

# GAYLE NELSON & COMPANY

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19<sup>th</sup> January, 2011

**The Commission of Enquiry into the Collapse  
of Financial Institutions in Jamaica in the 1990s**

The Jamaica Pegasus Hotel  
81 Knutsford Boulevard  
Kingston 5

**Attention: The Secretary to the Commission  
Mr. Fernando DePeralto**

Dear Sirs:

**Re: Bentley Rose, Macro Finance Corporation Ltd & Benros Company Limited**

Herewith please find my promised submission in relation to The Moneylending Act. I should be much obliged if you would provide Mrs. Sandra Minott-Phillips, Attorney-at-Law representing Jamaican Redevelopment Foundation with a copy of this submission.

As regards the copies of documents sent to you earlier today while I was out of office, I have noted that, for the most part, my staff was unable to find copies of the actual mortgages, and you were sent copies of the titles instead. The rationale is that the mortgages are registered on the said titles thereby establishing the fact of the mortgages.

Yours truly,  
**GAYLE NELSON & COMPANY**

PER: 

**GAYLE A. V. NELSON**

Encls.

**COMMISSION OF INQUIRY INTO THE COLLAPSE OF FINANCIAL INSTITUTION  
IN JAMAICA IN THE 1990S**

**SUBMISSION ON BEHALF OF BENTLEY ROSE, BENROS COMPANY LIMITED, and  
MACRO FINANCE CORPORATION LIMITED**

**THE MONEY LENDING ACT**

The Act makes it clear in Section 13, which institutions are exempted from the Act. Jamaican Redevelopment Foundation does not fall into any of the categories set out in the Act. The false assumption being made for the benefit of Jamaican Redevelopment Foundation is that Section 14 of the said Act provides them with an exemption.

Section 14 reads as follows:

“(1) Where the Minister is satisfied that it is in the public interest so to do, he may by order declare:-

- (a) any loan or contract or security for the repayment of a loan specified in that order; or
- (b) any loan made, or any contract entered into, or any security for the repayment of a loan given by any person specified in that order,

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to be exempted from the provisions of this Act, subject to such terms and conditions as may be specified in the order.

(2) Where there has been a breach of any term or condition specified in an order under subsection (1), or any fraudulent act in respect of the exemption obtained thereby, or where such order has been obtained by misrepresentation, whether innocent or otherwise, the Minister may by order revoke that exemption but without prejudice to the rights of any innocent third parties”.

(It may be noted that in relation to Section 13(e) of the Money Lending Act the rate of interest has now been increased from twelve and one-half per centum (12 1/2%) per annum to twenty five per centum (25%) per annum).

**COMMENT:** As regards Section 14 it is clear that the exemption in that Section only applies to each individual loan “where the Minister is satisfied that it is in the public interest”. Further, “where there has been a breach of any term or condition specified in an Order under Subsection (1)” etc., “the Minister may by order revoke that exemption”. So Jamaican Redevelopment Foundation is not an institution which is exempted under the Money Lending Act. This institution must seek and obtain from the Minister an exemption for each and every loan or contract or security. It is readily apparent that Jamaican Redevelopment

Foundation has not done that and it is a misinterpretation of the Act to say that they have blanket exemption.

Further under Section 8 of the Money Lending Act, Jamaican Redevelopment Foundation is obliged to provide the borrower with a note or memorandum in writing of the contract and a copy thereof must be delivered or sent to the borrower within seven (7) days of the making of the contract, failing which the contract is not enforceable. There is no evidence that Jamaican Redevelopment Foundation has acted in accordance with the Money Lending Act in relation to Mr. Rose or his companies.

**In addition, Section 8 Subsection 2 recites:**

“(2) The note or memorandum aforesaid shall contain all the terms of the contract, and in particular shall show the date of the contract, and in particular shall show the date on which the loan is made, the amount of the principal of the loan, and the interest charged on the loan expressed in terms of a rate per centum per annum”.

**COMMENT:** There is no evidence that JRF has complied with Section 8(2) of the Money Lending Act.

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Further, Section 9 of the said Act makes illegal any contract which provides directly or indirectly for the payment of compound interest, and Section 12 of the said Act makes the charging of costs by the Lender for the granting of the loan or proposed loan, illegal. So when JRF refused to provide Mr. Rose with a statement of account, the logical conclusion must be that illegal interests and/or illegal charges are being concealed.

Further, if as alleged, the Minister of Finance attempted to regularize the situation after the debts had been transferred to FINSAC and/or Dennis Joslin Limited and/or Jamaican Redevelopment Foundation Inc. by retroactively providing exemptions to the said non-exempted entities, such an exercise was not lawful, and in the result the said transfers were and are illegal.

In addition if, as was reported in the news media at the relevant time, the debts were purchased by JRF greatly discounted, it could not have been intended for the purchasers of the debts to recover from the debtors the amount of principal outstanding as well as the interest purportedly accrued at the interest rate which the original bank was charging, and it would not be lawful for any such entity to recover from the debtor interest at an even higher rate than the original bank had been charging.

Dated the 19<sup>th</sup> day of January 2011

GAYLE NELSON & COMPANY

Per:   
GAYLE A.V. NELSON