to
14 Mr. Hylton but I am seeing several to
15 Refin Trust from around that date, but
16 that is why I am going through looking.
17 COMM. BOGLE: So basically what he has said is
18 unsubstantiated.
19 MISS CLARKE: That is for you Mr. Chairman, if he
20 comes forward with something and it is
21 for the benefit of all then I am sure...
22 COMM. BOGLE: So we move on.
23 MISS CLARKE: Because much of what he has said is
24 probably going to be unsubstantiated.
25 With the greatest of respect I don't

1 believe that the witness in his initial
2 answer was only referring to written
3 data but I move on.

4 A: Okay, sir, should I read it.

5 COMM. BOGLE: What is date of that letter.

6 A: January 16, 2001.

7 COMM. BOGLE: Go ahead and read it.

8 MR. GARCIA: Can we see it?

9 A: From Ballantyne Beswick and company.

10 COMM. BOGLE: You would like to see it first.

11 MR. GARCIA: Yes.

12 COMM. BOGLE: Pass it to him.

13 (Document shown to witness)

14 (Letter shown to Mr. Garcia)

15 Okay. At this point we will be

16 accepting that as an exhibit, so could
17 you please read it, that would be AH49.

18 A: From Ballantyne Beswick dated 16th of
19 January 2001.

20 **Refin Trust Limited.**

21 **Attention Mr. Patrick Hylton,**

22 **Dear sir**

23 **Re: Transfer of property, May Day**

24 **Plantation.**

25 **I have been trying in vain for the last**

1 four weeks to make telephone contact
2 with you. My assistant has left several
3 messages and it seems all methods to
4 make contact with you have failed.
5 In my last telephone conversation with
6 the Minister of Education he informed me
7 that he spoke with you about the
8 proposed acquisition of one of the lots
9 re the above captioned subdivision for
10 the May Day High School in Mandeville.
11 It is the very nature of this
12 acquisition that I need to discuss with
13 you, so as to finalize the debt owed by
14 my client to FINSAC Limited.
15 I ask that you treat this matter with
16 the utmost urgency. I will continue to
17 attempt to make contact with you
18 verbally by telephone.
19 Yours faithfully
20 Richard Bonner.

21 COMM. BOGLE: Can you make some copies of it. AH49,
22 make some copies.

23 MR. GARCIA: Can I ask some questions?

24 COMM. BOGLE: You may after she is finished. Go ahead
25 Miss Clarke.

1 MISS CLARKE: Thank you Mr. Chairman. Could AH48 be
2 put in the witness' hand, that is the
3 letter that was introduced on cross-
4 examination from the Ministry of
5 Education to JRF I believe, Mrs. Velda
6 Grant-Taylor.

7 A: Yes.

8 Q: Do you have it?

9 A: Yes, ma'am.

10 Q: That paragraph that you were asked to
11 read, I believe you were asked to read
12 the last two paragraph on the last page
13 of the letter?

14 COMM. BOGLE: No, no, AH48, no I don't remember him
15 reading that.

16 MISS CLARKE: Oh this was the one that was put in, I
17 am just now going to ask him to read it,
18 I am sorry. Could you read or let me
19 read, page two, and this letter is dated
20 April 10, 2007, page two the first
21 paragraph on that first page.

22 **The Ministry has now learned that the**
23 **parcel of land will be auctioned**
24 **shortly. This is most regrettable as if**
25 **sold to another entity it will deprive**

1 the students of a playfield that has
2 been in use for several years. The
3 Ministry of Education and Youth is still
4 desirous of acquiring the land and will
5 do so through cash payment rather than
6 land bonds. We ask that the land be not
7 offered for sale by auction but rather
8 be sold to the Ministry at a value to be
9 agreed with the Commissioners of
10 Valuation and Land.

11 To facilitate easy communication on this
12 matter, you may contact us and certain
13 numbers are given.

14 I am going to ask you to look at AH32
15 now.

16 A: Yes ma'am.

17 Q: AH32, is that letter dated December 18
18 2006?

19 A: Yes ma'am.

20 Q: And based on your looking at these two,
21 AH32 says:

22 This is to advise that your proposal to
23 settle your indebtedness through
24 splintering and sale of lots at May Day
25 is not approved and JRF is writing this

1 letter and now indicating how much you
2 owe as at 2006 December?

3 A: Yes.

4 Q: Just asking for the record, this letter
5 that you are looking at now, Exhibit 48,
6 AH48, Mr. Hutchinson, in relation to the
7 offer to purchase by cash by the
8 Government, first question is, would it
9 have come after JRF signalled that it
10 was not interested in your proposal?
11 AH32, this letter AH32 would have come
12 in terms of a date after it.

13 A: That is correct, it would have come
14 after it.

15 MR. GOFFE: Could you clarify which proposal we are
16 speaking about here?

17 MISS CLARKE: The proposal indicated in AH32, that is
18 the one, that is as far as I have
19 clarified it, the one referred to JRF in
20 AH32 so this letter came after.

21 A: This letter came after, yes.

22 Q: Where the Ministry said it was now
23 prepared to pay by cash, it came after?

24 A: That is correct.

25 Q: And is it also correct, based on that

1 letter that is attached to AH48, there
2 is a letter attached to it dated July
3 24, 2002?

4 A: Yes.

5 Q: Where Mr. Burchell Whiteman is writing
6 at paragraph two of that 2002 letter to
7 say:

8 That I have been informed by the
9 attorney-at-law representing
10 Mr. Hutchinson that you are willing to
11 sell the property for \$3.5M and that you
12 will accept land bonds in that amount
13 provided that the bonds paid to Joslin
14 Jamaica Limited be secured with interest
15 and that we seek as purchaser and vendor
16 to have the relevant transfer and stamp
17 duty waived. We are pursuing the matter
18 of the condition with the Ministry of
19 Finance and Planning and expect to be in
20 touch with you very shortly to finalize
21 the arrangement.

22 Now, this letter AH48 to which that one
23 I just read is attached, is just
24 confirming, coming almost five years,
25 where the Government agreed to pay by

1 cash, it's coming almost five years
2 after the Ministry acknowledged that
3 there was a proposal on the table to pay
4 with bonds.

5 A: Yes.

6 Q: Five years later the Ministry is
7 agreeing to pay JRF by cash?

8 A: Yes.

9 Q: And this is after JRF had signalled that
10 they had refused your proposal?

11 A: Absolutely.

12 Q: Now, look at AH47, that letter dated
13 October 29, 2007?

14 A: Yes, ma'am.

15 Q: There was a question put to you that I
16 just want some clarification on. You
17 were asked if you agreed with the last
18 paragraph?

19 A: Yes.

20 Q: **We regret the length of time that it has**
21 **taken to complete the transaction but we**
22 **are sure you will accept that much of**
23 **the delay could be attributed to your**
24 **previous legal representative.**

25 You were asked if you agreed with the

1 assertion at the last paragraph and you
2 indicated no, and you wanted to explain
3 as to why you were indicating no, it was
4 not a matter of just a bare no?

5 A: Because what stopped that issue was that
6 we couldn't get the issue of interest
7 addressed. It was not to do with because
8 of previous legal representative and I
9 told Mr. Lauriston Wilson as much.

10 Q: When you say the issue of interest, what
11 interest?

12 A: The interest on the bond, in other words
13 the Ministry of Finance up to this day
14 did not address the issue as to interest
15 on the bonds.

16 Q: Okay thank you Mr. Hutchinson.

17 I have no further questions of this
18 witness, Mr. Chairman.

19 COMM. BOGLE: Mr. Garcia, Mr. Goffe, the new exhibit,
20 would you like to...

21 MISS CLARKE: That's 49?

22 COMM. BOGLE: AH49.

23 MR. GARCIA: Mr. Hutchinson, did you receive any
24 communication indicating that Mr.
25 Hylton was personally handling your

1 matter in January of 2001?

2 A: No, I didn't.

3 Q: No.

4 A: Except this one.

5 Q: Well, this letter doesn't indicate, it
6 is just merely addressed to his
7 attention, you agree?

8 A: I can only say that my attorney on
9 several occasions indicated that he just
10 cannot get through to Mr. Hylton.

11 Q: And you would agree with me that this
12 letter is indicating that Mr. Hylton and
13 Mr. Bonner were not having verbal
14 communication at the time?

15 A: Not verbal communication.

16 Q: Earlier when you read the letter -- but
17 I would like to draw your attention to
18 the very end. This letter is copied to
19 a number of persons, could you indicate
20 the names and titles of the persons
21 copied on the letter.

22 A: Miss Dianne Davidson, Loan Recovery
23 Manager; Mrs. Andrey Robinson G.M.
24 Asset Manager; Mrs. O. Patricia Spence,
25 Loan Recovery Manager, and myself.

1 Q: And you are aware from the documents in
2 your possession that Miss Davidson,
3 Mrs. Robinson and Ms. Spence were
4 officers of REFIN Trust Limited?

5 A: Yes.

6 Q: And you are also aware from the
7 documents in your possession that they
8 had some responsibility for your matter,
9 is that right?

10 A: Yes.

11 Q: Mrs. Robinson in particular?

12 A: Well, I saw the name before in previous
13 documents. The same person that I was
14 supposed to have met with and I didn't
15 meet with.

16 Q: Yes, you agree that it was in
17 February 2002, over one year after this,
18 letter that Mr. Bonner wrote to
19 Mr. Hylton advising of the reasons for
20 his refusal to deal with Mrs. Robinson?

21 A: Advising of the reasons?

22 Q: To deal with Mrs. Robinson.

23 A: Yes, I recall that letter.

24 Q: So at this time, January 2001, so far as
25 you are aware there was no communicated

1 refusal to deal with Mrs. Robinson?

2 A: I can't say, I have no evidence of it, I

3 have no evidence of communication to

4 Mr. Hylton.

5 Q: So far as you are aware there was none

6 at the time?

7 A: No.

8 MR. GARCIA: Those are my questions, sir.

9 COMM. BOGLE: Okay. Mr. Goffe?

10 CROSS-EXAMINATION BY MR. GOFFE

11 MR. GOFFE: Just a couple of questions.

12 Mr. Hutchinson, in the second paragraph

13 of the letter it says 'he informed me',

14 who is 'he' in this letter?

15 A: Which letter?

16 Q: The same letter.

17 COMM. BOGLE: AH 49.

18 MR. GOFFE: "He informed me...". Could you tell me

19 who is that 'he' please?

20 A: Okay that would have been the Minister

21 of Education.

22 Q: And in the final sentence in that

23 paragraph it says **"It is the very nature**

24 **of this acquisition that I need to**

25 **discuss with you so as to finalize the**

1 debt owed by my client to Finsac
2 Limited."

3 A: Yes.

4 Q: Is this letter saying that the only way
5 that the debt to Finsac could have been
6 finalized is if the property was sold to
7 the Ministry of Education?

8 A: We were trying to get - because we were
9 told that there was a cash problem so we
10 were trying to get...

11 Q: Sorry, who had the cash problem?

12 A: We were told that the Government had a
13 cash problem and therefore we were
14 trying to get the parties to agree to a
15 non-cash transaction so it was a swap.

16 Q: You have not answered my question, sir?

17 A: Come again.

18 COMM. BOGLE: I think the witness might have
19 misunderstood the question based on the
20 reply given so if you could ask the
21 question again.

22 MR. GOFFE: Sure. Look at the sentence right here.

23 A: **"It is the very nature of this**
24 **acquisition that I need to discuss with**
25 **you, so as to finalize the debt owed by**

1 **my client to Finsac Limited".**

2 Q: The question I have asked you, your
3 attorney seems to be tying the so called
4 finalizing of the debt with the sale to
5 the Ministry of Education?

6 A: Yes.

7 Q: The question I am asking you is, was it
8 that the only way that you could repay
9 the debt was to sell the property to the
10 Ministry of Education?

11 A: I am saying that was a major cornerstone
12 of our proposal, yes.

13 Q: No, I didn't ask you if that was a major
14 cornerstone. I am asking you if that
15 was the only way that you could
16 finalize?

17 A: I am saying the only way we could
18 finalize the debt is with that sale and
19 the others.

20 Q: Sorry, the property could only be sold
21 to the Ministry of Education, that is
22 what I am asking you know?

23 A: No, but what I am trying to say to you
24 is that he wanted to meet with
25 Mr. Hylton because as I said before...

1 COMM. BOGLE: Just a minute. I think you are probably
2 going on the wrong point. The question
3 I think that Mr. Goffe is asking is,
4 could you have sold the land or offered
5 the land to somebody else?
6 A: That's what I am trying to explain.
7 COMM. BOGLE: Well, it is yes or no. In other words,
8 could you have offered it to somebody
9 else?
10 A: Remember I said earlier, sir, we could
11 have offered it to somebody else but it
12 was being used as a - I mean, if you see
13 the nature of the place it is being used
14 as a playfield. It would have been much
15 more difficult selling that piece of
16 land to somebody else, it would have
17 been much more difficult.
18 COMM. BOGLE: All right.
19 MR. GOFFE: I have no further questions, Mr.
20 Chairman.
21 COMM. BOGLE: At this time then we will adjourn for
22 the day. Tomorrow we will convene and
23 commence at 10:30 a.m. and we will go
24 through until 6:30, from 10:30 in the
25 morning until 6:30 in the afternoon and

1 that will facilitate Dr. Paul Chen-Young
2 via video conferencing.

3 MISS CLARKE: Mr. Chairman, my friend wants to know,
4 not me, how many breaks we will be
5 afforded?

6 Laughter

7 COMM. BOGLE: The Secretary has just asked me to
8 explain that the 10:30 start is because
9 of the time difference where
10 Dr. Chen-Young is. And regarding that
11 question, Miss Clarke, we will review it
12 tomorrow.

13 MISS CLARKE: Very well.

14 COMM. BOGLE: So tomorrow morning ladies and gentlemen
15 10:30. Thank you. Have a good
16 afternoon.

17 Mr. Hutchinson, we reserve the right to
18 recall you just in case, but you are
19 excused.

20 A: Okay thank you sir.

21

22 ADJOURNMENT

23

24

25