

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, 11<sup>TH</sup> NOVEMBER, 2009

PRESENT WERE:

COMMISSIONER

The Hon. Mr. Justice Boyd Carey (Ret'd)

MEMBERS

Mr. Charles Ross  
Mr. Worrick Bogle

COUNSEL FOR THE COMMISSION

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

SECRETARY TO THE COMMISSION

Mr. Fernando DePeralto

MARSHALLING THE EVIDENCE

Miss Kelly Wong --- Attorney-at-law

REPRESENTING THE BANK OF JAMAICA AND HON. OMAR DAVIES

Hon. Mr. Michael Hylton, Queen's Counsel  
Mr. Robin Sykes - Attorney-at-law  
Mr. Kevin Powell - Attorney-at-law  
Miss Celeste McCalla - Attorney-at-law

REPRESENTING JAMAICA REDEVELOPMENT FOUNDATION

Miss Kaianne Lee - Attorney-at-law

REPRESENTING DEBTOR AND HIS COMPANIES

Mr. Gayle Nelson - Attorney-at-law

REPRESENTING DEBTOR

Mr. Raphael Codlin - Attorney-at-law  
Miss Melissa Cunningham - Attorney-at-law

1 NOVEMBER 11, 2009

2 COMMISSIONER: Good morning, ladies and gentlemen. The  
3 Commission of Enquiry is now in session.  
4 We are getting off to a late start.  
5 Let's hope that this is not a pattern. I  
6 think -- who is the witness you are  
7 calling first this morning?

8

9 MR. HYLTON: Good morning, sir. In relation to the  
10 questions asked by Mr. Nelson, the  
11 Deputy Governor responsible for that  
12 area, Mr. Gayon Hosin, will be the  
13 witness.

14

15 COMMISSIONER: And she is ready?

16

17 MR. HYLTON: Yes, sir. I wonder, sir, if you would  
18 wish me to now address some questions I  
19 just received and the question that you  
20 asked yesterday or should I do it after?

21

22 COMMISSIONER: I am trying to structure this thing in  
23 some orderly way.

24

25 MR. HYLTON: Those are the three things that we need

1 to address.

2

3 COMMISSIONER: The question which I posed, who is going  
4 to answer that?

5

6 MR. HYLTON:

7

Mrs. Halsall, sir.

8 COMMISSIONER:

9

Is she here?

10 MR. HYLTON:

11 She's here, sir, but there is a  
12 difficulty in terms of time and that is,  
13 sir, to properly answer the question some  
14 data is required from our Caribbean  
15 neighbor, it's been requested, we hope to  
16 have it later today, but in all  
17 likelihood we would not be able to answer

the question until tomorrow.

18

19 COMMISSIONER: We have to postpone Miss Halsall then?

20

21 MR. HYLTON:

22

There is also another matter that I  
23 should tell the Commission, and that is  
24 that the Prime Minister has summoned  
25 Mrs. Halsall, Mrs. Anderson and the

other senior persons in the Monetary

1 Division to a meeting at Jamaica House  
2 in less than a hour, so that I would  
3 have that difficulty any way. That  
4 doesn't affect Mrs. Rosin's position.

5  
6 COMMISSIONER: Well, we have to yield to higher  
7 authority.

8  
9 MR. HYLTON: As I mentioned that, sir, that also  
10 affects the questions that I received  
11 this morning, those will be answered by  
12 those persons as well so that it seems  
13 that the matters to be addressed by the  
14 monetary people, that is the Caribbean  
15 question and these, we will have to  
16 address that tomorrow,

17  
18 COMMISSIONER: Well, to make sense out of all of this,  
19 we have do that. So then, Mr. Nelson's  
20 questions are to be addressed to  
21 Mrs. Rosin?

22  
23 MR. HYLTON: I should tell you also, sir, you  
24 received I think yesterday some  
25 questions that Mr. Nelson had handed in,

1 2 I should tell you that an additional set  
3 4 of questions was received by us at a  
approximately 8:30 p.m. last night but we  
are ready to answer them.

5

6 COMMISSIONER: Splendid. You have them, but do we have  
7 them?

8

9 MR. HYLTON: I don't know.

10

11 COMMISSIONER: The eight o'clock one. Very well,  
12 everybody is seized of the matter? Can  
13 we have Mrs. Hosin in the box.

14

15 MRS. HOSIN SWORN

16

17 Q: Mrs. Rosin, good morning, what is your  
18 full name?

19 A: I am Gayon Hosin.

20 Q: Could you spell it?

21 A: G-A-Y-O-N H-O-S-I-N

22 Q: And your position in the Bank,  
23 Mrs. Hosin?

24 A: I am Deputy Governor of Financial  
25 Institutions, Supervisory Division.

1 Q: I think you need to keep your voice up a  
2 little.

3 A: I will try.

4 Q: Deputy Governor, Bank Supervision, in  
5 1994, what was your position in the  
6 Bank?

7 A: I was a Director in the Supervision  
8 Division.

9 Q: And were you subsequently promoted?

10 A: Yes.

11 Q: To?

12 A: Senior Director in 1996 and Division  
13 Chief in 1998 and Deputy Governor in  
14 2005.

15 Q: In the same division?

16 A: All in the same division, yes.

17 Q: Mrs. Rosin, Mr. Nelson is going to ask  
18 you some questions.

19 A: Okay.

20

21 COMMISSIONER: Mr. Nelson.

22

23 MR. NELSON: Thank you sir. Good morning ma'am?

24 A: Good morning.

25 Q: My friend Mr. Hylton has very graciously





1 Q: So you have accepted that the assets  
2 were eight point something billion and  
3 the...

4 A: That was their finding, yes.

5

6 COMMISSIONER: You have no reason to doubt it?

7 A: I have no reason to doubt it, it closely  
8 resembled the assessment we had made  
9 earlier.

10

11 COMMISSIONER: But they saw it and you..

12

13 A: They were in charge, they assessed it a  
14 little more objectively perhaps than the  
15 previous management and we have accepted  
16 the report.

17 Q: And do you also agree with the  
18 observation that the directors and/or  
19 the owners of the Bank failed to conduct  
20 the business of the Bank according to  
21 law in all respects and prudently on  
22 behalf of the depositors, you agree with  
23 that?

24 A: I can't speak to that statement, what I  
25 saw in the report on page 12 is a

1 statement that, and I quote:  
2 'We have sighted a number of instances  
3 where we consider the Companies  
4 businesses have been administered in a  
5 manner inconsistent with generally  
6 accepted banking and building society  
7 practice and in many cases in direct  
8 contravention of the Undertakings given  
9 to BOJ by the Boards of Workers Savings  
10 and Loan Bank, Corporate Merchant Bank  
11 and Capital Assurance Building Society  
12 and dated 6 August 1996. We are  
13 continuing our investigations into a  
14 considerable number of matters but we  
15 set out below examples of our findings'.  
16 That is the reference we saw in the  
17 report.

18 Q: All right. I will bring you to it in a  
19 minute, but did you see at Page 8 of  
20 Section 3, at the very top of the page  
21 that they were of the view that the  
22 delinquency of the loans appears to be  
23 due in part to Mr. Lindsay's  
24 disenfranchising the credit control  
25 function through personal but unrecorded

1 intervention, top of page 3

2 A: Page 9 of the report.

3 COMMISSIONER: Is that the right page Mr. Nelson?

4 A: The report we have at the Bank has a

5 reference on page 9 where it says: The

6 delinquency of the loans appears to be

7 due in part to Mr. Lindsay

8 disenfranchising the credit control

9 function ....

10

11 COMMISSIONER: Sorry, is that report...

12 A: Its a report that was provided to the

13 Commission by the Bank of Jamaica.

14

15 COMMISSIONER: We don't seem to be able to find it. I

16 take it we have all the same document

17 looking at.

18

19 MR. NELSON: I provided this morning copies for the

20 panel.

21

22 MR. HYLTON: Mr. Chairman, the report is Tab 5 of

23 this bundle.

25 COMMISSIONER: Yes, but copies were given to us this

1 morning, that is not the report? We are  
2 at one, Mrs. Hosin is somewhere else.  
3

4 MR. HYLTON: Can I just indicate, if you look at page  
5 9 of that report in the bundle, page 9  
6 that begins 'Credit Control', look at  
7 the second paragraph.  
8

9 COMMISSIONER: Listen, that fancy thing there that we  
10 have got does not tie in what we were  
11 issued with in the bundle.  
12

13 MR. HYLTON: That is the one she's quoting .  
14

15 COMMISSIONER: We have found Page 8 that I gather is  
16 upside down.  
17

18 MR. HYLTON: Is it followed by page 9.  
19

20 COMMISSIONER: It is followed by page 9 but...  
21

22 MR. HYLTON: May I suggest, sir, that since there is  
23 a full copy that we make copies of it.  
24

25 COMMISSIONER: Yes. It's wasting time, all of this

1 'to-ing' and 'fro-ing'. Sorry

2 Mr. Nelson, are you with us?

3

4 MR. NELSON: Well....

5

6 COMMISSIONER: We have found the page.

7

8 MR. NELSON: I believe I heard you say page 8 just  
9 now, that is in relation to Mr. Delroy  
10 Lindsay.

11

12 MR. BOGLE: Yes.

13 A: May I point out that the report that the  
14 Bank of Jamaica has, the reference to  
15 Mr. Lindsay appears on page 9, and that  
16 is the copy that was provided to the  
17 Commission, so we have a difference in  
18 page number referencing.

19

20 MR. NELSON: If my friend, Mr. Hylton, could give the  
21 witness...

22 A: I have a copy of the Bank of Jamaica  
23 Report.

24

25 MR. NELSON: .. a copy of mine so we can be on the



1 same page.

2 A: I don't know that report.

3

4 MR. NELSON: Mine has it at the bottom.

5

6 COMMISSIONER: Listen, Mrs. Eosin is with you, so let  
7 us move on.

8

9 MR. NELSON: Thank you. Now that observation about  
10 Mr. Delroy Lindsay, is that in keeping  
11 with what the Bank of Jamaica found as  
12 well?

13 A: This was the opinion of Ernst & Young,  
14 basically it was not inconsistent with  
15 the findings of the Bank of Jamaica as  
16 regards the extension of connected party  
17 loans of dubious or questionable  
18 quality.

19 Q: But it not just loans of dubious and  
20 questionable quality that they are  
21 talking about, they are talking about  
22 disenfranchising the credit control  
23 function through personal but unrecorded  
24 intervention.

25 A: And what I am saying, Mr. Nelson, is  
24

1 that the temporary managers, that Ernst  
2 & Young were at the time, would have had  
3 full control of all the records of the  
4 bank. When the Bank of Jamaica does an  
5 on-site examination, we don't have full  
6 control of all the records of the bank  
7 and so our findings would not  
8 necessarily have included documentation  
9 that would have allowed such an opinion.  
10 We may have had a view but we wouldn't  
11 have a supported opinion as Ernst &  
12 Young obviously were able to draw from  
13 the document they saw, but I am saying  
14 it's not inconsistent with the findings  
15 of the Bank of Jamaica that there were  
16 extensive questionable loans to  
17 connected parties including Mr. Lindsay.

18 Q: I see. Now, if I might go to  
19 DEBTOR. It is page 14 on my copy  
20 of the report.

21 A: It's page 15 on the Bank of Jamaica copy  
22 of the report.

23 Q: Under the sub-grouping called DEBTOR.  
24 DEBTOR is a XXXXXX of CMB and  
25 Workers Savings and Loan Bank.

1 DEBTOR has two loans in his own  
2 name and three in the name of XXXXXX  
3 Limited, a company which we  
4 believe he controls.  
5 And then it provides a table showing the  
6 amounts of the loans, three to XXXXXX  
7 Limited and two to DEBTOR himself,  
8 totaling \$xxM. You have that?

9 A: I have read it on page 15 of this  
10 report, yes.

11 Q: By the way what was the exchange rate at  
12 that time?

13 A: I don't know.

14 Q: Roughly?

15 A: I don't have that detail, but we could  
16 get the reference.

17 Q: But in today's money that would be  
18 perhaps xxx million dollars, am  
19 I right?

20 A: This hasn't made clear whether it  
21 Jamaican dollar loan, I presume it is.

22 Q: I hope it's not US dollars, \$xx million  
23 Jamaican, I hope

24 A: It has not said in the report.

25 Q: But all these figures are in Jamaican

1 currency, they are not in US dollars?

2 A: I am a little bit perplex Mr. Nelson

3 because you were .

4

5 COMMISSIONER: You are not the only one, we are a

6 little puzzled by all of this.

7

8 MR. BOGLE: Exchange rate importance regarding this

9 is what we don't understand.

10

11 MR. NELSON: Sometimes when we look at these

12 documents that go back so many years we

13 fail to appreciate the value of the

14 money at the time, so that \$xx Million

15 now would be far less.

16

17 COMMISSIONER: That's a nice mathematical thing but

18 what concern is it to this Commission?

19

20 MR. NELSON: That is the only point I am making.

21 Now, after Ernst & Young provided that

22 report, the Workers Bank continued to

23 operate, am I right.

24 A: For awhile, if I recall correctly for a

25 short while.

1 Q: Why was that?

2 A: In terms of what?

3 Q: Wasn't it insolvent?

4 A: The assessment had been that it was  
5 insolvent even by the temporary  
6 managers, yes.

7 Q: So I am asking, I believe we heard  
8 yesterday that when the Bank of Jamaica  
9 found that a commercial bank was  
10 insolvent it would close the bank?

11 MR. HYLTON: Perhaps you could repeat the question,  
12 sir.

13

14 MR. NELSON: Having regard to what we have been told  
15 that when the Bank of Jamaica found a  
16 commercial bank to be insolvent, they  
17 would close the bank?

18 A: I don't know that...

19

20 COMMISSIONER: I am sorry, I don't think that is an  
21 accurate representation of the evidence.

22 Q: I see. Well, you agree that it was  
23 insolvent. So the bank being insolvent,  
24 why was it allowed to continue to  
25 operate?

1 COMMISSIONER: Excuse me. Yes.

2 A: The decision to close, as was explained  
3 yesterday, was both the decision to  
4 issue a licence and the decision to  
5 revoke a licence are decisions that  
6 continue outside of the BOJ's authority,  
7 so I can't tell you exactly why.  
8 Mrs. Anderson had indicated yesterday  
9 that there are a wide range of other  
10 considerations that are taken into  
11 account when such a drastic decision is  
12 being made but those decisions are at  
13 levels above the Bank of Jamaica.

14 Q: I understand that but she also said that  
15 although such a decision would be  
16 finally a decision for the Minister,  
17 that the Bank of Jamaica would make the  
18 necessary recommendation, am I right?

19 A: Correct.

20 Q: So did the Bank of Jamaica recommend  
21 that the Workers Savings and Loan Bank  
22 be closed?

23 A: The Bank of Jamaica had recommended that  
24 intervention action be taken with  
25 Workers Bank among all other banks that

1 it had made such recommendations on and  
2 prior and it was on the basis of these  
  
3 recommendations that further actions  
4 including the retaining of Ernst & Young  
5 to take temporary management were done.  
6 Q: Yes, but I am not really referring to  
7 all other banks, I am talking about the  
8 specific circumstance at **Workers Bank**  
9 which was insolvent, I don't know if all  
10 the other banks were insolvent, but in  
11 relation to **Workers Bank**, I am asking  
  
12 whether the recommendation was made for  
13 the bank to be closed?  
14 A: I answered and said it was, as it was  
15 for all other, yes, not that that  
16 intervention action be taken. If I  
17 could refer to the detailed report to  
18 the Commissioner of Enquiry on page 13,  
19 item (e) in response to question number  
20 8, it says:  
21 "Attempts by the Central Bank to have  
22 some licensees closed before their  
23 insolvency reached huge levels were in  
24 most cases unsuccessful" --  
25 And it lists the reasons, **Workers Bank**

1                   would have been one of the -- The  
2                   Workers Group would have been one of the  
3                   groups, so....

4           Q:           So you are saying there are levels of  
5                   insolvency?

6           A:           I am saying that the Central Bank made  
7                   recommendations for closure of insolvent  
8                   entities and our attempts were to ensure  
9                   that this happened before the  
10                  insolvencies reached huge unmanageable  
11                  levels.    The recommendations were made  
12                  as soon as it was the Central Bank's  
13                  assessment that an entity was insolvent  
14                  that often -- as a matter of fact that  
15                  always occur long before the entity or  
16                  its auditors recognize that fact, that  
17                  assessment took place.

18          Q:           May I ask if that was before Ernst &  
19                   Young came in?

20          A:           Yes, it would have been before Ernst &  
21                   Young came in because that was the basis  
22                   on which Ernst & Young was brought in.

23          Q:           I see, thank you. Now, I believe that  
24                   when we had stopped -- while all of  
25                   those circumstances were prevailing,



1 approximately 10% of Workers Bank  
2 inflows -- well at least in 1998, was  
3 from Bank of Jamaica, am I right?

4 A: Can you tell me what you would be  
5 referring to in terms of making that  
6 determination?

7 Q: You have attached to the report some  
8 appendices?

9 A: Yes, I do.

10 Q: And do you have Appendix B?

11 A: Yes, I have it.

12 Q: Look at the top of Appendix B, on the  
13 left hand side there is inflow, that is  
14 the Workers Bank cashflow, am I right?

15 A: It's a projected cashflow that Ernst &  
16 Young provided which projected estimated  
17 cashflow for March through December  
18 1998, the actual numbers were January  
19 and February, so just to be clear that  
20 we are looking at estimates of  
21 projections by Ernst & Young, these are  
22 not actuals....

23 Q: But their report was in April, am I  
24 right, the report was in April?

25 A: The report was in April based on actual

1 data up to February and from March  
2 according to this cashflow and according  
3 to the text it was projection that they  
4 made.

5 Q: So they were projecting it based on?

6 A: I am not sure what they were projecting  
7 it based on.

8 Q: But cashflows of about what percentage  
9 were going into Workers Bank from Bank  
10 of Jamaica?

11 A: Actually the cashflows do not seem to  
12 amount to 10% of anything, so I am not  
13 sure on what basis the conclusion is  
14 drawn.

15

16 MR. HYLTON: I think there is a little difficulty, if  
17 I could ask Mr. Commissioner, the first  
18 document after Appendix B, the first  
19 table, could you tell me what is the  
20 first figure?

21

22 COMMISSIONER: Three billion six hundred.

23

24 MR. HYLTON: Are you looking at the one from BOJ or  
25 the one that Mr. Nelson gave you?

1 MR. BOGLE: The one from Mr. Nelson which she says  
2 she has.  
3

4 MR. HENRIQUEZ: The very first schedule I have is  
5 161,129, that is what you have?  
6

7 MR. HYLTON: That is what I have.  
8

9 MR. HENRIQUEZ: The three billion is the Third Schedule.  
10

11 MR. HYLTON: The one sixty one is actually Schedule  
12 B, your copy is like mine.  
13

14 COMMISSIONER: This is Alice in Wonder Land.  
15

16 MR. HYLTON: Are you looking at the one Mr. Nelson  
17 gave you or you are looking...  
18 A: No, I am looking at the BOJ copy.  
19

20 MR. HYLTON: The one that begins with three-six is  
21 the one that has the 10%, the other one  
22 doesn't, so it's a big distinction.  
23

24 MR. BOGLE: Yes.  
25

A: I am surmising from the numbers

1 presented and it's just arithmetic  
2 really, that what Ernst & Young has  
3 inserted at the line 'BOJ 10%', and I  
4 don't know what that represents, but it  
5 seems to represent the rounded  
6 difference between the opening and the  
7 closing BOJ overdraft of the prior  
8 month. In other words, to the extent  
9 that the bank benefited from incremental  
10 overdraft, it was counted as inflow. I  
11 am not sure.

12 Q: You were saying it was a projection and  
13 not an actual?

14 A: This is a projection that we are looking  
15 at, yes.

16 Q: But you are unable to tell us what the  
17 actual percentage was?

18 A: I am not aware of any inflows to Workers  
19 Bank from Bank of Jamaica except by way  
20 of the overdraft that they accessed from  
21 the Central Bank.

22 Q: I am not sure whether it's overdraft or  
23 not but the inflows...

24

25 COMMISSIONER: But she should know how these banks

1 work, she's saying that the BCJ doesn't  
2 have to count out money and give them,  
3 it's an overdraft facility they have. 4

5 MR. NELSON: But what I understand her to be saying  
6 is that the money that they were getting  
7 from BOJ was overdraft.

8 A: What I am saying is that I am not clear  
9 as to the basis on which Ernst & Young  
10 would have projected a cash inflow line  
11 as originating from BOJ; Workers Bank  
12 had no inflows from the Bank of Jamaica,  
13 Workers Bank accessed an overdraft at  
14 the Central Bank.

15 Q: The overdraft which they accessed, the  
16 moneys which they got which you  
17 classified as overdraft, could you put a  
18 percentage on it?

19 A: Percentage of what?

20 Q: Percentage of their inflows, they are  
21 getting money from Bank of Jamaica...

22 A: Sir, if we look at the numbers here....

23

24 COMMISSIONER: Just one moment, sir, could you look at  
25 page 31 of the responses given by the

1 Bank to questions....

2

3 MR. BOGLE: It says, 'did the BOJ make any advances  
4 to any of the failed institutions which  
5 were insolvent at the time', and the  
6 last paragraph is saying the Bank made  
7 advances to these entities  
8 notwithstanding their assessed  
9 insolvency, which to my mind is  
10 different from just the result of  
11 clearing, this is saying that advances  
12 were made which is different from the  
13 clearing house situation.

14 Q: And separate from overdraft too?

15 MR. BOGLE: Right.

16 A: The issue of making advances was the  
17 Commission's question, our response was  
18 as to them accessing by way of over-  
19 draft and then it went on to say the  
20 Bank made advances in reference to their  
21 accessing by way of overdraft, that was  
22 the only means by which they were able  
23 to access funding from the Central Bank.

24

25 MR. HYLTON: z think when you read the whole

1 paragraph, it start by explaining and  
2 then in the last sentence using the  
3 question's exact word.

4

5 COMMISSIONER: If you ask if he makes advances, and you  
6 say you make advances, anybody can say  
7 yes.

8 A: The advances were made, sir, by way of  
9 overdraft.

10

11 COMMISSIONER: We understand what you are saying, but  
12 the response given by the Bank to  
13 question 13 is capable of some other  
14 interpretation. Mr. Hylton will clear it  
15 up in due time I suppose.

16 A: If we look at question 12, sir, it also  
17 asks whether the Bank as lender of last  
18 resort advanced money and the response  
19 gave a table of the overdrafts that  
20 were in place at the point of  
21 intervention of each of the entity; I  
22 think it would be reasonable to conclude  
23 that the word 'advanced' was used  
24 interchangeably with overdraft and I can  
25 assure you that there were no other

1 types of advances from the Central Bank  
2 to Workers Bank.

3

4 COMMISSIONER: I take it...

5

6 Q: I don't think we can flog that horse any  
7 more, sir, so may I just ask now about  
8 BOJ's debenture interest; BOJ's  
9 debenture interest, ma'am, do you agree  
10 with me that it was \$870 Million, \$870  
11 Billion, sorry.

12 A: It appears to be \$870 Million but I  
13 should clarify that the reports that the  
14 BOJ has in Appendix B, it indicates a  
15 line item BOJ/Debenture Interest and  
16 that line item is projected to total  
17 \$870 Million for the ten month period  
18 ending -- well, for the period ending  
19 December 1998 and this figure appears to  
20 represent Ernst & Young estimates of  
21 cumulative interest payments to be made,  
22 (a), against the BOJ overdraft extended  
23 to Workers Savings and Loan Bank and  
24 projected through to April 1998 and (b),  
25 against a FINSAC 15% debenture that



1 would be issued for the period -- well  
2 would have been issued in May 1998 and  
3 on which interest would accrue at 15%  
4 through to December 1998 under the  
5 projection on the assumption that the  
6 BOJ overdraft was expected to be  
7 converted into a FINSAC debenture in May  
8 1998 and if you look at bullet point 4  
9 on page 19 of the Ernst & Young Report,  
10 you will see that that was their  
11 assumption, one of their assumptions.

1

2

13

14

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24

25

DAY 2 10:30 A.M.

MR. NELSON: Its 870,000,000?

A 870,000,000.

Now, are you aware that from as far back as 1995 Workers Bank was in breach of Section 10, subsection (1) of the Banking Act dealing with the maximum value of fixed assets which the bank would hold in relation to its capital base?

A Yes. The bank's records include the audited financial statements of Workers Savings and Loans Bank for the period and it reflected all those financial statements.

COMMISSIONER: One moment please, the microphone is a little distance from you. Mr. Nelson, would you be good enough to repeat the question, please?

MR. NELSON: The question is as follows: Were you aware that from as far back as from 1995 Workers Bank was in breach of Section 10, subsection (1) of the Banking Act dealing with the maximum value of fixed assets which the bank could hold in

relation to its capital base?

A Yes. I said the Bank's records dating back from 1995 and even prior, do include Workers Savings and Loan Bank's audited financial statements for that period and the audited financial statements do evidence that the bank was in breach of the statutory fixed asset holding limits as well as customer and connected parties exposure limits among others.

And that is from -- I am saying 1995,

Q you are saying that...

I am saying that the records do evidence

A that what you say is so.

Yes. And were you aware that certainly

Q as far back as 1995, the bank was in breach of Section 13 sub-section IF of the Bank Act which deals with the permitted lending limits to specific customers and related parties?

I think I just answered that question as

A well.

No, this is a different...

I just spoke to a recognition from the

Q

7

audited accounts that the bank was in breach of the statutory fixed asset holding limits as well as customer and connected parties exposure limits among others.

Q I see. And that relates to what you said earlier about Mr. McIntosh and Mr. Delroy Lindsay, am I right?

A It would.

Q Yes.

A It would include all those connected parties, yes.

Q Yes. You see what I am trying to get at, I am trying to understand why all of these things were going on and the Bank of Jamaica knew nothing and those people continued to be officers of the bank and the bank continued to operate.

A Okay.

MR. HYLTON: I think she has already addressed that sir, in terms of the powers of the closing...

COMMISSIONER: Yes.

MR. NELSON: Yes. But you say you knew about this -I said 1995, you say even before that.

But the recommendation to close the bank...

A The recommendation?

Q ...did not happen at that time?

A If I may explain. Banks may from time to time breach statutes; all banks.

Q All the officers remain in place, the officers who...

COMMISSIONER: Just let her answer and then you can intervene, please.

A A bank is not closed because on one occasion a statute was breached. The measure of closure takes into consideration among others things the severity of the issues; the seriousness in terms of repetitiveness of breaches. Basically in regulation of banks the resolution must be proportionate to the offence. So the issue of closure wouldn't be a decision taken on a first finding that a bank had breached its fixed assets statutory limit or even as regards lending limits to specific customers and related parties. What would happen there is that the bank is

required to take ameliorative action to ensure that the breach **is** remedied.

Where in the case of Workers the necessary ameliorative actions were not taken and actually worsened then that would have basically racketed up the supervisory recommendations for sanction. Recall that at that time the supervisory authority did not have much of the sanction powers. Our job was to assess...

And make recommendation?

Q

...advise and recommend. And we did that each time.

Q

Yes. But you speak of if it happens on one occasion it doesn't necessarily...

A

Your question sir was, the Bank knew these breaches from 1995 and yet allowed the bank to continue operating. I am clarifying for you the basis on which recommendation for closure which seemed to be what you were inferring.

Q

No, I went on to speak about the officers being disallowed to remain in place for example, DEBTOR,

this is five loans.

A The Bank of Jamaica equally did not have any power to remove any officer.

Q Or make any recommendation?

It always would make the appropriate recommendations.

Q Yes, was any recommendation made in...

COMMISSIONER: A prowess tiger has no power she said to make any such recommendation. That's what she said.

MR. NELSON: I don't understand, sir. What I am asking n is if any recommendation was made in relation to DEBTOR.

A Recommendations would have been made in respect to all the findings; all the adverse findings.

Q But you can't remember specifically about DEBTOR?

A I wouldn't speak specifically to any particular officer.

MR. HYLTON: I think the Commission should be aware that these are not questions that we were alerted to.

A Not all.

COMMISSIONER: Well, in order to for this Commission to

function in some structured way, don't go outside your...

MR. NELSON: No, I am not going outside the questions sir, but when I receive an answer which is off-target I have to try to bring the witness back on target.

COMMISSIONER: Bearing in mind she has given you an answer.

MR. NELSON: The Workers Bank records...

COMMISSIONER: I mean for our purposes DEBTOR was what, a XXXXXX of the bank?

MR. NELSON: Yes sir, he was.

COMMISSIONER: I don't know, the name came up. I don't suppose we can just know that.

MR. NELSON: It says exactly what he was sir, he was a XXXXXX of CNB and Workers Savings and Loan Bank.

COMMISSIONER: Yes.

MR. NELSON: The Workers Bank records ma'am, the Bank of Jamaica would look at the Workers Bank records when they do their inspection?

COMMISSIONER: Sorry?

MR. BOGLE: Can't hear you. Could you repeat the



question, Mr. Nelson?

MR. NELSON: I am asking whether the Bank of Jamaica would look at the Workers Bank records when they do their inspection?

A That's what we have explained before.

Q So you would have been aware that by 1995 Workers Bank's own records reflected a claim by a customer of \$XXM?

A We are not able to confirm that item.

Q I am talking about the XXM.

A We are not able to confirm that item.

Q When you look at the records you look to see, or do you see that that there are court claims against the bank?

A The records that the Bank of Jamaica looks at you will appreciate, in an on-site examination which is within a specified period of time, usually within three weeks, cannot cover each and every record of the of a bank. You have asked about a specific item of XXM and I am saying we are unable to confirm that item.

Q Well, perhaps that's true. Would you

have been aware of a XXXM; a suit against Workers Bank for that amount?

A (No answer).

Q In their own records?

COMMISSIONER: One second. She needs an aid.

MR. NELSON: Oh! I see, I am sorry.

A The audited financial statements of 1996 for Workers Bank at page 14, Note 20 (e) state, and I quote:

"A customer had obtained default judgements against the bank for approximately XXX million. These judgements were set aside. There are two additional claims by this customer for the same amount. These suits are proceeding to trial. The bank in turn has a counter-claim amounting to XXX million. It is the opinion of the bank's attorneys that the bank has a good defence to the actions. No provisions have been made in respect of any of the matters disclosed in Note 20 (a) to 20 (e) as the outcome cannot be determined at this time."  
You say that the Report of which you

have a copy says that the bank had a counter-claim of \$XXX million.

MR. HYLTON: She didn't say the report, she said the audited financial statements.

MR. NELSON: The audited financial statements -- I beg you pardon -- said that the bank had a counter-claim of JAM \$XXX million.

A That's what the audited financial statements reflect, yes. Note 20 (e).

Q And can I ask what is the date of that audited financial statement?

A That's the audited financial statement as at 31st December, 1996.

Q Yes. Can I just read to you something of Workers Bank in relation to that same lawsuit?

"A customer has filed three suites for you in which he obtained default judgement against the bank for approximately \$XXX million.

These default judgements have since been set aside and these suits are proceeding to trial. The bank in turn has a counter-claim amounting to \$xx million and it is the opinion of the bank's

attorneys that the bank has a good defence to the action". You don't have that?

A I have what I read.

Q But you haven't...

A I am not sure what you are reading from.

MR. HYLTON: M'Lord, remember he says he is reading something from Workers Bank.

MR. NELSON: No.

MR. HYLTON: I have no idea what it is. So how can she repond?

MR. NELSON: It is Workers Savings and Loan Bank, Auditors Report and Financial Statement Year Ended December 31, 1997.

A I quoted...

Q Which is a later report.

MR. BOGLE: It is two different reports. That was 1996 and that is 1997.

MR. NELSON: Yes. So in 1997...

COMMISSIONER: Has she got that report, Mr. Nelson?

MR. NELSON: No, she says she has the 1996 one. The one I have is 1997. So I am saying that mine is a later report.

COMMISSIONER: I suppose for what purposes. In other words, can you get synchronised?

MR. NELSON: Yes. Let me ask you, if in those circumstances the judge hearing the application -- this is not a legal question -- to set aside default judgement suggests that the bank should put aside the monies that are being claimed by the claimant, would that money be put with Bank of Jamaica? Can you repeat that for me, please? If the judge hearing the application to set aside the default judgement

A suggests that the bank, the Workers bank

Q should put aside the money being claimed by the Claimant, would it be put to the Bank of Jamaica?

A Okay. I can state categorically that the Bank of Jamaica does not hold funds relating to any judgement made against any of its supervised entities. Well, its a continuum, is it not? It's a continuum?

A Not as I am aware. And that's my answer. But the Bank of Jamaica was holding funds, substantial funds for Workers

Q Bank?

A

A The Bank of Jamaica held cash reserves.  
Cash reserves?

Q For Workers Bank.

A Cash reserves?

4 Yes. Statutory cash reserves.

A Yes. And for those Workers Bank had notes  
of deposits with, and money at call at  
Bank of Jamaica and the Postmaster General  
in 1995 of 1 billion one hundred and four  
thousand, seven hundred and two dollars,  
am I correct? Let me quote from Workers  
audited financial statements at 31st  
December for each of the three years that  
your question referred to, and your  
question has not referred to them now but  
in the written questions we got it  
referred to '94, '95 and 1996. And in their  
audited financial statements for each of  
those years it includes a line item notes,  
'deposits with, money at call at Bank of  
Jamaica and Postmaster General'. These  
balances would include cash reserves,  
other positive balances held at the Bank  
of Jamaica if any, as well as I presume

whatever notes or moneys they would have held with the Postmaster General. The audited accounts grouped those amounts together.

Q In other words lumped Bank of Jamaica and Postmaster General together?

A If you look at the Bank of Jamaica's published unaudited quarterly assets and liabilities for commercial banks at 31st December for each of the said period it would show balances: "due from Bank of Jamaica for Workers Bank". And these amounts were for 1995, one billion one hundred and seventy-nine million, thirty-six thousand. Your question had referred to...

That's even more than I am suggesting.

Q It's less. Your question had referred to  
1,104,702 billion.

Yes.

Q That's a bigger number than the number I  
just quoted.

I am sorry, I didn't hear the number.

Q Your question...

A Your figure was how much?

Q

A Your question referred to 1,104,702B.

Yes.

Q Our number is 1B, that is, the audited numbers.

Yes.

Q One billion one hundred seventy-nine million and thirty-six thousand. For 1996...

Q One billion one hundred and seventy-nine million was more than one billion one hundred and four million.

A No, your number says that was a billion. I don't know how many trillions it is, it is a big number when you describe it as billion.

Anyway.

Q Okay. So I can provide that the amounts due from Bank of Jamaica according to the unaudited assets and liabilities for Workers were in similar region, they were different figures from what were later published in their audited financials.

Yes.

But I am confirming that these amounts

Q



would have been in reference to the cash reserves of the Bank of Jamaica.

Q Approximately?

Well, Workers really didn't have a history of having anything in excess of its cash reserves at the Bank of Jamaica. Usually it was short.

Q But in any event, these figures that I have provided in question are not far off not; am I right?

A If I ignore the word "billion."

Q Oh! see. All right.

So I am just clarifying that those figures represent what is purported to be held at BOJ, statutory cash reserves that banks are required to hold with the Bank of Jamaica proportionate to their prescribed liabilities. And prescribed liabilities refer to deposits and other borrowings. What I should also make clear is that, in the case of Workers Savings and Loan Bank those cash reserve balances would have been transferred at the same time that the deposit liabilities of Workers

Bank were transferred to the entity that assumed those deposit liabilities and other prescribed liabilities of Workers Bank. That entity was Citizens Bank which was later renamed Union Bank. So in terms of the disposal of the cash reserve; the cash reserve follows the liabilities.

Did any Workers Bank assets go into

Q Union Bank?

Certain assets and liabilities of Workers

A Bank were transferred to Union Bank. Let me find my details here. Okay Workers Bank subsequent to temporary management was closed and its assets that were rehabilitated by FINSAC would have been transferred. What I should make clear is that the BOJ would not have been a part of the restructuring and rehabilitation measures and that would have included the transfer of assets and liabilities. That would have been the responsibility of FINSAC, the agency handling that rehabilitation. Transferring those assets and

Q

liabilities?

A Those particular assets and liabilities that were transferred.

4 Workers Bank's assets and liabilities?

Assets and liabilities that were transferred. The full book of business of Workers Bank was not transferred. But some?

4 Some assets. Some bad assets in particular have been rehabilitated and so on but those that were transferred to Citizens Bank.

4 To Union Bank?

To Citizens Bank where several entities; the good portfolios of several entities and their deposit liabilities were merged into Citizens Bank. If I recall it's really five entities; five failed entities were merged into one. The one was Citizens Bank, it was later renamed Union Bank and then it was sold. The Bank of Jamaica wouldn't have any details of which of Workers Bank original assets were the ones that were continuing into Union Bank.

Q And ultimately into RBTT?

A The Union Bank was ultimately acquired by RBTT.

Q Thank you.

Q If we can just move away from Workers Bank.

COMMISSIONER: Yes. Thank you.

## FINSAC DAY 2

November 11, 2009

MR. NELSON

Now what control if any does the regulatory department of the Bank of Jamaica or any of the banks in fact have over Jamaica Redevelopment Foundation and/or, operating before that, and/or FINSAC...

MRS HOSIN:

As Acting Governor Anderson would have elaborated yesterday, the Bank of Jamaica has supervisory oversight responsibility for Commercial Banks, licensees under the Financial Institutions Act and building societies. The entities you have referred to do not fall into that category.

Q

So no control over Jamaica Redevelopment Foundation?

A

No oversight, no control it is a private entity.

Q

Would the Bank of Jamaica or its regulatory department have control over any financial institutions operating in Jamaica which is in fact a foreign

country?

A Bank of Jamaica has supervisory oversight responsibility for commercial banks licences under the Financial Institutions Act and building societies. This oversight responsibility would extend to such entities whether they are domestically owned or owned by foreign entities.

Q I am not just talking about just about owned I am talking about...

COMMISSIONER: One moment please. You might as well repeat the question I suspect.

MR. NELSON: Well I believe she was giving me an answer. I don't know if she got the question in the beginning.

MR. NELSON: Well the answer she gave sir, was that the Bank of Jamaica has...

COMMISSIONER: All right find another question in the meantime.

MR. NELSON: Over financial entities whether they are foreign own or local own. But I was saying that I am asking not just asking about foreign own but about foreign registered inc. When you hear inc...

COMMISSIONER: How does that concern what operates here. If it operates here then it has to be registered here I would think unless it is a bandoloo business.

Q I take that point.

COMMISSIONER: Pardon me to use such unrensic language.

MR. NELSON: Now is the regulatory department of the Bank of Jamaica or any other department aware that assets and liabilities held by and for Workers Bank were transferred to FINSAC and thereafter to Joslyn and thereafter to Jamaica Redevelopment Foundation?

A The assets and liabilities remaining after the rehabilitation of Workers Bank by FINSAC were transferred to Citizens Bank, as I said earlier under a merger restructuring with other distressed entities that ultimately resulted in Union Bank. However as a part of the rehabilitation process FINSAC would have sought to deal with bad assets prior to the said merger and this would have included the disposal of such assets by FINSAC via sale to other entities

including those references, those to which you referred.

Q Including Dennis Joslyn Limited and Jamaica Redevelopment Foundation?

A Yes, including those to which you referred, yes.

Q And was BOJ aware that after those transfers it was brought to the attention of the Minister of Finance, at the time Mr. Omar Davies, that under the Money Lending Act it was not legal to transfer the assets to an entity that did not enjoy the exemptions provided to commercial banks under the Money Lending Act?

A The Bank wasn't a party to any such discussion.

Q And wasn't aware of that?

A I certainly wasn't.

Q You weren't. Were you aware that the minister attempted to retroactively provide exemptions to those companies that only the banks had before? The

A Bank wasn't a party to those discussions.



Q But you weren't aware of it?

A I certainly wasn't.

COMMISSIONER: I am only saying if these questions are being **addressed** to the right person?

MR. NELSON: Well, if she is not aware...

COMMISSIONER: She has answered she is not aware and we are not stopping you because I know the binoculars.

MR. NELSON: Merchant banks now, can you tell us what control the regulatory department of the Bank of Jamaica or any other department, had or has over merchant banks, such as Fidelity Finance Merchant Bank Limited which was taken over by FINSAC of course.

A As was indicated by Acting Governor Anderson yesterday, the Bank of Jamaica has supervisory oversight responsibilities for all commercial banks, licensee under the Financial Institutions Act and building societies. Licensees under the Financial Institutions Act include merchant banks.

Q So the controls aren't the same as the commercial banks?

A Basically they are similar. They operate under different Acts, so they are not identical in every respect but they are broadly very similar.

Q I see. So in relation to Fidelity Finance Merchant Bank would there be any control over the interest that it would charge?

A There is...

COMMISSIONER: You mean the rate of interest?

MR. NELSON: The rate of interest.

A Interest rates that are charged to borrowers by licensed deposit taking entities would be governed by the terms of the contract between the respective parties. There is no supervisory regime administered by the Bank of Jamaica for the control of interest rates charged by lenders.

Q I see. All right. Could you tell us whether or not, just as a general question which flows. Has it been discussed in management that it might have been of assistance to the general well being of the banking community and

of Jamaica to control the interest rates?

A That was not...

COMMISSIONER: I am not quite clear what the question, what you are dealing with, the question is not precise I am not sure what you are talking about.

A This was not a question that was provided to us before.

COMMISSIONER: Use your common sense.

A Basically as I indicated we operate -- there is no such supervisory regime for control of interest rate, we operate in a liberalised market and market forces do operate.

MR. NELSON: I see. Thank you very much.

COMMISSIONER: I am not sure that that comment is warranted. In a sense it is a matter of contract.

MR. NELSON: Now, well what she said at the end sir, is that market forces do operate. So I take that to mean that if you are lending at too much of a higher interest rates other persons lend at a lower rate, am I right?

- A It is basically...
- COMMISSIONER: If people think the rates are too high the courts are still there.
- MR. NELSON: Yes.
- COMMISSIONER: They have access to the courts.
- MR. NELSON: Yes, quite right sir, thank you very much.
- COMMISSIONER: Thank you Mr. Nelson.
- MR. HYLTON: Mr. Chairman I don't have any re-examination.
- COMMISSIONER: Yes, the Commission will ask the question.
- MR. ROSS: To the matter of temporary management at what point did the BOJ gain the authority to place institutions under temporary management without the sign off of the Minister?
- A That power of the supervisory authority making the determination as to temporary management was transferred to the Bank of Jamaica from the minister in the 2002 amendments, I believe.
- Q So up until the late 1990's all those decisions had to come from the minister, those powers rested with the minister?

A Right, those powers didn't come to the Bank of Jamaica until 2002.

COMMISSIONER: Mr. Hylton, do I understand you have some questions which were given to you on our behalf?

MR. HYLTON: Yes, that is why I had just told you sir. I received questions when I came this morning. That is what I was referring to at the start that there were questions that provide the monetary policies that I would need to respond to and I was asking sir, if you could allow me to respond to them tomorrow.

CHAIRMAN: I see. Well I take it that there is no other witness.

MR. HYLTON: No sir, those witnesses are also addressing the one remaining issue sir, which is your question.

COMMISSIONER: Well let me just say this we haven't yet received yesterday's transcript so we need on behalf of the Commission to look at the transcript to see if anything arises from the evidence so far given which warrants our recalling any of

those witnesses. I suspect there might well be. So I am suggesting that you advise those witnesses that they should make themselves -- well we know who is coming tomorrow -- available for them to be called upon. We can't release them permanently; they are on call, so to speak.

There being nothing else I think that completes the days dispensation. Peace be onto you. We stand adjourned.

ADJOURNED