

## Appendix 2

### Opening Statement of Sir Robin Auld

Providenciales Proceedings, 13<sup>th</sup> January 2009

Tuesday, 13th January 2009

Opening Statement by SIR ROBIN AULD

Good morning, everybody. I think you all know I am Robin Auld.

The Inquiry, of which these hearings are part has been prompted, there's no gainsaying, by an increasing volume over the last few years of allegations of corruption in relation to Ministers and other elected Members of the legislature in the conduct of their public duties. These allegations startled the UK House of Commons UK Foreign Affairs Committee in July of 2007, as is well known. Most of the allegations were and continue to be made anonymously for fear or claimed fear of retribution from those against whom they were made.

The UK Foreign Affairs Committee described a palpable climate of fear in its report to the House of Commons a year later and recommended the appointment of a Commission of Inquiry "with full protection for witnesses".

As you know, I was appointed last July by the then Governor, His Excellency Richard Tauwhare MVO, to conduct this Inquiry under the Territory's Commissions of Inquiry Ordinance. The job given to me by my terms of reference has two parts. The first is to investigate the possibility of corruption or other serious dishonesty in recent years in relation to past and present elected Members of the Territory's legislature. There are, I suppose, three aspects to that.

The first is that I am concerned with the possibility, not with proof, of corruption. I have no power to determine issues of fact or to direct any particular outcome. It is not my job to make findings of guilt or to exonerate those against whom allegations have been made. The most I can do -- if I have information of possible corruption or other dishonesty -- is to recommend further and more searching investigations, say, by the police and/or some other public enforcement body with a view to criminal prosecution, recovery of the proceeds of crime if proved and/or consideration of other sanctions.

Secondly, you will have noticed the wording of the term of reference -- "corruption or other serious dishonesty ... in relation to elected Members of the legislature". It concerns possible criminality, both by the bribed and the bribers, if any.

Thirdly, the possible criminal conduct with which I am concerned is that, in the terms of reference words, "in recent years", in relation to both "past and present" elected Members of the legislature.

Sadly, there is nothing new about allegations of corruption in the Turks and Caicos Islands. Sir Louis Blom-Cooper QC, in his powerful reports in the 1980s lamented the widespread scope for it here. The UK Foreign Affairs Committee, in its investigation in 2007 and 2008, whilst expressing particular concern about alleged excesses of the present administration, acknowledged similar allegations about its predecessors. However, practicality and time have led me not only to confine my inquiries to the last eight or ten years but also to focus particularly on the period of this administration.

Anyone with any familiarity of the public affairs and commercial life of the Territory knows that the escalating volume of allegations, true or false, has reached a crescendo. The pressing concern is for the health of the Territory and its people today and for the future -- not what may have happened some years ago.

The vast bulk of the information put before the UK Foreign Affairs Committee and this Inquiry is in fact of alleged corruption under this administration, relatively little about its political predecessors. That may be in large part a symptom of the passing of time, dimming, as it does, keenly felt grievances and memories and leading to disappearance of evidence. I should also mention that a likely source for canvassing such earlier transgressions, namely present Ministers and other Members of the House of Assembly has produced very little. Personal letters that I wrote to all of them and others, inviting whatever assistance they could give me in my task were in the main greeted with silence. In short in contrast to the many complaints about them, there were very few complaints from them or others about their predecessors.

Many of you will have seen from the Commission's regular press statements that its staff has made wide, searching and profitable investigations. They have also spent some time on the Islands, examining and obtaining copies of public records and interviewing those who have come forward with information. The result, some six to seven months now into the Inquiry, is a vast and still growing body of information, bearing mostly on ministerial and public officials' alleged misconduct over the last few years, a re-run in large part of material placed publicly and in confidence before the Foreign Affairs Committee of the UK House of Commons.

Well, that's the first part of my job. The second part as defined by my terms of reference is to report on any indications of systematic weaknesses in the law, governance and administration of the Territory. It is clearly complementary to the first part of the Inquiry. If things have gone badly wrong, despite the recent constitutional and other changes in governmental and administrative structures, another look at them is necessary, isn't it? On such matters I have had the benefit of a large volume of written evidence from a variety of knowledgeable and influential sources. There are also valuable audit and other public reports prepared for this and earlier administrations.

The Commissions of Inquiry Ordinance allows me to determine the procedure to be followed at the Inquiry as a whole and in any oral hearings that it involves. In determining the procedure, I have had to keep in mind the essentially inquisitorial nature of the whole exercise, of which these oral hearings, as I have said, are but a part. First, there are so many transactions, business relationships and practices involved and parties to consider, often extending over a period of several years. Secondly, there's the short time in which I have to submit my report, originally four, now seven months. Thirdly, as I have already emphasized, there is the preliminary nature of my role.

So here I am, with much of the Commission's enquiries made and information in, but still short, still short of full and accurate disclosure from a number of persons, in the main Ministers in the present Administration alleged to have profited from bribery.

I have made repeated complaint in the Commission's press statements about the absence of hard and satisfactory disclosure from them, not so much about how they spent their money but where they got it from. Hence the summonses that I have been obliged to serve on them to produce documents and give evidence of their interests and as to how they acquired them. There is also other oral evidence to call, evidence that for obvious reasons can only be a fragment, a fragment, of that already accumulated in writing by the Commission in its inquisitorial role.

With me are Alex Milne, senior Counsel to the Inquiry; shortly to be assisted by Sarah Clark, junior Counsel to the Inquiry; and also Jacqueline Duff, the Solicitor to the Inquiry, who sits nearer to me; and Laurance O'Dea and Bahar Ala-Eddini who are over on my right-hand side, and are probably the best known names to all in this room in the Inquiry for their conduct of the business of its correspondence over the last few months. As readers of the Commission's press statements know, I had hoped to conduct separate oral examinations under each head, the first, in December of last year, as to ministerial disclosure of interests, and the second this month of other witnesses. That is how we planned it. However, because of the delays in obtaining full and accurate disclosure of ministerial interests, I have had to combine the two in one series of oral hearings starting today.

Before I say any more I should mention that the whole Inquiry, including these hearings, is a "judicial proceeding" under the law of the Turks and Caicos Islands. It comes with various formal trappings of such a proceeding, including powers to deal with contempt of Court. I say that not to be formal or "heavy", but to ask all present to observe the basic courtesies and consideration to people taking part in the Inquiry, in particular witnesses. Giving evidence is always and at best an anxious and nerve-racking business, and it requires concentration by the questioner and the questioned. Those subjected to the ordeal are entitled to silence, no gestures, oral or otherwise, and a minimum of movement in the room. Anyone disregarding those decencies will, I am afraid, be very quickly removed and in addition, in extreme cases, possibly subject to punishment for contempt of the Commission.

Having said that, I hope to conduct the proceedings relatively informally and - with everybody's co-operation - in as relaxed an atmosphere as possible in the circumstances. Breaks in the proceedings will be as few and as short as humanely possible, for we have much to do in the short time available. But witnesses may need the occasional short rest,

and so will the Court reporters, producing the Live-Note daily transcripts who sit on my left. Attorneys, witnesses and I should remember to speak clearly, sufficiently loudly and not too quickly, otherwise their already testing job can be made unpleasant, verging on impossible. Also, please remember that we are in a hotel, whose guests are here to enjoy themselves and in peace. All of us should follow the directions of hotel staff and police security officers while here. Unfortunately, it has not been possible to provide on-site parking for those attending the hearings, but directions will be given for nearby off-site parking and I think probably have been this morning. Refreshments should be available just outside the Inquiry room for those attending at cost, which I hope will be modest. No other facilities are open to those attending only for the purpose of the hearings.

This is the programme. The hearings will continue throughout January and as necessary into February, sitting normally from 10.30 am to 1.00 and 2.00 pm to 4.30 pm. They will include not only an examination of Ministers and other Members of the House of Assembly as to their interests but also an opportunity for giving evidence orally or in writing to those who I consider may be implicated or concerned in any subject matter of the Inquiry.

At the hearing the Governor, if he wishes - and he does wish - may be represented by the Attorney General or another public officer holding a legal appointment. Any other person whom the Commission notifies that it regards as a subject of the Inquiry or to be implicated or concerned in its subject matter may also be represented by an attorney.

Now, just a few words about the procedure that I shall adopt, all or much of which is to be found in the Commission's press statement of 23 December of last year, when read with the Commissions of Inquiry Ordinance. Today's transcript of these opening words of mine will also, I hope, serve as a useful aide-memoire. The first stage of the hearings, that relating to Ministers and other Members of the legislature's disclosure of interests will begin in a few minutes.

There will be no opening addresses by Counsel or anyone else. Mr. Milne, as Counsel to the Commission, will start, subject to any submissions from the Bar, by calling the Honorable Dr Michael Misick, the Premier, who attends in response to a Commission summons for an examination as to his interests.

The procedure for the Premier will be the same as that for any other Ministers, former Ministers or Members of the legislature, summoned to produce documents and give evidence as to their interests. In each case the purpose of the examination is to make good inadequacy of disclosure where it exists. Mr. Milne will also consider, in the light of the evidence of each Minister or former Minister, whether to call his or her permanent secretary or other senior Government official to deal with any matters arising from the Minister's or other Member's evidence. Each such witness may be examined by his attorney, if any, and with my permission, the attorney of other parties affected by the evidence. Finally, he or she may be examined again by Mr. Milne. That is the first stage. In the second stage of the hearings, that of oral evidence to be given by others across the whole range of the Commission's terms of reference, the fragment to which I referred a little while ago, Mr. Milne will take a similar course. He will examine each witness in chief. With my permission each such witness may be cross-examined by or on behalf of any person whom I consider --

and notify in advance where possible – as the subject of or implicated by such evidence. He or she may then be further examined by Mr. Milne.

The third stage, any person whose conduct I consider to be the subject of the Inquiry or to be in any way implicated or concerned in its subject matter by oral evidence in these hearings at the earlier stages may give evidence orally or in writing in relation to it. If the witness does so orally, he may be examined in chief by an attorney instructed by him for the purpose. He may then be examined by Mr. Milne and if he wishes, re-examined by his attorney. Any such person who seeks or is requested by me to give evidence in writing will be given a reasonable time in which to do so.

The fourth stage, finally the last, there will be an opportunity for closing addresses by or on behalf of all involved as witnesses in any of the earlier stages, to be followed by a single address by Mr. Milne.

So that is the pattern. I should add that I may, under the Commissions of Inquiry Ordinance, receive and consider any material, whether by way of oral evidence, witness statements, documents or otherwise, even though it wouldn't be admissible as evidence in civil or criminal proceedings. I may determine how such material should be given and by whom and it is a matter for me what weight to give it.

I will require all oral evidence to be given on oath or by affirmation and normally in public. If, in response to application, I agree to hear evidence in private, I may prohibit publication to, or disclosure by, any persons attending before me, of all or part of such evidence privately given. And I may award persons attending before the Commission, in response to a summons or by request, a sum which in my opinion represents the loss caused to that person by attendance.

All of this comes, much summarized form, from the Commissions of Inquiry Ordinance. Evidence given in the Inquiry, whether or not given in confidence, shall not be admissible against the person giving it -- as distinct from against any other person -- in any civil or criminal proceedings, except for perjury or contempt. That doesn't mean that the witness is immune from subsequent criminal proceedings, if there are any, prompted by information or evidence arising in the Inquiry. In addition, all evidence given before the Commission will be absolutely privileged and no witness giving it shall be liable to any civil proceedings in respect of it. In all of this I shall try to conduct the Inquiry in such a way that it does not risk prejudicing the fairness of any subsequent proceedings.

The next and final stage will be for me to write a report and make recommendations as provided by my terms of reference. In doing that, I shall keep well in mind the preliminary nature of the Inquiry. I shall concentrate on matters of real substance and importance to the present and future well-being of the Territory.

I have probably missed a number of important matters that I should have mentioned, and as the hearings get underway, I shall no doubt think of more or be prompted by representations from the Bar to add this or that. If so, I shall give proper notice to all concerned and do it, I hope, in a way that is fair.

Now, before I call on Mr. Milne to introduce himself and Ms Duff and to hear any submissions that there may be from the Bar, I should remind you that the Commission's Secretariat are as always here to help you. They can be contacted here in the hotel or by email or telephone as indicated in the Commission's website.

I am sorry to have taken so long over what is essentially a housekeeping exercise, but it seemed important to me to set out the limitations and framework of the exercise that I am about and the issues with which we are going to have to grapple over the next three or four weeks in different ways. Mr. Milne.

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