

**THE TURKS AND CAICOS ISLANDS**

CR 34/12, 35/12, 36/12, 37/12, 39-40-42, 44/12- 46/12

**IN THE SUPREME COURT**  
**CRIMINAL SIDE**  
**BETWEEN:**

**THE QUEEN**

**-and-**

**(1) MICHAEL MISICK**

**(2) FLOYD BASIL HALL**

**(3) MCALLISTER EUGENE HANCHELL**

**(4) LILLIAN BOYCE**

**(5) JEFFREY CHRISTOVAL HALL**

**(6) CLAYTON STANFIELD GREENE**

**(7) THOMAS CHALMERS ("CHAL") MISICK**

**(8) LISA HALL**

**-and-**

**(9) MELBOURNE ARTHUR WILSON**

**The following referencing of documents and statements is used throughout this document:**

**Referenced Individuals**

1. Michael Misick [MM]
2. Floyd Hall [FH]
3. McAllister Hanchell [MH]
4. Lillian Boyce [LB]
5. Jeffrey Hall [JH]
6. Clayton Stanfield Greene [CG]
7. Thomas Chalmers (“Chal”) Misick [TCM]
8. Lisa Hall [LH]
9. Melbourne Wilson [MW]
10. Richard Padgett [RP]
11. Varet Jak Civre [Civre]
12. Samuel Been [SB]
13. Quinton Hall [QH]
14. Earlson Robinson [ER]

**Entities, Developments and other Institutions**

15. The Turks and Caicos Islands [the Islands or TCI]
16. The Turks and Caicos Islands Government [TCIG]
17. The Attorney General’s Chambers [AGC]
18. The Third Turtle Club [TTC]

19. The Seven Stars Complex [7S]
20. Joe Grants Cay/Dellis Cay [JGC/DC]
21. Salt Cay [SC]
22. Water Cay [WC]
23. North West Point [NWP]
24. East Caicos [EC]
25. West Caicos [WeC]
26. Beaches
27. Juniper Hole
28. South Caicos

**18<sup>th</sup> January 2016**

1. This case is about political corruption and financial greed.
2. The period covered is between 2003 and 2009 and focuses on the activities of Michael Misick who was, during this time, the First Minister (or Premier, as he was to become) of the Government of the Turks and Caicos Islands, and other loyal members of his Cabinet.
3. During that period, Ministers of Government were the beneficiaries of payments totalling, in the case of some individuals, many millions of dollars made directly to them or the political party they represented, the Progressive National Party [PNP].
4. The money was received from potential and/or actual developers who sought to benefit from favourable development agreements and/or from Belongers (the term used to

describe people with full TCI citizenship rights) who obtained Crown land from which they were to jointly profit with the politicians under the guise of the Crown Land Policy (which was intended to fairly and properly “empower” Belongers by giving them access to the one real and only resource of the Islands: the land. What that Policy was not designed to do was to give to the favoured few (family, friends and fellow Party supporters) a financial reward for doing nothing other than being the named purchaser of land, which was in reality being immediately sold to someone else at a significant profit. How that arose was because the empowerment designed into the CLP was to enable Belongers to purchase land after benefiting from a discount available to Belongers only. By doing so and selling the land on, a practice known as “FLIPPING” it, sometimes immediately, the consequence of the transaction was that the government and therefore the citizens of the TCI would lose money.

5. The monies received by the Ministers were in no sense monies that could be attributed to the work of honest servants of the people whom they were elected to represent.
6. In order to enrich themselves and/or their families, the defendants undermined, ignored and usurped almost all of the Country’s institutions designed to ensure and preserve good governance. A number of witnesses will be called to explain how the Government of the Islands should function.
7. Instead, Michael Misick sought to influence developers as to whom they should work with, rejecting the developers’ choice of Belonger partner and proposing his nominated choices of Belonger. He sought money from developers at every opportunity, even threatening to revoke Belongership if he was not paid what he claimed to be owed.

8. The prosecution's case focuses on 9 of the land deals, or developments, that were negotiated during the Misick years. The analysis of these 9 will, the Crown submits, show the way that the political establishment was prepared to abuse their responsibilities to the electorate by, in effect, treating as their own that precious resource: the land. The first document we would like Your Lordship to look at is the preamble to the Crown Land Policy. Indeed, in the preamble, effective from 2 November 2005 the Government declared:

“The crown is the largest landholder in the Turks and Caicos Islands. This makes Crown lands the Government's most valuable tangible asset and places an obligation on Government agencies responsible for Crown Land Management to address both immediate and medium to long-term planning prerequisites. The potential value of Crown Land has risen dramatically over recent years and this increase is likely to continue over the next five to ten years or longer. It is therefore important that administrative rules and standard practices concerning Crown Land allocation, pricing and management, which have been evolving over the years, be consistent in addressing the needs of economic and social development while at the same time preserving the environment, TCI's greatest asset. This Crown Land Policy is formulated to provide long-term benefits to Belongers; both in terms of increasing their role in commercial land development and helping them gain access to land for residential use.”

9. No one could disagree with this statement of principle, it being intended to apply fairly, properly and in the interests of all. Despite this statement of principle, you will hear of

land deals where the value of the land was so deeply discounted (not just due to the permitted discount, but also because the real value was reduced) so as to cause significant loss to Government revenues. This led inexorably to the collapse of the Government's financial well-being and eventually to the need for a bail out.

10. This was happening after, by way of example, Michael Misick and McAllister Hanchell and their wives had been the “undeclared” beneficiaries of exclusive Centurion credit cards. Available only by invitation from American Express and reserved for the wealthiest in global society, the cards were underwritten and funded to the tune of \$6 million by J&T Banka, the bank that was supporting a prospective developer of an island known as Salt Cay: Mario Hoffman. I say undeclared in the sense that an examination of these defendants' finances and their declarations for the purposes of the legislators Register of Interests were silent on this and other monies, financial sponsorship or gifts which they received.

11. This huge personal financial advantage was received at a time when delicate negotiations were progressing as to the nature of the development on Salt Cay. Salt Cay, it was proposed, would be developed with its own Port of Entry into the Islands, run by the developer - a significant concession to be made to any developer.

12. At the end of this opening we will examine the finances of the defendants in some detail. Suffice to say, however, at this stage that there is a remarkable symmetry of access to money and spend during the Misick years by all the political defendants. From a base in 2003 (whatever the respective financial standing of the defendant) to a peak in 2006/2007, a falling away in 2008 (as the Commission of Inquiry was appointed) and then returning to the 2003 levels in 2009/2010, as the Misick years of power came to a

conclusion. It will be stark when Your Lordship sees the graphic representations, how each defendant was enriched beyond the wildest dreams that a politician should have, by access to monies that would not be available to them simply taking account of their salaries.

13. It is of note that the underlying theme of the relationships with the developers was the preparedness by the politicians to surrender on matters that would have been of short or long term advantage to the Government and the people of the Turks and Caicos Islands, all in reality for their own personal gain. There is a difference between making a judgment call as to whether or not a deal is a good one, and making a decision based on it being to one's financial advantage. Different people would come to different decisions as to what is a good deal, but this case it not about that – this case is about politicians making decisions where they are personally advantaged. Whereas, for example, a decision might be made to reduce the available discounts for bringing goods from overseas, or to recalibrate the payments made by developers to scholarship funds, all of that in the normal course of discussion with a potential developer is understood. But when it is tainted by personal financial gain for the politicians, you will appreciate that the gain to the politicians and the loss to the Government, and therefore to the people of the TCI, becomes a concern that attracts investigation and ultimately prosecution.

14. Investment in Scholarship funds for the benefit of student Belongers is one example where the politicians were prepared to reduce or abolish the usual and expected commitment made by developers to make annual contributions to the Scholarship fund for the public benefit. Hundreds of thousands should have been paid as part of a normal development agreement. Those sums were reduced in a way that we say can only be explained by seeing the monies going to the politicians.

15. Aside the “political” defendants, the remaining defendants in the case are Attorneys Thomas Chalmers Misick, Clayton Greene and Melbourne Wilson, and the wife of Floyd Hall, Lisa Hall, who, the Crown’s case will show, was an active assistant in hiding the proceeds of Floyd Hall’s corrupt income.
  
16. The Attorney defendants (Thomas Chalmers Misick and Clayton Greene) received funds (lending them an appearance of legitimacy in relation to the transactions) and then made structured payments of money for the benefit of the political defendants and for their own gain. They were, and there is no beating about the bush as far as this is concerned, acting, in effect, as private bankers for the politician defendants by receiving corrupt monies and then paying the monies out to order – something that, the Crown submit, an Attorney would or should have realised was unusual, and not something which in the normal course of client/attorney relationships was a proper thing to do. Before we develop that a little further, it is often argued that things weren’t quite then what they are now. To that extent, we throw the gauntlet down. By the beginning of this century there is no doubt that any attorney acting as a “private banker” would know that he had to be particularly careful about the source of funds, why his client was receiving them, and why he was being asked to disburse them rather than dealing with the transactions as an attorney would be expected to. The money laundering regulations became effective in the TCI from 2000. The business of banking was controlled. The definition of “banking business” included in its definition the acceptance of deposits and the paying out of those monies on demand. Of course the lawyers weren’t required to be registered under the Banking Ordinance, but if the banks were regulated and the lawyers were standing in their place as substitutes for the receipt of funds and the paying out of those monies, you will wish to consider what was going on in the minds of two qualified people who had

their own obligations to the law. They became a very simple entry and exit point for criminal funds to avoid banking oversight.

17. In relation to Thomas Chalmers Misick: he laundered money for his brother Michael and benefited on his own account, particularly, you will hear, in relation to the prospective developments known as Dellis Cay and Joe Grant's Cay.
18. In the case of Clayton Greene: he benefited, by way of example, in respect of the proposed development at Juniper Hole. He set up the secret "John Doe" account for the benefit of Floyd Hall to receive monies generated for or by corruption in relation to the development known as Water Cay. You will wish to ask yourself what on earth an attorney was doing setting up an account called "John Doezer" and hiding the true beneficiary from public scrutiny.
19. In the case of Melbourne Wilson: in relation to the proposed development at North West Point he received hundreds of thousands of dollars, way beyond any fee for lawyer's work. How he came to receive that money, and the way in which the North West Point development was brought about will be something you will concentrate on during the course of the trial.
20. As to Lisa Hall, married to Floyd Basil Hall, a former Minister and, at one stage, deputy of Michael Misick. She was the recipient of funds destined for Floyd Hall following, on the Crown's case, the corrupt payment of monies from the developer of the Seven Stars Resort. Mrs Hall, and this is one feature of the case against her that the court will wish to give attention to, opened a bank account in the US to receive the proceeds of corrupt payments, and, the Crown suggest, acted as the launderer of those proceeds. This was in

relation to the Seven Stars Resort. We ask Court to consider this: why would a Belonger resident in an offshore, non income tax paying jurisdiction, wish to go to the USA to open a bank account, when the country from which she left is a US dollar currency? What was she doing? What lay behind hiding those funds from this jurisdiction?

21. Some detail in respect of the roles of the Ministers. By section 8 of the 1998 Constitution, the Cabinet members were required to take an oath in accordance with Schedule 1 to the Constitution in the following form:

**I .....do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in the office of member of the Executive Council. So help me God.**

22. By the 2006 Constitution (in force with effect from 2006) and section 28 and the schedule to that Constitution, the Oath for the due execution of office of a member of the Cabinet read:

**I, [name], do swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors in the office of member of the Cabinet. So help me God.**

23. What is meaning, as a starting point, of taking that Oath of office to well and truly serve? It is not a meaningless Oath. We are, as we have been told on many occasions, in a God-fearing country, where respect for religion and for an Oath such as this, is significant. This Oath is intended to be the foundation of a solemn compact between the Minister,

his duties and responsibilities, and the people of the Turks and Caicos Islands whose trust has been reposed in that Minister.

24. To well and truly serve Her Majesty Queen Elizabeth II requires the recognition that the role of Minister implies an obligation to serve the Crown properly and honestly, not for personal advantage and not at the expense and to the detriment of the Crown. We anticipate that Your Lordship will find little difficulty in finding that the Crown and the Queen are just representations of the Government and people of the Turks and Caicos Islands, who deserve and demand the integrity of their ministers.
25. On 9 May 2003 (following his election, but before he became Chief Minister) Michael Misick swore the oath of allegiance. Floyd Hall took the same Oath on the same day, as did Jeffrey Hall and McAllister Hanchell. Lillian Been (as she then was) took her Oath of Affirmation on 23 September 2003.
26. The Crown's case is that, rather like a well-organised collection of people breaking the law, these elected defendants nurtured criminality, encouraging it to flourish and taking full advantage of their important positions for their personal benefit.
27. The financial consequences of the Misick period were felt long after he had vacated office. With senior civil service pensions being cut, the politicians made what some may say were generous statutory provisions for their own pensions after they reached 50 years of age. If they had served at least 8 aggregate years, they were permitted to draw large lump sums and annual payments.

28. The Crown's case is plain. The gauntlet is thrown down. The defendants treated the Treasury as their own personal Treasury, their Attorneys as their own private bankers and their political Party bank account as their own private reserve. The politician defendants abused their power, sought and obtained substantial personal financial gain.
29. Throughout Michael Misick's Premiership, the procedure for granting Crown land was abused and deeply politicised. The abuse being that prime land was invariably given to themselves or family, close friends and/or associates - you will hear evidence to that effect - and that this land was then, sometimes without ever being owned by these people, sold on or "flipped" as is the term of art, to a developer, thereby breaching, the Crown submit, the Policy. There was flagrant and criminal disregard. Flagrant doesn't bring it to the point where Your Lordship considers conviction, but the Crown say this was flagrant disregard for the Crown Land Policy, a Policy designed to give advantage to the many and not for the few insiders. North West Point is a good example of this – the details will show how the politician defendants, assisted by Melbourne Wilson, were able to produce significant cash returns for themselves, and in some cases their families, for doing nothing more than defrauding the Government. They knew that the land was for sale, they identified who would be allowed to apply, the forms were filled in and submitted and the decision was made to afford the land to their friends and family. The land was then sold at a significant profit and they received a significant return. Similarly, in relation to Juniper Hole we will see how Belongers were given wholly unexpected cheques for the use of their names whilst the politicians pocketed cash as well. Some people, Belongers, were nominated to be the purchasers of particular parcels of land. The land would be sold straight on to someone who was willing to pay more for it, and the Belonger would receive a cheque – sometimes knowingly, sometimes not. With the gain and profitable advantage to friends and family, many who wanted to buy land to go

about their honest business, suffered: 6,000 Belonger applications for Crown Land were unanswered over the years of Mr. Misick's Premiership. These were found at the Crown Land Unit of the Ministry of National Resources during the course of the post-Misick era when matters were being investigated, and governance was returned to something approaching normal.

30. The next part of the opening turns to more formal aspects. The Turks and Caicos Islands are an overseas dependent territory of the Government of the United Kingdom [UKG]. HM Queen Elizabeth II is the head of state and rules through an appointed Governor. We make these assertions in this opening as part of the case that the Crown has to prove. It may all sound trite but these are things that need to be established.

31. The Governor acts, particularly since 2006, in consultation with a Cabinet of elected Ministers. Decisions are made by the Cabinet over all issues of domestic policy (subject to the formal approval of the Governor) save in relation to defence and Foreign Affairs where the Governor (on the advice of UKG) is responsible.

32. Within that broad statement of governmental responsibility, during the relevant period of 2003 to 2009 some policy issues were vested in the Governor and others were vested in Ministers. An example of that is that the responsibility for security rests with Governor, but responsibility for deciding how much the Governor can spend rests with the Ministers. The Governor has ultimate responsibility for the police service and security of the Islands. One of those areas where there will always have to be a meeting of minds between the Governor and Ministers. If something goes wrong, it is the Governor's responsibility. But a matter such as how much the police should have is for the Ministers to decide.

33. The Ministers were appointed, in a Westminster model of governance, by the Premier (or prior to 2006, the Chief Minister). The Premier is the head of the elected Government from among the group of politicians who were elected to the Legislative Assembly.
34. The electorate consists of people over the age of 18 who were known as “Belongers”. Being a Belonger attracts rights that come with citizenship the most important of which, some might think, is the right to vote.
35. The 1998 Turks and Caicos Islands Constitution Order 1988, made under the provisions of the West Indies Act 1962, set out the rights and obligations of Belongers. That remains and is constant throughout.
36. Under the provisions, the Government is empowered to grant Belonger status to a person “who has made a significant social or economic contribution to the development of the Islands.” This was supposed to be, we will suggest, a high threshold and with “strict conditions”, not something to be handed out at a whim, and not something which, the Crown submit particularly in relation to Michael Misick and McAllister Hanchell, should be used as a means of personal gift or reward who had been financially generous to them. You earn your Belongership by making a significant contribution to the islands, not by giving significant reward or personal gift to politicians
37. The 1988 Constitution was replaced in 2006. The 2006 Constitution provided for Cabinet Government and a new Office – that of Premier. There was a general strengthening of local governance. This was meant to allow those with local political support to take greater responsibility for policy and implementation.

38. That 2006 Constitution remained effective until suspended by the UK Government in April 2009. At the time of the suspension of the 2006 Constitution the Government of the Islands was on the verge of almost complete financial collapse.
39. There were by that time 'real concerns' as to the ability of some Government departments to manage their finances, and there was continuing concern over the management of public funds. It has been said that financial difficulties at this time were exacerbated by the desperation of Ministers to sell the TCI's land - at deep discounts of the real value. No one will lose sight of the fact that by 2008 there was a global recession, but that does not answer the way in which land had previously been sold at such deep discounts that there was nothing in the Government reserves.
40. Following the suspension in 2009 of the Constitution, the Turks and Caicos Islands Constitution (Interim Amendment) Order 2009 was brought in to force. The Governor ruled under advice from London.
41. You will know of or will learn during this trial that leading up to the suspension of the Constitution there had been a Commission of Inquiry [CoI]. We emphasise that the findings of the CoI are not relevant to the evidence to be led during this case nor will the evidence be referred to so far as the Crown are concerned.
42. What was the conduct that these defendants engaged in? We can summarise it in this way. Generically it can be described as follows:

- a) Bribery and corruption. The case for the Crown is that prospective developers were encouraged to pay monies in order to procure development rights; to protect investments and the government ran itself almost as a protection racket: if you don't pay, you can't play.
  
- b) There was necessarily a loss to the people of the TCI, the Government of the Islands and the genuine supporters and members of the PNP - those who had dedicated themselves to supporting the PNP. There was loss to them as money was paid to the PNP but withdrawn by those who had access to the accounts for their own benefits.
  
- c) I have already referred to the hiding, concealing, transferring, or arranging to do so of the proceeds of criminality intending to avoid detection and be beyond the reach of the authorities.

43. The next part of this opening will review the structure of the Information and set out the way that the various evidential heads, as referred to above, fit into the allegations in this Opening. The Court is going to hear evidence relating to:

- a. Water Cay
- b. The Seven Stars Complex
- c. North West Point
- d. Beaches Resort
- e. Salt Cay
- f. Juniper Hole
- g. Joe Grants Cay/Dellis Cay

- h. Projects which were being proposed by Richard Padgett (East Caicos and Third Turtle Club)
- i. South Caicos
- j. West Caicos

### **Summary of the Information**

44. **Count 1** is the conspiracy to receive bribes in which Michael Misick [MM], Floyd Hall [FH], McAllister Hanchell [MH], Jeffrey Hall [JH] and Thomas Chalmers Misick [TCM] made an agreement to enable MM, FH, MH and JH to receive bribes.
45. The bribes were paid to the serving Cabinet Ministers in order that they would act contrary to the ordinary rules of honesty and integrity, in the manner expected of Government Ministers.
46. Throughout the time that these elected politicians were in office a number of payments were made directly or indirectly to the named defendants or for their benefit. The payments would not be described as honest political donations or rewards for work honestly done. Rather, they were bribes deliberately paid in order to influence those with important decision-making powers.
47. The Ministers who received bribes did not act on their own. There was an agreement between those defendants to accept bribes themselves or to assist others to accept bribes. It is clear, we say, from the size of the country, the size and nature of the developments, the respective roles of the named Ministers and their receipt of funds (supported as we say they were to that end by TCM) that they all knew that whilst they were in political control, advantage could and would be sought from developers. Some

Ministers developed closer relationships with particular developers, others developed relationships with others. A good example is the relationship between MM and MH and the developer of Salt Cay Mario Hoffman. On the other hand, the relationship FH garnered with Varet Jak Civre [Civre] and Richard Padgett [Padgett]. Our case is that everyone knew what was going on, they all were in a position to support or stop it, but each was able to develop a particularly relationship with a particular developer, and the other politicians would step back as the politician who had developed the relationship developed his scheme.

48. Once a bribe had been paid or offered, the politicians were expected to deliver advantages to the corrupt developers. Sometimes they were able to and sometimes they were not.

49. This course of conduct can be evidenced by an examination of the corrupt relationships between individual developers and ministers which we will see as we look in great detail at the various developments to which we have referred. We can see payments that show that an overarching agreement to receive bribes must have been in place. Why do we say that? You can see monies being transferred from the developer and reaching one or more politicians; these payments have no bearing on ordinary honest dealings, but do seem to have a bearing on the gain that a developer was seeking.

50. The prosecution does not allege that each payment is linked to a specific event: to do so would be unnecessary as a matter of law and impossible as a matter of fact because one cannot look into the minds of developer and politicians. But what you can see is payments from developers to politicians, and then advantages flowing to the developers. The defendants and their co-conspirators created an environment of corruption in which

bribery was necessary in order for normal activities to take place, as well as for corrupt advantage to be obtained. In their words: if you want to come here and develop, you have to pay, and if you want favourable treatment you definitely have to pay. This has been and is described as 'pay to play'.

51. The role of Attorneys in this conspiracy was in particular the disguising and laundering of the proceeds of this criminality. In the cases of TCM and CG in particular, they carried out plans in relation to developments (by way of example, at Juniper Hole and South Caicos), which led to the structure for the payments to Belongers.
52. The client accounts and other accounts of TCM and CG were used for the receipt and subsequent payment out of the proceeds of bribes. These payments were disbursed either directly to the Ministers or via people or institutions associated with them. Sometimes they were paid to friends and relatives, sometimes to reduce credit card debts or pay other bills.
53. In relation to TCM, during the period of the conspiracy he worked at a number of firms, including under his own name at Chalmers & Co. On occasion payments were made to the Chalmers and Co professional account, purportedly for the provision of professional services. We suggest that the evidence will show that these services were fictitious, and were merely a smokescreen for the corruption that was being facilitated. Once the money had been received, TCM did not keep it – the money was paid out to the advantage of others, as a banker would do.
54. The detailed analysis of TTC, EC, 7 Stars, Dellis Cay, JGC, Water Cay, Salt Cay and Beaches will explain the roles of the defendants. At this stage it would be right to state

that given their duty of loyalty integrity and honesty, which each of the elected politicians owed to the citizens and the government, their willingness to share in the spoils - whether to a significant extent or not - and to be a party to meetings in Cabinet where the bribes and agreed reductions in payments by developers were facilitated, lays the foundations for their respective roles in this criminal agreement.

55. **Count 2** - Conspiracy to Defraud. This count reflects the economic risk the defendants exposed the Islands to as a result of their criminal conduct.

56. Count 2 alleges an overarching conspiracy between MM, FH, MH, JH, LB, CG and TCM, to defraud the Government (and the people) of the Islands this was a natural consequence of their corrupt behaviour and interrelationship with the developers.

57. It is alleged that the agreement was that they would act contrary to the economic interests of the Government and/or the Belongers by:

- a. Failing to ensure so far as possible that there was open competition for the sale of crown land and the award of development agreements – in other words, a proper open and transparent tendering agreement rather than back door agreements with friends,
- b. Selling land at an undervalue,
- c. Granting planning permissions or concessions, which were uneconomic to the Government whilst being generous to the applicant,

- d. Permitting Belongers of personal choice to obtain land at considerable undervalues,
- e. Knowingly allowing some Belongers to become owners of land in circumstances where it was known that the true intended purchaser was not a Belonger, thereby taking dishonest advantage of the Belonger discount, and
- f. In permitting such transactions, undermining the ability of the Government to collect stamp duty that would otherwise have been due on the land if it had been sold at a proper market value.

58. Count 2 is evidenced through the following developments: EC, JGC, Water Cay, Salt Cay, 7 Stars, and Beaches. That Ministers approved in Cabinet the shortfall in the entitlement of TCIG to monies, which were, we suggest, the lifeblood of their fellow citizens, for their own personal gain or the personal gain of colleagues or family is the starting point for considering their roles in relation to this count. We should pause and say a few words about the government. We will come back to that in more detail, but might be argued that governor all that was being done was open in Cabinet and the Governor, Richard Tauwhare in the relevant period and who will be giving evidence, was signing off. It is right to say that decisions about who should receive a discount and who should benefit from the Development Agreement, were agreed in Cabinet, and the governor would sign. You will hear that the governor, in signing or approving, was simply carrying out the will of Cabinet. It was not a matter for him to refuse to do if the cabinet had agreed. Of course he could question, but he could not ultimately refuse. Whatever may be put to Tauwhare, one issue we submit will overarch all other issues in

your consideration of the issues: and that is did he know that these politicians were receiving backhanders

59. **Count 3** – Conspiracy to Defraud. This count names MW conspiring with FH, JH and LB. The North West Point [NWP] transaction is a reflection of Count 2. It is free standing as it is against MW, who is not said to be part of the overall conspiracy. The evidence relating to NWP is relevant to Count 2, but it is in particular relevant to MW on Count 3. It is relevant to Count 2 so far as FH JH and LB are concerned.

60. The short allegation relating to NWP is that MW, together with the named co-conspirators FH JH and LB, together agreed to defraud the Government of the Islands in relation to the transfer of Crown Land at North West Point. The land had been sold to Belongers at a 50% discount to its value, and was then immediately sold on to a developer who paid the full price for it. As a result, the Government was deprived of the land's full value and of the full stamp duty payable, and the conspirators pocketed up to \$1million and more.

61. **Count 4** – Conspiracy to Defraud. This count focuses on CG, who it is alleged conspired together with MM to defraud the Government by arranging the transfer of Crown Land at Juniper Point on terms that were contrary to the economic interests of the Crown.

62. **Count 5** – Conspiracy to Defraud. This count relates to the collection of monies apparently collected for the benefit of the PNP, which in reality was diverted for the personal benefit of the named defendants. It is alleged that MM, FH, MH, JH, LB assisted by TCM, agreed to defraud the PNP and its members. Examples of this can be

found at Seven Stars, Dellis Cay, Beaches, JGC, Water Cay and Salt Cay. Once the monies hit the account, they was distributed for their direct or indirect benefit.

63. So far as the bank accounts were concerned, there was one account at the BCB bank, the signatories were any two of MM FH and Arabella Smith. There was also one at the FCIB: FH, MM, Trevor Cook and Arabella Smith were the signatories.

64. Arabella Smith will tell you that she signed blank cheques for FH, who was the party treasurer, to use. She trusted him as Treasurer.

65. You will hear from Gordon Burton who took over in 2010. The records he received were scant: some electronic and hard copy reports of the income and expenditure reports from 1999 to November 2006. Mr Burton is not able to comment on how FH kept his records. It is suggested that this is because they were so scant, but the numbers will assist. When Mr Burton took over, there was \$690.00 in the party account. The payments from the party account to MM, FH, and two beneficiaries of MM's payments - Mildred Rivas and Tarsha Hall were not of the kind, according to Mr Burton that he believed would result in the party condoning the payments for personal benefit. They were payments to friends or associates of MM and FH, which don't appear to be relevant for the party's purposes.

66. The PNP account at the BCB was unknown to Mr Burton, so he is not able to assist as to the \$5.6m it received between June 2002 and February 2007, nor as to the personal loans that MM and the Halls had to take out to clear the accumulated overdraft of \$1.5m. You will have the evidence of that during the course of the trial.

67. Bearing in mind the sums of money mentioned, in 2003 the PNP sought and obtained a loan for election expenses. The amount of the loan from BCB/the Belize Bank was \$110,000. \$73,500 of that sum, which was obtained for election expenses, was applied to clear MM's personal overdraft. The loan was paid off from the resources of the PNP. The Crown's case will show that \$110,000 was borrowed for the purpose of election expenses, \$73,500 was applied to MM's personal overdraft, and the loan was paid off by the PNP – effectively paying MM's overdraft.
68. Among the evidence you will hear is that during 2006 the two PNP accounts at BCB and FCIB respectively were credited with \$3.1m. These are just examples of expenditure:
69. In January 2006 \$23,400 was debited from the PNP account to pay “Karlee Artist” to “style the wardrobe of the Premier of the TCI”.
70. In March 2007 the PNP Belize Bank account was used to pay in part for a boat charter for the Premier MM's wife and 9 other guests at a cost of \$100,000. In 2007 \$150,000 was debited from the PNP account for furnishings of the newly built home for the Premier the Crown say that that is abusing the account and defrauding the “genuine”, unknowing members of the PNP, out on the streets raising money, which was used in the ways we describe.
71. MM, FH and JH opened a joint account at the BCB for the purpose of receiving a loan of over \$1.5m to clear the overdraft of the PNP. Following the drawing down of the loan no repayments were made and by year-end 2007 the PNP loan account was in debt to the extent of \$1,613,741.18. You will compare the drawing down of the loan and the

use of funds which had otherwise been credited to the PNP account. It is suggested as part of the background to this count, the named defendants:

- a. Sought and procured donations in the name of and for the benefit of the PNP when in fact the donations were applied for the personal benefit of the conspirators; and/or
- b. Received and used donations for a purpose, which was not for the benefit of the PNP.

72. The PNP benefited between 2002 and 2010 from an income in excess of \$13.5million – all this money was not applied for political purposes but rather to fund individuals who were already benefiting from salaries as Ministers and members of the legislature. During the period 2003 to 2009 the PDM (the other political party in TCI, that had been the governing party prior to the 2003 Election) received \$1.69m by way of comparison. It can be argued that one is much more popular, but it is important because the electorate is only 7000, we can see that the monies received by the two parties at the 2007 election was \$186 per elector (PDM) and \$1,148 (PNP). we compare that with expenditure in Jamaica during the 2007 election, where the spend per head in US\$ was about US\$5. It is a small point, but the point is that a fortune was paid into the PNP account and was applied for the personal advantage of some of the people in positions of power.

73. The internal ledgers of the PNP reveal that whilst others benefited as well, in 2007 the following defendants received what was described as a “candidates’ stipend”:

- a. Jeffrey Hall \$85,000,
- b. Floyd Hall \$95,000,
- c. Lillian Boyce \$70,000,
- d. McCallister Hanchell \$43,034.25,
- e. Michael Misick \$216,000.

74. It will be shown from the ledgers of the PNP that show how the money was distributed.

75. A more generic reference to monies is that during the period of MM's leadership of his party, \$1.9m was paid from the party accounts for the benefit of MM or to third parties on his behalf. The payments were described as being party related payments, whereas the actual payments, it is suggested, are far removed from that purpose. Were these funds received as political purposes, or to enhance and develop the lifestyle of the politicians?

76. Your Lordship will see, for instance, on 15 September 2006 \$200,095.00 was paid to Caretti Turner, decorators who were instructed in the refurbishment of MM's home. On 31 August 2006 a payment of \$10,095 to the Brilliamont School. LisaRaye McCoy who was married to MM, had a daughter at this school. You will wish to consider whether this was a proper use of party funds. On 28 September 2006 \$70,095.00 was paid to MM's American Express card. You will wish to consider if this was a proper use of party funds.

77. In addition, there was a provision in the 2007 PNP accounts for what is described as financial assistance that totalled over \$775,000. In the ledgers MM also benefited from income under that heading as well as the "misc" heading and the travel heading. Between

2006 – 2008 the ledger records payments to MM of over \$844,632. This gives an example of how monies were distributed. The issue between the crown and the defence can be summarised in this way: the Crown say that if monies credited to the PNP account were political donations, then donors were giving them for party purposes, and not personal expenditure of the defendants who benefitted. If they weren't given to the party by way of donations, but by way of the party laundering the proceeds of bribery and corruption, that would fall under the next Count. We say it is not necessary for the Crown to say whether this money is the proceeds of corruption, or monies donated genuinely to the party and misused. Your Lordship will see monies going in from developers that we identify as making corrupt payments. You may take the view that these were the proceeds of bribery. On the other hand, Your Lordship may conclude that there are sums that you are not satisfied are bribes but ought to be seen as donations. We then invite you to consider whether the donors would like the funds to be taken out and used to fund the politicians' lifestyles.

78. A summary of the monies received by MM from the PNP is to be found in the proposed facts. We don't know at this stage whether MM accepts that he received that money, or whether he disputes those facts. What the proposed facts show, from the exhibits that are available, is that MM received over \$450,000 from the party account, January 2005 being the high point when he received \$160,000. The proposed facts also set out, by reference to schedules and underlying documents, that \$1.4 million was paid out to third parties on MM's behalf. From the second account, between 2006-8 \$844,000 was recorded as being paid out on behalf of MM from PNP accounts. That is how we reach the total of something like \$2.3million during that period.

79. In relation to FH and LH, their benefit from payments out of the PNP accounts is set out in the proposed facts. In addition, \$65,000 was applied to make payments to the Halls' credit card account.

80. MH benefited from payments in excess of \$230,000 between December 2004 and October 2008. LB and her husband Hayden Boyce were beneficiaries between December 2005 and January 2007 of \$140,000 in payments from the PNP. Jeffrey Hall received \$127,000 from party funds between 2003 and 2008.

81. We now move to the money laundering counts. These counts identify the "modern-day criminality": the attempts made by the defendants to ensure that the benefit of their criminality was not discovered or recovered from them. A number of counts are aimed at specific defendants and deal with their role within the criminal arrangements.

82. **Count 6 – Conspiracy to Disguise the Proceeds of Crime.** The basis of this count is the conspiracy between MM, FH, MH, JH, LB and with the assistance, the Crown say, of TCM to disguise the proceeds of crime. The monies were payments to the PNP. They at times purported to be political donations but were, in reality, as we will see, bribes paid for the conspirators' benefit. These payments were made with a view to avoiding those monies being discovered. The reason why one does this is because one is seeking to avoid getting caught, or avoid the money being traced so that a confiscation order cannot be made in respect of those funds. The monies in relation to this count came from Beaches, 7 Stars and Dellis Cay among others. Funds were paid to the PNP account by the developers of these named developments.

83. **Count 7** – Concealing the Proceeds of Criminal Conduct. This count deals with the circumstances in which CG agreed with FH and MM to conceal the proceeds of MM's criminal conduct.
84. **Count 8** – Entering into a money laundering arrangement. This count relates to the receipt by CG of \$1,000,000 from the North West Point land deal. The received funds were in the name of Quinton Hall [QH] but were dispersed to various recipients, in the main for the benefit of QH's cousin, the politician FH.
85. **Count 9** – Conspiracy to Conceal or Transfer the Proceeds of Criminal Conduct. This Count represents the arrangement between TCM and MM to conceal or transfer the proceeds of MM's criminality. TCM's role is similar to the one he is alleged to have played in the overall conspiracy at counts 1, 5 and 6, as set out above. Examples can be found in the sections relating to Salt Cay, Beaches, Dellis Cay and JGC.
86. **Count 10** - Conspiracy to Conceal or Transfer the Proceeds of Criminal Conduct. This count represents similar allegations so far as TCM is concerned the arrangement between TCM and MH to conceal or transfer the proceeds of MH criminality. The actions and activity of TCM's role is similar to the one identified by the headline of 'private banker' – he received funds into his client accounts and then, on the direction of MH in this case, distributed these funds for an on their behalf. Examples of count 10 can be found in the sections relating to, *inter alia*, Salt Cay.
87. **Count 11** – Converting or Transferring the Proceeds of Criminal Conduct. FH used his company Paradigm Limited in order to conceal bribes paid to him in connection with a number of developments. Paradigm Limited features in particular in relation to the Third

Turtle Club development, with which Mr Padgett is connected, and \$375,000 is paid to Paradigm for FH's benefit. We will develop that more when we come to look at the details of TTC.

88. **Count 12** – Dealing with the Proceeds of Criminal Conduct. JH and MW, during the NWP transaction, obtained \$1,800,000 from the monies paid by the developers to secure the deal. This count, sets out the Crown's allegation and deals with the laundering of a sum from the proceeds of the fraud on the Government.

89. **Count 13** – Acquiring the Proceeds of Criminal Conduct. The Crown's case will show that LB acquired \$1,000,000 after the Government was defrauded in respect of the land at North West Point allegedly and apparently to Belongers when in truth it was to a foreign developer.

90. **Count 14** – Entering into or Becoming Concerned in a Money Laundering Arrangement. It is alleged that LB entered into an arrangement with MM to conceal the proceeds of MM's criminality- \$100,000. The Crown's case is that MM was beneficiary of \$100,000 from the NWP transaction, and it was LB who facilitated that money being made available to him.

91. **Count 15** – Converting or Transferring the Proceeds of Criminal Conduct. The Crown say LH received and laundered \$425,000 which she knew, or should at least have had reasonable grounds to suspect, were the proceeds of the criminal conduct of her husband FH. The \$425,000 represented a bribe paid by Civre to FH in connection with the planning around the development of the Seven Stars Complex.

~~92.~~ Count 16 – Using the Proceeds of Criminal Conduct . This relates to monies received in respect of the payment for Water Cay: \$50,000. When the Water Cay transaction was underway, a sum of money was paid into the CG client account opened in the name of John Doezer. This account received a payment from a man by the name of Aulden Smith, who the Crown say, had profited from receiving a “Belonger” discount on the sale of some land on Water Cay to a man named Peter Wehrli. We will hear more as we go through the Water Cay transaction. \$50,000 from that transaction was applied from the John Doezer client account to purchase a parcel of land on Grand Turk. The account summary entry against this transaction reads “R Robinson purchase of land”. The purchase was made in the names of Floyd Basil Hall and Lisa Michelle Hall, and Land Registry documents show the date of transfer as 5 May 2006.

93. I will not open Count 17

94. We now turn to review the structure of the Government of the TCI and the roles played by the various Office holders. A TCI Constitution was first introduced in 1976. A fresh Constitution was introduced in 1988. The 1988 Constitution was replaced by a new Constitution in 2006, which was partially suspended in March 2009. The current and applicable Constitution is the 2011 Constitution, which became effective on 1 November 2012. That instrument is relevant to the conduct of these proceedings, the 1988 and 2006 Constitutions apply to the conduct of the Office holders.

95. The Governors during the period with which this case is concerned were:

- a James Poston (2002-2005) [now deceased]
- b Richard Tauwhare whom we will call (2005-2008)

c Gordon Wetherell who took over as the COI was appointed (2008-2011)

96. The Governor's functions are set out in particular at sections 5 and 13 of the 1988 and sections 20-25 of the 2006 Constitutions.

97. Matters reserved to the Governor included responsibility for defence, external affairs, regulation of international financial services and internal security, including the police, the public service and administration of the courts. The Governor was not required to consult the Cabinet if he was acting under instructions given to him by the UK Secretary of State. When Mr Tauwhare gives evidence he will tell court about role of governor and duties of ministers.

98. Save in relation to these matters, the Governor was required to consult the Cabinet on the formulation of policy and the exercise of his powers. Cabinet minutes employ the form "H.E the Governor concurred and ordered accordingly", words used to show that the Governor was acting in accordance with the advice of Ministers ("the Governor in Cabinet"), much like the Queen's actions in the UK, although the Governor actually sits in Cabinet.

99. In the matters of land and policy towards developers, the Governor was in effect bound to accept the advice of ExCo as it was or the Cabinet. In reality he could only object or veto if the matter was such as to require him to invite the Secretary of State at the Foreign and Commonwealth Office in the UK to intervene. He had the option, and you will see as the case unfolds that there were occasions when he did write to London to explain what had been going on in Cabinet, and

drew short of seeking advice as to whether or not the Secretary of State should intervene. I draw an analogy with Her Majesty the Queen and the Governor, but the important distinction is that Governor is at, and chairs, Cabinet meetings.

100. Under the 1988 Constitution, the Cabinet of elected Ministers was known as the Executive Council [ExCo]. The most senior Cabinet Minister held the title of Chief Minister. The 2006 Constitution changed the Chief Minister's title to Premier, and ExCo's to the Cabinet. The Cabinet consisted of the Governor, the Premier, the Attorney General and six Ministers. One of the six Ministers was designated as Deputy Premier.

101. Members of the Cabinet were also members of the Islands' legislature. Under the 1988 Constitution, this was known as the Legislative Assembly. Post-2006 it was known as the House of Assembly of the Turks and Caicos Islands, consisting of 15 elected members. Elections to the legislature were scheduled to take place every 4 years.

102. Richard Tauwhare was Governor between 2005 and 2008. It was he who decided to seek the appointment of a Commission of Inquiry. You will hear from him, he has made two statements relating to his time as Governor. The first statement of Governor Tauwhare deals generally, through documents and emails, with his role in the Governance of the TCI and his knowledge of matters through Cabinet. The second statement is a review of his understanding of the developments.

103. In his first statement, Mt Tauwhare describes his appointment as Governor. He sets out how he saw his role within the Constitution – very much as “titular head”, with MM as the head of the elected Government. Whether that moves from a constitutional application of their roles will be a matter for Your Lordship, but we do say as a fact that one of the issues you will want to consider is whether this was a Governor operating in a position of being blinded as to politicians in receipt of monies, or shutting his eyes, or not knowing. Our case is that when you see and hear Mr. Tauwhare, you will see and hear a man of integrity, who did not see sufficient in his mind to consider that anyone was in receipt of bribes.

104. He will tell you that he was required to consult and act on the advice of Cabinet. The phraseology adopted: “H.E. Governor concurred and ordered accordingly”, indicated that the Governor was acting in accordance with the advice of Cabinet and not of his own accord. Mr Tauwhare’s policy was to discuss Cabinet papers with the Attorney General and the Deputy Governor. The papers that he received consisted of land allocations, development agreements (the term used to describe the compact between developer and Government as to how a proposed development would progress) and Belongership applications.

105. The Governor was concerned that Cabinet papers were not of a standard or quality expected of the public service, which he in part attributed to the public service not keeping up with the rapid economic development, and in part to “widespread political interference”. Cabinet papers were often submitted at the last minute, leaving the Governor no time to consider them in advance of the

meeting. When he asked for papers to be resubmitted to allow for more time to consider them, Ministers questioned his authority to do so, despite him being Chairman of the Cabinet. Mr Tauwhare was also concerned to control the use of “oral mentions” – as a means of bringing matters to Cabinet that had not been put into writing. One can readily understand that if there has been an event of consequence, or something urgent has arisen, a Minister must have the right to bring an oral mention. But to use them deal with a request to amend an agreement with a developer, or to reach such an agreement, we submit that this is abuse of the oral mention, something that Mr Tauwhare was concerned with. Mr Tauwhare will tell court that this became a frequent source of friction between himself and the Ministers, who would rely on the argument that there were developers concerns which needed to be resolved. The Governor recalls that this was particularly acute in relation to the Salt Cay development proposals. You will recall what was alluded to in respect of Salt Cay: the \$6m made available to MM and MH by the developer.

106. The Governor was seeking to improve policies, procedures and institutions leading to long term improvements in the standards of governance. He reflects that he was seen as an unelected foreign Official, any attempt to impose measures were seen as being “in the UK interests” and provoked anger and resistance. One of the issues which you will have to consider is whether the political resistance to change was indeed based on a concern that there was foreign interference or whether it was to avoid a tightening of the process, thereby making the decision making necessarily more transparent and accordingly more difficult to “corrupt”. Governor Tauwhare was concerned to develop a constructive relationship with the Ministers because otherwise the areas of special

responsibility that he had would be deprived of funding, as Ministers might not approve or could withhold funding. Mr Tauwhare was often accused of infringing the powers of the democratically elected Ministers and attempting to impose his personal views or those of the UK over their own. It was argued by Ministers that everything they did was necessary to attract investment and in the best long term interests of the TCI. The Governor's responsibility, and therefore the areas where his budget was threatened, was the regulation of international financial services, internal security (including Police) and oversight of the public service.

107. The Governor felt that he was being effectively bullied into agreeing to whatever the Ministers proposed; although he was not prepared to tolerate that and sought to work on a spirit of cooperation and partnership he gave way to the elected ministers. On no occasion prior to July 2008 did the Governor consider it necessary to revert to the Secretary of State for permission to act without or contrary to the advice of Cabinet. He was alert to the Constitutional and political risks of confrontation and took the view that without compelling evidence was not prepared to intervene. The Crown's case is that the politicians were alive to that, and played on that position.