

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
TUESDAY, JANUARY 12, 2010

PRESENT WERE:

THE COMMISSION

The Hon. Mr. Justice Boyd Carey (Ret'd) - Chairman
Mr. Charles Ross - Member
Mr. Worrick Bogle - Member

COUNSEL TO THE COMMISSION

Hon. R.N.A. Henriques OJ, QC, LL.M.

SECRETARY TO THE COMMISSION

Mr. Fernando DePeralto

MARSHALLING THE EVIDENCE

Mrs. Kelley Wong-Henry - Attorney-at-Law

REPRESENTING DR. OMAR DAVIES

Mr. Kevin Powell - Attorney-at-Law
Ms. S. Gibbs - Attorney-at-Law

REPRESENTING JAMAICA REDEVELOPMENT FOUNDATION

Mrs. Sandra Minott-Phillips - Attorney-at-Law
Mr. Gavin Golfe - Attorney-at-Law

REPRESENTING PATRICK HYLTON

Mr. Dave Garcia - Attorney-at-Law

REPRESENTING DEBTOR 18

Mr. Anthony Levy - Attorney-at-Law

REPRESENTING MISS TYNDALL

Mrs. Nicole Foster-Pusey - Attorney-at-Law

REPRESENTING FINSAC

Mr. Lackston Robinson - Attorney-at-Law

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Tuesday, January 12, 2010.

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Commencing at 9:42 a.m.

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CHAIRMAN:

Good morning ladies and gentlemen,
welcome to the continued session of this
Commission of Enquiry which is now in
session. Mr. Robinson?

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MR. ROBINSON:

Chairman...

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CHAIRMAN:

Would you be good enough to announce the
counsel who are present for the records,
please. Just ask them their names.

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MR. ROBINSON:

You want to announce yourselves?

13

MRS. FOSTER-PUSEY: Nicole Foster-Pusey...

14

CHAIRMAN:

Would you mind rising?

15

MRS. FOSTER-PUSEY: Nicole Foster-Pusey, representing

16

Miss Shirley Tyndall.

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MR. POWELL:

I am Kevin Powell, with me is S. Gibbs,
we are instructed by Micheal Hylton and
Associates, and we are representing
Dr. Davies.

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MR. GARCIA:

Dave Garcia, representing Patrick Hylton
Sandra Minott-Phillips; and Gavin Goffe,
instructed by Myers, Fletchers and
Gordon representing Jamaica.

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2 Tuesday, January 12, 2010.

3 Commencing at 9:42 a.m.

4 CHAIRMAN: Good morning ladies and gentlemen,
5 welcome to the continued session of this
6 Commission of Enquiry which is now in
7 session. Mr. Robinson?

8 MR. ROBINSON: Chairman...

9 CHAIRMAN: Would you be good enough to announce the
10 counsel who are present for the record,
11 please. Just ask them their names.

12 MR. ROBINSON: You want to announce yourselves?

13 MRS. FOSTER-PUSEY: Nicole Foster-Pusey...

14 CHAIRMAN: Would you mind rising?

15 MRS. FOSTER-PUSEY: Nicole Foster-Pusey, representing
16 Miss Shirley Tyndall.

17 MR. POWELL: I am Kevin Powell, with me is S. Gibbs,
18 we are instructed by Micheal Hylton and
19 Associates, and we are representing
20 Dr. Davies.

21 MR. GARCIA: Dave Garcia, representing Patrick Hylton
22 Sandra Minott-Phillips; and Gavin Goffe,
23 instructed by Myers, Fletchers and
24 Gordon representing Jamaica
25 Redevelopment Foundation Inc.

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3 CHAIRMAN: Thank you. There is counsel at the back
4 there. I am afraid you have to come
5 forward to speak.

6 MR. LEVY: Anthony Levy, representing DEBTOR 18

7

8 MR. ROBINSON: And I am Lackston Robinson, representing
9 FINSAC and I am instructed by the
10 Director of Crown Proceedings. May it
11 please you Mr. Mr Commissioner and
12 Members of the Panel, on the last
13 occasion Mr. Campbell was of the
14 understanding -- he gave an undertaking
15 to the Commission to do research with a
16 view to providing answers to the
17 questions posed by Mr. Braham and the
18 Commission. It is with regret Mr.
19 Commissioner, that Mr. Campbell has not
20 completed his research and he is not
21 prepared to answer the questions that he
22 was asked to research. We recognise the
23 importance of the task that the
24 Commission has to perform and we also
25 recognise that it has to do so in

1 reasonable time. We are committed to
2 assisting you, sir, in fulfilling your
3 mandate. Nevertheless, we are
4 constrained this morning to request
5 further time for Mr. Campbell to
6 complete his research so that he can
7 adequately assist the Commission.
8 I spoke to Mr. Campbell this morning and
9 he intimated to me that he would require
10 another month or so because he said that
11 in addition to the questions asked and
12 the research that he was asked to do, he
13 was also asked to do further research to
14 assist Miss Tyndall. So therefore, I
15 think that is added responsibility that
16 he has. He is saying that a month would
17 be a reasonable time within which he
18 could complete his task.

19 (Chairman confers with Commissioners) If
20 CHAIRMAN: we were to harken to what you said, Mr.
21 Robinson, this Enquiry would go on into
22 we know not when and clearly that is
23 wholly unacceptable. It seems to us that
24 Mr. Campbell has to endeavour to obtain
25 assistance to complete his

1 research long in advance of any four-
2 week period; that is far too long. We
3 must say at the moment that he ought to
4 concentrate on what the Commission
5 asked him to do. What the witness has
6 asked him to do is something that must
7 take secondary place, I should suppose.
8 But I think you perhaps should
9 reconsider this lengthy period for which
10 you asked because what you are doing
11 will bring this Commission to a halt.
12 This is important information and if the
13 thing is to proceed in a structured way
14 and not in a fragmented way then we need
15 the information as early as possible. I
16 mean, I do not quite understand what is
17 the difficulty. What is he looking for:
18 Hard drive, software, documents, what?
19 Can you help us? If there are minutes
20 he hasn't got to read them. I am sure he
21 has people in the office who can read
22 them and give us a synopsis.

23 MR. ROBINSON: Two things sir: My understanding from
24 Mr. Campbell is that as far Miss Tyndall
25 is concerned that he was not asked by

1 the witness to do the research. My
2 understanding is that he was asked by
3 you to do the research so as to assist
4 Miss Tyndall. And the second point is
5 that the documents which he is searching
6 for, he says that there are about ten
7 thousands boxes and he has to search for
8 the information in various boxes.

9 CHAIRMAN: So what, the boxes are just cast down
10 there, they are not classified? What
11 kind of archive is that? So they are
12 just thrown around like in the RM Court
13 in Montego Bay?

14 MR. ROBINSON: That came to my mind when you asked the
15 question awhile ago.

16 CHAIRMAN: They were thrown into a basement and the
17 sea came in and washed them away?

18 MR. ROBINSON: That is the difficulty, he has to go
19 through some many boxes to locate the
20 information, not that he is going
21 through to assess them so to speak, but
22 I think it is a big task and I
23 understand he is trying his best. I
24 don't know about getting assistance, he
25 has persons there but I don't know if

1 even with the assistance he has there he
2 could complete it in a shorter period.
3 CHAIRMAN: You have something called overtime, do
4 they not? You have 24 hours, you can
5 work a shift program, you can do all
6 sorts of things. You know what is
7 remarkable, if you want to do it, you
8 can do it; what you want is the will.
9 MR. ROBINSON: And the money.
10 CHAIRMAN: Oh, well. When you are addressing the
11 Commission that is talking about
12 meltdown, money is a scarce commodity.
13 MR. ROBINSON: I understand the position sir, we are
14 going to do our endeavour best.
15 CHAIRMAN: One month is impossible, we could never
16 agree to one month. So if you want a
17 five-minute break to go and think about
18 it and come back and give a more
19 realistic assessment...
20 MR. ROBINSON: You see, the difficulty sir, is that you
21 may give us two weeks and we can't
22 complete it. Let me speak to Mr.
23 Campbell.
24 CHAIRMAN: You might well come back here in the one
25 month and tell us the same thing.

1 MR. ROBINSON: I think that is the...

2 CHAIRMAN: You can't guarantee a thing, you are
3 just speculating, so go and reconsider,
4 speak again with Mr. Campbell.

5 MR. ROBINSON: Let me speak with Mr. Campbell and see
6 if he is going to reduce the period.
7 Just a moment.

8 MR. LEVY: Mr. Chairman, if I might offer some
9 assistance to Mr. Campbell, he was also
10 supposed to find the documents which he
11 couldn't find when I was cross-examining
12 him, these documents, he may get
13 assistance from his attorneys because
14 they ought to have been disclosed in a
15 lawsuit against Refin Trust Limited. So
16 if his attorneys can find them, because
17 they ought to have been disclosed -- I
18 haven't seen them but they ought to be
19 have been disclosed.

20 Secondly, he might be able to assist
21 Miss Tyndall if he has a spare
22 calculator, I think it would help her.
23 Thank you, Mr. Chairman.
24 Pause.

25 (Mr. Robinson confers with Mr. Campbell)

1 MR. ROBINSON: May it please you, Mr. Campbell has
2 advised me that the information is
3 indeed classified; he has gone through
4 most of boxes; he has gotten about
5 60-70% of the documents so far. He has
6 to go through to find some information,
7 for example, to say if you asked him
8 about that valuator who did the
9 valuation, he can't find the valuation
10 itself but he has to go through the
11 minutes to see; so it takes a
12 considerable amount of time but he says
13 by the end of the month he should be
14 complete with the research and he would
15 endeavour to send you some information,
16 some documents before then.

17 CHAIRMAN: That's two weeks' time.

18 MR. ROBINSON: A little over two weeks, Chairman.

19 CHAIRMAN: We are minded to give a two-week
20 period, we don't wish to extend our
21 time.

22 MR. ROBINSON: It maybe unrealistic, sir.

23 CHAIRMAN: You know, when we started out it was
24 impossible but now we are coming into
25 the realm of possibility. See what a

1 little thinking can do?

2 MR. ROBINSON: This is indeed stretching it, Chairman.

3 CHAIRMAN: No, we are not stretching anything at
4 all, two weeks is good in these
5 circumstances. You must bear in mind
6 you know, Mr. Robinson, that a great
7 many people were written to a very long
8 time ago seeking information and the
9 attitude was one of, 'listen we don't
10 want to tell you one thing', so you can
11 imagine. They were completely disdainful
12 -- I don't know if that is an
13 appropriate term to use, but ..

14 MR. ROBINSON: As far as Mr. Campbell is concerned that
15 is certainly not the case.

16 CHAIRMAN: I am not suggesting that Mr. Campbell
17 is doing any such thing; I am speaking
18 generally about the approach.

19 MR. ROBINSON: I think Mr. Campbell underestimated
20 what he was required to do here because
21 when I spoke to him initially and
22 advised him that he was not adequately
23 prepared he was adamant that he was
24 going to come, and having come and
25 having seen what he has to undergo he

1 recognised that he needed far more
2 information. So I think it was his
3 underestimation of what he was required
4 to do. So we will try but, sir, I will
5 say having spoken to Mr. Campbell I
6 think the end of the month, a little
7 over two weeks is just about the right
8 time. And I implore you to allow him
9 so that when he comes on the next
10 occasion he can give all the information
11 that is required rather than coming
12 here and not being able to answer the
13 questions.

14 CHAIRMAN: Are you giving a guarantee? If you are
15 giving me a guarantee I am quite willing
16 to accommodate that but if you are not
17 giving me a guarantee I can't see what
18 you are asking for. If you can give us a
19 guarantee we have no problem. It is
20 pretty obvious what the result must be.
21 We are constrained to say that two weeks
22 is out, give us the absolute guarantee.

23 MR. ROBINSON: What that means sir, you recognise that
24 then that two weeks may be inadequate.

25 CHAIRMAN: I don't recognise anything at all, we

1 won't allow the thing to drag on.

2 MR. ROBINSON: If we tell him two weeks sir, I don't

3 think he will be able to complete the

4 thing in two weeks.

5 CHAIRMAN: You can't give us a guarantee for the

6 period you are you putting forward?

7 MR. ROBINSON: It is very likely.

8 CHAIRMAN: It is either a guarantee or not a

9 guarantee, not a near guarantee.

10 MR. ROBINSON: Well, to give you an undertaking is a

11 serious responsibility and we really

12 don't want to do that. While I am not

13 doing the work myself but I would say,

14 having spoken to him...

15 CHAIRMAN: Sorry, before you go any further, Mr.

16 Levy was suggesting that there is

17 information which ought already to have

18 been available because he has disclosed

19 that some action has been filed.

20 MR. ROBINSON: The information Mr. Levy is speaking

21 about, sir, is just a small fraction of

22 what he has, perhaps a small portion and

23 maybe Mr. Campbell has that information

24 already. There is a lot more information

25 that he has to search for.

1 CHAIRMAN: You have gotten 70%.

2 MR. ROBINSON: Between 60-70%.

3 CHAIRMAN: So it is only 30% you are talking being
4 about.

5 MR. ROBINSON: I am saying to you he has found the
6 documents, 60-70% of the documents he
7 has located but he has to go through to
8 find the information, collate it and
9 pass it to you. So I gave you the
10 example of the valuation. He cannot find
11 the valuation itself so he has to go
12 through the minutes to see if there is
13 any reference to the valuator.

14 CHAIRMAN: Mr. Robinson, what we are disposed to do
15 today is to allow you until the 26th,
16 which is a two-week period, to come and
17 bring what you have unless of course,
18 you give us a guarantee in which case we
19 would resume on the 2nd of February, and
20 then we would hear your witness on the
21 2nd. If we have a guarantee for the 2nd,
then he comes on the 2nd, brings in all that he must bring or of
22 course sending it in advance or whatever
23 -- you appreciate you could send it in
24 advance?
25

1 MR. ROBINSON: Yes. We intend that what information we
2 have we are going to send in advance
3 definitely. The documents we have we are
4 going to send it in advance. By the
5 26th sir, we should be able to tell you
6 definitively where we are and whether or
7 not we can complete it.

8 CHAIRMAN: Well, tell *you what we will do*, we are
9 putting it down to resume on the 26th;
10 send what you have and we will see. So
11 that you have a two-week period.

12 MR. ROBINSON: I would suggest sir, that we by the 26th
13 if we are unable to give you a guarantee
14 that we will complete everything by the
15 26th then we could go on the 2nd and
16 proceed rather than coming here on the
17 26th, but we should be able to tell you
18 definitively by the 26th or before the
19 26th where we are and then we could
20 supply you with everything and we come
21 on the 2nd.

22 CHAIRMAN: It seems this is a hit and miss.

23 MR. ROBINSON: No sir, because we may come on the 26th
24 and we don't want to come back here and
25 ask for another adjournment if we are

1 not prepared to go on the stand and to
2 answer some questions.

3 CHAIRMAN: If we have no guarantee whatever that
4 you will be ready on 2nd...

5 MR. ROBINSON: That is what I am telling you, that by
6 then we should be able to tell you.

7 CHAIRMAN: When?

8 MR. ROBINSON: By the 26th or before the 26th we should
9 be able to say exactly where we are.
10 That is two weeks from now.

11 CHAIRMAN: You want a week to tell us when you will
12 be ready? You want a week? You are
13 telling us now that you will be ready
14 on the 2nd?

15 MR. ROBINSON: What we will do, sir, within a week give
16 you some indication, in a week's time
17 definitely, where we are.

18 CHAIRMAN: You see, one of the problems is the
19 scheduling. All the schedules we have
20 produced so far are really written in
21 nothing.

22 MR. ROBINSON: I understand the difficulty.

23 CHAIRMAN: We make a schedule and before the ink is
24 dry we have to change it.

25 MR. ROBINSON: I understand the difficulty.

1 CHAIRMAN: We have made the arrangements and
2 counsel who are here have cases to do.

3 MR. ROBINSON: I understand the difficulty but...

4 CHAIRMAN: Can you give us in a week something
5 definite?

6 MR. ROBINSON: We will endeavour to do that, sir. We
7 will endeavour to do that.

8 CHAIRMAN: You see, we don't want a loose
9 arrangement, we want to know
10 definitively what it is we are doing.

11 MR. ROBINSON: That is what I am saying. I was asking
12 whether or not in a week's time we can
13 tell you definitively.

14 CHAIRMAN: We are casting in all our minds a modus,
15 I am not suggesting anything definitive,
16 I am thinking out aloud how we can find
17 a solution to this.

18 MR. ROBINSON: Could we say the 2nd definitively, we
19 complete it then and we come the 2nd as
20 was proposed and we come on the 2nd with
21 all that we have. We will just come on
22 the 2nd.

23 CHAIRMAN: No, the 2nd must mean you come with
24 everything. If you are not coming with
25 everything you come tomorrow.

1 MR. ROBINSON: Well...

2 CHAIRMAN: And we start. I am not trying to be
3 difficult, we are trying to...

4 MR. ROBINSON: I quite understand.

5 CHAIRMAN: ...to get the Commission moving as fast
6 as possible...

7 MR. ROBINSON: I crave your indulgence.

8 CHAIRMAN: Certainly.

9 MR. ROBINSON: We are saying the 2nd definitively, sir,
10 everything.

11 CHAIRMAN: So it is understood that we will allow
12 you to go away and obtain the
13 information, supply it and be in
14 attendance here.

15 MR. ROBINSON: On the 2nd.

16 CHAIRMAN: On the 2nd of February.

17 MR. ROBINSON: 2nd, yes. Provided the information is
18 there, as long as it is there.

19 (Laughter).

20 As long as it is there; we can't bring
21 what we don't have. All we have, we will
22 produce all we have to answer all the
23 questions.

24 CHAIRMAN: Please, please can we have no
25 interruption.

1 MR. ROBINSON: Yes, we will provide all the information
2 we have, everything we have on the 2nd.
3 So that means we will go through, by
4 then we would have gone through all the
5 documents, and produce to the Commission
6 the information with all the documents
7 we have.

8 CHAIRMAN: If you haven't got it you haven't got
9 it, you can't manufacture it.

10 MR. LEVY: Not only manufacture it, conceal it.

11 CHAIRMAN: It is a matter of regret that the New
12 Year dawned bright and cold and we were
13 hoping we could go forward with speed
14 and heat but that is not to be for the
15 reason that the witness who was
16 scheduled to be heard is unable to bring
17 us information. So this Enquiry is
18 adjourned until next Tuesday; we stand
19 adjourned until next Tuesday, the 19th
20 of January. We can all go home and
21 sleep. We will have to reschedule
22 witnesses for next week, obviously not
23 Mr. Campbell and obviously not
24 Mr. Hylton because they require the same
25 data -- that would be right, Mr. Garcia?

1 You require the same material?

2 MR. GARCIA: I think Mr. Chairman, there is an extent

3 to which that will depend on the

4 questions that are posed. I imagine

5 that it would be possible for Mr.

6 Hylton to give his evidence but

7 depending on how the questions unfold we

8 could end up in the same difficulty of

9 needing further investigations to be

10 done.

11 CHAIRMAN: Right, the point I am making...

12 MR. GARCIA: So I think it could be unwieldly.

13 CHAIRMAN: So as I say the best thing is to allow

14 Mr. Hylton to give evidence after Mr.

15 Campbell has completed his exercise.

16 MR. GARCIA: Mr. Chairman, with regret I say I think

17 the answer is yes and I say with regret

18 because Mr. Hylton was rather anxious

19 to come and give his evidence next week.

20 CHAIRMAN: We wanted to get on and of course that

21 is not to be -- very well. We stand

22 adjourned until next Tuesday.

23 Adjournment taken at 10:25 a.m.

24

25