

VERBATIM NOTES

OF

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

Held at The Jamaica Pegasus Hotel

On

Tuesday, 22nd September, 2009

Day 1

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. Henriquez OJ, QC

SECRETARY TO THE COMMISSION

Mr. Fernando DePeralto

MARSHALLING THE EVIDENCE

Mr. Ransford Braham Attorney-at-Law

REPTG. MR. D. LATTIBEAUDIERE & HON. OMAR DAVIS

Hon. Mr. Michael Hylton, Queen's Counsel

Mr. Kevin Powell, Attorney-at-Law

Mr. Robin Sykes, Attorney-at-Law - BOJ Miss

Celeste McCalla, Attorney-at-Law - BOJ

REPTG. JAMAICA REDEVELOPMENT FOUNDATION

Mrs. Sandra Minott-Phillips, Attorney-at-Law

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2 COMMISSIONER: Ladies and gentlemen, this Commission of
3 Enquiry is now in session and I will begin
4 by asking our Secretary to read the Terms
5 of Reference of the Commission. 6

7 MR. DEPERALTO: Good morning everyone. The terms of
8 reference of the Commission is:
9 1. To examine the circumstances that led
10 to the collapse of several financial
11 institutions in the 1990s with particular
12 regard to:

13 A) The extent to which these
14 circumstances were directly
15 influenced by domestic or
16 external factors;

17 (b) Government's fiscal and
18 monetary policies;

19 (c) The management practices and
20 role of Board of Directors of
21 the failed institutions;

22 (d) The performance of Government's
regulatory functions

23 (ii) To consider what actions, if any,

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could have been taken to avoid this occurrence and to evaluate the appropriateness of the actions which were taken by the authorities in the context of Jamaica's economic circumstances and in comparison to intervention by the State in other countries which have had similar experiences.

(iii) To review the operations of FINSAC in relation to the delinquent borrowers and to determine whether debtors were treated fairly and equally.

(iv) To review the probity and propriety in F'INSAC's management, sale and/or disposal of assets relating to delinquent borrowers.

(v) To review the terms and conditions of the sale of non-performing loans to the Jamaica Redevelopment Foundation.

(vi) To review the practices of the Jamaica Redevelopment Foundation in the treatment of delinquent borrowers and, in particular, the management, sale and/or disposal of their assets.

(vii) To assess the long term impact of

1 2 the collapse of these institutions on the
3 4 economy and on the businesses and individuals
5 6 whose loans were involved as well as the
7 8 economic and social impact of the actions taken
9 by the Government with regard to savers,
10 depositors and investors of the failed
11 institutions.

12 (viii) To review the steps that have
13 subsequently been taken and make
recommendations as to what further steps should
be taken to prevent a recurrence of such
widespread collapse of financial institutions
and the resulting hardships. 14

15 COMMISSIONER: Thank you. And as observed at the very
16 outset, this Commission of Enquiry
17 appointed last October to enquire into the
18 collapse of financial institutions in the
19 1990s is now in session. The long awaited
20 moment has regrettably been long delayed.
21 We wish to apologize. We will not however
22 participate in any further delay by taking
23 time to offer explanations or excuses for
24 that unfortunate fact but we can and do
25 disclaim any blame.

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Some general remarks are, however, called for before we get on the way. The Commission comprises Mr. Charles Ross on my right, Mr. Worrick Bogle and myself Justice Boyd Carey as Chairman. Mr. Fernando DePeralto is Secretary to the Commission; Honourable R. N. A. Henriquez OJ, QC, is counsel for the Commission; Mr. Ransford Braham is counsel who will marshal the evidence before the Commission.

We wish to state that this enquiry is neither a witch hunt nor a trial. We have no power to give any judgment or indeed make any binding legal rulings. The purpose of the enquiry is to investigate, like a pathologist, the etiology of the disease, that disease being the financial melt-down which affected the nation. We propose to conduct this investigation thoroughly with the utmost fairness to all and with patience and courtesy. Not being a trial, we will allow some procedural flexibility, especially as regards to the rules of evidence. The enquiry would be

1 2 conducted in public save where it is necessary
3 4 to sit in camera, perhaps on the ground of
5 6 confidentiality. In such circumstances we will
7 8 hear counsel or the witness not represented.
Notice of such application should be lodged to
the Secretary prior to the witness being
called.

9 The Commission will sit on Tuesdays to
10 Thursdays at 9:30 a.m. to 4:30 p.m. Full
11 transcripts of what takes place in this place
12 will be available to the public on payment of
13 a fee.

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16 Before we end, we ask for the cooperation of
17 witnesses and counsel to ensure that the
18 enquiry is conducted with expedition and time
19 is not taken up exploring issues that are not
20 relevant. In this regard we invite counsel who
21 represent persons desirous of giving evidence
22 before the Commission to confer with counsel
23 marshalling the evidence and to liaise with

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the Secretary.

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One final comment we think necessary, the inevitable intention between the objectives of thoroughness and expedition requires some balancing. But we are confident that with the cooperation of all parties concerned it can be achieved. Thank you.

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MR. BRAHAM:

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COMMISSIONER:

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MR. BRAHAM:

May it please you Mr. Chairman, may I take the opportunity to make you aware of the attorneys present. Mr. Honourable Michael Hylton, Queen's Counsel, along with Mr. Kevin Powell for Mr. Derrick Lattibeaudiere and the Honourable Omar Davis. Also present, attorneys Mr. Robin Sykes and Miss Celeste McCalla who are attorneys also from the Bank of Jamaica. Mrs. Sandra Minott-Phillips is also present, sir, and she is representing Jamaica Redevelopment Foundation.

There is no one representing FINSAC.

No, sir.

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2 COMMISSIONER: Thank you.

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4 MR. BRAHAM: This morning, sir, the Commission had

5 proposed to hear from two witnesses,

6 Honourable Derrick Lattibeaudiere -- one

7 witness, I am sorry, and after, at some

8 other point, the other witness, but sir,

9 Mr. Hylton will indicate to you what the

10 position is in relation to that witness. 11

12 MR. HYLTON: Morning, sir, would it be appropriate... 13

14 COMMISSIONER: Just one moment, can everybody hear? Not

15 that there is a large crowd.

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17 MR. HYLTON: I will try and project, sir.

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19 COMMISSIONER: Yes.

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21 MR. HYLTON: Would it be appropriate to address you as

22 Chairman and not Commissioner?

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24 COMMISSIONER: Yes please.

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1 MR. HYLTON: It is my pleasure, Mr. Chairman, to appear
2 before you again.
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4 COMMISSIONER: Good to see you again.
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6 MR. HYLTON: The Governor as I had indicated to the
7 Secretary in advance is the leader of the
8 Government team in the present negotiation
9 before the IMF, the International Monetary
10 Fund. The team leaves Jamaica today
11 indeed to attend meetings with the Fund
12 and in those circumstances the Governor
13 would not be able to appear before the
14 Commission today as was scheduled. That,
15 sir, is the difficulty that we face. 16
I should also mention, Mr. Chairman, that the Secretary has kindly sent
17 to the Governor a list of questions and the Bank
18 of Jamaica is putting together a submission to
19 the Commission in response to those questions
20 which I think will certainly assist the
21 process.

22 25 CHAIRMAN: I am sure it will.
23 Thank you Mr. Hylton.

1 It's a matter of great regret that after one
2 year, we seem to be following
3 precedent from America, we are proceeding
4 with all deliberate speed, because we
5 requested memoranda from a great many people
6 and it seems some sort of
7 reluctance to come forward. It seems to me that
8 the persons expect that we will summon people
9 and then when they are in the witness box we ask
10 them questions, but that is not how this thing
11 will proceed. We need to know what these people,
12 whoever is making a complaint, know before they
13 go in the witness box and at least counsel who
14 is marshalling the evidence can know what the
15 whole thing is about. How so that might be, it's
16 pretty obvious, that we can go no further this
17 morning. I think on behalf of the Commission I
18 wish to say that we wanted this thing to proceed
19 in a structured way, so that, as everybody
20 appreciates, the terms of references are
21 extraordinarily expansive and we have two
22 Desideratas, Desiderata of thoroughness and
23 the Desiderata of getting on with it,
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1 but we will have to balance it because this
2 thing just cannot go on forever. Funds are not
3 inexhaustible; the very fact that people who
4 should be here and have gone off to seek some
5 assistance, we have to face that fact, there
6 is no fund for this thing to go on and on and
7 on so I am wondering if I could ask you Mr.
8 Hylton to see that your, and I don't know if
9 I should call them clients, these witnesses,
10 are forthcoming with their responses. So what
11 we propose to do is to adjourn this hearing and
12 to resume on the 3rd of November, that should
13 give all parties, we hope, ample and adequate
14 time to put their teams in order, because we
15 should like when we resume to get on with it,
16 the usual phrase, and again I repeat, this is
17 not a trial, we are trying to get information
18 and it's information which is got, shall I say,
19 at the public hearing that cause material which
20 should inform the reports that we are required
21 to make. So it is not what we might read or hear
22 about, but what emanates from the

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1 witnesses who will come before us and give
2 evidence.

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4 MR. HYLTON: Certainly, sir, that should be enough time
5 for the submission and the interior work
6 to be put together. I would just like to
7 observe, I notice, Mr. Chairman, you made
8 a comment about persons not being
9 forthcoming and I know you did not direct
10 that specifically to my client....

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12 COMMISSIONER: No, I am talking generally.

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14 MR. HYLTON: Because the letter, sir, of the 15th of
15 September will certainly be responded to
16 in full and as you said...

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18 COMMISSIONER: I wasn't making any personal remarks, I
19 was speaking quite generally, because as
20 you can see, I invited you into our little
21 cubby hole there and you see that we have

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23 boxes and boxes of mass of papers, which
24 might all be relevant, but we have to look
25 at it and some boxes we have not seen yet,
well because they have to be copied in not

1 triplicate but in quintuplicate and circulated
2 so even if eventually one doesn't use them we
3 at least have to look to see what it is we have
4 got. I don't know if there is anything else
5 anybody has to say. Sandra.

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8 MRS. PHILLIPS: Mr. Chairman, thank you. I first of all
9 wish to express my gratitude to RJR News
10 which is how I knew that the matter was
11 starting at 9:30.

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13 COMMISSIONER: I think you should stand.

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15 MRS. PHILLIPS: I am sorry. I don't think I have anything
16 to add Mr chairman.

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18 CHAIRMAN: Well since you are here, I don't think I
19 should ignore you entirely.

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21 MRS. PHILLIPS: Thank you for that.

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23 COMMISSIONER: Well it is for the Commission to adjourn. 24

25 MRS. PHILLIPS: Sorry, before you adjourn, can I just ask

1 a question.

2 COMMISSIONER: Certainly.

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4 MRS. PHILLIPS: In relation to the procedure and the way
5 forward, so that we can know what to
6 expect in a given week, it is anticipated
7 that we will know what will be expected in
8 a given week?

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10 COMMISSIONER: Oh yes.

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12 MRS. PHILLIPS: We expect to receive like at least a
13 schedule?

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15 COMMISSIONER: We have a schedule, but we could not put
16 the schedule out obviously when we learnt
17 that certain things were happening,
18 because it would mean that we would
19 withdraw them and begin again.

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21 MRS. PHILLIPS: So we will get it before the 3rd?

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23 COMMISSIONER: You will know in ample time when your
24 witnesses or whoever, or anything that
25 affects you, you know when we are resuming

1 but if a particular witness is being called you
2 will be advised and I take it you will contact
3 the Secretary and if you appear for somebody,
4 you have to speak also with Mr. Braham.

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7 MRS. PHILLIPS: I will.

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9 COMMISSIONER: Well, thank you very much for coming.
10 am sorry -- well I should say we have
11 proceeded with deliberate speed, I hope
12 this deliberate speed will mean eventually
13 we get going. Thank you very much. This
14 session is adjourned.

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16 A D J O U R N M E N T
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