

REPORT
OF
COMMISSION OF ENQUIRY
INTO THE
AWARD OF CONTRACTS,
THE
GRANT OF WORK PERMITS
AND
LICENCES AND OTHER MATTERS

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HEADQUARTERS HOUSE,
10, MARKET STREET,
PORT KAITUMA, TRINIDAD
1973

REPORT

OF COMMISSION OF ENQUIRY

INTO THE AWARD OF CONTRACTS,

THE GRANT OF WORK PERMITS

AND LICENCES AND OTHER MATTERS

INSTITUTE OF JAMAICA
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HEADQUARTERS HOUSE,

Duke Street,

31st August, 1973.

YOUR EXCELLENCY,

Under a Commission issued by Your Excellency's predecessor in office under the Commissions of Enquiry Law, Chapter 68, we were appointed to hold an Enquiry with the following terms of reference:—

"To enquire into and report on the system and practices relating to:—

- (i) the award of contracts, whether for the construction of buildings, the execution of works, the supply of equipment, goods or materials, or the provision of services (including sub-contracts for the supply of equipment, goods or materials or the provision of services or any sub-contract in connection with such contracts) for or on behalf of any department of Government;
- (ii) the distribution of houses and/or lots in Government housing or land settlement schemes;
- (iii) the granting of or refusal to grant licences under the Trade Law, 1955, whether for the importation or exportation of goods;
- (iv) the granting of or refusal to grant work permits under the Foreign Nationals and Commonwealth Citizens (Employment) Act, 1964 and the exemption of persons from the provisions of that Act;
- (v) the distribution of jobs in public projects;
- (vi) the provision, by or through any department or agency of Government, of labour or other personnel for work on projects undertaken for or on behalf of the private sector;
- (vii) the sale, purchase, rental or hireage of real or personal property, by or on behalf of, or from the Government of Jamaica;

and the disbursement of public funds in connection with any of the foregoing and all matters relating to or incidental to the foregoing."

Following an invitation issued by the Secretary to the Commission we received altogether thirty-one memoranda, twenty-three from Government Ministries and Departments and eight from members of the public. It can, therefore, be said that on the whole the public were unresponsive to the invitation.

We began sitting at Headquarters House on the 14th June, 1972, and thereafter sat intermittently until the 20th July, 1973, when we had our final session. We held ninety sessions altogether, all of which, save five, were in public. During our Enquiry we heard oral evidence from one hundred and sixty-four witnesses and received one hundred and four exhibits.

Four persons, including Dr. Arthur Burt and Mr. Arthur Williams, the Minister of State and Parliamentary Secretary respectively in the Ministry of Education, were summoned to give evidence but declined to attend.

We have dealt with in narrow compass with the evidence as it was unfolded to us. If there are gaps in certain areas this we submit is due to the limitations of the Law under which we discharged

our duties. We had no power to compel the attendance of any witness before us. Some who could have materially assisted our Enquiry showed a marked aversion to the precincts of Headquarters House.

Our terms of reference covered a broad area which might still have been more fully explored. We took the view, however, that an Enquiry of this nature should be concluded within a reasonable time.

We are particularly grateful to the staff of the Ministries of Local Government and Home Affairs and also to the staff of Gordon House for facilities willingly placed at our disposal.

We have also received the utmost co-operation and assistance from many Civil Servants—too numerous to mention them all by names. We would like, however, to mention especially the Stenotype-writers without whose cheerful assistance and hard work our task would have been impossible.

We wish also to record our special thanks and appreciation to the small staff of the Commission who worked under constant pressure without complaint.

The Commissions of Enquiry Law, Chapter 68, was passed on the 27th March, 1873. That law is now a weary centenarian—designed for a world that has long since ceased to exist. We submit with all respect that no Commission in the future should be required to sit under the provisions of a law which in effect makes it optional for a witness to decide whether or not he will appear before the Commission. Commissioners should have power to compel the attendance of witnesses summoned to appear before them. There is precedent for this in Section 7 of the Commissions of Enquiry Act 1958 (Chapter 514) of the Laws of the former Federation of the West Indies—the most modern statute on the subject we have been able to discover. A witness before any such Commission of Enquiry would, of course, be entitled to the same immunities and privileges as if he were a witness before the High Court.

Under the terms of our Commission we are required to submit to your Excellency our report with the notes of evidence taken in the course of our Enquiry. We send it herewith in triplicate.

We have the honour to be

Sir,

Yours faithfully,

H. L. DACOSTA

I. HERON

CARL CHEN

M. B. C. SCOTT,
Secretary.

HIS EXCELLENCY, THE MOST HONOURABLE FLORIZEL GLASSPOLE, O.N., C.D.

Governor-General of Jamaica,
King's House.

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government operations have been reported under the heading of public expenditure.

2. The magnitude of government operations increases from year to year. It is the largest contractor in the state; its funds are derived largely from taxation and it is accountable to Parliament for the expenditure of funds that have been voted in the annual budget. The one major reason that funds allotted to one project might with equal latitude have been allotted to another purpose, it is pre-eminently desirable that a standard "basis for award" be constructed. It is equally desirable that the responsibility of contracting personnel should be beyond question and that they should be educated in and administered by organizations that carefully guard their responsibility.

3. We appreciate that most citizens have some appreciation of what is involved in the making of a contract. In the context of this chapter we define a contract as an agreement between a Government Ministry (or Department) and a person to purchase goods, perform a service or carry out an assignment or project for which the Government issues the money order.

ORGANIZATION OF MINISTRIES FOR BUILDING CONTRACTS

4. There are three Ministries which normally engage in building operations. First and foremost, there is the Ministry of Works which has prime responsibility for building and engineering operations, on behalf of Government. In this Ministry reside the greatest degree of expertise and experience available in government. They are responsible for undertaking all building contracts for government, except those of the Ministries of Education and Housing. Secondly, regarding the Ministry of Education, the endorsement of their building programmes clearly warranted their requisite expertise and experience. During the initial period of all we attempted, they embarked upon what that Ministry defined a "massive and continuous building programme" with inadequate human resources and capital. It was therefore no wonder that the adventure period early with the plan:

CHAPTER I

CONTRACTS FOR THE CONSTRUCTION OF BUILDINGS, THE EXECUTION OF WORKS AND PROCUREMENT

SECTION A

CONTRACTS

INTRODUCTORY:

1. The modern state must of necessity enter into contractual arrangements to discharge a number of its functions and the more sophisticated the society, the more complex and varied will be the nature of these contractual arrangements. In fact we live in what has been called the 'active society' that assumes more and more responsibilities for the health, welfare and good life of its citizens. It has been well said by a leading authority that "contracting is no longer limited to the logistic periphery of government action but has moved into the main arena of policymaking". And in turn the influence of government penetrates to an unprecedented scale into the internal life of private organizations.

2. The magnitude of government operations increases from year to year: it is the largest contractor in the state: its funds are derived largely from taxation and it is accountable to Parliament for the expenditure of funds that have been voted in the annual budget. For the very reason that funds allotted to one project might with equal fairness have been allotted to another purpose, it is pre-eminently desirable that it should get "value for money" in contracting. It is equally desirable that the soundness of its contracting principles should be beyond question and that they should be adhered to and administered by organizations that are fully geared for their responsibilities.

3. We apprehend that most citizens have some appreciation of what is involved in the making of a contract. In the context of this chapter we define contract as an agreement between a Government Ministry (or Department) and a person to purchase goods, perform a service or carry out an assignment or project for which the Government meets the money costs.

ORGANIZATION OF MINISTRIES FOR BUILDING CONTRACTS

4. There are three Ministries which normally engage in building operations. First and foremost, there is the Ministry of Works which has prime responsibility for building and engineering operations, on behalf of Government. In this Ministry reposes the greatest degree of expertise and experience available to government. They are responsible for undertaking all building contracts for government except those of the Ministries of Education and Housing. Certainly as regards the Ministry of Education, the ambitiousness of their building programmes clearly outstripped their available expertise and manpower. During the material period which we examined, they embarked upon what that Ministry dubbed a "massive and momentous building programme" with inadequate human resources and expertise. It was therefore no wonder that the adventure proved costly to the tax-payer.

5. In the case of Ministries other than Education and Housing, the Cabinet laid down a procedure for the control of government contracts. This procedure is contained in Ministry of Finance Circular No. 43 dated 18th November 1963 and all Permanent Secretaries and Heads of Departments were asked to ensure strict compliance with the instructions contained in that circular. A Government Contracts Committee was thereby established to deal with the works of all Ministries (except schools and government housing). Thus, the operations of the Ministry of Education and Ministry of Housing were removed from the ambit of the Government Contracts Committee. While there might be sound reasons for the exemption of these two Ministries from the operation of the particular Ministry of Finance circular, it does seem somewhat strange that no attempt has ever been made by the Cabinet or the Ministry of Finance to lay down guide-lines for the contractual operations of the Ministries of Education and Housing. A directive on the lines of Circular 43 would seem to be pre-eminently desirable. Thus, while a Government Contracts Committee remained an essential part of the machinery for most government contracting by virtue of Circular 43 there was no such requirement at the Ministry of Education or Housing. True enough a Contracts Award Committee was established in 1962 at the Ministry of Education by directions from the then Prime Minister but we are satisfied that this committee, for all practical purposes, ceased to be effective from August 1970. We feel quite certain that if the existence of such a committee had depended upon a Ministry of Finance circular similar to Circular No. 43, its eclipse would not have been total. On the evidence it seems plain that contract-wise, the Ministry of Education was allowed to pursue its own empirical path untrammelled by any principles pertaining to sound financial control.

6. We consider below the system and practices of the three Ministries involved.

1. The Ministry of Education has a long history of government contracts. It is one of the few Ministries which have a large number of contracts. The Ministry of Education has a long history of government contracts. It is one of the few Ministries which have a large number of contracts. The Ministry of Education has a long history of government contracts. It is one of the few Ministries which have a large number of contracts.

2. We observed that most of the contracts were for the purchase of goods. The Ministry of Education has a long history of government contracts. It is one of the few Ministries which have a large number of contracts. The Ministry of Education has a long history of government contracts. It is one of the few Ministries which have a large number of contracts.

ORGANIZATION OF MINISTRIES FOR BIDDING COMMITTEES

3. There are three Ministries which normally engage in bidding operations. They are the Ministry of Education, the Ministry of Housing and the Ministry of Finance. The Ministry of Education has a long history of government contracts. It is one of the few Ministries which have a large number of contracts. The Ministry of Education has a long history of government contracts. It is one of the few Ministries which have a large number of contracts.

REPUBLIC OF SINGAPORE
 MINISTRY OF EDUCATION
 1970

SECTION B

MINISTRY OF WORKS

GOVERNMENT CONTRACTS COMMITTEE:

7. Over the years the Ministry of Works has developed considerable experience in the types of contracts that are most suitable for their requirements. In 1963 as stated above, the Cabinet laid down certain procedures for the award of contracts to the value of twenty thousand dollars (\$20,000) and above. This procedure was embodied in Ministry of Finance Circular No. 43 of 18th November, 1963. Apart from contracts, it also dealt with the appointment of consultants such as Architects and Engineers. Under Circular 43 a Contracts Award Committee was established in order to deal with the work of all Ministries excepting Schools and Government Housing.

8. The Government Contracts Committee consists of—

Chairman Director of Technical Services, Public Works Department, Ministry of Works. In cases of contracts over one hundred thousand pounds (\$100,000) (\$200,000) the Chief Technical Director would be the Chairman and the Director of Technical Services a member.

Permanent Members: Chief Architect, Public Works Department, in the case of buildings; Chief Engineer (Civil) in the case of Civil Engineering works; Senior Officer in the Ministry of Finance; Finance Officer, Ministry of Communications and Works.

Secretary: Supplied by the Director of Technical Service.

Part-Time Members: When discussing tenders, contracts conditions or awards—Permanent Secretary of Ministry concerned or a nominee approved by the appropriate Minister. Chief Quantity Surveyor, Public Works Department. When project design by Public Works—Director of Construction, Public Works Department. Private architects, consultants and quantity surveyors employed are required to attend when contracts supervised by them are under discussion.

9. This Committee has the following responsibilities:—

- (a) recommending to the appropriate Ministry, for transmission to the Cabinet, private architects, quantity surveyors or specialist consultants in order of suitability, for Government buildings or Civil Engineering work and maintaining a list of those suitable for employment on different categories of work;
- (b) reviewing and maintaining the classified list of Government contractors for approval of Cabinet;
- (c) advising the Accounting Officer concerned for transmission to the appropriate Minister on the type of contract conditions to be used for projects over \$20,000 in value;
- (d) advising the Accounting Officer concerned for transmission to the appropriate Minister on the method of calling for tenders for projects over \$20,000 in value;
- (e) opening all tenders or negotiating prices for projects over \$20,000 in value;

- (f) recommending to the Accounting Officer concerned, for transmission to the appropriate Minister the award of contracts in order of preference for projects over \$20,000 in value, having fully investigated the tenders, the financial stability of the tenderers and their sureties and their ability to execute the work in the period and manner required.

10. The recommendation of the Contracts Committee in regard to private architects, quantity surveyors, specialist consultants and the award of contracts for construction must be submitted by the Ministry or the Accounting Officer, as the case may be, to the Cabinet or the appropriate Minister, as the case may be, for final decision. The cabinet or the Minister concerned has the right to accept or reject or vary any of the recommendations or advice of the Contracts Committee with regard to matters mentioned at paragraph 9 (a), (b), (c), (d) and (f) above.

11. The Technical Services Directorate of the Ministry of Works is responsible for co-ordinating all design functions including those allocated to private architects, quantity surveyors and consultants: (the functions of private architects relative to those of the Ministry of Works are indicated in an Appendix to Circular 43). Once an outside architect is employed, the Technical Services Directorate will advise him as to whether he will have to consider employing other private architects, engineers, quantity surveyors or other specialist consultants or whether that Ministry will be able to provide any of these services. Paragraphs 9 and 10 of the Circular provide for the issuing of interim certificates and for the payment of direct labour where the Ministry of Works undertakes architectural functions on behalf of other Ministry. We are not aware that there has been any amendment of this circular which still forms the essential basis for contracts undertaken by the Ministry of Works.

12. The types of contracts involved vary in so far as the project is locally financed or internationally financed. The procedure and practice used by the Ministry of Works vary according to the type of contract that is being undertaken but the following procedures are those most in common use:—

LOCALLY FINANCED PROJECTS:

13. (i) **Contracts by Selective Tender**

Here, invitations to tender are sent only to a limited number of pre-qualified contractors included in the approved classified list of government contractors. This is a universally accepted practice and is based on the knowledge of the Government Contracts Committee that the selected list comprises those contractors that are most suitable and who are likely to be in a position to carry out the particular project efficiently. This method of awarding contracts is the one most frequently used; in selecting the short list of contractors the Committee naturally takes into consideration the contractor's work-load at the particular time. Contract documents comprising drawings, bills of quantities and specifications are prepared by/or for the Ministry of Works and made available to the contractors invited to tender.

(ii) **Design and Construct Contracts**

Occasionally there are projects for which both the design and construction work are concurrent. In such cases the construction work is examined fully by the Technical Staff of the Ministry and by the Government Contracts Committee before decision is taken. The benefits to be obtained from such contracts arise when the

parties to be considered for the award of a contract are specialists for the particular type of work or construction required, or the need for the expeditious completion of the work requires both to proceed concurrently.

(iii) Negotiated Contracts

In certain cases, projects are most expeditiously dealt with by direct negotiation with the selected contractor. Such a method would be employed when the project is of an intricate nature and/or there is need to eliminate the time required for employing the tender procedure.

(iv) Schedule of Rates (Labour and Materials) Contracts

Under this type of arrangement negotiation is carried out with one or more government classified contractors for the execution of work on the basis that the contractor will provide all materials and labour. The rates to be paid for materials will include the cost of transport at current mileage rates based on charges per ton mile for certain types of materials (e.g. metal and steel) or per load for other types (e.g. lumber and cement). In addition an amount to cover overheads and incidentals is allowed after taking into consideration the nature of work, the location and other unusual conditions which may exist. The rates for labour are those reflected in the Ministry's current "Schedule of Labour Rates" for the relevant categories.

Where it is proposed using this type of arrangement for projects not exceeding \$20,000 the Contracts Committee may be consulted but generally the particular Director concerned and/or the senior officer of his Directorate will assume responsibility for its employment. In such cases however, the Minister is informed. In the case of specific items of works (e.g. asphalt paving) for which the Ministry has established a fixed rate, contracts in excess of \$20,000 in value may be awarded with the approval of the Minister.

(v) Schedule of Rates (Labour Only) Contracts

Under this arrangement all materials required are provided by the Ministry of Works and the contractor provides the labour for the execution of the work. The rates are those set out in the "Schedule of Rates for Labour Only Contracts."

(vi) Nominated Sub-Contracts

There are occasions when it becomes necessary to obtain quotations to carry out work of a specialist nature within a contract. On such occasions quotations are obtained from a number of contractors and/or suppliers. These tenders are then reviewed by two senior officers of the Ministry. The successful contractor then becomes a nominated sub-contractor to the main contractor.

COMMISSIONS:

14. Where the Ministry has a heavy work-load and is unable to undertake all the work required i.e. architectural, engineering, quantity surveying or land surveying it becomes necessary to employ a consultant and Circular 43 lays down the procedure to be followed. The names of the consultants required are submitted to the Government Contracts Committee which recommends them to the appropriate Ministry for transmission to the Cabinet. (Circular 43 is reproduced at Appendix B).

The Ministry of Works maintains a list of contractors who are required for all types of activities on which it engages. The lists of contractors, unlike that of the Ministry of Education, are settled solely on a professional basis and a regular procedure is followed. It is on the following lines:—

- (a) an advertisement is placed in the Press and interested parties may then apply to be placed on the Government List of Contractors for various categories and for different types of works;
- (b) contractors are required to meet certain criteria aspect of financial standing, capacity, former experience in the technical type of work and technical competence. They are required to fill out a standard form of application giving all the details which the Ministry of Works considers relevant for consideration;
- (c) the contractors' list is then screened by the Government Contracts Committee;
- (d) the contractors' list is submitted to the Minister who then in turn submits it to Cabinet;
- (e) the list is usually reviewed annually.

The above procedure at (a) (e) applies to all contractors except those on the 'D' List. This list embraces contracts under \$4,000.

CONSULTANTS:

15. The government maintains a list of consultants who apply for inclusion on the list of Government Consultants. The Government Contracts Committee reviews this and if found to be in order in terms of staff structure, technical ability, previous experience and any other desideratum considered necessary, the names are then placed on the list.

INTERNATIONALLY FINANCED PROJECTS:

16. In today's world, finance for major projects is often sought from an International Lending Agency. The most prominent of these are the International Bank for Reconstruction and Development (I.B.R.D.), usually known as the World Bank, the Inter-American Development Bank (I.D.B.) the Canadian International Development Agency (C.I.D.A.) and the United States Agency for International Development (U.S.A.I.D.). These Agencies have all established procedures for the selection and appointment of consultants and for the pre-qualification and award of contracts. These procedures vary in some respect from one agency to another particularly in respect to the short-listing of firms in connection with Consulting Services and follow well established principles which are fully recognised by the Ministry of Works.

17. It is a basic fact that lending agencies grant loans in respect of the overseas content of projects with a small allowance for local cost and the utilization of such loans therefore involve the procurement of goods and services from a particular country in the case of National Agencies or from any of the member countries in the case of International Agencies. Further, most of the Agencies require that Consulting Services will be obtained from the lending country although participation by the borrowing country is usually permitted. So far as the appointment of consultants is concerned, the usual practice is to invite expressions of interest accompanied by supporting data from firms within the appropriate country or countries by advertisements in the press and/or professional journals.

From the firms which respond to this invitation a selection of the best four to six firms is made with the concurrence of the Lending Agency and these firms are then invited to submit technical proposals on the basis of specific terms of reference. Not infrequently further information is supplied by briefing in Jamaica of representatives of the selected firms.

18. The technical proposals are then carefully reviewed by not less than three qualified and experienced officers and are then marked independently by them in accordance with the pre-determined marking system designed to determine, *inter alia*, the following:—

- (i) the qualifications and experience of the firm;
- (ii) its experience in the particular field of the project;
- (iii) its understanding of and responsiveness to the Terms of Reference;
- (iv) its proposed allocation of resources to the project.

On completion of this independent evaluation process, the assessors meet to select the most suitable firm for the project. As a rule the order of merit is established without any difficulty but if there is any dispute as to this, a further review is carried out by the assessors jointly to establish an agreed order of merit. The list of firms in order of merit is then submitted to the Government Contracts Committee accompanied by a report on the evaluation carried out. Thereafter, matters proceed according to the procedure outlined in Circular 43 referred to above.

19. When a firm has been selected under the procedure outlined above on the basis of its technical proposals, it is next invited to submit a financial proposal in line with guidance given by the Ministry as to the type of contract which will be acceptable. The type of contract may be—

- (i) fixed price, or
- (ii) cost plus fixed fee, or
- (iii) time rate i.e. a fixed rate (e.g. daily, monthly) for specified services—

depending on the nature of the services to be provided. When the Consultants have submitted their financial proposal it is reviewed both by the Lending Agency and by the Ministry. If the financial proposal as submitted proves unsatisfactory to the Lending Agency or the Ministry, attempts may be made to negotiate an acceptable modification with the Consultants. In the event of the proposals being unsatisfactory and the Consultants unwilling to negotiate, the next step is to invite a second choice to submit a financial proposal and so on until a satisfactory proposal is obtained. The usual approval of the final accepted proposal is then secured prior to the signing of the contract.

20. So far as the award of a contract to a contractor is concerned, the usual practice is for the submission of pre-qualification data to be invited from geographically qualified contractors in much the same way as is done for consultants. Following the submission of such data by interested firms, a short list of preferably not more than about eight of the firms which have met the pre-qualification requirements is drawn up. The firms on the short list are invited to apply for tender forms which has drawings, bill of quantities, specifications and conditions of contracts, and to submit tenders for the works on or before a specified date. In the case of International projects the aforesaid document usually prepared by Consultants in consultation with officers of the Ministry and the tenders are reviewed by the Consultants and these officers. A report on tenders is then received placed before the Government Contracts Committee in the normal way.

THE SYSTEM IN PRACTICE:

21. Assume for example, that the Ministry of Health has decided to add a new wing to a hospital. The question then arises as to how this decision is implemented. First, the Ministry of Works prepares preliminary drawings for approval. At the same time a cost estimate is made. If the project is prepared to cost in excess of \$20,000, the cost estimate forms the basis of such discussions between the Ministry of Finance and the Ministry of Works. After agreement is reached a submission is made to the Cabinet seeking approval for tenders to be invited. When approval is given the Ministry of Works invites tenders. The tenders are then considered by the Government Contracts Committee which then submits to the Ministry of Health a report on the tenders received, together with a recommendation as to the award of the contract. This report and recommendation is then embodied in a Cabinet Submission which after being approved by the Ministry of Finance is submitted to the Cabinet for approval. The award of the contract is made by the Ministry of Works and payments to the contractor is made by the Ministry of Health on the certification of the bills by the Ministry of Works.

If the project is estimated to cost less than \$20,000 the Cabinet is not requested to approve the invitation to tender if funds are already included in the budget for the project, neither is the Cabinet requested to approve the award of the contract and the Ministry of Finance would only be consulted if the sum tendered is in excess of the voted provision for the project.

SECTION C

MINISTRY OF EDUCATION

PRELIMINARY OBSERVATIONS

22. So far as the building operations of the Ministry of Education were concerned, the picture was one of utter chaos and confusion, that almost beggars description. It took some nineteen sessions to deal with all its ramifications. Indeed, if one discarded the other activities of the Ministry of Education and looked only at the segment with which we were concerned, that Ministry might well be describe as 'Chaos Incorporated'. At this stage we merely point out some of the root causes for the chaos that was the Ministry of Education.

23. First, there was the question of the personalities involved. Mr. Edwin Allen was the Minister at the material time. Mr. Allen was perfectly frank with the Commission when he gave evidence—even though he tended to lecture us at times. It is quite clear from his evidence that he was out of touch with the Building Programme that was being carried out by his Ministry. He left its administration to Dr. Burt in whom he reposed absolute confidence: unfortunately, this confidence was completely misplaced.

24. By directive of the then Prime Minister dated 16 th June 1970, Dr. Burt was entrusted with the administration of the entire Building Programme under the Minister: in fact, Dr. Burt assumed supreme command. The appointment of Dr. Burt had unfortunate repercussions for the Ministry of Education. We shall have to deal in some detail with the conduct of the Minister of State, hereafter. At this stage it is sufficient to say we reject completely Dr. Burt's statement that he did not know of the over-expenditure at his Ministry. Indeed, the evidence is over whelmingly against any such assertion. He seemed, in fact, to have had a vested interest in over-expenditure.

25. On the civil service side, Mr. A. W. Shaw was at the material time the Permanent Secretary and the Accounting Officer. It may truly be said that uneasy lies the head that wears this crown. His responsibility is great, both as administrative and accounting officer. Mr. Shaw seemed an amiable and charming personality, but in our view lacked the toughness of calibre to cope with the unusual situation that existed at the Ministry. He was clearly not sufficiently firm in opposing Dr. Burt's spending spree. He frankly admitted that he never set out his objections in writing to the Minister, as it was his duty to have done; nor did he inform the Ministry of Finance of the circumstances. His dealings with civil servants at critical moments equally lack that firmness which one would expect from someone occupying this high Office. In censuring Mr. Shaw, it must be admitted that there are mitigating factors but he certainly cannot be absolved from some responsibility on the question of over-expenditure at his Ministry. It appears, however, that Mr. Shaw was not well supported by a trained and dedicated staff. There seemed to have been a general decline of morale among the staff and certainly one case of corruption.

26. The next cause for the debacle was the abandonment of well-tryed procedures and fundamental principles. The Contracts Award Committee as an advisory body was a most useful instrument in the proper administration of contracts. There was no clear edict from Dr. Burt abolishing it; it simply withered from lack of use. The Ministry became contract happy and between the period April 1971, to November, 1971 two hundred and seventy-five contracts totalling two million seven hundred and sixteen thousand, one hundred and thirty-four dollars and ninety-three cents (\$2,716,134.93) were awarded: but in the rush to negotiate contracts, all business-like principles were abandoned. Thus verbal instructions would be given to contractors to carry out work. No contracts would be signed and sometimes

indeed, no contracts were signed until the moment came for payment. If any private individual conducted business in the way the Ministry of Education did, there would not be the slightest doubt in the world that he would find himself in the bankruptcy court. The whole system at the Ministry reeked of incompetence. Added to all this, there was a complete break-down in the financial control of expenditure. The Permanent Secretary complained severely of a shortage of manpower and there is obviously a great deal of truth in his complaint.

27. Finally, the Ministry of Education had purported to enter upon a Building Programme when it was completely unequipped staff-wise to deal with what would be the tremendous strains of such an endeavour. It clearly lacked the necessary expertise. This was pre-eminently so in the case of the administration of the Junior Secondary Schools Programme; it applied equally to the Primary Schools Programme. Despite all this, the ministerial motto at the Ministry appears to have been 'press on, regardless'. In short, the odds against the successful conclusion of the building programme were enormous. It is no "wonder the massive and momentous building programme" ground to a halt.

CONTRACTS AWARD COMMITTEE

28. Sometime in 1962 a Contracts Award Committee was established to advise the Minister on the award of contracts. We were informed that it was established on the directions of the Prime Minister but there was no document produced evidencing its establishment, composition or functions. As mentioned earlier the Circular issued by the Ministry of Finance on the 18th November 1973 concerning the control of government contracts excluded works related to schools, but no corresponding directions under Section 18 (1) of the Audit Law, 1959 were ever issued; nor does it appear that the Minister of Finance ever ratified the financial control arrangements.

29. It is understood, however, that the main functions of the Committee were:-

- (a) To investigate the status and settle the lists of contractors;
- (b) To advise the Minister on the award of Contracts and on any problems that might arise in the execution of these contracts in implementing the various programmes; and
- (c) To review the execution of contracts awarded and the performance of contractors.

The Contracts Award Committee advised not only on contracts for the construction of new buildings but also those in relation to maintenance, repairs, earth works, electrical works and the manufacture of furniture.

METHODS OF AWARD

30. Contracts were awarded on the following basis:-

- (a) Projects valued at \$10,000 and under were awarded by the Minister on the advice of the Committee;
- (b) Projects valued at between \$10,000 and \$20,000 were submitted to tender and the contracts therefor subsequently awarded by the Minister on the advice of the Committee; and
- (c) Projects valued at \$20,000 and over were also submitted to tender and the award of the contracts therefor made by the Cabinet.

There were, however, occasions when speed was essential and the Chief Architect and the Technical Officers would advise that a contract for over \$10,000 might be awarded by negotiation with a nominated contractor on the basis of a Schedule of Rates or, in the case of standard buildings, a fixed rate would be agreed with selected contractors and/or suppliers.

COMPOSITION OF CONTRACTS AWARD COMMITTEE

31. From the history of its membership it seems clear that the intention was to have a Committee comprised of political nominees with Civil Servants as advisers. The character of this Committee was therefore unlike that of the Government Contracts Committee established by Ministry of Finance Circular 43, for other Ministries.

In the period 1966-1967 the members of the Committee were:-

Mr. E. A. Rae (now deceased) - Chairman

Mr. Emile Josepfs, M.P.

Mr. A. W. G. Shaw, the Permanent Secretary

Mr. V. I. Patterson, the Chief Architect.

There was an unfilled vacancy created by the resignation of Mr. Eustace Bird, who had been a member. Other Ministry officers attended meetings in advisory capacities or, on occasions, as representatives of the Ministry member officers on the Committee.

32. The actual date of Dr. Burt's appointment to this Committee is not recorded. However, the confirmed Minutes of a meeting held on the 13th July, 1967 record that-"Dr. Burt who had recently been appointed a member of the Committee, was welcomed." In any event he attended most, if not all, meetings of the Committee and served on one or two Sub-Committee to which he had been appointed.

33. Mr. Patterson, the Chief Architect, stated in his evidence that the political members made it quite clear that the Ministry officers were present only as advisers on technical and administrative matters and they also insisted that the right to nominate contractors was their prerogative; it is conceded however, that on occasions, they did invite the views of the Ministry officers present.

LISTS OF CONTRACTORS

34. The Contracts Award Committee compiled a list of contractors classified as "A" and "B" respectively. The "A" list would consist of the large contracting firms and the "B" list of the smaller firms. The names on these lists corresponded roughly to the Grade 1 list of contractors compiled by the Ministry of Works. For contracts of \$10,000 and under, a list was prepared from recommendations made by members of Parliament; here political affiliations and loyalties were by no means unimportant. On the whole, however, the criteria that guided the Contracts Award Committee in relation to these contracts were:-

(a) The location of the work to be done;

(b) The size of the contract;

(c) The ability of a person close to the location of the building to undertake such works.

PERFORMANCE

35. On the whole, it appears that the Contracts Award Committee functioned in an efficient and business-like fashion. Inspection of the records disclose that proper though not sufficiently precise minutes were kept and all contracts recommended for an award were listed with the name of the contractor, the general nature of the works and the amount of the contracts. However, after about August 1970, the record of the Minutes of the meetings held were either not kept or were not available for inspection by the Commission. What evidence there was on the matter rather indicated the former conclusion.

36. At the beginning of the financial year the Contracts Award Committee would be aware of the money available to be spent on contracts for building, maintenance etc. Thereafter at each meeting they were provided with a statement by the Ministry officials showing the balances remaining to be spent on the award of contracts and their policy was not to award any contracts in excess of such sum.

THE PERIOD AFTER AUGUST, 1970

37. With the death of Mr. E. A. Rae, the Chairman of the Contracts Award Committee in June, 1970 the only two non-officials on the Contracts Award Committee were Dr. Burt and Mr. Emile Josephs, M.P. In his evidence Mr. Josephs indicated that after August, 1970 he did not participate in the deliberations of the Committee. Indeed, his exclusion from the Committee was the subject of complaint in a letter to the Hon. Prime Minister who was addressed as "Dear Effendi"—the Arabic address for a "special friend". That letter of 30th April, 1971 stated *inter alia*:—

"It is nearly a year now that no meeting of the Awards Committee has met, yet the Schools Programme is going on and my position is completely ignored."

There can be little doubt that after August, 1970 the Committee was completely emasculated. Whereas prior to that date the Committee met regularly each fortnight, thereafter it met *ad hoc* at the pleasure of Dr. Burt, sometimes without all members concerned being advised. Further contracts were awarded at other meetings held by Dr. Burt or by "memos" sent by him directly to officers or by oral instructions from him. Failure of officers to move with celerity, because there were no funds available would invite from Dr. Burt the admonition—"move for God's sake, move".

38. At this stage too, the practice of selecting contractors from a list of approved persons or firms nominated by each Member of Parliament was no longer fully observed. Instead the Minister of State was in direct touch with Members of Parliament for their recommendations for contractors for particular projects; thereafter the Minister of State would inform the senior officers of the Building Section of the projects to be undertaken and the names of the contractors. A direct result of this was that new contractors—previously unknown to the technical officers—emerged, some conspicuously lacking in the necessary talents and skills.

THE DECLINE AND FALL OF THE BUILDING PROGRAMME

39. We deal with the Junior Secondary and Primary School programmes under separate heads. Here it is sufficient to make some general comments on the award and execution of contracts under the Burt regime. The new methods of awarding contracts made control impossible, both from the administrative and financial point of view. Added to this, there was the practice of instructing contractors to commence work before any contract was signed. Sometimes contractors would arrive at the

Ministry demanding payment for work done and it was only at this time that the contract documents and the payment forms would be completed. A direct consequence of this failure to commit contracts to writing before a project was started was the fact that it was impossible to determine what work constituted variations under a contract; this could obviously lead to manipulation of claims. This was a particularly serious situation when the honesty of a number of contractors to the Ministry was more than questionable and the competence of others doubtful. It was now clearly an abuse of language to speak of a primary school building programme; it had clearly degenerated into a series of skirmishes between Dr. Burt and his building officials with the contractors waiting for the spoils. The building section at all material times clearly under-manned and constantly harassed ultimately capitulated under the pressure for action built up by Dr. Burt. When the alleged programme came to a halt towards the close of 1971 this Section of the Ministry bore a striking resemblance to an army in retreat; it was dispirited and disorderly.

THE PRIMARY SCHOOLS BUILDING PROGRAMME—THE PURPOSE OF:

40. The Primary Schools Building Programme is a continuing one. It aims to provide a sufficient number of places in Primary Schools as the population grows. For this purpose sums are annually included in the Budget. In this section of the Report we trace how the over-expenditure was discovered, the extent of it and the actions taken by Government consequent on the over-expenditure.

THE CONSTITUTIONAL POSITION

41. The Constitution of Jamaica provides that there shall be a Consolidated Fund into which shall be paid all the revenues of the Government of Jamaica, and out of which shall be paid all sums for which a warrant was issued by the Minister responsible for finance, i.e., sums voted by the House of Representatives or otherwise chargeable on the Consolidated Fund by virtue of the Constitution or some Law of Jamaica (Sections 114, 117 (1) and (2)).

42. The Accountant General, as the official responsible for the operation of the Consolidated Fund, provides for the information of the Ministry of Finance a monthly statement setting out the amounts paid into and out of the Consolidated Fund. By maintaining a running total of the amounts paid into and out of the Fund from the beginning of each financial year and comparing these totals with the total estimate of revenue and expenditure for the full year, the statement provides a basis for assessing whether revenue is being received and expenditure incurred at the expected levels. Thus, if expenditure appears to be below the level expected at any particular stage, investigations can be made as to the reasons for this and corrective actions taken in good time to ensure that there is no hold-up in the implementation of authorized activities. Conversely, it is also possible to assess whether expenditure is proceeding at too rapid a rate and to take steps to avoid excesses on the total authorized appropriations.

EXCESSIVE RATE OF EXPENDITURE

43. In examining the statement for the month of August, 1971, the Ministry of Finance observed that expenditure was proceeding at so fast a rate that a serious financial problem would arise if the rate was not checked. The statement showed that after only five months of the financial year, the amount drawn down from the Consolidated Fund for the use of the Ministry of Education on its capital projects was \$4,176,000.00 out of a total vote of \$6,587,000.00, that is to say, approximately two-thirds of the year's provision.

44. Because of the situation which had arisen it became necessary for the Ministry of Finance to obtain explanations. It accordingly called on all Ministries to forward statements showing their current financial position, i.e., what portion of the total vote for the year had been expended and what portion remained to be spent. The statement received from the Ministry of Education revealed that actual payments made as at the 30th September, 1971, in respect of the Primary Education Building Programme (for which a provision of \$2.5m. had been voted) was \$3,087,842 and that the Ministry expected to spend a further \$2,412,158 during the remainder of the year, resulting in a projected excess of \$3,000,000 on the provision of \$2.5m. It was this statement which led to subsequent discussions and correspondence with the Ministry of Education about the excesses on their Capital Expenditure for 1971-72.

MINISTRY OF EDUCATION'S APPEAL

45. On the 20th October, 1971, the Ministry of Education forwarded a memorandum to the Ministry of Finance. It was clearly in the nature of an S.O.S. requesting the Ministry of Finance to save the Ministry of Education from embarrassment. It indicated that the provision of \$2.5m. included in the Capital Estimates of the Ministry of Education had been over-spent and requested a further provision of \$3,000,000 to meet commitments already entered into. This over commitment was entered into without the prior approval of the Ministry of Finance or the Cabinet. It was clearly in breach of Section 19(1) of the Financial Administration and Audit Law. This *cri de coeur* from the Ministry of Education evoked little sympathy at the Ministry of Finance which, not unnaturally, was shocked by this display of financial unorthodoxy. In the view of the Ministry of Finance, education quite understandably began with some elementary knowledge of the Financial Administration and Audit Law and the Regulations made thereunder.

INTERROGATION BY MINISTRY OF FINANCE

46. Some pertinent interrogatories were therefore directed to the Permanent Secretary, Ministry of Education by the Financial Secretary on the 20th October, 1971, concerning the over-expenditure and over-commitments. A reply was received on the 8th November, 1971, and it was to the effect that the total commitments brought forward from 1970/71 was \$4,305,038 and the commitments entered into since the 1st April, 1971, was \$3,700,000. These were the two most important items. What these two amounts showed was that approximately \$8,000,000 of the commitments were either brought forward or entered into since the 1st April, 1971, against a vote of \$2.5m. In other words, knowing that \$2.5m. had been voted by Parliament the Ministry of Education proceeded to enter into total commitments amounting to \$8,000,000 as announced at that time.

47. It was no wonder that the Ministry of Finance commented critically—

“This case illustrates all that is bad about the way in which some Ministries and the Ministry of Education in particular proceed with the conduct of public business. The Ministry proceeds as though there is no financing problem and therefore no need to pay any attention to the budgeted provisions. The guiding principle seems to be that if a proposal seems good in itself they should proceed with its implementation, and only later, when commitments are firm, apply for the funds to finance it. There are several instances of this kind of action being taken in the Ministry of Education. There is no need to point out what sort of conditions would exist if every Ministry proceeded in the same way.”

THE MINISTER OF FINANCE INTERVENES

48. In fact, the Minister of Finance had been even more caustic at a meeting on the 25th October, 1971, at which all Permanent Secretaries and their Finance Officers were present. It was at this meeting that the Minister promised to have the offending application from the Ministry of Education framed and hung in his office and further stated that he would be requesting the Auditor General to examine the Ministry's accounts with a view to instituting sur-charge proceedings against the officers concerned. On the same date, i.e., 8th November, 1971, that the Ministry of Finance received a reply to its enquiries, it also received a separate memorandum from the Ministry of Education requesting their examination and comments on a draft submission asking the Cabinet to agree to the provision of supplementary funds consequent on the reported over-expenditure.

The first paragraph of the submission reads as follows:—

"Cabinet is aware that in the previous financial year the most massive and momentous School Building Programme ever attempted by any Government of this country was launched, resulting in actual expenditure of \$2.853m. with concomitant commitment of \$4.3m. which fell due in this financial year. It should be explained that in November, 1970, Supplementary Expenditure which increased the Vote for 1970/71, from \$1.8m. to approximately \$2.5m. was granted, and to ensure the actual expenditure of this amount in the comparatively short time of four (4) months before the end of that financial year, it was necessary to embark on projects, the final cost of which was far in excess of the voted figure. Only \$2.5m. was provided for this programme in the current year's Budget."

EXPLANATION FOR OVER-EXPENDITURE

49. This first paragraph of the submission embodied the explanation which proved completely unacceptable to the Ministry of Finance. The fact is that what had taken place in the previous year did not and could not provide any authority for a new or expanded building programme in that year, 1970/71. The Ministry of Education was saying that approximately seven hundred thousand dollars (\$700,000) was provided in the Supplementary Estimates 1970/71, and in order to spend seven hundred thousand dollars in that year they entered into commitments which resulted in a carrying forward into 1971/72 of \$4.3m. but when the facts were examined it was found that the provisions made in the Supplementary Estimates for 1970/71 related to an entirely different matter.

50. In the first Supplementary Estimates an amount was included which related to the provision of twenty kitchen canteens at twenty schools, for improvement to the feeding capacity in certain primary schools. This was not for an expanded building programme. In the second Supplementary Estimates an amount of five hundred and eighty-two thousand, nine hundred and eighteen dollars (\$582,918) was provided to meet the amount carried forward from the previous year. In other words, in the year 1969/70, the total amount provided in the Budget was not spent, although commitment had been entered into, and in order to discharge those commitments in 1971/72, it was necessary to provide the sum of five hundred and eighty-two thousand, nine hundred and eighteen dollars (\$582,918).

51. The astonishing thing is that these explanations were in fact, provided by the Ministry of Education at the time they sought those supplementary provisions. So they must have known what the provisions were required for. Moreover, the printed Supplementary Estimates passed by Parliament contained those explanations in the remarks column. There was no basis on which the Ministry

of Education could have interpreted the provisions made in the 1970/71 Supplementary Estimates to mean that authority had been given for a new and expanded building programme. It was no wonder, therefore, that the Ministry of Finance could not accept the explanations proffered.

EXPLANATION REJECTED

52. A minute was put forward on the Ministry of Finance file to the Minister himself, stating that the explanation was not acceptable. It was pointed out, however, that information provided in the discussions which had taken place with the Ministry of Education made it clear that in fact the Vote had already been exceeded and that some supplementary provisions would actually be necessary on this account. These were the preliminary views expressed at that time.

53. The matter was again subsequently discussed between members of staff of the Ministry of Education and the Ministry of Finance and as a result of this discussion a more substantial note was sent to the Minister of Finance. Following upon this the Minister of Finance gave instructions for the appropriate officer to write to the Ministry of Education and this was done on the 10th December, 1971. The letter explains, as outlined above, why the Ministry found the explanations of the Ministry of Education unacceptable. The letter continues at paragraph 6—

"In light of the foregoing, it will be necessary for your Ministry to indicate the source of authority for the commitments entered into during 1970/71 which resulted in the need to bring forward into 1971/72 commitments which you estimate at \$4.3m.

An explanation will also be required as to why fresh commitments which you estimate at \$3.7m. were entered into during 1971/72 despite the fact that the provision in the 1971/72 Estimates for this programme was \$2.5m.

Finally, an explanation should be given as to why the state of affairs referred to above was not brought to the attention of the Ministry of Finance and Planning in time for corrective action to have been taken before the provision was actually exceeded."

To this letter there never was a reply. The only possible reply would have been a penitent one—*nostra est culpa gravissima*. The Ministry of Education had thrown out of the window all rules and regulations relating to proper financial administration.

CABINET INTERVENES

54. Thus, chaos had come full circle at the Ministry of Education. The Cabinet provided supplementary funds to the amount of \$1,900,000 and instructed the Ministry to suspend all projects at the most convenient tie-off stage, and at the same time noted with strong disapproval the overexpenditure of the funds. The situation, as the Ministry of Finance commented had resulted from—

"a total lack of sense of proportion and total absence of financial control on the part of the Ministry of Education."

Thereafter, the matter was reported to the Auditor-General with a view to taking sur-charge proceedings against those responsible, for the over-expenditure.

AUDITOR-GENERAL'S REPORTS

55. The Auditor-General made two reports on the matter; the first was on the 14th December, 1971, and it was addressed to the Financial Secretary. In it he stated there was no effective system of vote control of expenditure relating to building contracts and that Mr. Magnus, the Acting Assistant Under-Secretary, continued to certify contract vouchers for payment without the authority of the Financial Secretary although he was aware that the above provision (i.e., \$2,500,000) was exhausted in September, 1971. He further stated that as at 23rd November, 1971, the Primary Schools' Vote was exceeded by \$1,503,727.15.

56. The Auditor-General's report on the 17th February, 1972, complained that the inadequacy of information on decisions relating to the implementation of school building contracts presented a problem in the placing of responsibility for the various transactions which had resulted in the unauthorised over-expenditure.

The letter continued—

"It can be said from the very outset that as far as building contracts are concerned there has been complete disregard for proper financial control of expenditure."

Paragraph 2 of his letter is particularly pertinent.

"Departmental correspondence show that the Ministry estimated its inescapable commitments under Subhead 2, Primary Schools for 1971/72 in the amount of 3.8 million dollars. I was not able to verify this amount from the records. Although approval for expenditure was given for only 2.5 million dollars there appeared to be several new contracts ranging from \$13,000 to \$90,000 which were considered and put into effect during the financial year and there was no evidence of any financial plan to keep expenditure within the limits of the approved 2.5 million dollars. It seems, therefore, that without consulting the financial records, it was clear that the approved estimate would be exceeded from early within the financial year. This situation was aggravated by an absence of financial control over these contracts in the main accounting branch of the Ministry as it was only at the time of payment that this branch usually became aware of the expenditure. It did not appear that the Finance Officer played any part in the decision to initiate contracts from time to time."

Paragraph 3 stated—

"There was evidence of instances where "contracts were divided into separate sub-contracts and although the reason for this may be valid, it was noted that awards for projects in excess of \$20,000 are required to be submitted to the Cabinet for approval."

57. In the opinion of the Auditor-General, the reasons for the unauthorised excesses were—

- (1) Failure to make plans for the continuation of programmes and for new programmes during the financial year which would not exceed the approved budget of 2½ million dollars.
- (2) The decisions from time to time to implement new contracts without the consideration of the availability of funds.
- (3) In-effectiveness of the accounting system in relation to building contracts."

58. The evidence led before the Commission clearly corroborated the findings and conclusions of the Auditor-General.

THE JUNIOR SECONDARY SCHOOLS BUILDING PROGRAMME AGREEMENT WITH WORLD BANK

59. On September 30, 1966 a Loan Agreement between the Government of Jamaica and the International Bank for Re-construction and Development was executed in the sum of (U.S.) \$9,500,000. The purpose of the loan was to develop Secondary Schools and post secondary institutions for teacher training, technical and agricultural education and consisted of:—

- A. Construction of and equipment for:—
 - (1) 50 new Junior Secondary Schools;
 - (2) the expansion of 4 Teacher Training Colleges;
 - (3) the expansion of the College of Arts, Science and Technology; and
 - (4) the expansion of the Jamaica School of Agriculture.
- B. Construction of staff houses for Junior Secondary Schools in rural areas.
- C. Architectural and engineering services for the above.
- D. Employment of foreign Specialists to assist in the development of curricula, production of instructional materials and training of teachers for the institutions included therein and training abroad of Jamaican Teachers and School Administrators.

CONSULTANTS

60. The Ministry of Education, in its programme for the construction of 50 Junior Secondary Schools throughout Jamaica, appointed as consultant architects/engineers, the associated firms Caudill Rowlett Scott of Houston, Texas, Rutkowski & Bradford of Jamaica, and Shearer & Morrison of Jamaica, on the 17th January 1967, to render architectural and engineering services.

AIMS OF PROGRAMME

61. The educational aims of the Junior Secondary School Programme as formulated were as follows:

To provide a form of education that will acquaint students with various occupational skills, so that they may discover their vocational interest and increase their desire to pursue further educational avenues in those disciplines.

To raise the level of students entering secondcycle secondary schools in order that the level of these outputs may in turn be raised.

To equip children in the age group 12 to 14 with a minimum degree of skill to be better able to service manpower needs, and in this regard to expand the employment horizons of persons entering the labour force at the age of 15 and to make that education immediately functional on entering the labour force.

To challenge the abilities and attract the interest of students.

To establish a more balanced educational programme which would integrate manpower needs with skills offered through the educational facilities and to correct the imbalances in the educational facilities offered through the existing educational institutions.

PHASING OF PROGRAMME

62. The project began in June of 1966 and was planned as a three-phase construction programme. The three phases were to be terminated in September of 1967, 1968 and 1969 respectively. The designs and construction documents for the phase 1 schools were completed in December of 1966. However, delays were experienced due to unforeseen problems concerning international tendering procedures. The problems prompted a unanimous decision to tender the entire project as one large bid package, thus eliminating any earlier concept of smaller bid packages.

MAIN CONTRACTORS

63. In due course tenders were received, and J.G. Fitzpatrick Construction Limited, General Structures Incorporated, and Mancon Limited were appointed main contractors to carry out the building of 50 Junior Secondary Schools and 46 teachers' cottages and flats in accordance with the drawings and specifications prepared by the consultant architects/engineers for the sum of £4,704,341.4s.4d. to be completed over a period of 24 months. The contract sum of approximately £4.7m included a provisional sum of £645,300.0s.0d for schools on 8 sites and £80,604.0s.0d for teachers' cottages and flats on 12 sites.

APPOINTMENT OF QUANTITY SURVEYORS

64. The quantity surveyor appointed by the Ministry of Education at the commencement of the project was Stoppi and Associates and Cairney Bloomfield and Associates. After the commencement of the project, the consulting architects/engineers recommended the appointment of Barkeley and Spence, Quantity Surveyors, to the Ministry of Education to prepare interim certificates. The Ministry of Education agreed to this.

BUILDING SITES

65. Some of the building sites were not ready for handing over to the contractor and in addition necessary information was not available to the main contractor on signing of the contract documents.

66. The contractor presented to the Ministry his programme of construction, divided into four phases. Because sites were either not available or were changed as was the case with Springfield, Vauxhall and Knockalva, or because there were siting and school board problems such as at Morant Bay, Happy Grove, Clarendon College and St. Elizabeth Technical High School, the phasing arrangement was disrupted. The reason for the change of site at Springfield was strictly political and in the case of Vauxhall, the site that had been chosen had to be changed to satisfy the Bauxite Company. In the case of Knockalva it was the Minister of State's wish that the school be built at Lacovia instead.

SELECTION OF SUB-CONTRACTORS

67. During the carrying out of the building operations, the sub-contractors complained that F.G.M., the main contractors, were not paying them on time and this created hardship. These sub-contractors were selected from a list supplied to the main contractor by the Ministry of Education. The nomination of sub-contractors is usually carried out with the consent of the consultant architects/engineers but in this instant the list of sub-contractors supplied to the main contractor was done without the agreement of the consultant architects/engineers. This departure from the Conditions of Engagement of the consultant architects/engineers and the conditions laid down by the World Bank could not

be explained by Mr. L. P. Brown, the then Project Co-ordinator who indicated that from the very outset the main contractor did not have the freedom of choice with respect to choosing the sub-contractors. Mr. Brown stated that he did not know who prepared the list of sub-contractors but some of the members on that list were on the official list prepared by the Ministry of Communications and Works.

DEVALUATION AND DELAYS

68. Shortly after the award of the main contract in 1968, devaluation took place and further substantial additional costs were incurred owing to increases in labour awards, building materials and the fact that the floor area of the buildings were increased. The Ministry's budget which was prepared as far back as 1966 at the appraisal stage at a unit cost of £2 per square foot was obviously inadequate to meet the rising costs that had taken place over the period.

69. Bearing in mind the World Bank's insistence on international competitive tender and the overhead cost of an international contractor and the method of nomination of sub-contractors the contract figure of under £3 per square foot seemed somewhat surprising. In the light of some of the circumstances known to the Ministry's officials and the Consultants the contract price was considered a competitive tender. It should be noted that significant increases to the total contract sum are occasioned when professional fees for architects and engineers and quantity surveyors are based on a fixed percentage of the final cost of construction.

70. The construction programme had been delayed by twelve months mainly due to the requirements of the World Bank which were not fully appreciated when the initial time-table was prepared. The design for the schools in particular had exceeded the areas indicated in the plans at the appraisal stage, the excess being due to the fact that two type designs were developed for various school sizes on flat sites.

71. The effect of devaluation was discussed at a meeting held at the Ministry of Education on the 5th January, 1968 where the Project Director, Mr. Woodham and representatives of the main contractor and consultant architects and engineers were present. The Quantity Surveyor who was responsible for providing cost analysis and cost control was notably absent from that meeting. The main contractor's representative Mr. Fitzpatrick indicated that additional cost to the school building programme brought about by devaluation, in so far as the importation of goods from Canada was concerned, was approximately £118,950.0.0. He also stated that he did not have sufficient time to calculate accurately the increases caused by devaluation for the schools indicated in the provisional sum. However, an estimate of £160,000.0.0 was given. The total increase due to devaluation would then have been approximately £279,000.0.0. The Quantity Surveyors who were appointed to provide full professional services on cost control were not consulted as to the validity of the estimate of 14% increase given by the main contractor. The Quantity Surveyors were asked to provide a list of materials and the unit of increased prices that would occur on that particular list. The figures given for increases of material by the contractors were a once and for all increase according to Mr. Woodham.

72. Mr. Woodham also stated that when the contract was signed only 22 sites that were acquired, and on which construction could start, were available to the main contractor, and not all of these sites fell neatly into the phasing programme that the contractor had submitted. Why the contractor's programme indicating the phasing of the project was not re-negotiated was not indicated in the evidence. Of the eighteen schools that fell within the First Phase only fourteen of these were available to the main

contractor. It is difficult to see how a contract could be awarded to the contractor when he only knew for certain what was involved in the building of 22 schools out of 50. Yet in the site report prepared for the World Bank inspection in August of 1968 only 10 of the 50 sites were not selected for acquisition. The method adopted by the Ministry of Agriculture and Lands which was responsible for site acquisitions for the School Building Programme inevitably led to delay. Their policy when making submissions to the Cabinet was to deal with a group of sites rather than individual sites. Invariably some of the sites that were being acquired did not correspond with the phasing of the contractor, since the phasing was something for his own convenience. This procedure inevitably led to delays and increased costs.

STAFF SHORTAGE

73. Among the many contributing factors responsible for the almost doubling of the estimated cost of the School Building Programme was the Ministry of Education's inability to provide the manpower to deal with the construction programme. The Building Section in the Ministry with only one qualified architect and a number of Building Inspectors who had grown up with long experience in the field was clearly inadequate to handle a project of that magnitude. However, despite this the consultant architects and engineers should have provided better guidance and professional expertise. The Project Director, Mr. Woodham submitted to Cabinet in 1967 a memorandum stating *inter alia*:—

"I should point out however, that although the contractors seem very well organized, the Ministry does not appear to be organized to undertake this project even though Cabinet has agreed on the additional staff. As of now, not one additional person has been added to the staff to carry through this programme and I should add that if the contractors begin in the field before we are geared to undertake the project it would be disastrous in terms of costs, due to delays in approvals, payments of bills, procurement of materials, approval of variation orders and coordinating of all the activities necessary to carry through an efficiently operated project."

These words in fact proved prophetic. The Ministry never secured the manpower or technical expertise to deal with the scheme.

REASONS FOR OVER-RUN

74. From the evidence adduced the major factors for the over-run of the budget of the project were as follows:—

- (a) Devaluation in 1968.
- (b) Increase in the cost of labour caused by two labour increases granted to the industry by the Joint Industrial Council for the building industry.
- (c) Extension of Preliminaries due to additional work.
- (d) Extension of Preliminaries due to the late acquisition of sites.
- (e) Extension of Preliminaries due to contractual documents not being available from the consultant architects/engineers and quantity surveyor.
- (f) Changes in design and extension to existing facilities.
- (g) Increase in the prices of building materials.
- (h) Increases in professional fees due to increased building costs.

- (i) The payment of all reimburseable expenses to professional architects/engineers and quantity surveyors agreed in principle with the World Bank, but not provided for in the contract sum.
- (j) The provisional sum included in the contract documents for the construction of eight schools was too low.
- (k) The main contractor's claim of 12% on the last eight schools for preliminaries, overhead and profit although other contractors carried out the work.
- (l) The cost involved for international tendering and preparation of contract documents.
- (m) The appointment of sub-contractors by the Ministry instead of nomination by the Consultant after competitive tender.
- (n) Site changes by the Ministry without reference to the Consultants.
- (o) Ancillary works authorised by the Ministry of Education.
- (p) Additional payment to the contractor in respect of extra costs incurred as a result of initial delays covering the period from the signing of the contract (the 8th January 1968) until the date of substantial possession of building sites.
- (q) Additional costs to the contractor in respect of preliminaries and overheads as a result of extension of the contract period beyond the 24 months from December, 1968.
- (r) Stoppage and resumption of work directed by Ministry of Education to enable the Ministry to undertake a thorough examination of the causes of escalation in costs and to effect reductions and economies in construction.
- (s) The direction given by Minister of State, Senator Wynter, re-defining the way in which the Junior Secondary schools were to be constructed on a number of sites.

PLANNING AND ORGANIZATION

75. The first requirement of good contract management is thorough planning. This principle is axiomatic. In our opinion the whole history of the Junior Secondary Schools Programme violated this fundamental maxim inasmuch as the programme proceeded largely on the basis of trial and error.

76. The organization of contract works is the prerogative and duty of the contractor. Its implementation affects, in detail, the particular project and in general, the contractor's reputation. Good planning and organization will be of little use if construction is commenced before the contractor has prepared his programme on the basis of continuous information from the architect and other consultants, the promised performance of sub-contractors and has agreed this programme with the architect. To begin building before agreeing a programme is normally contrary to the interest of the employer (in this case the Ministry) and detrimental to proper financial control. In this programme the contractors plan for a smooth operation was thrown out of joint because sites within a particular phase were not available and sometimes contract documents were not forthcoming.

77. The architect in charge should encourage good communication between himself, his employer, quantity surveyor, contractor, sub-contractors, other consultants and the contractor's representative on the site. The architect should be solely responsible for the issue of all instructions to the contractor from whatever source they emanate. This should include all the instructions to sub-contractors, suppliers,

site staff and operators which must be channelled through the main contractor. Further all instructions must be confirmed in writing. Any interference with the recognized prerogative of the architect tends to throw the building programme off balance and in particular his control is diminished when sub-contractors are nominated, as in this case, when the contract concedes the right of the architect to select the contractor after appropriate tender.

78. The contractor is legally responsible for carrying out and completing the work in accordance with the contract documents to the reasonable satisfaction of the architect; in turn the architect will be accountable to the employer if he passes for payment work which is not satisfactory.

COSTS CONTROL

79. The architect and other consultants should ensure that the work specified in the contract document and any instructions given are capable of being properly interpreted and carried out by the main contractor and his sub-contractors. Work that was not in accordance with the contract should have been condemned by the Clerks of Works who were being paid by the Ministry since the longer standard work remained the more costly it is for the main contractor to replace it. The delay in giving such instructions and the carrying out of those instructions inevitably affected the issuing of interim certificates and the practical completion of the buildings, thus occasioning additional cost to the Ministry.

80. Greater financial control would have been insured if the Ministry's programme indicating the required cash flow for the execution of the buildings had been prepared by the consultants and approved by the Ministry. If the consultants in consultation with the Quantity Surveyors had prepared a contract expenditure graph related to the contractor's anticipated rate of construction, budgetary control would have been assisted. Further the Quantity Surveyor in consultation with the architects should have prepared periodic financial reports showing the effect of the adjustment of prime costs and provisional sums due to increase in materials and labour and any other authorised variations by the Ministry which affected the agreed financial cost of the building programme. The Ministry would then have been made fully aware of their budgetary commitments at every stage of the building programme. Since the dates of interim payments would have been known the Ministry would have been informed of their cash flow requirements and the personnel required by the Quantity Surveyors to carry out and check measurements for interim payments. The main contractor and sub-contractors would then have known that their certificates for payment when tendered after certification by the architect or quantity surveyor would be honoured within the terms of the contract and it would be unnecessary for the Ministry to go to Cabinet ever so often for additional funds to complete the project. The dates of interim payments should always be agreed at the beginning of the project and the Ministry informed in advance not only of their cash flow requirements but manpower needs also. Although the Ministry employed one of the firms of Quantity Surveyors involved in the programme without the advice of the consultants architect/engineers it should be noted that all consultants including Quantity Surveyors and Clerks of Works should have been instructed by the consultant architects/engineers and should be responsible to them for their work, and this was one of the conditions of contract of employment of the consultant architect/engineers.

81. Whilst it is recognised that some variations were necessary particularly where the Ministry's requirements changed during the course of the building programme it should be remembered however that frequent changes of mind and Ministers not only delay the progress of the work but can be expensive to the Ministry since it affects the contractors planned programme of work and cash flow.

CONSULTANT AND COSTS

82. Where a consultant is engaged on the basis of a fixed fee calculated as a percentage of the total contract sum a fortuitous increase in the contract sum due for example to an increase in labour and material should not automatically lead to the consultant earning an increased fee. Any increase on his fees over the original sum agreed should always be negotiable in the light of any additional work he is asked to undertake.

PERSONALITIES INVOLVED:

MR. EDWIN ALLEN, B.A., THE MINISTER

83. We remarked in an opening paragraph that the Minister of Education was out of touch with the building programme being carried out by Dr. Burt in his Ministry. This observation does not need much elaboration, the evidence of Mr. Allen himself, is eloquent on the point. We merely refer to some significant answers to some significant questions during the course of his evidence.

"Ques: Would I be correct in saying that you kept in close contact with the building programme of the various schools?"

Ans: I wouldn't say very close—I did take an interest when buildings were going on, how far advanced they were and that sort of thing, but I didn't take much interest in the award of contracts.

"Ques: Did you take an interest as to whether funds were available to carry out the contracts from time to time?"

Ans: I did not—"

"Ques: Now, were you aware of the fact that there was over-expenditure after Dr. Burt had assumed his responsibility?"

Ans: I was not aware of the fact before it went to Cabinet, I mean before that period of time when it went to Cabinet.

"Ques: Were you aware of the fact that there was over-expenditure prior to the 13th December, 1971?"

Ans: I would say just prior, I would be aware of it then".

"Ques: Mr. Allen, you really did not have very much contact with this part of the Ministry?"

Ans: Not very much."

"Ques: You had implicit confidence in Dr. Burt, so you left everything to him?"

Ans: Yes."

84. The answers to the above questions leave no doubt that the Minister was unfortunately out of touch with the building programme being carried on by his Ministry. While a Minister cannot be expected to have personal knowledge of every administrative detail of the departments assigned to him, the Minister's ignorance of vital developments in this important area of his Ministry's operations is inexcusable. The building programme involved the assumption by Government of extensive

legal obligations as well as the expenditure of vast sums of money. It was therefore incumbent on the Minister to have kept in touch with its progress and to have required his junior Minister to make regular and comprehensive reports to him on all developments. The Minister failed to institute any personal follow-up system, made no relevant enquiries and virtually abdicated his responsibility.

DR. ARTHUR BURT, THE MINISTER OF STATE

85. Dr. Arthur Burt was appointed Parliamentary Secretary in the Ministry of Education, after the General Elections of 1967. He was asked to undertake policy responsibility for the Primary Schools Building Programme. In 1969, he succeeded Senator Hector Wynter as Minister of State in the Ministry of Education and took over responsibility for the Administration of the Secondary Schools Building Programme. In the summer of 1970, he was asked by the Prime Minister to assume responsibility under the Minister for the entire Building Programme at the Ministry. Dr. Burt thus became the central figure in the execution of the Ministry of Education's building programme and exercised undisputed authority in this realm.

86. Dr. Burt occupied a key position at the Ministry of Education at a time when there was manifest over-expenditure on a programme for which he was responsible. During the early stages of the hearing before the Commission, suggestions of a grave character were made involving Dr. Burt personally. One would have thought that anyone jealous of his reputation would have been anxious to seek the first opportunity to defend his honour and to demonstrate the integrity of his administration. But what was the conduct of the Minister of State? He ignored the Commission's invitation to attend before it and absented himself from home to avoid the service of a subpoena upon him and finally suffered the crowning indignity of incurring the sanction of a blunt law before a Resident Magistrate. For the price of Fifty Dollars (\$50) he purchased immunity from investigation. We were almost tempted to let these words be the final pronouncement on the Minister of State but on reflection we think that we would be failing in our duty if we did not deal somewhat more fully with the evidence touching and concerning Dr. Burt and his regime.

DR. BURT'S STATEMENT

87. Dr. Burt submitted a statement dated July 17, 1972 to the Commission at the same time taking good care to see that it appeared in the Press. The statement is a mixture of truths, half-truths and palpable falsities. So far as the Contracts Award Committee was concerned, Dr. Burt would have it believed that the Committee continued in all its pristine vigour save for the facts that Mr. Emile Josephs was no longer invited to its sittings and that the method of selecting a contractor was changed. Thus originally, a list of contractors was compiled from nominations put forward by Members of Parliament and from these names the Contracts Award Committee would select names for particular contracts. According to Dr. Burt, from late 1969 to the first half of 1970 there were many complaints from some Members of Parliament about the procedure for award of contracts. For this reason a change was agreed upon whereby the Members of Parliament would themselves select contractors for particular projects. This according to Dr. Burt was the only change in the functioning of the Committee. The evidence, however, showed that from after August 1970, the role of the Committee in advising on contractors for projects was minimal.

88. Dr. Burt stated quite bluntly that—"It was not my duty to name any contractor to any particular project." He also remarked that—"It was not true that I was giving instructions to senior officers to start work." True enough it may not have been his duty to do so, but he certainly did. The best answer to Dr. Burt's plea of innocence here is the record itself. It is quite clear that from time to time Dr. Burt himself gave personal instructions to officers in the Ministry to commence building projects.

Mr. Victor Patterson, Chief Architect; Mr. L. Magnus, Principal Assistant Secretary in the Building Section and Mr. Donald Samuels, Acting Senior Executive Engineer, all concerned with the building programme gave evidence before the Commission. We quote below excerpts from their evidence:

"MR. MUNROE: Mr. Magnus, from time to time directives were given to you and other officers of that section of which Mr. Patterson is head, in respect of to whom contracts should be awarded for the building of schools?

MR. MAGNUS: Yes.

MR. MUNROE: Mr. Magnus, 'I have given my word to build two classrooms at Rose Hall School in St. Elizabeth. The contractor is Mr. Tony Graham. I believe the Building Officer knows him. May I ask for early action'.

Chairman: Would that have gone to the Building Committee?

MR. MAGNUS: No, sir, that was a note written.

Chairman: Were you consulted about that Mr. Patterson, as the head?

MR. PATTERSON: I don't think I was.

MR. MUNROE: That Minute is dated 11th August, 1971?
(The Minute referred to was from Dr. Burt)

"MR. MONROE: Mr. Magnus, St. Patrick Schools, 'I understand that the contractor named is procrastinating. As we are in a hurry to get it, I have decided to transfer this contract to Technical Associates. Please get in touch with Mr. Roper of Technical Associates and ask him to start the building programme immediately. I understand that the drawings are ready. Arthur Burt, HMOS, 13.8.70. There is a minute by you, Mr. Magnus, saying that it should be noted and then filed. Did you do the work or had it done, Mr. Magnus?'

MR. MUNROE: Reads—

"Mr. D. Samuels,

I should be grateful if you would ask Muir and Arscott Construction Co. to build the proposed school at Olympic Way." And in bracket there is Arthur Burt, HMOS, 27/5/71.

Did you carry out this request?

MR. SAMUELS: Yes, sir. This one was never started, sir.

MR. MUNROE: Though he signed his name as Arthur?

Chairman: As a fellow colleague, the most cordial relationship existed between you?

MR. MUNROE: Why didn't you carry it out, sir?

MR. SAMUELS: This was a waiting game, sir. No funds, sir.

MR. MUNROE: No. funds?

MR. SAMUELS: No funds and the pressure of work, sir, we couldn't cope with this sort of thing at all. I just decided that I couldn't do any more.

MR. MUNROE: Did 'Arthur' speak to you about it again?

MR. SAMUELS: Yes.

"MR. MUNROE: About how many times?

MR. SAMUELS: I can't recall how many times.

MR. MUNROE: You stalled as usual.

MR. SAMUELS: Yes.

MR. PATTERSON: Mr. Commissioner, you commented on the 'Arthur', well, the relationship was quite cordial at the time. You know, we had 'Arthur' and 'Dear Arthur'; 'Arthur' was 'Arthur Burt' and Dear Arthur' was 'Arthur Williams', and at that time there was no problem, but that we stalled when we had too much pressure. Mr. Magnus complained about the lack of funds, we complained about the pressure, but in the case of Technical Officers we were told, 'can you get someone from outside to assist'; that we did, but I just wanted to make the point clear that there was no friction at the time.

MR. MAGNUS: I would endorse that, really, sir.

MR. MUNROE: 'Mr. D. Samuels,

RE: NEW PRIMARY SCHOOL ENSOM CITY

I should be grateful if you would do your best to start the construction of this school as early as possible.

The contractor as I have indicated is Mr. O'Brien and the site work is to be done by Mr. Bertram Thomas.

Sgd. ARTHUR BURT,
HMOS

20th May, 1971.

Mr. Samuels, was anything done about this?

MR. SAMUELS: This was never done, sir.

MR. MUNROE: No funds available?

MR. SAMUELS: No funds available, sir, and apart from this, the Ministry of Education never bought this land.

- "MR. MUNROE: Whose land?
 MR. SAMUELS: Well, the developers, I think it is Ensom City Ltd.
 MR. MUNROE: Who were the Directors?
 MR. SAMUELS: I think it is Ensom City Limited, I am not sure.
 MR. MUNROE: Anyhow, the Ensom City School is still not started.
 MR. SAMUELS: Not started, sir.
 Chairman: How many more of these have you got?
 MR. MUNROE: 'Mr. Samuels,

Re: NEW PRIMARY SCHOOL AT SCARBOROUGH—ST. ANN.

Dr. Gallimore has named Mr. Edward Walker of Linton Park as the builder for the above-named school. I understand he has already done work for this Ministry I should be grateful if construction could start as early as possible.

Sgd. ARTHUR BURT,
 HMOS

4th January, 1971

Did this work start?

- MR. SAMUELS: No, sir, it was never started.
 MR. MUNROE: Why?
 MR. SHERMAN: There was some dispute in respect of the site. The Bauxite Company is doing extensive work in that area, and as a matter of fact, most of the area was residential and in that area they have removed to somewhere else and as a result of that the new site was proposed but not yet acquired.
 MR. MUNROE: Mr. D. Samuels,
 I now wish to confirm that the new Primary School at Rest in Clarendon should be built by Councillor Stewart. Site work should be done by Mr. Wally Sang.

Sgd. Arthur Burt,
 HMOS

21st December, 1970

Was this school built?

- MR. SAMUELS: It is now under construction, sir.
 MR. MUNROE: Is Mr. Stewart the contractor, Mr. Samuels?
 MR. SAMUELS: Yes, sir.
 MR. MUNROE: Any comments as to his competence as a Builder and Contractor?
 MR. SAMUELS: Well, at first we objected very strongly to him. I think Mr. Holness can enlighten you more on this.

MR. HOLNESS: Yes, sir, I can only agree with Mr. Samuels, that we objected to Mr. Stewart doing this type of job because prior to that he had a contract for Mitchell Town which, this was only maintenance work, really, and he was not able to do it, maybe, because he had no time and that contract was over a year and he was no where near completion.

MR. MUNROE: Are you aware of the fact that Mr. Stewart was Chief Sanitary Inspector for that area?

MR. HOLNESS: Yes, sir.

MR. MUNROE: And Mr. Wally Sang, who was he?

MR. HOLNESS: One of the Contractors named by the M.P. of that area.

MR. MUNROE: The then Prime Minister?

MR. HOLNESS: Yes, sir.

MR. MUNROE: Were you satisfied with his work?

MR. HOLNESS: Well, this was the first time I was dealing with him so I wouldn't know, sir.

MR. MUNROE: 'Mr. Don Samuels,
The Prime Minister wants the school at Milk River started immediately. It is to be built by Mr. Stewart and the bull-dozing to be done by Wally Sang.

'I should be grateful if you would state this as quickly as possible.

Sgd. Arthur Burt
HMOS

17/2/70

Is that the same school?

MR. SAMUELS: Yes, it is the same one."

89. In addition there was further evidence that Dr. Burt had requested Mr. Magnus to give instructions for work to be started at the following places:—

Pondside School— new building to accommodate three hundred students; re-roofing of existing building.

Hopewell Primary School—extension for five hundred additional places.

Cascade Primary School—extension for five hundred places.

Teachers' Cottage, Mount Peto.

Pondside Teachers' Cottage.

In all these cases the contractor to whom the work was allotted was on Dr. Burt's directive, one Mr. Spence.

90. In our view it is abundantly clear from the evidence that Dr. Burt's statement that he had nothing to do with the giving out of contracts was false and that he knew it was false.

91. Dr. Burt also stated that he was not told that there was lack of funds. We find this a most incredible statement and one which is overwhelmingly contradicted by the record. We fully accept Mr. Magnus' statement that time and time again he brought the question of the lack of funds to the notice of the Minister of State. Mr. Shaw, the Permanent Secretary, also took up the question of lack of funds with Dr. Burt. Mr. Samuels stated that from time to time he would employ delaying tactics in carrying out the directives of Dr. Burt. We quote again from his evidence:

- MR. MUNROE: Did you on more than one occasion go to Mr. Magnus and ask if funds were available to build certain schools?
- MR. SAMUELS: Oh yes.
- MR. MUNROE: And he said no?
- MR. SAMUELS: Yes.
- MR. MUNROE: And this was during Dr. Burt's period?
- MR. SAMUELS: Yes.
- MR. MUNROE: And Mr. Magnus having told you 'no' what did you do?
- MR. SAMUELS: I asked for some directive in writing.
- MR. MUNROE: From whom?
- MR. SAMUELS: From the Administrative Head, whether the Permanent Secretary or Mr. Magnus or somebody.
- MR. MANROE: And you played delaying tactics?
- MR. SAMUELS: All along, sir, we had to hold until we could get something in writing.
- MR. MUNROE: When you delayed these operations, did you at any time go to Dr. Burt indicating the fact that funds were not available, having regard to the fact that he was the person in charge?
- MR. SAMUELS: On several occasions we brought it to his attention.
- MR. MUNROE: Having brought these incidents to his attention on several occasions, what was his reaction?
- MR. SAMUELS: He said funds would be forthcoming so we should go ahead.
- MR. MUNROE: And you went ahead?
- MR. SAMUELS: Well yes, in a slower way.
- CHAIRMAN: Your pessimism was tempered by his optimism.

92. We accept as accurate, the statement signed by a number of civil servants who worked under Dr. Burt, and sworn to in evidence before us, that on innumerable occasions the administrative head of the building section had reminded Dr. Burt of the lack of funds; and had warned against and protested at the commencement of new projects for which no funds were available and that on all occasions Dr. Burt gave assurances that funds would be forthcoming. Further, Dr. Burt as policy

director of the building programme was given copies of the draft Estimates submitted to the Ministry of Finance in connection with the Ministry's budget for 1971-72 and Dr. Burt attended the budget discussions held at the Ministry of Finance with senior officers from his Ministry. In fact we are astonished at the temerity of Dr. Burt in advancing an explanation that is so palpably false and which inherently indicts his own competence as a Minister of State. (Dr. Burt's statement (Ex. 46) and the Civil Servants Reply (Ex. 47) are reproduced as Appendices D & E respectively).

DR. BURT AND THE CONTRACTORS

93. Dr. Burt further stated—"from time to time both the Minister of Education, Mr. Williams and myself were given up-to-date report of the progress of the programme but we were not involved in the actual running of this programme. The programme referred to by Dr. Burt was the building of the fifty Junior Secondary Schools. It was quite true that Dr. Burt was not actually engaged in the running of this programme but this did not prevent him from using unorthodox methods to secure the appointment of certain electrical sub-contractors on the programme. One of the consultants to the programme, Ruthkowski Bradford and Partners, complained of Dr. Burt's interference in the appointment of electrical sub-contractors at Clarendon College, Kemps Hill and Knockalva. The electrical sub-contractors concerned were Y. P. Seaton & Associates Co. Limited, and A1 Little Associates (1963) Limited. Again we find the same firm of consultants complaining in regard to the Jamaica School of Agriculture that their control over the contract was inhibited by the fact that the electrical sub-contractor was not selected by competitive tender but was nominated by Dr. Burt; in this instance Y. P. Seaton & Associates Limited. In all these cases the instructions were received by way of a telephone call.

94. Quite apart from Dr. Burt's concern to secure the appointment of these two firms as electrical sub-contractors it is further significant that these two firms obtained ninety per cent (90%) of the electrical contracts given out by the Ministry of Education during a period of the Burt regime. Mr. Y. P. Seaton stated in evidence that the total value of his Ministry of Education contracts amounted to two hundred and ninety thousand, one hundred and forty-eight dollars (\$290,148). In Mr. Little's case the total value of his contracts amounted to four hundred and five thousand, four hundred and two dollars (\$405,402). In addition his electrical work on the Junior Secondary Schools Programme brought him in a further sum of two hundred and sixty-eight thousand seven hundred and eighty-six dollars (\$268,786).

95. Mr. Little gave evidence with regard to some electrical work which he did at Dr. Burt's home. When he first appeared before the Commission on the 6th September, 1972, he said he had done this work almost three years previously at a cost to Dr. Burt of some six hundred dollars (\$600). When asked whether there was any entry in his books with regard to this work, he replied—"Quite possibly." The impression that he conveyed was clearly that his firm had done the work. However, when the gentleman appeared next day before the Commission, the account assumed a different form. He now stated that Dr. Burt gave him three hundred dollars (\$300) to purchase materials and that the work done by a task worker whose name he could no longer remember. Further he had no receipt from Dr. Burt though he had previously stated he had, and according to Mr. Little, no money came to his company.

96. Dr. Burt seemed to have been possessed of a strange urge to call on all his former contractors during the hearing before the Commission. Mr. Little received his call in July when he advised Dr. Burt to respond to the invitation of the Commission to give evidence. Dr. Burt was also in touch with two makers of furniture who both gave evidence before the Commission. Mr. Noel Lewis, Managing Director of Lewis Woodwork and Joinery Ltd. of 51 Hagley Park Road, stated that from 1966 to 1972 he obtained contracts for furniture from the Ministry of Education, for some seventy-nine thousand three hundred and sixty-eight dollars (\$79,368). Dr. Burt visited his office some three or four times according to Mr. Lewis, in order to urge him on when expedition for certain furniture was required. It seemed a little bit difficult to understand why a busy Minister of State should journey from his Ministry at South Race Course up to Hagley Park Road to discuss furniture; even if the telephone failed, Dr. Burt was a man of authority and had many messengers to do his bidding. Here again the contractor received a visit from Dr. Burt about three weeks previous to the date the contractor gave evidence, i.e., 5th September, 1972. Clearly this visit, at any rate, was not to urge Mr. Lewis to greater efforts.

97. Mr. Albert Cover stated that he knew Dr. Burt very well. The history of his contractual relationship with the Ministry is interesting. Between 1967 and 1968, Mr. Cover got contracts to the value of \$73,615.39. There was marked decline in 1969 when he experienced a dull period: then he was fortunate enough to meet Dr. Burt. From 1970 onwards he got contracts to the value of two hundred and sixty-six thousand five hundred and seventy-five dollars (\$266,575) in addition to a hundred thousand dollars (\$100,000) from the Junior Secondary School Programme. Mr. Cover admitted that Dr. Burt assisted him in getting contracts and that he was grateful to Dr. Burt. Here again this contractor saw Dr. Burt at his home about six weeks before giving evidence on the 11th September, 1972. Apparently Dr. Burt wanted to discuss with him the question of his giving evidence before the Commission but Mr. Cover stopped the Doctor in his tracks telling him that he was not interested.

98. Lastly, one comes to the relationship of Dr. Burt and Mr. Laurentine Johnson. Mr. Johnson might be described as a minion of the Ministry so far as building contracts were concerned. He received contracts from the Ministry totalling the sum of \$967,000 and he evidently enjoyed a privileged position. There are numerous complaints on record about the standard and quality of his work. In two cases on record, Mr. Johnson simply defied the instructions of the Building Officer. He was instructed to build a teacher's office and staff room but he constructed a lavatory block instead. Strangely enough although there were numerous complaints against Mr. Johnson's work no contract of his was ever terminated; in fact he was rewarded with more and more work. On the other hand, Winston Thompson who had apparently incurred Dr. Burt's displeasure, had his eight contracts terminated, though there were no recorded complaints about his work, and his contract at Porus School was actually taken from him and given to Mr. Johnson; thus was the biblical injunction fulfilled—"To him that hath shall be given." Mr. Johnson alleged in his statement that he made one payment of \$500 in cash to Dr. Burt and another of \$800 by way of a cash cheque. (Laurentine Johnson's statement (Ex.28) is reproduced as Appendix F)

99. Mr. Johnson's statement received some publicity in the Press: Dr. Burt knew of the contents of this statement as a letter written to the Commission clearly shows. Yet the former Minister of State deliberately refused to come before the Commission to answer the allegations against him, advancing for his refusal arguments that lacked any plausibility. We have no reason whatever to doubt that the facts set out in Mr. Johnson's statement are true. He actually journeyed from his home in Manchester to

Kingston to give his statement and he handed over a number of cheques; we are satisfied that his statement was free and voluntary. On Mr. Johnson's statement there can be no doubt that Dr. Burt was guilty of corrupt practices. But in our conclusion the conduct of the former Minister of State speaks with far more damning effect than any accusatory voice of any contractor.

MR. ARTHUR WILLIAMS, THE PARLIAMENTARY SECRETARY

100. Mr. Williams was elected Member of Parliament for Southern Manchester in 1967. In January, 1969, he was appointed Parliamentary Secretary in the Ministry of Education where he was responsible for the administration of the Primary Schools Programme.

101. Charges of corruption were made against Mr. Williams and it will therefore be necessary to examine the evidence against him.

102. First, there is the evidence of Mr. H. A. Young the Returning Officer who acted as treasurer for Mr. Williams campaign and who purported to record what took place at two meetings of contractors over which Mr. Williams presided. Mr. Young's political philosophy might be described as somewhat callous and he himself as a village machiavelli. We therefore do not accept a word Mr. Young said unless it is corroborated by other independent and reliable evidence. According to Mr. Young, he was present at meetings of contractors held by Mr. Williams but did not know their purpose; he however took notes and wrote up minutes although he stated that it had been agreed at the meeting that it was confidential and no minutes should be made. In one breath he states that as Returning Officer he could not get mixed up in Mr. Williams' political campaign and he did not regard himself as being active in Mr. Williams' campaign. In another breath we find him confessing that he was acting as Treasurer, collecting cheques on behalf of Mr. Williams and paying them into his own bank account and making payments out. He admitted lodging cheques in his personal account but kept no record of this. He stated however, that he had receipts but when asked to produce them he could produce only two. He was the reluctant treasurer-conscripted against his better judgment—forever intending to resign but forever holding on to the control of the purse-strings. He stated that he had tendered his resignation though there is no record anywhere of it.

103. Mr. Young asserts with apparent pride what most people would be ashamed to confess; thus Mr. Young stated that he advised Mr. Williams that it was unfair for certain contractors to be contributing and not getting anything therefore Mr. Sibliss' contribution should be refunded. This advice was tendered because he was 'anxious for justice to be done'. On being asked whether he would consider it proper for a candidate to ask a contractor for funds for his political campaign in return for his promise to provide him with government contracts, he answered that he did not consider it improper. In short, in our view Mr. Young's moral outlook was unworthy of the market place.

104. Then there is the evidence of Mr. Norman Sailsman, a building contractor to the Ministry of Education. The gentleman is hardly literate and has to employ a foreman who can read a plan. His lack of letters is a misfortune for which one may sympathize with him; his quick and cunning are however acquired arts which one must deplore. Mr. Sailsman was in a dilemma when he appeared before the commission. He had given a statement in which he had clearly stated that he had promise to contribute to Mr. Williams' campaign on the understanding that he would obtain contracts from government on Mr. Williams' recommendation. In between the making of the statement and his giving evidence before the Commission he had met Mr. Williams in Kingston and discussed the statement which he had given,

with Mr. Williams. When he came before the Commission he could not make up his mind what attitude he should adopt. His first posture was that he knew nothing whatsoever about what was in the statement; then he shifted somewhat and said he was forced to sign it and gave as his reason the fact that he was told that it would be kept a secret. Before the Commission he went as far as saying that Mr. Williams assisted him to obtain contracts. In his evidence he admitted that he had contributed towards the purchase of Mr. Williams' jeep and that he had made other contributions. The jeep, on its acquisition, was solemnly dedicated and according to Mr. Sailsman was used not only for constituency purposes but for taking people to the hospital and to the asylum.

105. The history of the award of contracts by the Ministry to Mr. Sailsman is significant. Before January, 1971, the total value of the contracts awarded to Mr. Sailsman was thirteen thousand one hundred and one dollars and three cents (\$13,101.03). After January, 1971, the value of the contracts awarded to him was one hundred and eight thousand dollars (\$108,000)—almost nine times as much. Mr. Sailsman admitted that Mr. Williams had recommended him for the schools at New Forest and Litiz. It appears therefore, that the increase in the value of the contracts awarded to Mr. Sailsman came after the January meeting of 1971 held by Mr. Williams and at which, according to Mr. Sailsman's original statement, contracts were promised in return for contributions. The question arises: is this a mere coincidence, just one of life's little ironies? (Mr. Sailsman's Statement (Ex.41) is reproduced as Appendix 'C').

106. Mr. Winston Thompson also gave evidence and corroborated Mr. Sailsman to the effect that Mr. Williams was promising contracts in return for donations to his political campaign. Mr. Thompson stated that he refused to agree to any "kick-backs" and walked out of the second meeting. Mr. Thompson's contracts were thereafter determined. Strangely enough, there is no record of any letter having been sent from the Ministry of Education to Mr. Thompson complaining that he was not performing satisfactorily and requesting that he do so. Indeed as a matter of law, it is difficult to see any reason for the termination of his contracts—one of which was nearly complete—and indeed no reason was alleged for the termination of his contracts. Here again one poses the question: is this just another coincidence or was there something more to it?

107. We will however for a moment discard the evidence of the contractors against Mr. Williams and examine his conduct in the light of his own evidence. In doing this one must bear in mind the important fact that Mr. Williams gave his evidence in chief and thereafter departed under a smoke screen thus refusing to submit his evidence to the searchlight of cross-examination. Accordingly, Mr. Williams' evidence appears in the light, most favourable to himself. Mr. Williams chose a band of persons to assist him in his political campaign and who attended the meetings called by him; who were they?

Mr. Eugene Sibliss—a contractor;
 Mr. Laurentine Johnson—a contractor;
 Mr. Clarence Miller—a contractor;
 Mr. Norman Sailsman—a contractor;
 Mr. Eric Spencer—a contractor;
 Mr. Lester Smith—a contractor;
 Mr. Winston Thompson—a contractor;
 Mr. Roy Walters—of unknown occupation;
 Mr. Clement Bloomfield—Chairman of the Mandeville Land Authority;
 Mr. H. A. Young—the treasurer.

All the above contractors were contractors to the Ministry of Education.

108. On Mr. Williams' own evidence, his meeting on the 16th January, 1971, was held at 10th West Road, Mr. Laurentine Johnson's office. The meeting on the 6th February, 1971, was held at Mr. Johnson's home. At the first meeting two facts were established beyond any shadow of a doubt. The first was that Mr. Williams handed a cheque for four hundred dollars (\$400) from Mr. Leiba, a paving contractor, to Mr. Young the Treasurer as a donation from the gentleman. The second fact was that it was agreed at this meeting that a jeep should be purchased for the campaign and it was further agreed that Mr. Johnson would advance the purchase money and that thereafter he would be recouped from contributions made by the contractors. As a matter of fact, a thousand dollars was subsequently withdrawn from a deposit account in the name of Mr. Young and Mr. Williams and paid over to Mr. Johnson on account of the purchase of the jeep. The meeting, as we have observed, took place on the 16th January, 1971. On the 20th January, 1971, four days after, we find Mr. Williams writing to Dr. Burt with regard to jobs for Mr. Leiba and Mr. Johnson. There were four paving jobs and three building jobs. He "strongly" recommends Mr. Leiba of May Pen, for the paving jobs and Mr. Johnson for anything else.

109. The evidence further discloses that at one time or another, contributions were made to Mr. Williams' campaign fund by most of these gentlemen. In addition to his contribution for the jeep, Mr. Johnson handed over to the Treasurer cheques totalling one thousand four hundred and twenty dollars (\$1,420). Mr. Clarence Miller, the operator of a Pest Control Firm, who admittedly denied making contributions to Mr. Williams' campaign fund on condition of getting contracts, made contributions totalling some one thousand three hundred and Seventy-four dollars (\$1,374). Mr. Lester Smith contributed some three hundred dollars (\$300). Mr. Sailsman contributed two hundred dollars (\$200) towards the jeep and made other contributions. Mr. Sibbiss also made his contribution towards the fund. In addition, the evidence was that meetings were held monthly and that there were monthly contributions. All these contributions must of course be viewed against the background of the sum considered adequate to cover the campaign including the purchase of the jeep which on Mr. Miller's evidence was twenty-five thousand dollars (\$25,000).

110. In the face of all the evidence of the number of contractors who made contributions to Mr. Williams' campaign fund, when asked by his Counsel—"Would members of the Committee also contribute to the fund?", he replied, "I think so, sir, yes." This is a strange exhibition of candour on Mr. Williams' part! The fact that there were these large contributions to his fund must have been clear to Mr. Williams beyond the peradventure of a doubt.

111. Mr. Williams was also in our view, somewhat cynical in his involving the Returning Officer in his campaign. When asked by his Counsel whether he considered its implications, he replied—"It was risky, sir—but it wasn't my risk, it was his."

112. A list of persons was also produced on Gordon House note paper in Mr. Williams' handwriting with amounts of money opposite their names. There were 'ticks' against a number of names and the evidence was that these were persons who were paid for their work in Mr. Williams' campaign. Mr. Williams' comment on this list was—"It is just a list of workers that would be ideal to have if we had the funds available to use them in organizing." We are not disposed to accept Mr. Williams' evidence on this point which was obviously given to minimize the fact that he had ample funds at his disposal in running his campaign.

113. Doubtless, Counsel to the Commission would have liked to have asked Mr. Williams certain questions about his bank statements, the hire purchase record of instalments paid and the contents of his diary which he gratuitously—in a moment of rashness perhaps—offered for the Commission's scrutiny; but apparently on reflection in the cooler atmosphere of Prattville, Mr. Williams thought a less courageous course was the safer to pursue.

114. An analysis of his Hire Purchase Agreement with Investment and Finance Company Limited regarding the purchase of a Mercedes Benz and comparison with his bank statement is interesting as the following figures show:

| | | |
|---|-------------|---------------------------|
| Purchase price of Mercedes Benz | \$7,960.00 | |
| Deposit | 3,254.00 | (shown on Bank Statement) |
| Balance | 4,706.00 | |
| Hire Purchase Interest | 752.96 | |
| Total payable to investment & Finance Company Limited | \$5,458.96 | |
| Payable by 23 instalments of \$228.00 | = \$5244.00 | |
| 1 instalment of \$214.96 | = \$ 214.96 | |
| | \$5,458.96 | |

Payments totalling two thousand two hundred and eighty dollars (\$2,280) were shown as credits in the Hire Purchase Account, but these items did not appear on the Bank Statement produced in evidence (Exhibit 52). One of three conclusions must therefore be drawn. The first is that they were paid in cash by Mr. Williams: this seems somewhat unlikely. The second is that someone else made the payments on his behalf; and thirdly, Mr. Williams may have had another Bank Account on which these cheques were drawn.

| | | |
|--|---|-------------|
| An analysis of the Bank Account shows total lodgements to the Account for the period 25/1/71 to 25/2/72 to the amount of | — | \$32,242.08 |
| Of which: | | |
| Identified in evidence as salary, etc. | — | \$13,824.24 |
| Identified in evidence for other receipts | — | \$ 8,090.00 |
| Total identified in evidence | — | \$21,914.24 |
| Unidentified | — | 10,327.84 |
| | | \$32,242.08 |

Further, even in respect of the sums identified, interesting questions arise. Thus there are two amounts of \$1,090.00 and \$3,510.00 which Mr. Williams identified as refunds from The Jamaica Labour Party—but gave no explanation of what was involved or how the question of a refund arose.

115. In his evidence in chief, Mr. Williams made no reference whatsoever to his meeting with Mr. Sailsman at which the latter's statement was discussed. If that meeting had not taken place, then judging from the occasions of indignant repudiations which punctuated Mr. Williams' evidence, one would have expected Mr. Williams to have totally dis-associated himself from any such meeting. Why did this meeting take place? Was it in order to persuade Mr. Sailsman to change the statement which he had given? We see no reason to doubt that the original statement of Mr. Sailsman was freely given. Mr. Sailsman's evidence as observed above, was corroborated by Mr. Winston Thompson. Accepting Mr. Sailsman's statement and Mr. Thompson's evidence, as we do, then Mr. Williams was guilty of corrupt practices. In any event, even if we reject Sailsman's statement and Thompson's evidence, on his own evidence—untested by cross-examination as it was—then Mr. Williams by surrounding himself with this band of contractors to the Ministry of Education was undoubtedly exploiting his position as Parliamentary Secretary to extract funds for his political campaign and from his general conduct and behaviour his integrity is open to the most serious doubts.

MR. A.W. SHAW, PERMANENT SECRETARY

116. Mr. Shaw was the Permanent Secretary and Accounting Officer at the material time and continued to discharge his functions at the Ministry of Education up to the 20th December, 1971. Mr. Shaw appeared before the Commission and gave evidence concerning the Contracts Award Committee, the procedure of the contractual processes from the Contracts Award Committee through the Building Section to the Accounting Department, the machinery for financial control, the break-down of the system of control and other matters. Perhaps the most important matter dealt with by Mr. Shaw was the machinery for financial control. He explained that monthly statements were produced which were circulated to all the Officers concerned with the construction programme and also to the political heads. The main accounts section also prepared monthly statements of expenditure under each Sub-head of Expenditure within the Ministry and before it came to the Accounting Officer it was audited by the Internal Auditor. Such was the system of control in theory. In practice it eventually broke down or perhaps it would be more accurate to say it was gradually abandoned.

117. Mr. Shaw on his own evidence was aware of a number of ills that affected his Ministry. He knew, for instance, that contracts, particularly electrical contracts, were signed after completion of the work—a system that he would not advocate because it might lead to manipulation; he became aware that proper procedures in the awarding of contracts were not being followed when the Chief Building Officer, Mr. J. Vaughan, brought specific instances to his notice. He knew of the decline of morale when his own office was invaded and contract vouchers removed from it. He was aware through Mr. Magnus, that the Minister of State, Dr. Burt, would give instructions to Mr. Samuels to start a particular building and when told that no funds were available, Dr. Burt would assure Mr. Samuels that funds would be forthcoming. Mr. Shaw also stated that, as Accounting Officer, he took up with Dr. Burt the question that work was being given out without authority and without funds being available.

118. When asked what caused the breakdown in the system, Mr. Shaw replied that there were several factors. In the first place, there was the actual volume of work; secondly, the Ministry was under-staffed for the work-load it was carrying; thirdly, the number of staff changes and lastly, the massive Secondary School Programme. The Ministry he stated was allotted some additional administrative staff but no one on the accounting side.

119. There can be no doubt that Mr. Shaw had knowledge of the over-expenditure on the Capital Programme at his Ministry. Indeed, on the 20th November, 1971, a memorandum was sent from the Ministry of Education to the Ministry of Finance indicating that the provision of \$2.5 million included in the Capital Estimates of the Ministry of Education had been over-spent and requested a further provision of \$3 million to meet commitments already entered into. Further on the 25th October, 1971, all Permanent Secretaries and their Financial Officers were summoned to a meeting at the Ministry of Finance. Mr. Shaw accompanied by the Principal Assistant Secretary, Mr. Magnus and Mr. Samuels then Acting Chief Engineer attended from the Ministry of Education; it was at this meeting that the Minister of Finance threatened to confer a dubious immortality on the Ministry of Education's offending application by having it framed and hung in his Office.

120. Indeed, thereafter, the Permanent Secretary took an important part in the negotiations between the Officers of the Ministry of Education and the Ministry of Finance in dealing with the financial crisis at the Ministry of Education. Before the Commission, Mr. Shaw was asked—

"Did the result of the failure to follow the proper procedures come to your notice, that is, contracts being given out without any funds to pay for them? Did that state "of affairs come to your knowledge."

Mr. Shaw answered—

"Yes, that actually did come to my knowledge."

Asked further whether he ever expressed his views in writing to the Minister, he replied—

"Not in writing."

121. Certain, it is, that Mr. Shaw had a most difficult job to perform in exacting circumstances and that he did not have the help and support from the staff that he was entitled to expect—but his attitude seemed one of resignation rather than one of militant opposition to the clear disregard of sound financial principles at his Ministry. As we observed above, as Accounting Officer, he failed in his duty to record in writing his objection to the impropriety and irregularity of the over-expenditure at his Ministry and in his duty to report the matter to the Ministry of Finance.

THE FINANCIAL CONTROL OF CONTRACTS FOR BUILDING AND PROCUREMENT

The Problem of Over-Expenditure

122. Although this subject is common to all the Ministries whose activities we reviewed, yet it seemed to us best to discuss it in the context of the Ministry of Education for the reason that the operations of the Ministry of Education in this sphere forms an almost copy book background against which to discuss the problem. Our observations here are nevertheless of general application.

123. It was established in evidence beyond any doubt, both from the evidence of the Auditor General and from the Reports of the Public Accounts Committee—which was supplied to us through the courtesy of the Clerk to the Houses of Parliament—that the problem of over-expenditure and over-commitment without previous sanction is one that is perennial in Jamaica. As the Auditor

General observed—it is generally only a question of quantum; in the case of the Ministry of Education it happened to be large. An observation made by the Auditor General goes to the heart of the matter—

“If Ministers are going to continue issuing directives which by-pass completely the communication lines of control or the lines of communication with regard to the accounting control, then there is always the possibility of over-commitment. It is quite simple, I wouldn't say quite simple, but it is not difficult to set up a system which, if followed precisely will keep everything in proper focus, but there must be penalties where there is no adherence to this system or where there are departures from these systems.”

124. The question is therefore, assuming that there is over-expenditure what are the sanctions that, as the law stands, may be imposed. So far as the political head of the Ministry is concerned, i.e., the Minister, there is at the moment no effective sanction even if he himself has ordered the over-expenditure and thereby acted in breach of Section 19(1) of the Financial Administration and Audit Law 1959 and of proper financial procedures generally. It is true that in a more sophisticated parliamentary environment, a Minister whose department has been clearly guilty of over-expenditure may be forced to accept responsibility and to resign, as has happened in England in recent times. In the present parliamentary atmosphere, however, this is hardly likely to happen as we think it largely true to say that in Parliament there is not as yet a bi-partisan approach to matters of finance—whatever may be the position in the Public Accounts Committee.

125. So far as the Permanent Secretary who is the Accounting Officer is concerned, there is a theoretical possibility of surcharge. The Auditor General who has held this high office for six years, told us that he knew of no case of a surcharge being imposed. In our opinion there seem to be three reasons for this. The first is that one can well imagine the reluctance of the Financial Secretary to impose a surcharge on an Accounting Officer when as compared with his Minister, his responsibility for the over-expenditure may be far less. Secondly, there is the distinct possibility that there is an undertone of sympathy for the Accounting Officer who is asked to carry a heavier burden than he ought to because of the shortage of qualified staff in his Ministry. Thirdly, there is the practical question of dealing with the matter. The printing of the Auditor General's Report is generally in arrears, and consequently the report of the Public Accounts Committee will be in arrears and it follows that the Ministry of Finance will be in arrears in its examination of the Reports of the Public Accounts Committee, so that in most cases by the time any serious breach comes to the notice of the Financial Secretary, the time limit for imposing a surcharge, which is three years, will have expired.

126. In view of the weakness in the imposition of sanctions as a deterrent and the fact that government expenditure on contracts looms large in its budget, we have thought it expedient to examine the points at which financial control is exercised in order to minimize the risk of over-expenditure occurring. In this context we have also examined the control exercised by the Ministry of Finance over government contracts and procedures as a whole.

127. The financial control of government contracts for the procurement of goods and services and the execution of public works is only one aspect of the control applied generally to the expenditure of government departments. External control is exercised by Parliament and the Ministry of Finance; internal control by the responsible officers of the spending department.

PARLIAMENTARY CONTROL

HOUSE OF REPRESENTATIVES

128. The supply expenditure of government departments has to be authorized by the House of Representatives to which annual Estimates are presented on behalf of the spending departments. These estimates are subjected to careful scrutiny by the Finance Committee of the House; thereafter, the money required is voted by the House and subsequently an Appropriation Act is passed which authorizes the expenditure and specifies the purpose to which it may be applied. It must be admitted however, that there is not much to be said for a detailed examination of departmental expenditure by the whole House, a body not well adapted to this kind of investigation. The House of Representatives can more effectively discharge its function of financial control in examining the government's broad strategy for public expenditure than in scrutinizing individual items of departmental expenditure whether on contracts or on other activities. In England the scrutiny of departmental expenditure and procurement is left by the House of Commons to two watch-dog select committees—the Expenditure Committee (formerly known as the Select Committee on Estimates) and the Public Accounts Committee.

129. The special purpose of the former was to examine particular lines of expenditure or individual projects while the outlay is actually taking place instead of many months afterwards as Public Accounts Committees inevitably must do. They also discharge the function of scrutinizing the efficiency of the administration and the validity of its operations. In Jamaica there is no counterpart to this Committee. Indeed, it must be admitted that the strength and vigour of parliamentary committees in England derive largely from the willingness of back-benchers to participate in the workings of the committee system and thus to make their contribution to the vitality of parliamentary democracy. The paucity of numbers of back-benchers in Jamaica makes it difficult to operate successfully more than one committee of the type under discussion.

THE AUDITOR GENERAL AND THE PUBLIC ACCOUNTS COMMITTEE

130. Another kind of control of the expenditure of government department comes into play through the system of audit by the Auditor General and the investigations of the Public Accounts Committee. It is significant to note however, that the control exercised by the Public Accounts Committee relates to expenditure that has already been incurred.

131. The Auditor General occupies a position of "authority, prestige and independence" and in the exercise of his function he is "not subject to the direction or control of any other person or authority". His office is established by Section 120 of the Constitution and his functions defined by Section 122. His functions are more specifically defined in Part IV of the Financial Administration and Audit Law 1959. The Auditor General is constitutionally charged with the responsibility of auditing the accounts of government departments and other institutions specified in Section 122 of the Constitution. He performs a crucial and important function in the control of public expenditure. We are particularly indebted to the present holder of the office who appeared before us, for his lucid exposition of his functions and duties.

132. Accounting Officers are required by law to present the Appropriation Accounts by the 31st July after the close of the financial year on 31st March. These Appropriation Accounts are examined by the Audit Staff and they are certified by the Auditor General who is required to submit his Report to the Speaker of the House by 31st December. The Speaker then lays them before the House of Representatives.

133. It is the statutory duty of the Auditor General to satisfy himself that:—

“All money expended and charged to an appropriation account has been applied to the purpose or purposes for which the grants made by the Legislature were intended to provide and the expenditure conforms to the authority which governs it and has been incurred with due regard to the avoidance of waste and extravagance.” (Section 27 (2) (c) of the Financial Administration and Audit Law 1959).

134. In discharging his duties, the Auditor General requires the assistance of an expert staff; unfortunately at the present time the audit staff of his department consists of one hundred and five of which there are thirty-eight vacancies; and in the Auditor General's opinion even a staff of one hundred and five is far from adequate.

Such a lack of staff must necessarily impose a tremendous strain on the department whose functions are critical to any proper system of financial control.

135. In discharging his functions, the Auditor General and the subordinate staff are entitled at all reasonable times, to have access to all books, records and returns relating to such accounts. Apart from satisfying himself as to the formal regularity of government payments, the Auditor General enquires into and reports upon inefficiency or extravagance in administration even though there has been no failure in technical regularity. He may also report on the system for processing contracts or departure from principles in government contracting procedures and any losses due to extravagance or lack of reasonable foresight. An instance of the Auditor General's discharge of one type of duty is illustrated by his report on the reasons for over-expenditure in the Ministry of Education to which reference has been made above.

136. After the Report of the Auditor General has been submitted to the House of Representatives, it is referred to the Public Accounts Committee which was first appointed in Jamaica in 1963. This is a most useful Committee because as the Hicks Report observes:—

“Members of the Legislature are brought directly into touch with the Departments, and report directly to their colleagues. This is educational for members of the Committee, and through them fosters the realization of responsibility for wise spending throughout the House. It further emphasizes the responsibility of the Government to Parliament and the whole body of citizens.”

137. In England this Committee of Parliament of the same name, enjoys tremendous prestige and its criticisms of departmental procedures are taken with the utmost seriousness. The principles and practice of public contracting have been largely built up as a result of the suggestions and criticisms emanating from the Public Accounts Committee. This Committee adopts a non-party approach in dealing with the examination of public accounts.

138. This Select Committee is appointed each session to examine the Appropriation Accounts and any other account laid before Parliament. In considering these reports and the report on them by the Auditor General, it calls for explanations from the Accounting Officers of each Ministry. The results of its enquiries are reported to the House of Representatives: from the House the Report of the Public Accounts Committee goes to the Ministry of Finance. That Ministry in due course examines the various aspects of the Report, issues instructions on what recommendations should be implemented and makes

a report in the form of a memorandum back to the next session of the Public Accounts Committee, stating whether it has any objections to any of the recommendations of the Public Accounts Committee, and if so gives reasons as to why they should not be implemented. If there are any differences which remain unresolved, they would of course have to be placed before Parliament. This has not actually happened in Jamaica.

139. The question arises as to how influential is the work of this Committee. The Committee has been fortunate in having a succession of able Chairmen and there can be no doubt that it discharges its duties conscientiously and efficiently. Its work, however, has been rendered less effective by the fact that there are tremendous delays in the printing of the Auditor General's Report and the Public Accounts. Matters tend to become historic by the time they receive the Committee's attention. In one instance, the Committee had to deal with three years work in one session; this obviously imposes an undue strain of the Committee. A perusal of the Reports of the Committee through the years shows how critical it has been of the perennial financial flaws affecting the control of public expenditure. At one time or another, the Committee has had occasion to stress:—

the true meaning of responsibility of the Accounting Officer to Parliament; the necessity for a proper system of commitment control and greater attention to budgeting; the inadequacies of the internal audit staff in most Ministries and the fact that where internal audit staff did exist, they were used interchangeably with accounting staff; its concern for the reliability of the accounts which have either not been audited or audited invariably by the staff preparing these accounts; its concern at the increasing amount of unauthorized expenditure as reflected in excesses and the breaches of the provisions of Section 13 Sub-section (2) and (3) of the Financial Administration and Audit Law; its deep concern at the obvious disregard for the principles laid down for parliamentary control of expenditure.

140. These, among many others, have been the pertinent comments of the Public Accounts Committee. It does seem to us however, that up to the present time at any rate, the Committee has been largely a voice crying in the wilderness and it does not appear that their criticisms have received the publicity they deserve or that the necessary correctives have been applied to rectify the matters that have attracted the criticisms of the Committee. Indeed, the Auditor General stated that in his opinion, the Report of the Public Accounts Committee was not taken seriously enough. Further, we find it somewhat alarming that at no time has a Report of the public Accounts Committee ever been debated in Parliament. There was only one occasion on which a Special Report of the Committee was debated. It is not enough to maintain the form of any institution, if its true significance has no meaning. We feel that a most useful purpose will be served by a study of the Reports of the Public Accounts Committee. (Excerpts from these Reports are reproduced at Appendix G.)

141. We emphasize and would urge the full implementation of the major recommendations of the Public Accounts Committee with regard to accounting staff. These are:—

- (1) Greater attention to supervision at all levels.
- (2) Preparation of a manual for guidance in all Ministries and Departments.
- (3) Internal in-service training programmes at all levels.
- (4) The proper organization of internal audit and separating of accounting and internal audit.
- (5) Designing regular training programmes which will provide all recruits with a knowledge of the regulations and possible effects of breaches.

- (6) Preparing job description and procedures for each job and improving supervision to ensure compliance with these procedures.

From the evidence adduced before us the implementation of these proposals have been minimal and clearly not effective. In short, the ills are clear, the remedies have been often prescribed and action should certainly follow.

MINISTRY OF FINANCE CONTROL

142. It must be emphasized that the system of control of expenditure by Parliament, and on its behalf by its servants and committees, does not operate at the most critical point in the financial cycle, i.e., the point at which decisions are taken. These decisions in descending order of importance are made by the Cabinet, by individual Ministers and by officials of the spending departments. Control in this context must not of course be interpreted as amounting to an absolute power of veto; rather it is the exercise of a powerful influence in the decision making process and is the responsibility of the Minister of Finance and under him, the Financial Secretary who is charged with the supervision of public expenditure and of their advisers in the Ministry of Finance. The control exercised by the Ministry of Finance is a continuing process that is most significantly exercised when the decisions involving government expenditure are made. It must always be borne in mind that although the determination of priorities of expenditure is in the ultimate analysis a matter of policy on which the Cabinet has the last word, the implementation of all policies are dependent upon the availability of funds and on this issue the voice of the Minister of Finance necessarily carries most weight.

143. We are considerably indebted to Mr. Madden, Deputy Financial Secretary for his illuminating exposition on the subject of Ministry of Finance Control which to many is an esoteric art. The control of the Ministry of Finance is exercised, *inter alia*, at two crucial points. The first is when the Estimates of the various Ministries and Departments are submitted to the Ministry of Finance; the analysis of the Estimates is carried out in three stages and we are satisfied that a detailed and searching enquiry is made. The process is a lengthy one and cannot be usefully recapitulated here.

144. There is a second stage of Ministry of Finance control and this is exercised after the Appropriation Act has been passed. The Ministry of Finance keeps in touch with the rate of expenditure that is being incurred in the various Ministries through examination of monthly statements submitted by the Accountant General showing payments out of the Consolidated Fund and it is when examining these monthly statements that the Ministry of Finance sometimes ascertains whether expenditure is proceeding at the expected rate or not. It will be recalled in our account on the Primary Schools Building Programme that it was by this means that the over-expenditure at the Ministry of Education was first discovered. Another means by which the Ministry of Finance now keeps a watchful eye on expenditure is by the Ministry of Finance issuing warrants at four-monthly periods for monies to be drawn from the Consolidated Fund instead of one warrant for the entire year as was previously done: in keeping with this new procedure Ministries are required to submit statements at intervals of four months on their expenditure programme.

145. There are, however, other aspects of Ministry of Finance control, apart from finance in contractual matters, that are less satisfactory. The Ministry of Finance is the appropriate department for laying down the general principles to be observed in the placing of contracts, for regulating procedures and for dealing with any unusual conditions. It is further, its concern to see that certain

established principles are maintained. In discharge of its first function, the Ministry of Finance in the year 1963 very appropriately issued Circular 43 dealing with contractual principles and procedures generally. It is significant to note, however, that two Ministries were exempted from the operation of that Circular, i.e., the Ministry of Education and the Ministry of Housing. They were more or less left to their own devices. We would observe, however, that it is not sufficient for the Ministry of Finance to lay down principles. It must also be pre-eminently concerned to see that those principles are maintained and there should be a constant striving for ensuring that the government obtains "value for money" in its procurement contracts. An illustration may serve the point; if, for example, the Ministry of Finance decides that where government departments are entering into contracts on a large scale then as a matter of principle there should be a Contracts Award Committee to advise the Minister, it should not thereafter be open to any Ministry to unilaterally abandon that principle.

146. The relationship between the Treasury in England and the contracting departments was aptly described by a Treasury Second Secretary in these terms:

"The broad line of division of responsibility between the Treasury and the contracting departments, is that the Treasury assumes general responsibility for laying down the principles to be observed in the placing of contracts, for regulating procedure and for dealing with any unusual conditions; while the contracting department takes complete responsibility for contract administration in detail and for ensuring that the conditions attaching to particular contracts are appropriate and that the financial provisions are prudent and economical."

147. We submit that a similar form of relationship between the Ministry of Finance and the contracting departments is desirable and should be maintained in Jamaica. It is significant for example, that although the Ministry of Housing is empowered to spend substantial sums of money there is nothing to suggest that the Ministry of Finance exercises the slightest control over the forms of contract or contractual procedures employed by that Ministry. A similar criticism can be made in the case of the Ministry of Education which was responsible for spending even more tax-payers money—yet was free to go off on contractual frolics of their own. The Ministry of Finance should lay down a number of basic principles for all contracting departments to follow; there is no reason in the world why they should vary from Ministry to Ministry. It is in this aspect of the matter that we find Ministry of Finance control at the moment deficient and in need of overhaul.

148. Again in the realm of contract there are certain concessions and special payments which should clearly be under the control of the Ministry of Finance except insofar as authority is delegated to any specific Ministry. These matters fall under three heads—

- (1) Settlement of Contractors' Claims.
- (2) *Ex-gratia* payments.
- (3) Abandoned Claims.

The first class is concerned with payment and settlement of claims which are recoverable against the Crown or which are believed to be so recoverable. They include payments in satisfaction of what are called "extra-contractual claims" in that they are not provided for in terms of the contract; basically they are settlement of claims for damages in breach of contract by the Crown. We were told that the approval of the Ministry of Finance was necessary for this type of settlement but there was delegation

of the right to settle up to a specified sum—which was not mentioned. While this may be so in theory, we are not clear how widely it operates. Does it, for example, only refer to claims arising from contracts carried out by the Ministry of Works and not, for instance, in the case of a claim by a contractor for the Ministry of Housing?

149. Ex-gratia payments are based “on grounds of equity and hardship” in that no legal liability is believed to exist. A claim, of this type, for instance, may arise in connection with a fixed price contract where owing to unfortunate circumstances costs have been substantially raised and the contractor has suffered a loss. Such a claim may well arise in practice. Here again payments of his nature should be under the control of the Ministry of Finance subject to any delegation within a fixed financial limit. On this point also the evidence is vague: we were informed that this principle of control existed but the evidence as to its general application was somewhat obscure.

150. The third class relates to the abandoning of a claim against a contractor, e.g., a claim to monies alleged to be due under a liquidated damages clause in the contract; clearly if the claim is maintainable and is not pursued a loss to the Treasury is incurred and Ministry of Finance approval should be obtained. There was not much evidence on this point, no doubt due to the fact that this type of claim can only be maintained where the building owner is not at fault and where the delay is due to the contractor. If the Secondary Schools Building Programme is any example, then claims of this nature may be merely theoretical—but one must not be unduly pessimistic for it is always possible to learn from experience.

DEPARTMENTAL CONTROL

151. Despite the existence of external checks on expenditure applied by the Ministry of Finance, the Auditor General and the Public Accounts Committee of the House of Representatives, the major and fundamental responsibility for the financial control of contracts is borne by the spending departments themselves. It is in the management of programmes of expenditure and the day-to-day supervision of projects by officers of the departments that control is most directly and effectively applied. It has been well said that “economy in public expenditure depend in the last resort on the strength and efficiency of the departmental machinery of financial control.”

152. The central figure here is the Accounting Officer of the Ministry who is responsible under the Minister for all financial matters. The Accounting Officer has been accurately described as “the lynchpin of the control of expenditure” in our system. He is also the Permanent Secretary and head of his Ministry. The duality of his function emphasizes the fact that it is not possible for questions of finance and administration to be divorced when policy decisions are being considered. The Accounting Officer receives a letter of appointment from the Minister of Finance which specifies his primary duties. He is not, however, the servant of the Minister of Finance or his representative in the Ministry, rather he is responsible to his Minister for economical administration. Further he has a responsibility to Parliament and is required to sign the Appropriation Accounts of his Ministry which in due course are laid before the House of Representatives. He must answer to the Public Accounts Committee for the correctness of the account and the regularity of payments recorded in it and therefore must satisfy himself that all payments have been made in accordance with parliamentary authorization. The Accounting Officer will not be expected to have a knowledge of minute details but he is certainly expected to have a firm grasp of the financial policy involved in his Ministry. He is certainly likely to invite the censure of the Public Accounts Committee if he fails in this respect.

153. The Accounting Officer has clear and specific instructions as to his course of action in certain circumstances. Accordingly it is his duty to object to a proposed expenditure if in his opinion it is irregular or improper; he may of course be over-ruled by his Minister. In such a case, however, he must set out his objection in writing with the reasons for it and make the payment only on written instructions from his Minister over-ruling his objection. After making the payment he should inform the Ministry of Finance and forward the papers to the Auditor General. Only if he acts in this strict manner will he be acquitted by the Public Accounts Committee of any personal responsibility for the expenditure. If a proposed expenditure is not irregular or improper, an Accounting Officer may still object to it on grounds of inefficiency or economy. He will then in the normal course of his duty state his views to his Minister and if he is over-ruled he may rely on the policy decision of his Minister in his defence before the Public Accounts Committee.

154. The Accounting Officer has the primary responsibility for all contracts placed by his department. It is his duty to ensure that any necessary approval is obtained and he must answer to the Public Accounts Committee for the conduct of the officers of his Ministry in the placing and management of contracts. On the premise that the Ministry must take the principal part in the financial control of procurement, it is of the utmost importance that the methods of control applied should be adequate. Effective financial control of procurement contracts require in the first place sound estimating of projects and the selection of the most appropriate type of contract. Here control is exercised at the heart of things and a breakdown in the system of control must necessarily have repercussions that might be quite irretrievable. It must be emphasized, however, that an Accounting Officer cannot carry out his heavy responsibilities of such a wide range unless he is supported by a sound organisation which permits a proper delegation of duties. Further as the Hicks report stated—"Without a clear knowledge of what is being spent Accounting Officers cannot perform their tasks properly". It is therefore an important part of the responsibility of the Ministry of Finance for the general control of expenditure that it should ensure that the organisation of each Ministry is such that the Accounting Officer can exercise a degree of control which his letter of appointment demands.

155. It cannot be stressed too often that the control here is vital and of the utmost importance and unless that control is ensured, a break-down of the system is certain and inevitable. Finally, we must observe that existing administrative machinery is primarily designed to provide an arithmetical check on public expenditure. There is no specialised cost-accounting unit fashioned for the express purpose of ensuring that the maximum returns are obtained from the expenditure of public funds and that the methodology of governmental operations conduces to the highest standards of productivity, economy and efficiency.

SECTION D

MINISTRY OF HOUSING

BACKGROUND:

156. The name of this Ministry has assumed various forms from time to time but the abbreviated form used in our report is sufficient to indicate the Ministry involved. Until February, 1969 there was a Directorate of Housing under a civil service Head responsible to the Minister. With the coming into force of the Housing Act 1968, the functions of the former Director of Housing passed to the Minister. The Ministry of Housing is responsible for a variety of operations under the Act ranging from the construction of buildings to the provision of roads, drainage etc. and spends large sums of money in the implementation of its programmes. The Ministry of Housing like the Ministry of Education is exempted from the provision of Circular 43 of 1963 issued by the Ministry of Finance and no circular of a corresponding nature has been issued with regard to the contractual activities of the Ministry of Housing. We enquired whether any regulations had been made under Section 54(f) of the Housing Act 1968 by the Minister laying down any procedures relating to its contractual activities. We were informed that there were no such regulations but were told that certain directives were issued. We requested sight of any such directive; none in fact was produced—one or two sets of laconic imperial edicts issued from the Minister were produced but these could hardly be classified as directives. The Ministry accordingly proceeded on its course unhindered by anything resembling regulatory procedures set down for the guidance of those who must operate the system.

157. We were told that before the advent of the corporation sole in the shape of a Minister in 1969, a list of contractors was kept—but thereafter the practice of keeping a list of contractors ceased. No attempt has ever been made to set up a Contracts Award Committee in that Ministry; perhaps the atmosphere would not have been conducive to its functioning.

SELECTION OF CONTRACTORS

158. We were informed by the Permanent Secretary, Mr. W. McDonald that ninety-nine percent (99%) of the Ministry's operation was done by employing the services of large or small contractors under the supervision of their officers and about one percent (1%) was done by direct involvement of their staff in the maintenance field. Apparently, the selection of architects, engineers, quantity surveyors and larger contractors was done by the Minister himself. In the case of rural housing schemes, the name of contractors would be supplied by Members of Parliament. The technical officers of the Ministry would be responsible for establishing their competence and appropriate tests might be employed to this end. We were informed that on occasions "big battles" would sometimes be waged around the issue of the competence of a contractor. In the case of larger schemes in Kingston and urban areas, the work was carried out by selected contractors and the tendency we were told was to use the same contractors. In fact, we were informed that the only case where tenders were ever invited was in the case of a scheme under a U.S. A.I.D. finance loan agreement and this was of course at the lender's insistence.

CONTRACTS

159. As to the types of contracts used, the former Minister of Public Utilities and Housing appeared before the Commission and as one would expect was emphatic about the system used and as to their unquestionable correctness. According to him contracts would be given out on the basis of an original

Schedule of Rates which was obtained from the Minister of Works and to which would be added increases in labour and materials that were approved. Of course on this basis there was really no question of negotiation; it was simply a matter of contractor accepting the terms or not accepting them. In the case of larger contracts, these would be undertaken by negotiation with a selected contractor. Mr. Hill stated that in his view bids led to corruption and this was apparently so because the contractors would get together to make arrangements with regard to their tenders. The undoubted fact however, is that any system no matter how perfect might lead to corruption if the persons operating it want it to lead to corruption, and even the system advocated and used by Mr. Hill could be the instrument of corruption if people so wished.

160. As to payment by the Ministry, whether the contractor was employed on a straight contract or a Schedule of Rates basis, he would only receive payment when the work was done and inspected and certificate issued by the Quantity Surveyor verifying the amount of work done.

THE BATTLE OF THE GIANTS

161. During the course of the hearing, the question of the dispute which had arisen between the Ministry of Finance, the Ministry of Housing and the Attorney General as to the role and function of the Minister of Housing under the Housing Act 1968 came to our attention. We deal with it here insofar as it is relevant to the contracting procedures of the Ministry and to the topic of financial control discussed above.

162. In a minute to the Minister of Housing, the Permanent Secretary, Mr. W. McDonald, raised the question of his function in regard to the negotiation of contracts. In the minute he stated that it had been brought to his attention that the terms and financial details of contracts were arranged and settled by the Minister in direct consultation with the technical officers of the Ministry. The contracts were then signed by the Minister and independent contractors employed by him and at no stage whatever was any aspect of these sometimes very substantial items of expenditure brought to his attention. Further, when later the contract price had to be varied or the vote exceeded, it was handled in exactly the same manner. These matters the Permanent Secretary argued should be submitted to the Minister through him.

163. In due course the retort courteous came from the Minister "a corporation sole". The Minister cited a number of sections of the Housing Act with respect to his powers under the Act including Section 14 which gave the Minister authority to put schemes into effect and in particular to erect dwelling houses, public streets or roads etc. The dispute widened to include the powers of the Minister under Sections 27, 41 and later Section 60 of the Housing Act, and in due course the matter was submitted by the Financial Secretary to the arbitration of the Attorney General's Department. The Commission had the opportunity of perusing the opinion of Dr. E. H. Watkins, the Solicitor General, as he then was, dated 4th June, 1970, addressed to the Financial Secretary. The opinion was as accurate as it was pellucid and analysed the functions of the Minister and Accounting Officer against the background of constitutional principles and practices. Under our system of ministerial responsibility and control it is the Minister's "role and function to formulate policy and to hand down decisions. Once these are done, those myriad forms by which such policies and decisions are implemented become the functions of the Minister's aides namely the Civil Service Officials. They act in his name. Their acts are and remain his acts for which he bears political responsibility."

164. We would adopt with respect the Solicitor General's view when he observed:—

"The Minister of Public Utilities and Housing is charged with responsibility for the subject of 'housing' which includes the administration of the Housing Fund. His duty is to exercise general direction and control over the work relating to the subject of housing. His is the function to formulate policy and to make decision so far as these affect the administration of the Housing Fund. He may lay down guide-lines for administrative action. He may even delegate decision-making with such limitations as he chooses to designated officials; but the work remains under the supervision of his Permanent Secretary. Consistent with this constitutional formula the Minister of Finance in discharge of his power under the Financial Administration and Audit Law invariably designates Permanent Secretaries as Accounting Officers."

165. As mentioned above, the Minister recited among his many powers under the Act that which empowered him to erect dwelling houses, public streets or roads etc; but obviously no one would expect the Minister to gird his loins and get down to the task of discharging these functions personally. All that the Housing Act does is to impose the ultimate general responsibility on the Minister for the due performance of the many matters that must be performed under the umbrella of the statute. Thus again to quote Dr. Watkins:—

"The Minister may within the limitations embodied in the Act, make the decision whether a particular payment-out or a particular advance should be made. The implementation of the decision thereafter becomes the function and duty of the Accounting Officer who must see that the transaction is properly documented and recorded."

166. When the Housing Act 1968 is read against the background of the Financial Administration and Audit Law, the relevant provisions of the Jamaica Constitution and the constitutional principles, applicable, the contentions of the former Minister of Housing become completely untenable. Nothing in the Housing Act affects the functions and duty of the Accounting Officer in discharging the functions entrusted to his care. Further, there is nothing in the law which permits the Minister himself to usurp the functions of the Accounting Officer.

167. The matter might have been happily resolved but for the opinion of the Attorney General of the 5th April, 1971 which might be aptly described as an unfortunate epilogue. In it he implicitly repudiates the correct and coherent views of the Solicitor General and thus clouded what had been eloquently clarified by the Solicitor General and there the matter rested.

168. In as much as the question raised above affects the proper discharge of his duties with regard to the control of expenditure by the Accounting Officer in his Ministry and the wider issue of the control of the Minister of Finance over the preparation of Estimates, it is recommended with respect that the Housing Act should be suitably amended to make it abundantly clear that nothing in it is intended to trespass on the orthodox and well established procedures of financial control, lest at any time in the future any one should attempt to resurrect the heretical views of the former Minister.

SECTION E

MINISTRY OF LABOUR

TRAINING CENTRES:

169. The Cabinet in 1967 decided to embark upon a Training Centre Programme. This was to be carried out in two stages under the auspices of the Ministry of Labour. During both stages the sites were selected by officers from the Ministry of Labour. Some of the sites were clearly unsuitable but in fairness to the officers concerned, in at least three cases they were directed by the Minister, as to the site to be chosen. During the first phase the work was carried out by private contractors under the supervision of the Ministry of Works.

170. Save for one mishap and one strange selection of a site, the first phase was carried out successfully. The mishap concerned the erection of a Training Centre at Twickenham Park. When \$12,400 had been spent on it, it was discovered that it was being built on the wrong site and it had to be demolished at a cost of \$4,000. It was thereafter re-built in Central Village.

171. The selection of the site at Granville for a training centre was most inappropriate inasmuch as the site was completely unsuitable for building purposes and the site itself was not near any population centre. Apparently it was decided by the former Minister of Health, Dr. Eldemire, that the Training Centre should be at Granville and his decision was ratified by the Cabinet. The selection of the site is all the more difficult to understand when we were informed that the St. James Parish Council had offered a suitable site at Albion at the nominal price of a shilling whereas the Ministry of Housing was asking the sum of \$3,000 for the site at Granville. This incidentally has not yet been paid. The upshot of it all is that although the contract price of the training centre at Granville was \$19,800 the extras amounted to \$31,757.00, most of which was spent on excavation works, retaining walls and a bridge. One can only express a pious hope that the results have justified the taxpayers sacrifice.

AN ADVENTURE IN BUILDING:

172. The first phase of the programme having been completed, it was decided to press on with the programme and speed was to be of its essence. The Ministry of Works was asked to prepare designs and to invite tenders. The tenders received were in the region of sixty-seven thousand dollars to eighty-seven thousand dollars. The Ministry of Labour thought that the Ministry of Works was dragging its feet and that in any event the prices that they obtained by tender were too high. After discussion of the matter at Cabinet level it was decided that the Ministry of Labour should be responsible for inviting new tenders and what is more to supervise the construction of the buildings.

173. Here one observes a strange phenomenon; one or two of the contractors, in particular Westminster Development Company Limited, had tendered both to the Ministry of Works and to the Ministry of Labour. The Cabinet incidentally had put a ceiling of \$50,000 for the price of each centre. Westminster Development Company Limited now clearly tendered at a lower price to the Ministry of Labour, yet it never occurred to anyone at the Ministry of Labour to invite an explanation as to why this was so. As it transpired in the final analysis, the Ministry of Labour merely got around the question of the \$50,000 ceiling by excluding a number of items which would normally have been included in the contract sum, and then thereafter paid for them as extras; thus, for instance, the contract price of the Buff Bay Training Centre was \$48,795 and the extras amounted to \$19,000.

174. From the point of view of policy this experiment in building is not one that should be encouraged. As Mr. Wint the Chief Technical Director in the Ministry of Works observed—

"I would not expect that a non-technical Ministry would have the skills available to the Ministry of Works to manage contracts of this nature."

It is more than doubtful whether in the end the Ministry obtained better value for money by going off on its own rather than building the centres under the supervision of the Ministry of Works.

175. There is one other feature of the Ministry of Labour's operations that we comment on. It was observed that the Westminster Development Company Limited was given Serial Contracts to build some six centres over a widely scattered area. Here again, Mr. Wint observed that it was not the policy of the Ministry of Works as a general rule to award Serial Contracts. In this instance, the representative of the Ministry of Labour urged its justification in that Westminster Development Company Limited performed with expedition and that they had a source of material from Canada not available to the other contractors. It was impossible in the state of the evidence to come to any definite conclusion on this issue. In our view, however, where projects are dispersed over wide areas it seems undesirable in principle to award Serial Contracts, particularly as this course could lead to an escalation in costs.

SECTION F

PROCUREMENT CONTRACTS

SUPPLY DIVISION:

176. Contracts for the supply of equipment, goods and materials may be referred to under the commendous term as procurement contracts. Contracts of this nature are with minor exceptions negotiated by the Supply Division of the Ministry of Finance for all Government Ministries and Departments. The operations of the Supply Division are governed by the Financial Administration (Supplies) Regulations 1963 (hereinafter in this Section referred to as "The Regulations") made by the Minister of Finance under Section 18 of the Financial Administration and Audit Law, 1959. These Regulations came into force on the 7th June, 1963.

177. It is generally recognized that great advantages are obtained if a particular Ministry undertakes the procurement for a generally required commodity or service for all others. Duplication of staff is eliminated and competition between the several user Ministries avoided; economies of bulk purchase are secured; specialized purchasing skill and experience can be developed and applied for the benefit of the Central Government as a whole. The Supply Division of the Ministry of Finance undertakes procurement on behalf of other Ministries on an "agency" or "re-payment" basis and not by way of what is known as an "allied service". The basic distinction between the two is that in the former, the user or client department re-imburses the supplying or agent department in the amount of this expenditure and the payment is eventually charged to the user department's Vote. On the other hand where the "allied service" system is used, there is no repayment by the user department and the cost of the service is borne on the Votes of the supplying department. We have referred to the advantages of the "agency" system above but one must admit that it does involve rather complex inter-department settlements and accounting.

SUPPLY ADVISORY COMMITTEE

178. The Regulations provide for the establishment of a Committee known as the Supply Advisory Committee. This Committee consists of—

- (a) the Chief Supply Officer as Chairman;
- (b) a representative from each Ministry (usually the Financial Officer) who is nominated after consultation with the Financial Secretary; and
- (c) three persons who are members of the public and who are appointed by the Minister.

179. These three persons are appointed by the Minister on the recommendation of the Under Secretary in charge of the Supply Division. We were informed that prior to the last election the members of the public who sat on this Committee were—Mr. C. Greaves Hill, Miss Amy Bailey and Mr. Lucien Rattray. All but one have been re-appointed by the Minister. Miss Bailey has given way to Mrs. Minna Wilmot. We were not informed as to what were the reasons for the non re-appointment of Miss Bailey: if as we suspect the reason was that she belonged to the Jamaica Labour Party, then we would submit with all respect that changes based on pure party affiliation is not a principle that should be pursued, if the person in question displays the competence required for the position. Surely the time has

now come when the most competent and qualified person for a position should be appointed irrespective of party affiliation on Committees of the nature that we are considering. But to continue with the Supply Advisory Committee—an Officer of the Supply Division performs the duties of Secretary of this Committee. It advises the Chief Supply Officer on the nature and standard of quality of all supplies to be purchased.

LIST OF SUPPLIERS

180. The Regulations prescribe that the Chief Supply Officer must prepare and maintain a list of all approved suppliers for each item of supplies and to restrict invitations to tender as well as contracts for the purchase of supplies to the same suppliers. The Chief Supply Officer however reserves the right to include the name of any applicant in the list of Approved Suppliers and the aggrieved person may appeal to the Minister.

181. The list is prepared on the basis of applications made to the Chief Supply Officer who is charged with responsibility for procurement on behalf of the Government. In the past, persons were invited to make applications by means of publications in the Press; this practice was apparently discontinued but it is however proposed to revive it by asking for applications on a quarterly or half yearly basis. The list is reviewed from time to time and there is no numerical limitation to the list.

TENDERING PROCEDURE

182. An invitation to tender is a prerequisite to the award of contracts whenever any of the following conditions arise:—

- (i) when the purchase price of the item is in excess of five hundred dollars (\$500) except where there is a sole approved supplier;
- (ii) where supplies are to be delivered in quantities to be specified over a three month period or more;
- (iii) where consideration is being given to import supplies or when such supplies or acceptable substitutes are manufactured in Jamaica and may be obtained on the local market.

183. When tenders are to be invited, each supplier on the Approved List of Suppliers handling a particular commodity is sent a covering letter and a Tender Form setting out the specifications, special conditions, quantities etc. of the commodity together with a franked envelope addressed to the Chief Supply Officer and returnable not later than 3:00 p.m. on the day immediately preceding the date of the meeting to be held to consider the tenders. When the commodity is obtainable on the local market, a return date of three weeks is usually considered reasonable but if it is to be imported a return date of six weeks is permitted so as to give the supplier sufficient time to communicate with his overseas principals.

184. A special Tender Box is provided and kept in the Supply Division's Conference Room. Replies received through the post or delivered to the Registrar are promptly placed in it. Tenderers may of course place their tenders in this box; the box has two separate locks—the key for one lock is held by the Chief Supply Officer and the key for the other lock is retained by one of the Minister's appointees.

185. At precisely 3.00 p.m. on the day of closure, the Secretary to the Supply Advisory Committee seals the Tender Box. Tenders arriving after the appointed hour are appropriately marked and remain in that state for the information of the Committee and of course receive no further attention.

186. The next stage is the meeting of the Committee. It meets on the morning following the closing of the Tender. The Tender Box is then opened by the Chief Supply Officer and a non-official member in the presence of the other members. The content are handed to the Secretary who opens the sealed tenders and places them on the table in front of the Chief Supply Officer. The latter initials each tender and passes it to the Secretary who assigns the documents a number; the documents are numbered in consecutive order.

187. When all the tenders are opened and numbered, the Secretary reads out the serial number of each tender, the price shown thereon, the delivery rates and other relevant information. Each member of the Committee is required to note this information on a special form provided for the purpose. At this stage, the Committee discuss the question of the award on the basis of the information before them. When a decision has been reached, all members are required to note on the form the serial number of the bidder recommended for award of the contract. This done, each member signs and dates his own form and hands it to the Secretary who places these forms in a file together with the tender documents. The meeting may of course consider one or more tenders as the occasion requires. Where a technical item is required, and which requires a skill in judgment not possessed by the members, a Sub-Committee of not less than two members is appointed by the Chairman with the concurrence of the other members to obtain expert assistance from government officers who possess the necessary expertise and thereafter advise the Committee.

188. On conclusion of the meeting, the Chairman submits the recommendation of the Committee to the Minister through the Under Secretary in charge of the Supply Division. The Minister then makes an award and advises the Under Secretary accordingly. The award is next referred to the Chief Supply Officer who prepares and signs the contract and forwards it to the successful Tenderer. Unsuccessful tenderers are notified and advised of the name of the successful tenderer but no further information is disclosed.

189. From the above account it appears that the practice and procedure of the Supply Advisory Committee follows the usual and fair lines of such awarding Committees. Of course in practice the making of a particular award might not be a simple matter. The Supply Advisory Committee has first of all to apply the correct criteria for purchasing which are basically—quality, price, delivery and service. Where it happens that there is more than one tender then all things being equal, the Committee sometimes recommends to the Minister that the award should be divided up between the parties. This is a useful practice because it encourages competition and to a limited extent avoids monopoly, and what is more it is essentially fair.

190. Delays do of course occur in the obtaining of supplies by a Ministry. These may arise in three ways—the Ministry or Department itself may be guilty of delay in forwarding its requisition; sometimes there are delays within the Supply Division itself, and lastly there may be delays occasionally on the part of the contractors.

DISPENSATIONS

191. The Supply Division obviously comprises a large section of the Ministry. There is in fact we were told, a staff of two hundred and forty-seven officers ranging from an Under Secretary to Departmental Assistants, but even with such a large section all the necessary expertise may not be contained within the section itself. Thus although normally the Supply Division purchases on behalf of the Ministry of Works where equipment of a special nature is required and where it is the Ministry of Works who would be required to advise thereon, permission is sometimes given to the Ministry of Works to import directly. This is necessary in order that the system should work with a degree of flexibility. Again there are dispensations as in the case of the Ministry of Education: thus school furniture—benches, desks and chairs—are obtained directly by the Ministry of Education from local manufacturers. In the case of the World Bank Programme, the Ministry of Education was allowed to buy school equipment and books and magazines directly; all other items were however purchased through the Supply Division.

REGULATIONS

192. The Regulations as we observed above were promulgated in June of 1963. As far as the evidence goes we were not informed of any review of these regulations from the time when they were first promulgated. We cannot accept that the 1963 regulations represent perfection and need no further consideration. It seems to us that regulations of this nature should be reviewed by-annually and any necessary amendments made in the light of their working.

193. We are of the view for example that the Regulations should be amended to provide that on the award of a contract all the tenderers should be advised not only of the name of the successful tenderer but also of his price and relevant conditions. This would remove any suspicion of unfair practices. Such disclosure is made in the case of Building Contracts and we see no reason why the same principle should not apply in all procurement contracts.

194. The English counterpart of our Financial Regulations Form GC/Stores/1 (October, 1970 Edition) furnishes an interesting example of timely revision. Clause 16 of the Standard Conditions deals, for example, with "racial discrimination" in the following terms:—

- (i) A Contractor shall not unlawfully discriminate within the meaning and scope of the provision of the Race Relations Act 1968 or any Statutory modification or re-enactment thereof relating to discrimination and employment.
- (ii) The Contractor shall take all reasonable steps to secure the observance of the provisions of Clause 1 hereof by all servants, employees or agents of the Contractor and all Sub-Contractors employed in the execution of the Contract."

195. There seems to us no reason why our Financial Regulations or any standard form of contract should not contain a provision against discrimination generally in terms of Section 24 of the Constitution of Jamaica. Thus, the clause would be on the following lines:—

- "(i) A Contractor shall not unlawfully discriminate within the meaning and scope of the provision contained in Section 24 of the Jamaica Constitution relating to discrimination.
- (ii) The Contractor shall take all reasonable steps to secure the observance of Regulations hereof by all servants, employees or agents of the Contractor and all sub-Contractors employed in the execution of the Contract."

SECTION G

CONTRACTS FOR THE PROVISION OF SERVICES

CONSULTANTS

196. This topic would obviously cover a wide area. The Commission, however, heard evidence on a limited aspect of it. This was in regard to the functions of Private Architects, Engineers and Quantity Surveyors employed with respect to building operations of Government. This is a technical area and save for the Ministries of Education and Housing is governed by the appendix to Ministry of Finance Circular No. 43 of 1963. The Circular provides for the involvement of Architects from the design stages through to the calling for tenders and awards. Tenders are called for by the Ministry of Communications and Works in accordance with the advice of the Government Contracts Committee. In the tendering documents, the name of the private architect is stated, to whom all enquiries are made for additional tendering information. On receipt of tenders by the Ministry they are opened in the Contracts Committee and any subsequent comparison of price or conditions in the tenders is carried out by the Private Architect/Quantity Surveyor, who then submit their recommendations for awarding the contract to the Contracts Committee. The Contracts are awarded by the client Ministry after consideration of the recommendations of the Contracts Committee, the Private Architect being named "the Architect" in the contract and assuming full responsibility for all site supervision and certification of payments due to the Contractor, in accordance with standard Government Procedures.

197. Tenders for electrical or mechanical subcontracts are called for by the architect concerned on recommendations from the Director of Electrical and Mechanical Services of the Ministry of Works and contracts are similarly awarded. We have made observations above on the question of the stages at which Architects, Engineers and Surveyors should become involved in the planning of programmes and on the consequences of failure to seek their participation at the early stages of planning. The Junior Secondary School Programme provides the best illustration. We have also criticised adversely political interference with Consultants in the discharge of their duties and instanced the case of Dr. Burt intervening to secure the appointment of his nominees as Sub-contractors when it was the duty of the Consultants to nominate such Sub-contractors after appropriate tendering.

SECTION H

LIMITATIONS ON CONTRACTUAL CAPACITY

198. There are two classes of persons whose capacity to enter into contracts with Government should in our view be limited. The first class comprises Members of Parliament and Senators. The second class comprises Civil Servants.

M.Ps. AND SENATORS

199. The Constitution itself recognizes the special position of Members of Parliament and Senators in relation to contracts with Government. There are two relevant constitutional provisions in relation to disqualification for membership of Parliament. Sec. 40 (2) (c) of the Constitution provides that—

“No person shall be qualified to be appointed as a Senator or elected as a member of the House of Representatives who— is a party to, or a partner in a firm or a director or manager of a company which to his knowledge is a party to, any contract with the Government of Jamaica for or on account of the public service, and has not—

- (i) in the case of appointment as a Senator, by informing the Governor-General; or
- (ii) in the case of election as a member of the House of Representatives, by publishing a notice in the *Gazette* within one month before the day of election,

previously disclosed the nature of such contract and his interest or the interest of such firm or company therein.”

200. In relation to tenure of office of Parliamentarians the Constitution further provides—
“Sec. 41. (1) The seat of a member of either House shall become vacant—

- (f) if he becomes a party to any contract with the Government of Jamaica for or on account of the public service:

Provided that—

- (i) if in the circumstances it appears to the Senate (in the case of a Senator) or to the House of Representatives (in the case of a member of that House) to be just so to do, the Senate, or the House of Representatives (as the case may be) may exempt any member from vacating his seat under the provisions of this paragraph, if that member, before becoming a party to such contract as aforesaid, discloses to the Senate or to the House of Representatives (as the case may be) the nature of such contract and his interest, therein;
- (ii) if proceedings are taken under section 44 of this Constitution to determine whether a Senator or a member of the House of Representatives has vacated his seat under the provisions of this paragraph he shall be declared by the Court not to have vacated his seat if he establishes to the satisfaction of the Court that he, acting reasonably, was not aware that he was or had become a party to such contract;

- (g) if any firm in which he is a partner, or any company of which he is a director or manager, becomes a party to any contract with the Government of Jamaica for or on account of the public service or if he becomes a partner in a firm, or a director or manager of a company which is a party to any such contract:

Provided that—

- (i) if in the circumstances it appears to the Senate (in the case of a Senator) or to the House of Representatives (in the case of a member of that House) to be just so to do, the Senate or the House of Representatives (as the case may be) may exempt any Senator or member from vacating his seat under the provisions of this paragraph if that Senator or member, before or as soon as practicable after becoming interested in such contract (whether as a partner in a firm or as director or manager of a company), discloses to the Senate or to the House of Representatives (as the case may be) the nature of such contract and the interest of such firm or company therein;
- (ii) if proceedings are taken under section 44 of this Constitution to determine whether a Senator or a member of the House of Representatives has vacated his seat under the provisions of this paragraph, he shall be declared by the Court not to have vacated his seat if he establishes to the satisfaction of the court that he, acting reasonably, was not aware that the firm or company was or had become a party to such contract."

201. This is a difficult area in which to legislate and it is note-worthy that some constitutions in the Commonwealth do not contain any provisions similar to those referred to above as regards a member of the House contracting with Government and the matter is generally dealt with by Standing Orders. It is difficult to say how effective this provision has been in practice. Further it is the type of legislation that can be circumvented without difficulty by people who are so minded.

INTEGRITY COMMITTEE'S RECOMMENDATION:

202. We note that on this aspect of the matter, the Integrity Committee in its Report observed in paragraph 46 as follows—

"The Committee recognises that the possibility exists for Members of Parliament to use their official position to further their own financial interests, particularly in the field of the award of Government contracts, allotments of lands under Government sponsored schemes, housing and the like. The situation is not completely covered by the Corruption Prevention Law or the Constitution."

"The Committee therefore recommends that urgent consideration be given to amending the Standing". Orders of both Houses of Parliament so as to bring under public scrutiny the circumstances surrounding the award of contracts to Members of Parliament, their families or companies in which Members or their families have an interest. Similar provisions should be made in respect of all allotments of land, housing and the like under Government sponsored schemes. The Committee feels that this would deter Members of Parliament from using their position to obtain undue advantage for themselves, their families and companies in which they have an interest in the matters referred to. No doubt the Committee appointed by Government to look into the principles and practice relating to the award of Government contracts and other related matters will have some recommendation to make in the matter."

203. We endorse, with respect, the recommendations of the Integrity Committee with regard to the amendment of the Standing Orders to provide for the matters stated. In respect however of allotments of land and housing under Government sponsored schemes we would go a step further, as schemes of this nature are intended to benefit a particular segment of the population of which we venture to suggest that Parliamentarians are not members. Accordingly, there should be specific legislation prohibiting Members of Parliament, Senators, their spouses and infant members of their family from participating in housing schemes or land settlement schemes either directly or indirectly. We feel it is not possible to extend the ambit of prohibition further to sons or daughters who have attained their majority or brothers or sisters.

CIVIL SERVANTS

204. The position of Civil Servants in this context also calls for special consideration. Section 3.7 of the Staff Orders for the Public Service of Jamaica, 1965, dealing with the conduct of Government Officers provides that—

“Public Officers whether on leave of absence or not are forbidden:—

- (a) to undertake any private work for payment or to engage in trade or employ themselves in any commercial or agricultural undertaking without the consent of the appropriate Service Commission.
- (b) to undertake any private agency in any matter connected with the exercise of their public duties.”

Although on the face of it the Order would appear to contemplate engaging in trade in the usual commercial way, it is in our view wide enough to, and must equally, embrace the case of a civil servant entering into a contract with Government either directly or through a nominee or through the machinery of a one-man company.

THE CASE OF V. R. THOMPSON

205. The Commission heard evidence with regard to the conduct of a civil servant, one Mr. V.R. Thompson, which aptly illustrates the wisdom of the prohibition. Mr. Thompson took up duty as the senior Legal Officer in the Ministry of Housing in July 1968. In August of the same year he formed a Company known as the Progressive Quarrying Limited in association with one Mr. Ernest Gordon. Both sharing equally in the issued capital. Mr. Thompson was himself responsible for drafting the Memorandum and Articles of Association. The company obtained a lease of Lakeside Quarry from the Minister of Housing; and Mr. Thompson himself prepared the lease. His company also supplied rubble to the Sandy Gully Scheme in 1969. This company acquired valuable equipment totalling over \$100,000 on hire-purchase terms and was undoubtedly in a fair way of business. In the first eighteen months of its operations the Company had a gross turn-over of \$204,000 and a gross profit of \$23,000 according to the Company's Account. Mr. Thompson stated that he borrowed monies totalling some \$5,000 and loaned them to the Company. Although he himself had to pay interest on some of this borrowed money, the interest payable was not passed on to the Company. Strangely enough, there was not a shred of evidence in writing with regard to these loans.

MR: THOMPSON'S EVIDENCE

206. Mr. Thompson first began by telling the Commission that he knew precious little about the company's activities. The truth did not emerge spontaneously from him; it had to be wrung from him piece by piece. Eventually it turned out that he participated actively in the running of the company and

in fact the company paid for a "key-man" insurance policy on his life in the sum of \$10,000. At one stage Mr. Thompson himself was authorised to sign cheques on behalf of the company. The evidence revealed that cheques totalling \$14,012.97 were paid to him; but according to his story they were for Pay Bills. To the end however, he insisted that he had not received one cent from the company by way of loan, interest, fees, travelling expenses or for anything else. It must be a rare phenomenon in commerce for a company to find such a good samaritan. At first, Mr. Thompson said he saw nothing incompatible between his duty as a civil servant and his activity in organizing and operating Progressive Quarrying Limited. In the end however, the light dawned and he conceded that had the matter been brought as forcibly to him as it was during the course of the evidence, he would have discussed the matter with the Chief Personnel Officer.

207. There could hardly be a clearer case of a civil servant placing himself in a position of conflict between his duties as a civil servant and his personal interest as a private person.

OTHER CIVIL SERVANTS

208. There were other instances of civil servants placing themselves in a position of conflict, brought to our attention; thus at the Ministry of Works, heavy equipment would be owned by a civil servant's wife and rented to the Ministry of Works. This is on the face of it a most undesirable state of affairs.

THE CASE OF R. HOLNESS

209. Although this case does not fall specifically within the terms of the Staff Order quoted above, it is for convenience dealt with here. Mr. Holness was a Senior Building Officer who had the duty amongst others to inspect the work of building contractors to the Ministry of Education. There was evidence that in the case of one contract awarded by that Ministry to Mr. Laurentine Johnson, Mr. Holness is alleged to have said to the contractor "that he did not want a cut but a slice." This statement Mr. Holness denied; he admitted, however, that he had received two loans of three hundred dollars (\$300) each from Mr. Laurentine Johnson, one of which had been repaid. Mr. Laurentine Johnson in his statement admits having paid Mr. Holness between \$650 and \$800 in order to obtain his first payment on the Porus Infant School contract. There was also evidence as regards the signature on another cheque for \$350 which was alleged to be that of Mr. Holness' wife, Gloria Holness. This lady appeared before the Commission and was asked whether she would be willing to give a specimen signature. She declined to do so. We regret to come to the conclusion that Mr. Holness had acted in a corrupt manner.

MORALE OF CIVIL SERVICE

210. During the hearings, we formed the impression that there seemed to be a decline in the moral fibre of certain segments of the Civil Service. This was particularly so in the case of the Ministry of Education. There was for example, the case of the six electrical contract vouchers being secretly removed from the Permanent Secretary's office in a highly irregular manner and payments being made on those contracts. For this rather unsavoury episode Mr. G. Sherman a former Assistant Under-Secretary must bear prime responsibility. Further in the case of the Ministry of Education, one cannot help but feel that the influence of the Minister of State, Dr. Burt and the Parliamentary Secretary, Mr. Williams was not salutary and that the moral decline permeated downwards.

SECTION I

SOME GENERAL RECOMMENDATIONS

FUNDAMENTAL PRINCIPLES

211. The Ministry of Finance should lay down principles for all Ministries to ensure the observance of sound procedures in government contracting, the maintenance of reasonable uniformity in contracting practice and compliance with government policies in the placing of contracts and the settlement of contractual terms. At present the Ministry of Finance Circular No. 43 of November, 1963, applies to all Ministries except the Ministries of Education and Housing. Thus while a Government Contracts Committee still functions with respect to the former Ministries a similar Committee was dispensed with at the Ministry of Education after July, 1970 with disastrous consequences. Once the necessity of having an Advisory Contracts Committee is laid down as a Ministry of Finance requirement for all contracting Ministries then such a Committee should not be abandoned.

Some of the principles of general application would include the following:—

- (i) that contracts should whenever reasonably practicable, be let by competitive tender;
- (ii) that the financial and commercial standing of firms should be investigated before contracts are awarded to them;
- (iii) that the contractors should be required to observe the Fair Wage Resolution of the House of Representatives;
- (iv) that as a general rule awards of contracts should not be made before agreement as to price, whether the contract is let on a Schedule of Rates basis or for a lump sum;
- (v) that provisions against corrupt gifts and payments of commission should be included in the standard forms of contract. Any breach of this condition by the Contractor or anyone employed by him or acting on his behalf would entitle the Ministry concerned to determine the contract. A useful precedent for such a clause is to be found in U.K. Form CCC/Wks/1 (October 1959 Edn.);
- (vi) that all standard forms of Government contracts should contain a provision against discrimination in terms of Section 24 of the Constitution of Jamaica.

FUNDAMENTAL DIRECTIVES

212. Certain fundamental directives should be given such as:—

- (i) that contracts should always be reduced into writing and signed by or on behalf of the Permanent Secretary of the Ministry concerned and by the contractor before work is started;
- (ii) that work should only be started before the signing of a contract in exceptional circumstances and only with the written consent of the Accounting Officer concerned;
- (iii) that where a project over a certain sum requires the consent of Cabinet, this project should not be let in two or more parts in order to evade that consent;
- (iv) that if it is necessary in the public interest to sub-divide the project into two or more parts this should only be done with the written consent of the Accounting Officer on the advice in writing of the Chief Architect or Engineer, as the case may be. The Accounting Officer would then have to be prepared to defend his action to the Ministry of Finance and before the Public Accounts Committee;

- (v) that all instructions or directives or requests by a political Head of a Ministry or Department in connection with the commencement or execution of a contract or in respect of any matter arising out of the provisions of such a contract should be given in writing by the aforesaid Head through the Permanent Secretary.

ROLE OF THE MINISTRY OF FINANCE

213. New and up-to-date instructions should be issued to all Ministries engaged in building operations by the Ministry of Finance with regard to its controlling role where questions arise in respect of settlements of contractors' claims, *ex gratia* payments and abandonment of claims against contractors, particularly those arising under a liquidated damages clause.

PREPARATION OF LIST OF CONTRACTORS

214. At the moment lists of contractors are prepared by officers who are professionally qualified in the Ministry of Works. On the other hand, in addition to the professionally compiled lists the Ministry of Education has a short list comprised predominantly of contractors—whose competences often suspect—recommended by Members of Parliament or other political representatives. We are of the view that notwithstanding the source of the recommendation the names of the proposed contractors should only be listed after technical advisers have satisfied themselves of their competence.

STANDARD FORMS

215. Standard forms of contract containing model conditions for all building and engineering work should be adopted for government contracts. The responsibility for ensuring that these standard forms of contracts are prepared should rest with the Ministry of Finance after consultation with the Joint Industrial Council of the Building Industry and all interested parties. Standard forms of contracts have the advantage that they can be printed and circulated to contractors so that they will know the terms upon which Government is prepared to enter into contractual obligations with them. Where contracts are given out on a Schedule of Rates basis those rates should be common to all Ministries and Departments.

FINANCIAL REGULATIONS

216. The Financial Administration (Supplies) Regulations 1963 should be amended to provide that on the award of a contract all the tenderers should be advised not only of the name of the successful tenderer but also of his price and relevant conditions, in order to remove any suspicion of unfair practices.

CONTRACT AWARD COMMITTEES

217. Contract Award Committees should be set up for the Ministries of Education and Housing on a similar basis as that established by Circular 43 for the Ministry of Works. The one which was set up in 1962 at the Ministry of Education was predominantly political. At the level at which such a Committee is designed to function, what is required is professional skill and expertise—not an exercise in political patronage. The ultimate decision will rest constitutionally with the Minister or Cabinet, as the case may be.

CONTRACT CO-ORDINATING COMMITTEE

218. A Contracts Co-ordinating Committee should be established for the Ministries of Works, Education and Housing. Such a Committee would provide opportunity for exchange of information and of making progress towards uniformity of contracting procedures. It would further ensure a forum for the discussion of problems common to all Ministries. It would also ensure that work was distributed among consultants and contractors on an equitable basis. It would further be possible for the Ministries of Education and Housing to draw on the greater expertise of the Ministry of Works. At present there is no machinery for discussion or co-operation between these three Ministries. It will, of course, be necessary to ensure that professional administrative and financial interests are represented on this Co-ordinating Committee.

CHAPTER II

LAND SETTLEMENTS AND HOUSING SCHEMES

SECTION A

LAND SETTLEMENT SCHEMES

DEFINITION

219. A Land Settlement may for practical purposes be defined as a block of land sub-divided into viable economic units and allotted under a Land Settlement Scheme to be used for agricultural purposes. There is an element of subsidy in all Land Settlement Schemes inasmuch as purchasers of lots in such a Scheme are not required to bear the full cost of infrastructure involved in construction of roads, the provision of water etc. There are other advantages too. The purchaser has twenty-five years to pay the purchase price—obviously a highly advantageous method of acquiring land. Further no interest is payable on the purchase price.

PROCEDURE FOR ALLOTMENT

220. The procedure for allotment is as follows:

The lots are advertised for sale and the date on which applications will be received: all applications are received on the appointed date and recorded in a Register. When the application stage has been completed a survey is made by the Land Officer of all the applicants. This survey would include age, ascertaining whether the applicant has been farming, whether he is a tenant or non-tenant. On the strength of this survey the Commissioner of Lands makes his recommendations to the Ministry for the different lots on the Land Settlement. An application is deemed to have been accepted by the Commissioner only when a Notice of Allotment is made in writing to the applicant. If there are sitting tenants, they have first priority; persons living within a radius of three miles are accorded the next priority.

EVIDENCE CONCERNING LAND SETTLEMENTS

221. The Commission heard evidence with regard to Land Settlements at Heywood Hall, Vernamfield, Flamstead, Paul Island Estate, Westmoreland and Braco. We would make the following comments on each, respectively:—

LOT 184—HEYWOOD HALL LAND SETTLEMENT

222. This is a case of blatant and deliberate dishonesty. Mr. Wycliffe Martin a former Member of Parliament and Parliamentary Secretary in the last Government, procured a transfer in April 1967 of Lot 184 to his son Peter Denzil Martin by falsely swearing in a number of documents that his son was a farmer when at the time he was an infant, age twelve and attending school: and this at a time when he held a commission as a Justice of the Peace. Mr. Martin's action was quite indefensible and might well attract the attention of the Director of Public Prosecutions.

VERNAMFIELD

223. This is a case of the Land Settlement that wasn't. On the 16th of February 1967 the Permanent Secretary of the Ministry of Agriculture and Lands wrote to the Commissioner of Lands instructing him to make an allotment of fifty acres of land at Vernamfield to Brigadier David Smith on normal land

settlement terms. Vernamfield was at the time being used by the Agricultural Development Corporation. There was no Land Settlement Scheme in existence there at the time these instructions were issued; neither were the lands available for sale to private individuals. The Commissioner of Lands at the material time stated in evidence that he did not know the particular reason for applying the machinery of the Land Settlement Scheme to this purchase.

224. There are legitimate means by which a nation may honour its distinguished soldiers. The method adopted in the case of Brigadier David Smith is not to be commended as a precedent.

FLAMSTEAD

225. The Watershed Protection Commission was carrying out an afforestation programme in this area which resulted in the displacement of twenty-six farmers. On 10th March, 1971, the Watershed Protection Commission handed over to the Yallahs Valley Land Authority one hundred and ten acres in Flamstead with the expressed stipulation that the twenty-six displaced farmers should be re-settled on this land. The handing-over was apparently done with all the fanfare characteristic of these occasions and all the leading *dramatis personae* were present including Mr. David Lindo the sitting Member of Parliament and Mr. C. McGann, Chairman of the Yallahs Valley Land Authority. The latter stated in evidence that a lot was said at the handing-over ceremony but he could not remember anything; he would have to see the record. Unfortunately no rural scribe was present to record the event for posterity. Thereafter, seventy-two acres of the one hundred and ten acres were sub-divided and fifty-six and one-half acre, comprising ten lots, were actually allotted. Of the twenty-six tenants whose claims had priority, only three received allotments. The other seven lots were allotted to persons who were not tenants. Whilst in a strict sense the Yallahs Valley Land Authority was responsible for making allotments—subject of course to the ultimate authority of the Ministry of Rural Land Development—there is little doubt that the persons who were mainly responsible for the allotments were the Member of Parliament and the Chairman of the Yallahs Valley Land Authority.

226. Among the proposed allottees was one Margaret Isaacs, a sister of Mr. David Lindo the Member of Parliament. The lady was not a farmer; she kept horses and apparently required grass-land to provide provender for them. She was allotted a lot over thirty-one acres for which she would be expected to pay \$2,501.30. The proposed acquisition was somewhat unfortunate inasmuch as Mr. Lindo owned lands adjoining the thirty-one acres, though he stated he would not regard that land as a valuable addition to his. Mr. Lindo's reaction to the situation was that if in helping his sister he had committed a crime, then he stood convicted of a crime.

227. Mr. Lindo further stated that nobody wanted that land. He admitted, however, that the interval of time between application for these lands and the proposed allotment was only a week or so. It is somewhat remarkable that neither the Member of Parliament nor the Chairman of the Yallahs Valley Land Authority saw any impropriety in the manner in which these lands were disposed of. Let it be assumed that for one reason or the other, the proposed tenants were not interested in the land. In these circumstances, the proper method of disposing of the lands would be to invite tenders for the purchase of these lands or put them up for sale by public auction. The Chairman's reaction to this suggestion was—

“that may be the policy of tomorrow, but it wasn't when I was Chairman of the Land Authority.”

Mr. McGann was twice a champion farmer but he does not appear to possess the qualities of a champion in the administrative field.

228. To complete the record, it should be added that the lots had not been transferred to the seven allottees who on investigation carried out in or about July 1972 proved to have been unqualified.

PAUL ISLAND ESTATE IN WESTMORELAND

229. In June 1966 certain lands at Paul Island, Westmoreland, were acquired by Government from the West Indies Sugar Company for the sum of \$767.18.0d. They were registered in the name of the Director of Housing at Volume 1027 Folio 363 in the Register Book of Titles. The Minister of Housing decided to dispose of a portion of these lands to sitting tenants who were then paying a pepper-corn rent. The land provided for twenty-three lots which were sold for \$10.00 per lot irrespective of the size of the lot. According to the Commissioner of Valuations, the valuation of the free-hold interests of these lots without any buildings or improvements as at 24th February, 1972 ranged from \$250.00 to \$650.00. Mr. Hill stoutly defended his action in disposing of these lots at \$10.00 each and added that in a case in Portland he had actually given away the land to the tenants. His action raises an important question of principle.

230. Under the Housing Act 1968, the Minister is empowered to sell or let land but he is not empowered to give away land. It may of course be argued that in law, once a price is fixed, no matter how illusory, there is a sale. It is submitted that while a private citizen may dispose of his lands however valuable, for a cent or give it away, a Minister who holds land in trust is not free to do so. If Crown Land is to be given away or to be sold at a price which bears no relation to its true value, then it is further submitted that such disposal should have the approval of the House of Representatives—the final constitutional guardian of the country's assets. Lands owned by Government represent public assets purchased from public funds. It would be exceedingly odd if when the most exact arrangements are made for the control and audit of expenditure of public funds, no adequate provision was devised to control or ensure proper disposal of assets into which any part of these funds have been converted.

INSTRUMENTS OF TRANSFER

231. There is another matter in connection with Paul Island Estate that calls for comment. On the instructions of the Minister, Instruments of Transfer were prepared following the form contained in the Seventh Schedule of the Housing Act 1968. Reliance was placed on Section 46 of the Housing Act 1968 which is in the following terms:—

“A document in the form specified in the Seventh Schedule, signed by the Minister, shall be sufficient to confer title on any purchaser and no such purchaser shall be concerned to see or enquire whether such sale is properly made or whether any notice necessary to be given has been given.”

232. Mr. Hill and his Legal Adviser contended that the form in Schedule Forty-six was sufficient to effect a legal transfer notwithstanding the fact that the land is registered. Someone unfamiliar with the art of registered conveyance may be tempted to place such an interpretation on the section, but it obviously cannot be correct. The matter can be put quite simply. There is a form of transfer in the Fourth Schedule of the Registration of Titles Law Cap. 340 of the Laws of Jamaica (1953) Edition;

that form is used in ordinary transactions but the transfer must be registered in order to pass the legal estate. The form in the Seventh Schedule to the Housing Act 1968 simply takes the place of the ordinary form to be found in the Fourth Schedule of the Registration of Titles Law Cap. 340. Its main purpose is to protect the purchaser's interests where there have been defects in the carrying out of the transaction, but the transaction must still be completed by registration.

233. The initial and proper procedure is stated with clarity by the Registrar of Titles:—

"If the land is registered and it is proposed to sell or subdivide the land a plan of the subdivision is deposited in the Office of Titles and transfer can be effected by reference to the lot number on the plan and identifying the Certificate of Title which relates to that particular parcel of land."

The allottees of the Paul Island Estate have bits of paper purporting to be Titles, but they would be fortunate to find anyone who would be prepared to lend on the security of such a title.

234. Inasmuch as the Minister in his formidable fashion threatens to perpetuate this form of conveyancing should he again return to his ministerial seat in the Ministry of Housing, it is suggested that Section Forty-six be amended to put an end to this unorthodox method of conveyancing.

BRACO

235. This was the last Land Settlement examined by the Commission and perhaps the most complicated. The Braco property was purchased in 1942 by Government from Mr. V. Parnell and it was leased to the United States for use as an emergency landing strip during the last war. This lease was terminated in 1944 and the property was handed over to the Lands Department. Situated as it is on the North Coast its potential as a tourist resort was envisaged from an early stage.

236. Mr. Jacob Taylor, the Secretary of the Beach Control Authority stated that soon after the Authority was established it became aware of the existence of the Braco property. Fishermen traditionally used sections of the beaches and obviously had a vital interest in continuing this user.

237. In December 1968 the first application for a subdivision of a section of the foreshore lands into eight lots for residential purposes was considered by the Beach Control Authority. A fishing beach had already been established on Lot 1 and there was a small resort cottage on Lot 2 which was operated by the Commissioner of Lands mainly for the benefit of his staff. The Beach Control Authority recommended that Lot 4 comprising approximately three acres should be reserved as a public bathing beach and Lot No. 1 as a public fishing beach. The recommendation was made by Mr. H. B. Tucker then Chairman of the Beach Control Authority. Lot 4 was subsequently sold to Mr. C. Langford, the Commissioner of Lands. Mr. Tucker and Mr. Langford thereafter met at Braco and an alternative site for the public bathing beach was suggested by Mr. Langford. On the 9th October, 1969, Mr. Tucker recommended acceptance of the alternative site which although rocky could be made suitable by blasting. In November 1969, Mr. Langford submitted for the Beach Control Authority's consideration a revised plan showing a public bathing beach reservation as Lot 91 with a road and sea-frontage of approximately two hundred feet and comprising approximately six acres.

238. On inspection this site proved not to be ideal for public bathing due to the rocky nature of the sea-front and a final decision on the matter was postponed. Professor Goodbody, the Acting Chairman of the Authority wrote to Mr. Langford on the 22nd December, 1969, pointing out that the application for subdivision should have been submitted to the Authority through the Trelawny Parish Council or the Government Town Planner in keeping with normal procedure; he added, however, that the Authority would in the interim merely note the application for sub-division pending a formal submission. On the 25th November, 1971, the application was resubmitted to the Authority through the Trelawny Parish Council. Lot No. 91, the proposed public beach has now been renumbered as Lot 109 on the latest plan.

239. The Commission was pressed by all parties to visit Braco and accordingly on Saturday, the 24th March, the members of the Commission paid a visit to Braco. We inspected closely both Lot 4 and Lot 109. As they appear today Lot 4 is undeniably much more attractive as a bathing beach than Lot 109, which is at the moment somewhat rugged in contour. In fairness, however, it must be pointed out that Mr. Langford has over the years actually created a beach on Lot 4 from what was originally swampy ground. It must also be pointed out that the development of Lot 4 appeared to be a somewhat easier proposition than the development of Lot 109.

240. It is rather unfortunate that this impasse should have arisen between the Beach Control Authority and the former Commissioner of Lands. It arose because the latter oversighted a policy directive and a Development Order. Apparently shortly after the Beach Control Authority came into existence a directive was issued that no Government owned beach lands should be disposed of without prior consultation and the approval of the Authority.

241. In 1963 the Town and Country Planning (Trelawny) Development Order came into force. It dealt with the development of the entire Braco area which included a public fishing beach, a public bathing beach and a sea-park. Further paragraph 12 the Order requires a Scheme Plan to be prepared where land is to be sub-divided for the purpose of sale, lease or letting for building purposes: Sub-paragraph 2 of the same paragraph provides that a person shall not sell, etc., until a Scheme Plan is approved by the Local Planning Authority. It is quite clear from the evidence that the Planning Authority would not sanction an application where the Beach Control Authority had an obvious interest without reference to the Authority and undoubtedly the Authority had a vital interest in this particular sub-division; as Mr. Dudley McLaren, the Government Town Planner observed, 'as far as the area where the Beach Control Authority's interests are affected we require that the Beach Control Authority themselves be satisfied.'

242. There is another aspect of the Braco settlement that engaged the Commission's attention. At some point of time which cannot be pin-pointed with precision Government decided to dispose of the beach lot at Braco on land settlement terms. According to Mr. Langford's evidence the proposal to allot lands to private individuals apparently originated in the Ministry of Agriculture and Lands with Mr. Gyles who was then Minister of Agriculture and was subsequently adopted by Mr. William McLaren while he was Minister of Rural Land Development.

243. Mr. William McLaren gave evidence before the Commission and gave the Commission one of its few pleasurable sessions. He was a refreshingly frank and honest witness. He gave evidence to the effect that Government decided that it would assist civil servants who had rendered meritorious services to the country to obtain lots on reasonable terms. In fact, the actual price of the lots at Braco was £800 per lot, save Lot No. 4, which was priced at £400 because of its swampy nature. The scheme,

however, as it turned out did not remain predominantly a civil service scheme because of the twenty-four allottees only seven were civil servants. The lots were never advertised as is customary in Land Settlement Schemes and no attempt was made to publicise it in any way. The Scheme certainly was never discussed with the Civil Service Association nor was any circular or any other appropriate method of publicising the sub-division adopted. In short, the allotments were made by the Minister and the Commissioner of Lands. Mr. McLaren characteristically accepts full responsibility for what had been done at Braco.

244. It is perfectly legitimate for Government and indeed laudable to establish a scheme whereby civil servants can obtain allotments. It is equally laudable for Government to set up a Land Development Scheme under which people who qualify under stated criteria may obtain land. We venture to state, however, that such a scheme should proceed on the basis of total equality and that every citizen should be treated alike. In short, if it is a scheme for civil servants, all civil servants should have an equal opportunity to apply. If necessary, the allottees can be decided by the drawing of lots. If the scheme is for the general public, it should be so advertised and every citizen given an opportunity to purchase.

245. We emphasise here what was said during the hearing by the Chairman:—

“if Government is disposing of lands, which it is perfectly free to do, then it should do so in purely rational way. It may do so by having a scheme for civil servants or by a Land Settlement Scheme or it may dispose of it as may be done in the normal commercial way. We have these lands, we don't want them so we put them up for sale by public auction or by inviting tenders; that seems to me the rational way of proceeding but this sort of thing where you have a mixture of a few civil servants and people who know a Minister must inevitably invite criticism.”

This is a principle from which the then Permanent Secretary did not dissent; indeed he endorsed it. We think it is accurate to say too, that by the end of the session Mr. McLaren, the former Minister of Rural Land Development accepted the principle adumbrated above.

246. We envisage that there might be obvious and sensible reasons for Government's entering into a negotiated contract for the performance of certain works or services; but the occasion must be rare indeed and the circumstances exceptional when the Government can be justified in disposing of land owned by it by private treaty. We submit that the proper way to dispose of such land is either by inviting tenders, the usual method, or putting up the land for sale by public auction. By adopting this method no one receives preferential treatment and every citizen has equal opportunity of acquiring the land.

ACQUISITION THROUGH NOMINEES

247. We have suggested above that Parliamentarians and their spouses should be precluded from participating in these schemes; equally necessary it is, to prevent other persons for whom schemes of this nature were not designed, from participating indirectly in these schemes by acquiring lands through a nominee. Every applicant in a Land Settlement Scheme should therefore be required to make a Statutory Declaration that he is not applying as nominee for anyone else.

SECTION B

GOVERNMENT HOUSING SCHEMES

HOUSING ACT, 1968

248. Housing Schemes are carried out by the Minister of Housing under powers conferred on him by the Housing Act, 1968. On completion of a housing scheme the Minister has power to let, lease or sell any dwelling house subject to such covenants and conditions as he may think fit (Section 14). Further Section 37 (1) of the Act provides:—

“When any land or buildings have been acquired by the Minister for the purposes of this Act, then, without prejudice to any of his other powers under this Act, the Minister may—

- “(a) let or lease for any term of years, or upon any conditions, any land or buildings so vested in him and accept surrenders of any such leases as he may think fit;
- (b) sell the land or exchange it for land better adapted for such purposes, either with or without paying or receiving any money for equality of exchange.”

249. When the Minister lets houses he is required to observe certain statutory requirements specified in Section 38. They are as follows:—

- (a) the Minister shall secure that in the selection of tenants a reasonable preference is given to persons who are occupying insanitary or overcrowded houses, have large families or are living under unsatisfactory housing conditions, except so far as the demand for housing accommodation in any district on the part of such persons can be satisfied without such reservation;
- (b) in fixing rents, the Minister shall take into consideration the rents ordinarily payable in the locality, but may grant to any tenant such rebates from rent, subject to such terms or conditions, as he may think fit;
- (c) the Minister shall from time to time review rents and make such changes, either of rents generally or of particular rents, and rebates (if any) as circumstances may require;
- (d) The Minister shall make it a term of every letting that the tenant shall not assign, sub-let or otherwise part with the possession of the premises, or any part thereof, except with the consent in writing of the Minister, and shall not give such consent unless it is shown to his satisfaction that no payment other than a rent which is in his opinion a reasonable rent has been, or is to be, received by the tenant in consideration of the assignment, sub-letting or other transaction.”

250. When, however, the Minister sells a house in a Housing Scheme the law itself does not lay down any specific requirements to be taken into consideration by the Minister. We were, however, informed that there were certain basic criteria for the allotment of houses. Applications were screened by the Management Section of the Ministry. The basic criteria were that:—

- (i) The applicant must not own a house.
- (ii) The instalment on the house must not be more than twenty per cent of the household income.

Other considerations were:—

- (i) Whether the applicant previously owned a Government house which was repossessed;
- (ii) Whether the applicant previously owned a Government house and sold it;
- (iii) Whether the applicant had a family.

251. When the investigation of the applications was complete a list was prepared and submitted by the Principal Assistant Secretary (Management) direct to the Minister with recommendations. The Minister then made the final decision on the award of the houses.

252. The former Minister of Housing gave evidence before the Commission. He stated that he used to leave the allotment of houses to the Civil Servants but became dissatisfied with their handling of the matter and he therefore decided to discharge this function personally. According to another segment of the evidence, however, this was a sphere in which political affiliations were of considerable importance.

253. The Housing Act confers multifarious functions on the Minister. He obviously cannot be expected to discharge all the functions personally, even if he has the strength of an Hercules. So far as the question of allotment of houses in a Housing Scheme is concerned, this is a case where the State is performing a social function and we feel it eminently desirable and appropriate that the Minister should be advised by a Committee on which citizens would have direct representation. We strongly recommend that such citizen representation should not be confined to members of the ruling party. The Minister under our system of government would of course have ultimate responsibility, but his powers would not be exercised or be exercisable in an autocratic manner.

254. We are further of the opinion that there should be a safeguard against the abuse of persons applying for houses by the use of nominees. Accordingly, each applicant in a Housing Scheme should be required to make a Statutory Declaration that he is not applying for a house as the nominee of any person.

CHAPTER III

LICENCES UNDER THE TRADE LAW, 1955

POWERS UNDER THE LAW

255. The power of granting or refusing to grant licences whether for importation or exportation of goods is vested in the Minister by virtue of Section 5 of the Trade Law as substituted by Section 4 of the Trade (Amendment) Act 1962. The appropriate Minister at the time of the hearing was the Minister of Commerce and Consumer Protection and prior to 1972, the Minister of Trade and Industry. Under the Law the Minister has power to delegate any of his functions to the Trade Administrator or any other public officer on such terms and conditions as the Minister thinks fit. The delegation may be revoked at any time by the Minister. Under this provision, the Minister has delegated to the Trade Administrator the functions of granting licences for the importation and exportation of certain goods. This delegation has been made on condition that the functions so delegated shall be exercised by the Trade Administrator subject to any general directions which may from time be given by the Minister.

MINISTERIAL CONTROL OF POLICY

256. The Minister advises the Trade Administrator which goods should be subject to specific import and export licences and simultaneously the policy which should govern the grant or refusal of such licences. Policy considerations are based largely on economic and political factors. Further, it is the Minister who decides what countries Jamaica may trade with for purposes of importation as well as exportation. Thus, at the present time trading with South Africa, Southern Rhodesia, Portugal and its dependencies is interdicted.

257. In order to inform traders, importers and the general public regarding goods which require specific licences to be imported into Jamaica or exported therefrom, the Trade Administrator publishes two Open General Licences, one for import and the other for export. These Open General Licences carry respective related Schedules which list the goods requiring licences to be imported or exported, as the case may be. The basic interpretation of these Schedules is that merchandise not listed therein requires no licence to be imported or exported, provided the country involved is approved for regular trade with Jamaica. The Open General Licences are published in the Jamaica Gazette and the local newspapers. The most recent Open General Licence is dated 10th May, 1973, but the Commission was informed that this has not yet been published.

258. It would obviously be undesirable to advertise publicly the policies which are approved by the Minister to govern the grant or refusal of licences—for matters of considerable delicacy may be involved. As a rule, however, this information is given on enquiry to the Trade Administrator's department. However, because of certain difficulties and misunderstandings which have been reported in recent times, particularly by the mercantile community for up-to-date information regarding import and export licence requirements, the Trade Administrator started at the beginning of November, 1971, a practice—as far as official discretion will allow of regularly communicating information

about import and export licensing policies to such bodies as the Jamaica Chamber of Commerce, Jamaica Manufacturers Association Limited and the Customs Brokers Association of Jamaica. These organizations in turn enlighten their members who are mainly involved in the mainstream of Jamaica's commerce and industry and consequently require maximum information and understanding of Government's import and export licensing policies.

ADMINISTRATION

259. The Trade Administrator as well as licensing officers (including the Deputy and Assistant Trade Administrators) authorized by him to sign and countersign import and export licences, all subscribe individually to the formal authorization which carries their specimen signatures and which are circulated to all the local banks and officers in the Collector General's Department for reference.

260. Applications for import licences are submitted in duplicate on prescribed forms; these are submitted either by mail or by personal delivery and in both cases the applications are received by the department's Registry staff who stamps the date of receipt on the duplicate copy of each application which in turn is then referred to the licensing officer for attention. In dealing with applications for import licences, licensing officers are naturally guided by the prevailing import licensing policy relating to the goods covered by the application under consideration. If an application is straightforward, the licensing officer signs both copies and then forwards them to a Numbering Clerk for him to affix a licence number and dates of issue and expiry. At this stage the document becomes the formal import licence; as a special precaution however, the present practice is that in addition to each import licence signed by a licensing officer, it must also be countersigned by either the Trade Administrator, Deputy Trade Administrator or Assistant Trade Administrator. After formal approval of an import licence, the original copy of such licence is returned to the licensee and the copy retained in the Trade Administrator's Department. Where applications are not straightforward, the licensing officer makes a submission and seeks the direction of the Trade Administrator through the Deputy Trade Administrator. Two Registers are kept by the Trade Administrator, one of the licences granted and another of the licences refused. The licence is normally granted for a period of six months and on the basis of established import performance.

261. Applications for export licences are received in the Export Licensing Section of the Department either by mail or by hand; they are submitted in duplicate on the prescribed forms. In dealing with these applications a licensing officer is guided by the prevailing licensing policies relating to the goods covered by the application under consideration. If an application is straightforward the licensing officer signs both copies; the licence number as well as dates of issue and expiry are then affixed to both copies of the application which at this point becomes a formally approved export licence. The original copy of the approved export licence is returned to the licensee and the copy retained at the Trade Administrator's Department. The licensing officer will seek directions from the Trade Administrator in applications for export licences which are not straightforward. Certain organizations which regularly import restricted goods which are intended mainly as raw materials for use in the service they offer are granted Open Import Permits to facilitate such regular importations and this concession is based on the nature of the operations involved. Included in these organizations are air-line operators, local manufacturers and bauxite companies.

OPEN IMPORT PERMIT

262. An Open Import Permit is a standing permit which is issued for a specific period, generally for a year and is subject to renewal but, may be revoked at any time by the Trade Administrator. An Open Permit specifies the restricted goods which may be imported by its holder without production of regular import licences. In short, an approved Open Import Permit is a substitute for regular import licences and the chief advantage of such a permit to the importer is that it saves him the necessity of securing regular licences for individual importations of restricted goods which he desires to import. In addition, from the point of view of the department, the Open Import Permit system saves time.

QUOTAS

263. In some instances quotas are issued to traders to allow importation of some restricted commodity. In the usual course of things, such quotas are granted against previous import performances. Quota holders are provided with quota vouchers: these quota vouchers are not equivalent to import licences nor do they dispense with the necessity of obtaining import licences. Quota vouchers must be submitted in support of formal applications for licences to import the restricted goods stated thereon. It is illegal to sell, transfer or otherwise improperly dispose of such quota vouchers.

264. In considering applications for import and export licences, the Trade Administrator is specifically guided by the policies which have been laid down by the Minister and already advised to the Trade Administrator through the usual channels. Policy, like public opinion, might be described as an unruly horse and it is largely based on political and economic considerations, the horizons which may change over-night. Applications which qualify for approval within the policy laid down are accordingly granted. Those which may not be so accommodated are refused.

THE SYSTEM IN PRACTICE

265. The Commission heard some most interesting evidence on the working of the licensing system in practice. Although it would be inaccurate to describe the system as an *ad hoc* one, yet it is not fully streamlined. Indeed it may well be impossible to have such a system in view of the area in which it operates and where local pressures are created by the international market.

RIGHT OF APPEAL

266. The Law itself gives no right of appeal from any decision of the Trade Administrator refusing a licence. We were informed, however, that in practice an appeal may be made to the Minister and thereafter the Trade Administrator must act in accordance with the decision of the Minister. In our view however, it would be more appropriate to confer this appeal as of right.

REFUSAL

267. Some times applications are refused because the required restricted goods are available from local manufacturers. In these cases the applicant is so informed and advised to secure their requirements from the local market. In such circumstances however, the officers of the Trade Administrators' Department are careful to refrain from mentioning any specific local manufacturer lest it should be thought that the Trade Administrator's Department was promoting the interest of any individual manufacturer.

TECHNICAL ADVISORY COMMITTEES

268. The Trade Administrator operates in a technical and sometimes delicate field where decisions must be taken on the basis of expert advice and it is interesting to note that his Department is assisted by several Committees which offer such advice. These Committees are appointed in consultation with the Ministry of Commerce and Consumer Protection and now comprise representatives of the Jamaica Chamber of Commerce, the Jamaica Manufacturers Association Limited and other technical specialists. The function of which Committee is primarily to inform the Trade Administrator whether items sought to be imported might be supplied by local manufacturers or supplied by manufacturers within the Carifta Area. Accordingly in dealing with some applications for import licences which require information of a technical nature reference which is from time to time made to these technical advisory committees. Certain precautions are however a prerequisite to such an approach; thus every effort is made to ensure that there is no disclosure to these advisory committees as to the identity of these applicants, prices of the articles to be imported or the direct source of importation. This procedure is certainly useful. It is a clear recognition of the obligation on the Trade Administrator's Department to protect the full interests of the applicants. The Committees of course, act only in an advisory capacity and the final decision on these matters must rest with the Trade Administrator.

269. In the discharge of his duties, the Trade Administrator must necessarily deal with a number of borderline applications for import licences. In these cases which require a delicate exercise of discretion in approving or refusing an application, the Trade Administrator follows the import licensing policy of the government and where such applications are of a very controversial nature, the Trade Administrator consults with the Ministry.

DELEGATION BY MINISTER

270. Section 8A(1) of the law, as it stands, permits the Minister to delegate to the Trade Administrator or any other public officer such of the functions of the Minister under the law as he may specify. This delegation however, does not prevent the Minister from discharging any of the functions so delegated. This provision is very likely to lead to a certain amount of conflict and the evidence is that during the last administration it did. We were informed that there were occasions when importers applied directly to the Ministry for import licences and such applications were supported by the Ministry without reference to the Trade Administrator. This created serious problems particularly in cases where previous similar requests may have been refused by the Trade Administrator. The system also gave rise to delays which led to complaints for which the Trade Administrator was not responsible as he knew nothing whatsoever about a particular application. In short, it is easy to see that confusion might very well arise where the Minister and the Trade Administrator may act simultaneously at the same level. It is much more satisfactory to have a two tier authority, the Administrator dealing with matters at first instance with an appeal to the Minister from the decision of the Administrator. This system would preclude any possibility of confusion arising.

THE PERENNIAL PROBLEM

271. There is a problem with which each successive Trade Administrator is faced and that is the importation of restricted goods without cover of import licences. Here there are two types of cases. First, there is the importer who through genuine ignorance of the import regulations brings into Jamaica restricted goods before first securing the necessary import licences. Secondly, there are those who with full knowledge, deliberately set out to contravene the law by bringing restricted

goods into Jamaica without the necessary licences. We were told that to overtake the first problem, the Trade Administrator's Department had recently arranged a series of seminars specially designed and intended to inform all levels of management and interested parties regarding the requirements of the Trade Administrator's and the Customs Departments relating to import documentation and other relevant matters. The series of sessions were arranged in conjunction with the Collector General's Department, the Jamaica Chamber of Commerce, the Custom Brokers Association of Jamaica and other interested public and private agencies. As regards the second category, the Trade Administrator works closely with the Collector General in a stern campaign to stamp out improper imports which are embarked upon in contravention of the law. The coercive sanctions of the criminal law are invoked penalties imposed for these improper imports including individual fines which may be as high as three times the value of the improperly imported goods with or without seizure of such goods. The campaign is apparently not without effect.

CONSIDERATION

272. We have examined the principal law and its amendments. There are now seven amendments and we are informed that there is another pending. The Trade Law is one which touches the commercial public closely and should be easily ascertained. At the moment it is a patchwork quilt and the new edition of the laws of Jamaica is still apparently some way off. We would suggest most strongly that when instructions are given to Parliamentary Counsel for the proposed amendment, they should also include instructions to consolidate the relevant statutes. This will certainly not be a major operation and will be of great convenience to all who must consult the law.

273. We have referred above to a pending amendment of the law. In a most useful session with the Permanent Secretary and the Trade Administrator, we were informed of the proposed amendment; naturally no details were given in view of the fact that a submission was being prepared for the Cabinet. We venture with respect, to endorse the basic new proposal for the re-introduction of a Trade Board which would be entrusted with responsibility within the policy directives for administering the import and export licensing system. This is a most salutary proposal. We do not know the details of the proposals, but would suggest that there should be a right of appeal from the proposed Trade Board to the Minister.

CHAPTER IV

WORK PERMITS

SECTION A

ADMINISTRATION BY THE MINISTRY OF HOME AFFAIRS

THE 1964 ACT

274. The Foreign Nationals and Commonwealth Citizens (Employment) Act 1964 (hereinafter in this Chapter referred to as "the Act") was designed primarily to ensure that non-Jamaicans would not be permitted to take jobs that Jamaicans could fill. The basic concept of the Legislation is to require non-Jamaicans to obtain work permits in order to engage in any gainful occupation in Jamaica. The governing rule was that work permits were only granted when it was established that the applicant had special skills not available in Jamaica but which were needed in the country's development. The Law itself did not lay down any principles or guide lines for the granting or refusal of work permits. The Minister has absolute discretion to grant a permit either with or without conditions; or he may refuse to grant it. Further, the Minister can, in writing, vary or cancel a work permit at any time.

MINISTERS INVOLVED

275. During the relevant period the Act was administered by two different Ministries. The Ministry of Home Affairs was responsible for the administration of this Act from its coming into force on 1st December, 1964, to February 1969, when this function was transferred to the Ministry of Labour and National Insurance. The system and practices applied by those Ministries in the granting or refusing of work permits and exemption of persons from the provision of that Act differ in some material respects mentioned hereafter.

EXCEPTIONS

276. If it were operated solely with regard to the letter of the law, certain hardships would necessarily follow. Accordingly a measure of equity was introduced on humanitarian grounds to temper the rigour of the law where it would otherwise have operated harshly. The most notable of the exceptions established on humanitarian grounds are as follows:—

- (i) applicants with long residence in Jamaica prior to the enactment of the law, the applicant's holding of Jamaican investments, having an appreciable degree of integration in the Jamaican society and reliance on Jamaica for a livelihood;
- (ii) applicants married to Jamaican wives and having established families here;
- (iii) applicants from British Honduras whose entry to Jamaica was facilitated by government because of hurricane "Hattie";
- (iv) applicants other than Cubans who had been granted political asylum;
- (v) Caymanians and Turks Islanders as their countries were formally dependencies of Jamaica.

The above list is of course not exhaustive as the humanitarian factor might assume many forms.

ADMINISTRATION

277. The Ministry naturally had to cope with a flood of applications when the law came into force and certain procedures were laid down for dealing with them. Applications were made in quadruplicate on prescribed forms to the Ministry. Satisfactory evidence had to be adduced to establish what steps had been taken to obtain a Jamaican national to fill the post. If the applicant was to be an employee, then the proposed employer would be responsible for forwarding the application which would have to be signed by both parties. If the applicant was to be self-employed then the application would be forwarded by him.

278. Although the Minister of Home Affairs had ultimately the responsibility for the issue of work permits, he in fact relied to a large extent on information provided from various sources. As early as the 23rd November, 1964, the Cabinet had issued a directive whereby specific Ministries were entrusted with responsibility for advising the Minister of Home Affairs as to the qualification and skill of applicants. The directive proceeded on a logical basis: thus the Ministry of Health would be responsible for advising on doctors, the Ministry of Education on teachers, and the Ministry of Works on Engineers, etc. The Ministry of Labour, however, had a dual function. Its basic function was to advise the Minister of Home Affairs on manpower requirements in particular fields; in addition it advised on the categories of skills that were not specifically entrusted to any other Ministry. The seeking of the appropriate advice was therefore the first essential step in the consideration of an application.

279. Each application was then considered by the Work Permits Committee. This was a committee established by the Minister to advise him on the grant or refusal of work permits under the Law. This Committee consisted of the Principal Assistant Secretary of the Ministry of Home Affairs as chairman and representatives from the Ministry of Labour and National Insurance and from the the Ministry of Trade and Industry. Having considered the application it forwarded its advice to the Minister. He was of course not bound by the advice of the Committee and the evidence disclosed that on many occasions he did discard their advice. Once the Minister took a decision, the work permit or letter of refusal, as the case might be, would be issued. It might be observed, however, that when a permit was refused no reason was stated for its refusal.

280. It was stated in evidence that there could be an appeal against a refusal to grant a permit. The word "appeal" however, is scarcely appropriate; what in fact would take place would be a re-consideration. The applicant or prospective employer would write stating the grounds on which a re-consideration was being requested and possibly presenting new facts that had not been stated in the original application. The Minister stated in evidence, that he would of course consider a case each time application was made whether or not new facts were presented. The letter asking for re-consideration would again be referred to the appropriate Ministry for further comments and re-examination before the matter was resubmitted to the Minister for his decision. The Minister was not obliged to, and in fact did not usually give reasons for his decision. Although an argument might be advanced in favour of the practice of not giving reasons for a decision, it does in practice make it extremely difficult in many cases to conclude on what basis a discretion was exercised. This is a matter discussed separately below. Work permits were invariably granted for a specific period depending on the essentiality of the job being done by a non-Jamaican and of the availability of a Jamaican national to fill the position. The maximum period for the grant of such a permit was five years.

281. Each permit was issued in relation to a specific job to a specific employer and in the case of self-employed persons, for a specific business. If the holder of a permit wished to change his job or the nature of his business, he was required to submit a formal application for a new work permit. Not infrequently, work permits were issued on condition that no extension of the original permit would be granted or on condition that a Jamaican would be trained to take over the particular job. If an application was made for the renewal of such a permit, the applicant would have to satisfy the Minister as to the efforts he had made to comply with the condition of training a Jamaican to take over the job.

282. One interesting category of work permits referred to in evidence is the "Open Category". This type of permit is valid for a five-year period and was issued to husbands of Jamaican wives who had established Jamaica as their place of residence during a continuous period before and after the enactment of the Act. In the case of such husbands who had not established residence in Jamaica prior to the enactment of the Act, special circumstances were taken into account such as the inability of the wife to maintain her health overseas, the existence of political instability or excessive racial intolerance in the husband's country, strong domestic family ties requiring the presence of the wife, recruitment of the wife by the government as nurses, teachers, etc. This type of work permit enabled the holder to move from job to job without prior approval of the Ministry.

283. Evidence was given on the question of time taken for considering applications. This evidence may be summed up by saying that where the applicants are members of a category in short supply, it might take a week or two, but on the average an application might take as much as three months before an answer, one way or the other, was given. As a general rule applications were processed in the order in which they were received but there were sometimes cases of urgency for one reason or another that would be accorded priority of treatment.

284. There were of course occasions when work permits would be issued while applicants were still abroad. These would be processed by the most convenient Embassy or High Commission where the applicant would be required to identify himself. It cannot be said that any satisfactory system for testing or ascertaining the skill of the applicant was ever established and reliance had to be placed largely on certificates and other statements, the value of which was sometimes dubious.

285. The Minister in pursuance of his powers under the Act delegated authority to the Permanent Secretary to grant work permits in the case of several categories of work. Section 3(7) of the Act exempts from the work permits requirements Commonwealth citizens who were ordinarily resident in Jamaica at the date of the passing of the Act and who resided in Jamaica for not less than nine months (whether continuously or not) in each of the ten years immediately prior to that date and were employed in Jamaica for not less than nine months (whether continuously or not) in each of the ten years aforesaid. The Foreign Nationals and Commonwealth Citizens (Employment) Exemption Regulations 1964 and subsequent amendments thereto provide for exemption of a number of categories of persons from the provisions of the Act.

286. We have mentioned the most material provisions of the law above and dealt with the administration of the law as it was outlined to us in evidence. We feel obliged to comment, however, that when individual cases were examined it was difficult to see how practice was related to theory. We comment on a few of these cases by way of illustration.

CASE 1—ARMANDO SALAME

287. This was an application by a British subject, a native of British Guiana, for permission to be given for her husband, who was a Brazilian national and herself to take up permanent residence in Jamaica. Her husband Armando Salame came to Jamaica on 19th February, 1960. During his visit it was discovered that he was engaged in illegal trading. The Chief Immigration Officer did not recommend the application and the Ministry of Trade and Industry refused to support it. The Work Permits Committee accordingly recommended that the application be refused. Mrs. Salame was not a Jamaican, she was from British Guiana and the husband a Brazilian who had only spent five months or so in Jamaica. The former Minister was questioned about this case:—

“DR. BARNETT: . . . can you say what is the reason for granting a work permit to such a person having regard to all the various matters taken into consideration which you have described to us?”

MR. MCNEILL: At this point of time I could not say.

DR. BARNETT: You will agree that on the paper there does not appear to be any rational grounds bearing in mind the various considerations you have described for the granting of a permit to that particular person?

MR. MCNEILL: I wouldn't agree on that.

DR. BARNETT: Well, what rational grounds?

MR. MCNEILL: I am not prepared to say what the rational grounds are, but I cannot say these are the only considerations, just a piece of paper here and the minute.

Chairman: But wouldn't the consideration be there on the paper, Mr. McNeill?

MR. MCNEILL: I am not prepared to say.

DR. BARNETT: But in terms of the normal consideration relating to the grant of the work permit such an application should not normally be granted, that is, a person who was not related to a Jamaican and only spent a short time here, wished to be engaged as a pedlar and had previously been discovered engaging in illegal trading, do you not agree that on the face of it such a person ought not really to have been granted a permit?

MR. MCNEILL: I don't know that that was the consideration applied, I don't know for instance how long his wife was resident in Jamaica.

Chairman: I thought the wife was not a Jamaican.

MR. MCNEILL: Yes, she was not a Jamaican, but if she were a long resident in Jamaica that would influence the matter.

Chairman: But if it would influence the matter, you would have requested information to find out and recorded that?

DR. BARNETT: Would you normally grant a work permit to the husband of a wife who had been long resident in Jamaica?

MR. MCNEILL: I would not say it was a normal thing, but each case has to be considered on its individual merit.

- DR. BARNETT: What is the merit in this particular application?
- MR. MCNEILL: In this particular application, I can't say in point of time.
- DR. BARNETT: Are there not lots of demerits disclosed there?
- Chairman: Just look at it on the face of it, what point of merit would recommend it, generally?
- MR. MCNEILL: Mr. Chairman, I say again
- Chairman: On the facts before you, there is no point of merit.
- MR. MCNEILL: I cannot say at this point of time.
- Chairman: Mr. McNeill, look at the facts before you, those recorded. Assuming the recorded facts are correct, what would you say is the merit in this application?
- MR. MCNEILL: I cannot answer that question."

CASE II—JAMES M. SPIVEY

288. This gentleman was married to a Jamaican and he wished to assist in the management of a tavern owned by the family. He applied for a work permit; the Work Permits Committee recommended the grant but it was refused by the Minister. Here indeed was a case which on the basis of the criteria outlined justified the grant of a work permit. The former Minister was questioned by Counsel about his case:—

"DR. BARNETT: Can you explain how in this particular case having regard to what you have said previously and the decision made in relation to Mr. Salame, how in this particular case you refused the application?

MR. MCNEILL: This decision was taken in 1964, I cannot honestly say to you at this time how that decision was taken except to say that the discretion was properly and judicially exercised, I cannot relate myself back to 1964."

Dr. Barnett then proceeded to point out that what the Commission was interested in was the system which was adopted in relation to the grant or refusal of work permits and further stated that the maintenance of records in relation to the decisions were important. Mr. McNeill agreed. There then ensued the following dialogue between the Chairman and Mr. McNeill:—

"Chairman: Can I put a question, Mr. McNeill? Again assuming that the facts stated there are correct, does any point of demerit appear on the face of the application?

MR. MCNEILL: Mr. DaCosta, I am not going to answer.

Chairman: Listen to my question.

MR. MCNEILL: I am not going to answer, I can only deal with the facts.

Chairman: The question Mr. McNeill, if you are not going to answer, I can ask you nothing more. I say assuming the facts are correct, can you make that assumption?

MR. MCNEILL: No, I will not make any assumption, I will only deal with the facts."

The refusal of the Minister to answer seemed difficult to understand because he had previously stated that in his experience he found the officers in his Ministry responsible and that they provided him with accurate information. All he was being asked was to answer questions on the basis of the information which had been provided for him and on which he had acted and which certainly had not changed with the passage of time.

CASE III—DOREEN DECAIRES

289. This lady was the mother of a child born in Jamaica of a Jamaican father. The representative of the Ministry of Home Affairs on the Work Permits Committee recommended approval and the representative of the Ministry of Labour stated that they would leave the matter to the Ministry of Home Affairs. In short, the Work Permits Committee favoured the grant but the Minister refused it. The lady was residing in Jamaica before the law came into operation. The following dialogue took place between Counsel and the former Minister:—

“DR. BARNETT; Could you explain why it was not granted in this case?”

MR. MCNEILL: No; you notice that I exercised my discretion and properly.

DR. BARNETT: You will agree that compassionate grounds are on the paper quite obvious.

MR. MCNEILL: I wouldn't say 'quite obvious' Dr. Barnett.

DR. BARNETT: You would say obvious?

MR. MCNEILL: They are based on two considerations, one residence in Jamaica for a period of approximately two years.

DR. BARNETT: Which begun before the law came into effect?

MR. MCNEILL: And secondly, the allegation of bearing a child for a Jamaican father.

DR. BARNETT: Did you see anything which militated against the grant of that permit on compassionate grounds?

MR. MCNEILL: I could not at this stage say.”

CASE IV—LEE CHEUNG CHING AND SHUM SHUI CHING

290. This is indeed a strange case. Round about March, 1967, an application was made by Mr C.N. Lee for work permits to be granted to Mr. Lee Cheung Ching and Mrs. Shum Shui Ching to work at his Supermarket. At this time the Ministry of Home Affairs was in charge of the grant of permits. Copies of the application were sent in the usual course to the Ministry of Labour: on the 20th March, the Permanent Secretary wrote the Ministry of Home Affairs stating that after careful consideration they recommended that the applications be refused as it was not considered necessary to import personnel to fill the positions for which the applications were made. Then in February, 1969, responsibility for the administration of the Act was transferred to the Ministry of Labour. In a letter of the 20th February, 1969, the Ministry of Home Affairs wrote to the Permanent Secretary concerning this application and stated that the Ministry of Home Affairs would be grateful if the Ministry of

SECTION B

ADMINISTRATION BY THE MINISTRY OF LABOUR

MACHINERY FOR ADMINISTRATION

291. The procedures and machinery for the grant of work permits during the time when the Ministry of Labour administered the law differs in some respects from that adopted by the Ministry of Home Affairs. Applications were still submitted in quadruplicate; one copy was retained on the work permits file, one copy went to the advising Ministry and the fourth copy went to the Employment Section of the Ministry. Applications were distributed among four processing officers. In dealing with a particular application, a processing officer would prepare a submission containing all the relevant particulars and summarizing the facts and arguments advanced in support of each application. From the processing officer the application would pass to a checking officer. From him the matter proceeded to the Manager of the Government Employment Service who then forwarded it with his recommendations to the Minister through the Permanent Secretary. The Minister might grant or refuse the application or raise further queries. One significant difference in processing, is that the Work Permits Committee was dispensed with by the Ministry of Labour. It cannot be said that this improved the administration of the law.

292. The Ministry kept separate files in respect of each application. There was also a card index system in the name of each person and the grant of a permit was noted on each person's card; renewal would also be noted on this card. There was also a Register containing the name of the applicants to whom work permits were granted with the number of the work permit and the date of expiry. There is however no Register corresponding to that kept by the Ministry of Home Affairs which showed what permits were not granted and also what permits were not originally granted but were subsequently granted on review. In some respects some practices previously established by the Ministry of Home Affairs were retained. This included the exceptions on humanitarian grounds, provisions for re-hearing of an application and the practice whereby the Minister did not state reasons for his decision. Mr. Newland, the Minister, stated in evidence that one of the first things he looked for was to see whether an application was properly processed. It is strange therefore that there were so many cases brought to the notice of the Commission which were clearly not properly processed. The Ministry of Labour was of course bound by the Cabinet directive whereby applications should be referred to the appropriate Ministries for advice as to the qualifications of an applicant. This often was not done and in some cases where it was done the Ministry of Labour acted with undue speed in granting a permit without waiting to receive the appropriate advice.

293. Again one of the most important fact that had to be dealt with in an application was as to the steps taken by the employer to obtain a Jamaican national to fill the post under application. This in any view was a most relevant and important matter for consideration in an application; it went to the heart of the matter. In a large number of cases this information was not provided although work permits were granted. There were for instance four applications by the Lai Corporation which were granted within a day or two of their receipt and in which there was not even an attempt to obtain the advice of the Ministry of Trade and Industry. They were obviously not properly processed and yet they were signed by the Minister. Again there were cases when the application was only signed by

the employer although for obvious reasons it should also have been signed by the employee. In February, 1971, six work permits were issued to Technical Associates Limited, only one of which was signed by both the employer and proposed employee. Again in the case of Messrs. Bill Lui and Chan Man-Kwan, two applicants from Hong Kong both of whom were employed by Plastic Industries Limited, May Pen, neither application was signed by the applicants, yet work permits were granted to both.

SECTION OF THE ACT

294. Section 9 of the 1964 Act creates an offence where a person makes any statement which he knows to be false for the purpose of procuring whether for himself or any other person, the grant of a work permit under the Act. Obviously it will be difficult if not impossible to secure a conviction if the proposed applicant does not certify that the information given is correct. It is impossible to tell the exact number of applicants who slipped into the fold with improperly processed permits—but they would seem to be legion.

Some cases considered by the Commission deserve special mention because of their unusual features:

THE CASE OF MR. TANG SIU WAI ALIAS JAMES TANG

295. On the 14th December, 1967 Mr. Paul Tenn a brother of Mr. Tang, wrote to the Permanent Secretary, Ministry of Home Affairs on behalf of his brother, Mr. Tang, who was desirous of obtaining permission to reside in Jamaica. The letter stated that Mr. Tang had been resident in Brazil for the past ten years. He was now on a three-month visit to Jamaica and that "he loves the climate and the country very much". The letter also added that Mr. Tang was part-owner of Tenn's Enterprise dealing in haberdashery, dry goods etc., and that Mr. Tang had approximately One thousand pounds (£1,000); Mr. Tang was further prepared to invest approximately two thousand pounds (£2,000) in the business. The letter further stated that Mr. Tang had an interest in his grandfather's business in Linstead and property there, all of which was valued in the sum of two hundred thousand pounds (£200,000).

296. The application was recommended by the Ministry of Labour and the Ministry of Trade and Industry but did not find favour in the eyes of the Ministry of Home Affairs. Then the scene shifts, the Ministry of Labour now takes on responsibility for the administration of the law. At this stage Mr. Tang now re-appears in another guise. An application was received from the owner of International Restaurant, Barry Street, requesting that Mr. James Tang be permitted to join his staff as Chef. He is described as a qualified Chef having completed courses in Chinese cooking at the Hong Kong Chinese, European and Brazil Cookery and Baking Institute. A letter was sent to the Ministry of Labour on 7th July, 1971 containing Certificates buttressing Mr. Tang's application. The Ministry of Trade and Industry apparently were not impressed and recommended refusal but a work permit was issued by the Ministry of Labour to Mr. Tang, valid to 31st August 1974. And thus lo and behold, Mr. James Tang having been denied entry as a chinese entrepreneur, renounces that mantle and is welcomed in his new role as a culinary artist.

THE CASE OF MR. LAK CHEUNG

297. A work permit was granted to Mr. Cheung to be a Master Mixer on the application of Golden Star Manufacturing Company Limited, manufacturers of rubber footwear. This permit was valid to 31st July, 1970. On the 30th June, 1970, Mr. Cheung applied for a work permit on his own behalf.

298. On the 30th July, 1970 Messrs. Myers, Fletcher & Gordon wrote to the Permanent Secretary Ministry of Labour on behalf of the Golden Star Manufacturing Company Limited. The letter after setting out the history of Mr. Cheung's association with the Company pointed out that during Mr. Cheung's last year, he had showed reluctance to impart any knowledge to his local understudy and that he was seeking to establish himself in business here in conjunction with others. The Golden Star Manufacturing Company Limited therefore requested that his permit be not renewed and the final part of the letter stated that the Company had reason to believe—as indeed was the case—that Mr. Cheung had made application in respect of his proposed new employment. Further, a letter dated the 15th July, 1970 had been addressed to the Ministry of Labour from the Ministry of Trade and Industry requesting that Mr. Cheung's case be investigated because he had not fulfilled the terms of his employment. It is strange to relate therefore that on the 25th August, 1970 a work permit was granted to Mr. Cheung valid to the 22nd August, 1973. In strict fairness to the Minister, it should be pointed out that in the Submission to him there was no mention made of the receipt of the letter from Myers, Fletcher & Gordon nor did it refer to the letter received from the Ministry of Trade and Industry; but in respect of the latter, it is submitted that the Minister should have enquired if the views of the Ministry of Trade and Industry were obtained because this was a part of the processing procedure. In any event however, the grant of a permit in these circumstances seem somewhat strange. And to cap it all, on the 21st August, 1970 the Ministry of Trade and Industry wrote to the Ministry of Labour on the matter. The letter was in fact received in the Ministry of Labour on the 24th August. The letter stated the condition on which Mr. Cheung's permit was granted, i.e., that he was to train a Jamaican in his art but he had failed to comply with this condition. The letter further pointed out that he was now intending to establish a business in direct competition with Golden Star his employer.

299. The letter from the Ministry of Trade and Industry strongly recommended that Mr. Cheung's application should be reviewed because in their view he was in clear breach of his undertaking. Hereafter the plot thickens. Mr. Cheung appeared before the Commission at his own request and gave evidence through an interpreter; apparently his English has not improved much since his Hong Kong days. According to Mr. Cheung, he had faithfully carried out the terms of his employment with regard to training people but he had come to a parting of the ways with the Golden Star Manufacturing Company because its Managing Director, Mr. Yapp Man Fung, did not carry out his promise to give him a share of the profits. Mr. Cheung therefore decided to go into business on his own and approached Mr. Eddie Hall of the Jamaica Manufacturers Association who in due course wrote to the Ministry of Trade and Industry on his behalf. Mr. Hall's letter to that Ministry made no mention of the fact that this gentleman held a previous work permit. It stated that Mr. Cheung was the owner of a manufacturing operation in Hong Kong known as Man Lee Rubber Shoes Factory specializing in rubber products and he proposed to set up a similar operation here.

300. This was certainly a case where it was most important to investigate the circumstances surrounding the application. One or other contention must have been wrong. Either that gentleman had honourably carried out his obligation under the terms of his work permit or he hadn't; yet the Ministry of Labour made not the slightest attempt to process this application properly.

301. We have just dealt with the failure of the Ministry of Labour to process applications properly; added to this, one gets the impression of considerable confusion in the administration of the law. Perhaps the best illustration of this is the case of Walcott-KIW joint Venturers, who were contractors in the bauxite world.

THE CASE OF WALCOTT-KIW JOINT VENTURERS

302. The evidence discloses a hopeless confusion on the part of the Ministry of Labour as to what was the proper procedure involved in this case. According to the representative of the Ministry of Labour, when the bauxite expansion programme started, there was an agreement between Alpart and Alcoa on the one hand, and the Government on the other, that the Bauxite Companies should be at liberty to bring in skilled people when they were not obtainable in Jamaica. Further, according to the Ministry of Labour, there was a meeting between all interested parties, i.e., Ministry of Labour, Ministry of Communications and Works and the Companies at which this policy was agreed. Significantly enough, there is no record in the Ministry of Labour's file of such a meeting having been held and what was the decision; indeed, on three occasions we find the Ministry of Communications and Works writing to the Ministry of Labour to enquire why they were not consulted with respect to certain work permits granted to employees of Walcott-KIW Joint Venturers. The Ministry of Labour never replied to these letters. Obviously, if an agreement as stated above had been reached, a simple answer would have been a reply to the Ministry of Communications and Works referring them to the arrangement that had been reached between the parties.

303. Fortunately, Mr. Chris Bovell of the firm of Dunn, Cox & Orrett which represents one of the bauxite companies, was present at the session and he referred us to Ministry Paper No. 52 relating to the Alumina Plant at St. Elizabeth where the Alpart Project was in the course of execution. Paragraph 16 of that Paper reads as follow:-

"The Companies shall undertake to make every reasonable effort to use Jamaican personnel in the construction and operation of the project and to train Jamaican personnel in whatever special skills the construction and operation of the project may require."

"The Government shall permit the Companies and their contractors to bring into Jamaica and grant work permits for such time as may be necessary for such technical and administrative personnel (including artisans and any other kind of personnel not available in Jamaica) as may be required for the project. If the Companies so request, permission will be granted in respect of particular jobs even although individuals may not have been selected to fill them."

It seems to us that a reasonable interpretation of paragraph 16 (quoted above) is that the Bauxite Company concerned should show a *prima facie* case that the required personnel were not available in Jamaica. This they would do by filling in the appropriate section of the work permit application dealing with what attempts had been made to fill the post locally; this was never done and the Ministry of Labour merely gave the 'Nelson eye' to all enquiries from the Ministry of Works and the Ministry of Trade and Industry.

THE CASE OF INTERNATIONAL COMSTOCK LIMITED

304. A similar situation arose where work permit applications were made by the Canadian Company, International Comstock Limited. In the case of the application on behalf of Mr. L. D. Chamberlain, the Ministry of Works refused to support the application. In a letter to the Permanent Secretary, Ministry of Labour, it was stated *inter alia*—

"It is noted that this Company has been expanding its operation in Jamaica without apparent due regard to the recruitment of Jamaican personnel in Supervisory positions and it is considered that if this practice continues both the Company and the Government will be subjected to criticism."

"Canadian International Comstock Co. Ltd. should be asked to advertise this particular post in Jamaica as this has not yet been done. In addition the Company should introduce steps to train Jamaican Nationals to replace personnel such as in the case under reference."

"Until action referred to in paragraph 3 is taken, this Ministry cannot support this application."

Apparently the Ministry of Labour made some attempt to get the Company to discuss the matter raised by the Ministry of Works; the representative of the Company failed to attend at the time appointed and in the result the permit was granted.

THE CASE OF MUMTAZ BAIG

305. Again, in the case of Mumtaz Baig on whose behalf an application was made by Comstock, the Ministry of Trade and Industry had occasion to complain to the Ministry of Labour about the failure of Comstock to deal with a relevant section of the application, i.e., to state what steps had been taken to obtain a Jamaican national. The Ministry of Trade and Industry advised that this should be insisted upon. In short, the Ministry of Labour seem to have entirely lost sight of what was the object of the law. Their whole approach was confused and unbusiness like. Further it seems too, that no satisfactory system of liaison between the Ministry of Labour and the Immigration Department was ever worked out in order to ensure that persons whose work permits had expired did not continue to work. Such action in this direction as there was, appear to have been quite spasmodic.

JOINT SESSION: TWO ISSUES RAISED

306. During a hearing at which representatives from both the relevant Ministries were present, there was a full and frank discussion on two major issues. The first was, should there be a right of appeal from the Minister's decision refusing the grant of a work permit? The second was, whether the usual limitation of the life of a permit to three years acted as a deterrent to Jamaica obtaining such professional and other skills as it needed.

RIGHT OF APPEAL

307. On the first issue after listening to the evidence on some cases where the applications were refused, we feel fully justified in saying that had there been a right of appeal, then on any rational grounds the appeal ought to have succeeded. If a Minister realizes that there is such a right, we feel too that he would resist any temptation to act capriciously because he would at all times have to be prepared to defend his decision. In our view, it is quite pointless for a Minister to assert that he has exercised his discretion judicially when his decision cannot be explained on any rational ground. The *ipse dixit* of a Minister is no substitute for a discretion properly exercised. Accordingly we are of opinion that some machinery should be devised to permit appeals to be taken from a Minister's refusal to grant an application.

SECTION C

SOME RECOMMENDATIONS

310. In the light of our observations above we would recommend:-

- (a) that a Work Permits Committee should again be appointed which would be entrusted with the responsibility of advising the Minister on the question of the grant or refusal of work permits;
- (b) that applicants who claim that they are in possession of particular skills, or diplomas, certificates or degrees in particular fields which are in short supply here should be required to satisfy the granting authority of their competence in their particular field;
- (c) that where the Minister disagrees with the recommendation made to him in respect of the grant or refusal of a work permit he should state his reasons in writing; only in this way can it be made manifestly clear that his discretion has been properly exercised and a body of precedents built up for the guidance of his advisers;
- (d) that where an application for a work permit has been refused, the applicant should be advised of the reason unless to do so would constitute a security risk;
- (e) that where a work permit is granted on humanitarian grounds, there should be no time limit attached to it;
- (f) that when a work permit has expired or has been cancelled, effective machinery should be established to ensure that the former holders do not act in breach of the law. At the moment there seems to be an absence of liaison between the Ministry responsible for administering the Work Permits Law and the Immigration Department; often breaches are discovered only by accident;
- (g) that every effort should be made to speed up the processing of applications and to this end a time limit should be laid down within which a decision should be conveyed to the applicant;
- (h) that some machinery should be devised to permit appeals to be taken from a Minister's refusal to grant an application;
- (i) that in view of the lack of statistics a manpower survey be undertaken by the Ministry of Labour and kept up to date to indicate the available professional or other skills that are in demand. In the execution of this task the Ministry could doubtless invite professional and other bodies to assist in providing relevant basic information.

CHAPTER V

THE DISTRIBUTION OF JOBS IN PUBLIC PROJECTS

311. There are three cases in which the question of the distribution of jobs in public projects might arise:—

- (i) Jobs might be given out by Ministries on contract, in which case the contractor would make his own arrangements for providing labour.
- (ii) In certain labour intensive projects, labour is usually obtained from the Ministry of Labour and Employment.
- (iii) In other types of jobs, e.g. Force Account, the Ministry concerned employs its own labour force designated by and large by the political party in power at the time. (The term "Force Accounts" is descriptive of a case where a Ministry, e.g., The Ministry of Works may elect to undertake projects of any value by using its own forces and a combination of those of the contractor under the same general supervision).

312. There seems little doubt from the evidence before us that on the whole labour for all public projects is selected on a political basis. The selection is usually done by the Member of Parliament belonging to the party in power. Where there is no Member of Parliament of the ruling party in a constituency his duties in this regard are taken over by a Caretaker. It is a case of the application of the dubious maxim— 'to the victor belongs the spoils'.

313. In some cases of special work, both parties are asked to provide workers. This would happen at Yuletide for example or around the period of independence celebrations. Some semblance of equity therefore prevails at these seasons but disappears thereafter.

314. The system of the selection of labour for public projects or indeed for any project on the basis of membership of a political party or a trade union is vicious and is to be utterly condemned; it should not be tolerated in any country pretending to be even semi-civilized. When a Government is elected, it becomes the Government of the entire nation and represents each and every citizen in the country. It represents all the people—rich or poor, christian or pagan, capitalist or communist, black or white. Indeed, any selection of labour on the basis of political opinions held by a worker is clearly discrimination within the meaning of Section 24 of the Constitution of Jamaica and therefore a violation of the fundamental right of the citizen enshrined in the Constitution. Be it observed too, that the Constitution does not recognize some forms of discrimination as being more heinous than others: all forms of discrimination whether arising from race, place of origin, political opinions, colour or creed bear the same badge of constitutional condemnation. Every Minister of Government on his appointment swears on oath that in all things he will be a "true and faithful" Minister. To be "true" in this context can mean no less than that insofar as he is required in the discharge of his high office to deal with matters touching the rights and freedom of citizens then he will respect and uphold those right without fear or favour. On such a plane there is no room for party preference or petty prejudices. It is the duty of every Minister to uphold the Constitution; it is the right of every citizen to so expect.

CHAPTER VI

ACQUISITION AND DISPOSAL OF PROPERTY BY GOVERNMENT

SECTION A

LAND ACQUISITION

315. The Commission dealt with three cases of acquisition of land by the Government. We comment on two of these below where in our view important principles are involved.

VALUATION OF LAND FOR ACQUISITION

316. The Commissioner of Lands whose Department falls under the Ministry of Agriculture is responsible for valuing all lands which Government proposes to acquire save in the case of the Ministry of Housing; and even in this case there is a certain amount of liaison between the Ministry of Housing and the Commissioner's Department. Further, on occasions he does some valuation for the Ministry of Housing. If a Ministry or Department requires lands, the Commissioner of Lands is requested to inspect the property and value it, and at the same time comment upon the asking price of the owner for the property: that is the first stage. He then makes his recommendations to what is called the Land Acquisition Committee of the Ministry of Agriculture of which the Permanent Secretary is chairman; a representative of the Town Planning Department and the Commissioner of Lands himself, also sits on this Committee. The Land Acquisition Committee examines the proposal for acquisition and looks at the valuation in relation to the asking price and in the light of this make their recommendation to the appropriate Department or Ministry, as the case may be.

317. As a general rule, all lands acquired after the 1st June, 1960, for the use of the Government of the island, other than lands acquired by the Minister of Housing, is vested in the Commissioner of Lands for the time being and are held upon the particular trust prescribed in Section 4 (2) of the Crown Property Vesting Law 1966.

318. The Commission has given careful consideration to the question of valuation of lands to be acquired by Government, The Permanent Secretary, Ministry of Agriculture, who appeared before the Commission expressed the view in forceful terms that the whole area of valuation should reside in the Commissioner of Valuations and not in the Commissioner of Lands because the greater degree of expertise in valuation is to be found in the Commissioner of Valuations' Office and the Commissioner of Lands did not dissent from this view. It is common knowledge that the Commissioner of Valuations values land for taxation purposes throughout the length and breadth of Jamaica. There seems no logical reason for the present state of affairs whereby the Commissioner of Valuations values land for taxation purposes and the Commissioner of Lands for acquisition. No reason was advanced for this illogically indefensible situation. We strongly support the view that all valuations should be done by the Commissioner of Valuations and this is reinforced by the fact that on the Commissioner of Lands' evidence,

the staff of twenty is "extremely inadequate" for the tasks that they must now undertake. In any event, at the present time there seems to be no co-ordination or co-operation between the Commissioner of Valuations and the Commissioner of Lands. This is an undesirable state of affairs and it is clear that there are instances where this co-operation is obviously necessary in the public interest. A notable instance of this is the case of the purchase of the Casa Monte Hotel on which we comment later in this Report.

MINISTRY OF HOUSING

319. The Ministry of Housing is in a unique position. By virtue of Section 3 of the Housing Act, 1968, the Minister of Housing is created a corporation sole with capacity to acquire, hold and dispose of land and any other property of whatever kind. All land or property of whatever kind vested in the Minister in pursuance of the Act is held by him for the purposes of the Act. The Minister may acquire land in connection with Housing Schemes, Slum Clearance Schemes and Improvement Schemes or for any purpose authorised under the Act. Land may be acquired by him for schemes in accordance with the provision of the Land Acquisition Law (Chapter 204) and any land so acquired is vested in the Minister and not in the Commissioner of Lands.

CAPE CLEAR AND KONINGSBERG

320. The properties known as Cape Clear and Koningsberg (hereinafter in this section referred to as Koningsberg) in St. Mary and at the material time consisting of some 2,700 acres, were once owned by Mr. Patrick Chung. Towards the close of 1961, the Government entered upon negotiations with a view to acquiring these properties which were evidently in good heart and were valued by the Commissioner of Lands for £361,000.0.0d. The proposal was that Government should acquire Koningsberg for £275,000.0.0d of which £75,000.0.0d should be paid in cash and the rest in Land Bonds. The cash payment was to be made during the first week of April 1962, and the balance in Land Bonds over the period 1962/63. The acquisition, however, was not proceeded with.

321. In 1967 the question of the acquisition of Koningsberg again came up for consideration by Government. Although the Commissioner of Lands valued the properties for £274,000.0.0d, Mr. Patrick Chung was nevertheless prepared to accept £150,000.0.0d for it payable as to £100,000.0.0d in Land Bonds on possession, and as to £50,000.0.0d in cash to be paid over a period of two years. Apparently the land was not to be used purely for land settlement purposes but was to be utilized also as an adjunct to Gray's Inn central factory to supplement the supply of canes to that factory. In March 1968, Government decided to acquire the properties. The Bank of London and Montreal, however, who held a first mortgage on the properties was not prepared to consider the sale at the price of £150,000 because the Bank itself had valued Koningsberg for £250,000.0.0d. Mr. Chung therefore, with reluctance and with an apology called off the sale.

322. Subsequently, Mr. Chung gave an option to purchase to Mr. Hugh Hart of Clinton Hart & Company; they were at this time acting as his Solicitors. The option was exercised some time in 1969. The Contract itself was not dated due as Mr. Hart says to an oversight. The benefit of this Contract was assigned to Koningsberg Limited, a company which was formed for the specific purpose of acquiring these properties from Mr. Patrick Chung. The three shareholders in the Company were Messrs. Clinton and Hugh Hart and Mr. Frank Hall. The Company acquired the properties for £134,000.0.0d in the latter part of 1969 and sold it in March, 1970 to the Government for \$400,000 to be paid as to \$200,000 in cash and as to \$200,000 in Lands Bond. The Company did no other business and was wound up shortly after the sale to Government.

323. In 1962 the Commissioner of Lands had valued the properties for £361,000 (\$722,000). Thereafter it was apparently in a state of rapid decline, because when Government purchased it in 1969 it was valued at \$401,000.00. It seems somewhat strange that although Government was offered the properties in 1967 for £150,000 (\$300,000) no attempt was made to bargain with Koningsberg Limited on the question of purchase price. The mere fact that the Commissioner of Lands had valued the land for \$401,000 was neither here nor there.

324. The case is an illustration of the extraordinary attitude of Government Departments towards a valuation of the Commissioner of Lands. They seem to have little idea of what is the purpose of obtaining such a valuation. The paramount reason is to give Government some idea of the value of the land in question. It certainly does not mean that if Government is selling they cannot accept a higher offer than the Commissioner's valuation. Equally, it does not mean that if Government is acquiring land they cannot bargain with the Vendor in order to obtain a price which is less than the valuation which has been put upon it by the Commissioner of Lands. In the case of Koningsberg, as observed above, it had been previously offered to Government for £150,000. It was in fact purchased by Koningsberg Limited from Mr. Patrick Chung for £134,000 so that there would have been nothing inequitable or unconscionable in bargaining with Koningsberg Limited on the question of price. One gets the impression during the inquiry that those responsible for spending taxpayers' money in acquiring lands were not over-concerned to get "value for money"—perhaps due to the persistent attitude of mind that whatever the price, behind Government stands the patient pack-horse in the form of the taxpayer.

DESIGNS FOR ACQUISITION

325. Designs for acquiring land and disposing of it to Government in the nature of Cape Clear Schemes should be discouraged by Government. Persons who would not wish their names openly associated with certain transactions are thereby enabled to operate behind a veil of anonymity, using the corporate machinery merely to conceal their identity. Further where land is acquired by Government from private companies or trustees it is the duty of the Government to advise itself of the persons beneficially interested in such transactions.

8 ARDENNE ROAD, KINGSTON 10

326. This is a case of a striking paralysis affecting those who have to make decisions on behalf of Government. A Department of Government was a sitting tenant: the premises were obviously required for the continued use of the Department. No decision was taken for a long period on the question of acquisition with the result that the taxpayers had to pay twice as much for the property as they could have acquired it for initially. In fact, there was a dramatic increase in the valuation of these premises given between January/February of 1969 and July 1969. In January, 1969 the premises changed hands for \$40,000 (a price at which the Government could have purchased) and less than a year after, in December, 1969 it was sold to the Commissioner of Lands for \$80,000 representing an increase of a hundred per-cent.

327. The acquisition of 8 Ardenne Road furnishes another illustration as to why the Commissioner of Lands' valuation should not be taken for gospel. The Valuer in this case did not know what was the zoning of the area in which the property was situated—a most relevant and important factor on the issue of valuation.

328. The Commissioner of Valuations, Mr. Ridsen, wisely observed that where there are serious problems involving development properties, it could be to Government's advantage to refer matters of this sort to persons who have been trained and qualified in the whole business of valuation practices and these people would be the valuation staff at his Office.

CASA MONTE HOTEL

329. Only a bold summary can be attempted here of what was a prolonged and somewhat intricate piece of sustained bargaining.

330. Mr. Philip Seaga and certain members of his family were the controlling shareholders in Casa Monte Hotel Limited, the Company which owned the Hotel of that name. In March '61 Casa Monte Hotel Ltd., (hereinafter in this Section called "The Company") obtained a loan of £40,000 from the Development Finance Corporation; a further loan of £4,000 was made to it in May, 1963—both these loans were secured by a mortgage debenture. There is a mountain of correspondence dealing with the demands for payment of principal and interest which was always in arrears.

331. Around mid 1963 Mr. and Mrs. Peter O'Leary and Mr. and Mrs. Bryan Butcher took over the controlling interest in Casa Monte by purchasing the shares of Mr. Philip Seaga and certain members of his family. They brought in some new capital but not sufficient to make the running of the Hotel a viable concern.

332. Mr. Philip Seaga held a second debenture from Casa Monte Limited in the sum of £55,000. Around mid 1966 Mr. Seaga put forward some proposals to the Development Finance Corporation for the transfer of its first debenture to him but nothing came of this proposal. As at 20th April, 1967, the amount due to the Development Finance Corporation stood at £40,723 13s. 3d. At long last the patience of the Development Finance Corporation was exhausted and they decided to invoke the power of sale contained in the debenture. The premises were put up for auction, but the reserved price was not reached and consequently the premises were withdrawn from sale.

333. In May, 1967, the Development Finance Corporation entered into a contract of sale with Mrs. Tortello, the daughter of Mr. Philip Seaga. The sale price was £45,000 but the Development Finance Corporation was only to receive £10,000 in cash, i.e. £7,000 on the signing of the agreement and £3,000 in the following September; the rest of the purchase money was to remain out on mortgage. The Development Finance Corporation was, therefore, doing little more than substituting one debtor for another.

334. In August, 1967, Mrs. Tortello wrote the Development Finance Corporation informing it that she had assigned her interest under the contract to purchase to Travel Advisers Limited. The assignee was a Company in which Mr. Philip Seaga and certain other members of his family (including Mrs. Tortello) held practically all the shares.

335. On the 11th August, 1967, the then Director of Tourism wrote to the Minister of Trade and Tourism stating that the Tourist Board having investigated a number of locations took pleasure in recommending Casa Monte as the location for the Hotel Training School. Casa Monte had thus gained the victory over its only two remaining rivals—Goldenhead Hotel and the now extinct Myrtle Bank.

336. In June, 1968 Government took a lease on Casa Monte at a rental of £13,000 per annum. The lease contained an option to purchase for £130,000. In July, 1971, Government exercised its option to purchase the property which was bought for £43,000 in 1967 and sold to Government for £130,000 in 1971.

337. We record at this stage that Mr. Edward Seaga who was then Minister of Finance and a son of Mr. Philip Seaga acted with propriety and took no part in the negotiation for the purchase of Casa Monte by the Government.

338. The acquisition is remarkable for the strange diversity of views among valuers. In February, 1967, Tinling Associates Limited valued Casa Monte property for £60,180. They recommended a reserved price of £48,178 for the land and buildings and £2,233 for the furniture etc. In January, 1968—just a year after, the Commissioner of Lands was asked to value the Casa Monte premises; he furnished the following valuation:

| | | |
|------------------------|---------|-------|
| 5½ acres @ £4,000 per | | |
| acre | £21,000 | |
| 9 acres @ 3,000 | 27,000 | |
| Buildings | 73,000 | |
| Furnishings etc. | 10,923 | |
| | | <hr/> |
| Total | 131,923 | |
| | | <hr/> |

No evidence was adduced that there was any capital expenditure of any kind between the two valuations. It is interesting, however, to compare those two valuations—

| | TINLING'S | | COMMISSIONER OF LANDS' | |
|-----------------|-----------|-------|------------------------|-------|
| Land | £22,500 | | £48,000 | |
| Buildings | 34,180 | | 73,000 | |
| Furniture | 3,500 | | 10,923 | |
| | | <hr/> | | <hr/> |
| | £60,180 | | £131,923 | |
| | | <hr/> | | <hr/> |

The Commissioner's valuation was \$71,743 more and this accretion in value was all within the space of one year.

339. Mr. Barber, the Deputy Financial Secretary (as he then was) stated in evidence that Government had decided "to operate on the basis of hotel training, cum hotel operation in training people." The question of the proposed user was therefore an important element in the valuation.

340. It appears that the Commissioner of Lands merely valued the land and buildings without any reference to the commercial factors. Was this Hotel a viable concern? Would a willing purchaser in the open market pay anything near that sum? Did the hotel in fact have any goodwill? It will be observed that there is a great contrast in the valuation done by Tinling Associates Limited and that

done by the Commissioner of Lands—over a hundred percent. Admittedly the valuations were done a year apart and even assuming that the valuation of Tining Associates Limited was on the conservative side, the difference is remarkable. It is quite obvious that a going business like a hotel cannot be valued merely by reference to the value of the land and the buildings, because unless people resort to it, it might be, to put it mildly, a white elephant. The question of goodwill is therefore important. This seems pre-eminently a case where Government should have obtained a valuation from some private concern experienced in this kind of valuation, in addition to valuation of the Commissioner of Lands. Alternatively, the Government might well have requested the services of the Commissioner of Valuations to obtain his opinion in an acquisition of this nature.

141. On the 11th May, 1971, Mr. Arthur Zedler wrote to the Commissioner of Lands regarding the acquisition of the land at the site of the former Government Hospital, Kowloon. The Commissioner of Lands had valued the land at \$1,000,000. Mr. Zedler stated that the land was worth \$2,000,000 and that the Government should pay \$2,000,000 for it. He also stated that the land was worth \$2,000,000 and that the Government should pay \$2,000,000 for it. He also stated that the land was worth \$2,000,000 and that the Government should pay \$2,000,000 for it.

142. On the 11th May, 1971, Mr. Arthur Zedler wrote to the Commissioner of Lands regarding the acquisition of the land at the site of the former Government Hospital, Kowloon. The Commissioner of Lands had valued the land at \$1,000,000. Mr. Zedler stated that the land was worth \$2,000,000 and that the Government should pay \$2,000,000 for it. He also stated that the land was worth \$2,000,000 and that the Government should pay \$2,000,000 for it. He also stated that the land was worth \$2,000,000 and that the Government should pay \$2,000,000 for it.

"The Commissioner is being given the disposal of your lands of 1971."

143. This case is the first of 1971. Then on the 7th April, 1971, came the case of the acquisition of the land at the site of the former Government Hospital, Kowloon. Mr. C. Patrick Loughran offered to purchase the land for \$2,000,000. The Commissioner of Lands had valued the land at \$1,000,000. Mr. Loughran stated that the land was worth \$2,000,000 and that the Government should pay \$2,000,000 for it. He also stated that the land was worth \$2,000,000 and that the Government should pay \$2,000,000 for it. He also stated that the land was worth \$2,000,000 and that the Government should pay \$2,000,000 for it.

144. With the acquisition of the land at the site of the former Government Hospital, Kowloon, the Commissioner of Lands had valued the land at \$1,000,000. Mr. Loughran stated that the land was worth \$2,000,000 and that the Government should pay \$2,000,000 for it. He also stated that the land was worth \$2,000,000 and that the Government should pay \$2,000,000 for it. He also stated that the land was worth \$2,000,000 and that the Government should pay \$2,000,000 for it.

SECTION B

DISPOSAL OF GOVERNMENT OWNED LANDS

VALUATION

341. Where Government proposes to dispose of land the Commissioner of Lands is asked for his opinion as to value. In this context here again his opinion is treated apparently with not only awe and reverence but almost as gospel. We suggest that in the disposal of lands the Commissioner of Valuations should be the proper authority to value material consideration being given to the user approved by the Government Town Planner. In any event, assuming our recommendation on this point is rejected, at least there should be consultation between the Commissioner of Lands, the Commissioner of Valuations and the Government Town Planner in cases where factors such as development potential and matters of this sort enter into consideration in fixing a valuation. The Commission heard evidence dealing with the disposal of three lots of lands at Waterworks Road. Two of these were owned by the Government and were acquired from the Water Commission. The other lot was owned by the Water Commission.

GOVERNMENT OWNED LOTS

342. (i) The first lot comprised an area of nine acres which was formerly owned by the Water Commission and acquired by Government during the premiership of the Rt. Excellent Norman Manley. The Government purchased this nine acres to stabilize land prices in the area and prevent speculation. This area was ultimately disposed of by Government to Mr. C. Fitzroy Livingston for \$158,000. Certificate of Title is at Volume 951 Folio 516. We give below the details referring to the disposal of this lot.
- (ii) the other lot comprised an area of four and one-half acres, again formerly owned by the Water Commission and sold to Government. Certificate of Title is at Volume 922 Folio 12.

THE NINE ACRE LOT

343. There can be no doubt that these lands were in an attractive residential area and they may well be described as 'choice'. From the evidence it is clear that a number of persons in a substantial way of business had made enquiries as to whether Government would dispose of these lands. Among them were Victoria Mutual Building Society and Key Homes Limited. There was also Mr. Ivan Levy, who owned adjacent lands. The following were among the offers received:

| | | |
|---------------------------|---|-----------|
| MR. K. IVAN LEVY | — | \$150,000 |
| MR. A. LIONEL LEVY | — | \$153,550 |
| MR. JOE ZIADIE | — | \$100,000 |
| MR. L. C. MCKENZIE | — | \$ 92,000 |
| MR. COLLIN MELHADO | — | \$122,000 |
| MR. E. L. HARRISON | — | \$102,000 |
| KEY HOMES LIMITED | — | \$157,250 |
| MR. C. FITZROY LIVINGSTON | — | \$158,000 |

344. It is clear from the evidence that all these gentlemen were making separate and isolated bids. It is significant that Mr. Livingston's bid only topped that of Key Homes Limited by \$750. It is either a remarkable co-incidence or Mr. Livingston had in some way learnt of the bid of Key Homes Limited.

345. Up to December, 1970, the applicants were told that no consideration was being given to the disposal of these lands. One person who was particularly interested in acquiring these lands was Mr. H. Arthur Ziadie—he was apparently bidding on behalf of Key Homes Limited. It is interesting to compare Mr. Ziadie's efforts to acquire these lands with that of the gentleman, Mr. C. Fitzroy Livingston, who ultimately did. On the 20th June, 1969, Mr. H. Arthur Ziadie wrote the Permanent Secretary of the Ministry of Rural Land Development offering to purchase nine and one-quarter acres at £8,500 per acre. It should be observed that this land was valued by the Commissioner of Lands on the 2nd of January, 1969, for £5,500 per acre; so that Mr. Ziadie was in fact offering to purchase at £3,000 more per acre; admittedly six months had passed but nevertheless the increase is considerable.

346. On the 25th June, 1969, the Permanent Secretary replied to Mr. Ziadie asking him what type of housing development would be undertaken. In an undated letter from Mr. Ziadie to the Permanent Secretary the price range of the houses was stated.

347. On the 15th May, 1970, Mr. Arthur Ziadie wrote to the Ministry of Rural Land Development asking if they would re-consider the disposal of this land as he was still interested in purchasing it. The reply of the Ministry was significant. It is dated the 25th May, 1970, and stated—

"Please be informed that the Government is not reconsidering the disposal of these lands"

348. Apparently, Mr. Ziadie wrote another letter dated 26th November, 1970, making another offer to purchase the land. The letter itself is not available; and here it may be mentioned that the Ministry's file itself had disappeared and the whole subject matter had to be re-constructed from what other sources were available. It is clear, however, that there was such a letter because on the 11th December, 1970, the Permanent Secretary of the Ministry of Rural Land Development wrote acknowledging Mr. Ziadie's letter of the 26th November, 1970, and informed him—

"No consideration is being given to the disposal of these lands at the present time."

349. This takes us to the end of 1970. Then on the 27th April, 1971, came the one and only application from Mr. C. Fitzroy Livingston offering to purchase the land for \$158,000: on the 25th May, 1971, he was informed that his offer had been accepted and he was directed to treat with the Commissioner of Lands. No letter was ever sent to any of the prospective purchasers mentioned above, telling them that Government had changed its mind and had decided to sell.

350. The Commissioner of Lands, Mr. C.C. Langford, had from as far back as the 22nd January, 1969, informed the Permanent Secretary, Ministry of Agriculture and Lands of something he must already have known of, i.e., that there had been several applications for these lands and that if Government no longer needed the land, he recommended that tenders be invited. This was sound advice and this was what ought to have been done.

351. With the greatest respect in the world, it was complete nonsense for the Ministry of Rural Land Development to have suggested that Mr. Livingston's bid was the highest. He was in fact, the only person who apparently knew the land was for sale and who made an offer after the Government decided to sell; further from the evidence there seems a distinct likelihood that he knew of the last offer that was made before Government decided to sell.

352. Mr. Nelson, the Commissioner of Lands, gave evidence before us and he stated that in 1971 he would value lands in this area at around \$7,000 to \$8,000 per quarter acre lot or approximately \$28,000 per acre. It will, therefore, be seen that Mr. Livingston got quite a bargain.

353. A distinguished English judge once said that Government should act as a high-minded citizen. We must perforce be critical of the manner in which this land was disposed of. A number of persons were interested in the land. One person in particular had made several enquiries concerning its purchase and was told that the lands were not for sale. Indeed on the 19th July, 1971, and after its disposal to Mr. Livingston, Mr. Ziadie again wrote asking if Government had decided to dispose of the lands because they would still like to make an offer to purchase. On the 18th August, 1971, the Permanent Secretary, Ministry of Rural Land Development replied laconically—

“I am to inform you that these lands have been sold.”

Mr. Ziadie was treated most shabbily; so were the other applicants offering to purchase. A valuable asset belonging to Government was thus disposed of in an unorthodox and slipshod manner. We repeat, the proper thing to have done was to have acted as the Commissioner of Lands had advised and to have asked for tenders.

THE SECOND LOT

354. This second lot of four-and-a-half acres was also disposed of to Mr. Livingston. On the 7th June, 1971, Mr. Livingston offered to purchase. On the 22nd June, 1971, the land was valued for \$73,468.75 by the Commissioner of Lands. On the 28th June, 1971, the decision was taken to sell but no Contract was entered into. On the 5th June, 1972, the Ministry of Mining and Natural Resources wrote the Ministry of Agriculture vetoing the sale of the land on the ground that the Government required to retain it as part of a green belt area. We were informed that there is a lawsuit pending concerning the purported sale.

THE WATER COMMISSION LOT—FOUR-AND-A-HALF ACRES APPROXIMATELY

355. It should be observed that a special procedure was laid down where the Water Commission was disposing of lands to private persons. The procedure which dates back to 1953, was that lands owned by the Water Commission should be sold on a competitive basis. This was modified in 1956, so that where a purchaser had adjacent lands or where the lands were needed for a specific purpose or for a public purpose, the Water Commission could negotiate by private treaty. The sale was, however, subject to the concurrence of Government at that time the Executive Council, and later, of course, it would be subject to the decision of Cabinet. This new directive was given in 1956, and according to the Secretary of the Commission, the guidelines laid down were never varied by any further directive.

356. This lot was disposed of while Mr. E. C. DePass was Chairman of the Water Commission in June, 1971. Mr. DePass gave evidence before the Commission. He is an extraordinary gentleman who cannot give a straightforward answer to a straightforward question. Asked whether an application to purchase was expeditiously dealt with, Mr. DePass replied—“I wouldn't say it wasn't”

Asked whether he did not accept that it was his duty to get the best price for public land, he replied—

“I would not say it isn't”

357. Here again, a number of persons in a substantial way of life were interested in acquiring this land. On the 3rd June, 1969, Mr. Morris of Rose Hall Development Limited wrote offering to purchase this land. He was told that the matter was under investigation and that he would be advised of a decision at a later date. On the 23rd June, 1969, Messrs. Judah, Desnoes and Company offered to purchase the land for \$11,000 per acre. They were also told that they would be advised of a decision at a later date. On the 27th June, 1969, Mr. Desmond Morris again wrote making a firm offer to purchase at \$11,600 per acre. On the 2nd March, 1970, Mr. Basil K. Jones also offered to purchase the land. He was advised that there was no proposal to sub-divide the land. On the 3rd December, 1970, Low Income Housing Development Limited offered to purchase the land for a middle class housing scheme. It is significant that this letter is marked by the Chairman—"Seen and Noted." Again the writer of the last letter was told that whenever the lands were for sale he would be advised. On the 3rd February, 1971, Low Income Housing Development Limited renewed their application asking the Commission to reconsider their decision. The matter was referred to the Chairman and he advised that the situation was the same as previously when they were told that the lands were not for sale. On the 11th June, 1971, Mr. Fitzroy Livingston wrote to the Water Commission offering to purchase the four and a half acres owned by the Water Commission, stating that he had recently purchased nine and a half acres from the Commissioner of Lands. Mr. Livingston no doubt supplied this additional piece of information in order to place himself in the preferred category as a person specially entitled to priority within the Government ruling. He failed, however, to disclose that he was at the time of the application to the Water Commission negotiating to sell the nine and a quarter acres which he purchase from Government to Broadway Glades Limited. Hereafter, although perhaps it would be inaccurate to say in the words of Hamlet that the matter proceeded with "wicked speed", yet undeniably it would be correct to say that matters proceeded apace.

358. Mr. Livingston's offer dated 11th June, 1971, was placed before a meeting of the Board of the Water Commission on the 15th June, 1971, under the unobtrusive heading "other Business". The Chairman recommended that the Commissioner of Lands should be requested to furnish a valuation of the land applied for by Mr. Livingston and Government's approval sought for the sale. This was agreed to by the members of the Board present, *nemine dissente*. There was no compelling urgency about Mr. Livingston's application so as to prevent a proper submission being prepared and submitted to the Board. The records of the Board do not indicate whether or not the other applicants for purchase were mentioned, let alone, discussed.

359. Mr. DePass was questioned by Counsel to the Commission about the other applications. The dialogue is illuminating:—

- "Q: And on the 23rd June, 1969, Judah, Desnoes and Company also applied offering \$11,000 per acre.
- A: That could have been, but I don't remember.
- Q: On the 27th June, Desmond Morris renewed his application for \$11,600 per acre.
- A: I am not aware of that.
- Q: On the 2nd March, 1970, Basil Jones applied to purchase that four and a half-acre lot?
- A: I really don't remember.

- Q: On the 3rd December, 1970, Low Income Housing Development Limited applied?
- A: Could have been, but I don't really remember.
- CHAIRMAN: Give him something to remind him.
- Mr. Munroe: That application was placed before you and you noted thereon, 'seen and noted, writer to be advised, when land available he will be so advised'. Do you remember that?
- A: Could have been but I don't remember."

360. The total collapse of Mr. DePass' memory is a little difficult to understand or to sympathize with when one recalls that there were annotations made by him on the relevant file on at least three occasions dealing with replies that should be sent to prospective purchasers. Further, the lot in question was the only one belonging to the Commission at Waterworks Road which was disposed of while he was Chairman. But to continue the history—on the 21st June, 1971, Government's approval for the sale to Mr. Livingston was sought. The matter of the sale to Mr. Livingston was actually put up for Government's approval without a valuation first having been obtained from the Commissioner of Lands. Not unnaturally, Government requested that the Commissioner of Lands furnish a valuation. The Commissioner's valuation was received on the 19th July and was forwarded to Government on 21st July, 1971; the sale was approved by the latter part of August or early September.

361. The courtesy of expedition by the Water Commission in the matter was reserved for Mr. Livingston alone. None of the other applicants was informed of the sale although they were previously told that when a decision was taken to sell the land they would be informed. Indeed in the latter part of 1971, Low Income Housing Development Limited renewed its application to purchase. On the direction of the Chairman of the Water Commission, the following reply was sent—

"I am directed to acknowledge receipt of your letter of December, 1971, applying to purchase four acres of land adjoining the Waterworks Road. A previous application for the land in question has been made which has been placed before Government for their approval. If this approval is not granted you will be further advised on the matter"

On the face of it the statement contained in the letter about a previous application was palpably false because the application of Low Income Housing Development Limited had undoubtedly preceded that of Mr. Livingston's by more than a year. If the truth had been told, the letter would have read somewhat in the following lines—

"A subsequent application was made which has found favour in our sight. We regret, therefore, that we cannot now consider your previous application."

362. To the end, Mr. DePass remained impervious to any criticism of his actions in this matter. He concluded his evidence with the profound observation—"I agree with what I say". The choice of Mr. DePass to head the Water Commission is obviously one of the unfortunate features of our political system as it now operates—where too often a person is chosen for office whose chief and best qualification is political ardour rather than intellectual calibre.

363. And so Mr. Livingston had acquired eighteen acres of choice land. In the circumstances outlined above, comment seems unnecessary. A Permanent Secretary described him as a person in a privileged position and we would hesitate to disagree with him.

364. Mr. Livingston appeared before the Commission but his evidence was almost completely incoherent; his condition was due, as he said, to the "vitamin tablets" prescribed by his doctor. He was not even in a fit state to do some simple arithmetic.

SECTION C

PURCHASE AND SALE OF EQUIPMENT BY GOVERNMENT

PURCHASE OF EQUIPMENT BY GOVERNMENT

365. This is dealt with in Chapter I Section F.

SALE OF EQUIPMENT BY GOVERNMENT

366. Where a Ministry or Department of Government has equipment that is surplus to its needs it may dispose of it with the concurrence of the Ministry of Finance. A Board of Survey is appointed by the Ministry to examine the equipment that is to be disposed of and makes its recommendations. Thereafter, the equipment is handed over to the Supply Division of the Ministry of Finance for disposal. In the case of the Ministry of Works that Ministry is generally allowed to dispose of equipment surplus to its needs with the concurrence of the Ministry of Finance or in certain cases, with that of the Cabinet. The sale of the equipment should then be effected by tender or public auction. This principle was unfortunately not observed in the case of the disposal of certain equipment to Technical Associates Limited.

SECTION D

RENTALS

RENTAL OF PROPERTY FROM GOVERNMENT

367. The most important case dealt with by the Commission is that of Rental by the Ministry of Housing. This matter has been dealt with under Housing Schemes.

RENTAL OF PROPERTY TO GOVERNMENT

368. The activities of Government are many and varied and property may be rented for various purposes. Premises may be rented by the Ministry of Labour, for instance, for Training Centres; office space may be rented for occupation by Ministries or Departments. One common factor is that, as a rule, the Commissioner of Lands is asked to assess the rental and on the whole the obligations of the Government as a tenant are similar to those of any other tenant.

SECTION E

HIREAGE OF EQUIPMENT

HIREAGE OF EQUIPMENT**(a) By Government**

369. Evidence was given by representatives from the Ministry of Works that equipment was sometimes hired at agreed rates by Government when Government-owned equipment was not available because of shortage of numbers or type. We were somewhat astonished to learn that in this case there is no written form of agreement defining the rights and obligations of both parties to the Contract; for example, what is the position when equipment must stand by idle at the request of Government for some particular reason? This is certainly a case where a standard form of agreement should be prepared by the Crown Solicitor in consultation with the Ministry of Works.

(b) From Government

370. As a rule, the hireage of Government-owned equipment to private individuals is only permitted when it is proven that the particular item is not available elsewhere in the area; agreed Government rates are applied and the hirer is required to make a deposit before taking delivery of the equipment. In this case there is a form of written agreement in use. Here again it is unfortunate that the terms of agreement relating to the hire of equipment were not complied with when the hirer was Technical Associates Limited.

CHAPTER VII

SUMMARY OF RECOMMENDATIONS

(EACH TO BE READ IN THE LIGHT OF THE FULLER EXPLANATION GIVEN IN PARAGRAPHS CITED)

CONTRACTS

371. The Ministry of Finance should lay down principles for all Ministries to ensure the observance of sound procedures in Government contracting, the maintenance of reasonable uniformity in contracting practice and the settlement of contractual terms. These principles would relate, *inter alia*, to the letting of contracts by competitive tender, the investigation of the technical competence, financial and commercial standing of proposed contractors, observance of the Fair Wage Resolution of the House of Representative, provisions against corrupt gifts and discrimination. (Paragraphs 195 & 211).

372. The Ministry of Finance should also issue fundamental directives in order to ensure the orderly and honest implementation of contracts. (Paragraph 212).

373. The Ministry of Finance should exercise ultimate control where questions arise in respect of settlements of contractors' claims, ex gratia payments and abandonment of claims against contractors and should prescribe with precision the limits of any delegation to Ministries to deal with these matters. (Paragraph 213).

374. All lists of contractors in all Ministries should be prepared by officers who are professionally qualified whether such contractors are recommended by Members of Parliament, Senators, Caretakers or anyone else. Competence, not political connection should be the test for inclusion in the lists. (Paragraphs 34, 214).

375. Standard forms of contracts containing model conditions for all building and engineering works should be adopted for Government contracts. Standard forms have many distinct advantages. (Paragraph 215).

376. All instructions or directives or requests by a political Head of a Ministry in connection with the commencement or execution of a contract or in respect of any matter arising out of the provisions of such a contract should be given in writing by the aforesaid Head through the Permanent Secretary. (Paragraphs 93, 197, 212).

377. Contracts Award Committees should be set up for the Ministries of Education and Housing. (Paragraphs 5, 26, 28, 217).

378. A Contracts Co-ordinating Committee should be established for the Ministries of Works, Education and Housing. There are a number of advantages to be gained from the functioning of such a Committee. (Paragraph 218).

379. Where a Consultant is engaged on the basis of a fixed fee, calculated as percentage of the total contract sum, a fortuitous increase in labour and material should not automatically lead to the consultant earning an increased fee. Any increase on his original fees should be negotiable. (Paragraph 82).

380. The award of Serial Contracts is undesirable in principle and therefore must always be justified in each case. (Paragraph 125, 175).

381. "Massive and Momentous" building programmes should not be embarked upon without proper planning and co-ordination at all levels and must be supported by the necessary administrative, technical and professional organisation. (Paragraphs 73, 75-80).

382. Sites for school buildings or for any other public purpose should be selected on the basis of their suitability for the purpose and not for political considerations or other extraneous reasons. (Paragraphs 65, 66, 72, 171).

ACQUISITION AND DISPOSAL OF LAND

383. In the acquisition and disposal of land by Government the price should always be based on the prevailing open market value between a willing vendor and a willing purchaser. (Paragraphs 243, 246 & 345).

384. The Commissioner of Valuations should be the proper authority to value land on behalf of Government. (Paragraphs 316-318 & 341).

385. The sale of Government owned land by private treaty can only be justified in exceptional circumstances. The normal and proper way of disposing of Government owned lands is by inviting tenders from the public or by public auction. Sales of Government owned lands by private treaty to a privileged few should have no place in our system. All citizens should have an equal opportunity to acquire lands being disposed of by Government. (Paragraph 246).

386. Government should be reluctant to make itself a party to land deals through the instrumentality of a private company, whose promoters are often anxious to conceal their identities. (Paragraphs 320-325).

FINANCIAL CONTROL

387. The strengthening of the Auditor-General's staff and of the Accounting Staff of Ministries generally is a pre-requisite for sound financial control. (Paragraph 134).

388. Every effort should be made to ensure that the Appropriation Accounts of Ministries are prepared and submitted to the Auditor-General by the 31st July in each year. Thereafter equal effort must be made to eliminate the delays in the printing of the Auditor-General's Report, the Public Accounts and the Report of the Public Accounts Committee. (Paragraphs 132, 139).

389. The Reports of the Public Accounts Committee should be treated with far more seriousness and effect given to their recommendations. (Paragraphs 140, 141).

LAND SETTLEMENT AND HOUSING SCHEMES

390. Members of Parliament, Senators, their spouses and infant children should be prohibited from participating in Housing and Land Settlement Schemes. (Paragraphs 203 & 222, 247).

391. The machinery of the Land Settlement Scheme should never be perverted to dispose of lands to preferred individuals however deserving they might be. Land Settlement Schemes should be operated in an orthodox manner and in the full light of publicity. (Paragraphs 219, 220, 223-224, 225-228, 242-245).

392. Land Settlement Schemes should never be used as a form of political patronage; nor should Government owned lands be given away without the express approval of Parliament. (Paragraph 230);

393. Land Settlement and Housing Schemes should not be used as the medium for land speculators. Each applicant in such a Scheme should therefore be required to make a Statutory Declaration that he is not applying as a nominee for any other person. (Paragraphs 247 & 254).

394. There should be a Committee on which citizens have direct representation irrespective of party affiliation to advise the Minister on the allocation of housing under the Housing Law. (Paragraph 253.).

WORK PERMITS

395. A Work Permits Committee should again be appointed to advise the Minister on the grant of work permits. (Paragraph 310).

396. Applicants who claim that they are in possession of particular skills, or diplomas, certificates or degrees in particular fields should be required to satisfy the granting authority of their competence in their particular field. (Paragraph 310).

397. Where the Minister disagrees with the recommendation made to him in respect of the grant or refusal of a work permit he should state his reasons in writing; only in this way can it be made manifestly clear that his discretion has been properly exercised and a body of precedents built up for the guidance of his advisers. (Paragraph 310).

398. Where an application for a work permit has been refused, the applicant should be advised of the reason unless to do so would constitute a security risk. (Paragraph 310).

399. Where a work permit is granted on humanitarian grounds, there should be no time limit attached to it. (Paragraph 310).

400. When a work permit has expired or has been cancelled, effective machinery should be established to ensure that the former holders do not act in breach of the law. (Paragraph 310).

401. Every effort should be made to speed up the processing of applications and to this end a time limit should be laid down within which a decision should be conveyed to the applicant. (Paragraph 310).

402. Some machinery should be devised to permit appeals to be taken from a Minister's refusal to grant an application. (Paragraph 307).

403. In view of the lack of statistics, a manpower survey should be undertaken by the Ministry of Labour and kept up to date to indicate the available professional or other skills that are in demand. (Paragraph 310).

AMENDMENT OF LAWS

404. The Financial Administration (Supplies) Regulations 1963 should be amended to provide that all tenderers should be advised not only of the name of the successful tenderer, but also of his price and relevant conditions. (Paragraphs 193 & 216).

405. The Housing Act 1968 should be suitably amended to clarify certain matters. (Paragraphs 160-168 & 231).

406. Section 3.7 of the Staff Orders for the Public Service of Jamaica, 1965, dealing with the conduct of Civil Servants needs to be widened to prevent the Civil Servant engaging in business through the medium of a private company. (Paragraphs 204-207).

407. The Trade Law, 1955 and subsequent amendments should be consolidated. (Paragraph 272).

408. Section 8A (1) of the Trade Law 1955 permitting the Minister to delegate his powers to the Trade Administrator is unsatisfactory. Confusion may well arise when the Minister and the Trade Administrator can act simultaneously at the same level. There should be a two tier authority, the Trade Administrator dealing with matters at first instance with an appeal to the Minister from the decision of the Trade Administrator. (Paragraphs 266 & 270).

APPOINTMENTS TO STATUTORY BODIES

409. The selection of persons for the chairmanship of statutory bodies should be based primarily on their ability to discharge their duties efficiently and with integrity and not on their political affiliations. (Paragraphs 227 & 362).

SELECTION OF LABOUR

410. The system of selection of labour for public projects or indeed for any project on the basis of membership of a political party or a trade union is vicious and is to be utterly condemned; it is clearly discrimination within the meaning of Section 24 of the Constitution and a violation of the fundamental right of the citizen. Accordingly, all questions of political allegiance should be disregarded in considering a citizen's claim to be employed. (Paragraphs 312-314.)

APPENDIX A

MEMORANDUM ON SOME ASPECTS OF THE LAW RELATING TO GOVERNMENT CONTRACTS

INTRODUCTORY

At Common Law the Crown was in a very happy position. It could enter into a contract with a subject and, through the Attorney General, could sue to enforce that contract. The subject, on the other hand, had no right to sue the Sovereign. This was presumably based on the maxim that the Crown could do no wrong, whereas obviously the erring subject could.

English law did not distinguish between the Crown in its personal and political capacity. It is well settled that the Crown's general capacity to contract rests upon no statutory authority. Until the passing of the Crown Proceedings Law, 1958 (corresponding to the United Kingdom Crown Proceedings Act, 1947), actions could not as a rule be brought against the Crown or a Government department. In England there was the cumbersome remedy by way of Petition of Right after obtaining the fiat of the Sovereign which was granted on the advice of the Attorney General. In Jamaica, there was a similar cumbersome procedure whereby proceedings were commenced by way of a Statement of Complaint and the fiat of the Governor obtained. There were, however, many statutes in Jamaica which made provision for suits to be brought against heads of departments and contractual actions could thus be maintained against such persons which by statute could "sue and be sued".

In England, it was "a convention of long standing that where continuing functions are to be exercised by a Government department, particularly if these will result in commitments of expenditure beyond the financial year, the power to incur the expenditure should be defined by statute" but the non-observance of this convention, however, did not affect the Crown's legal power to contract. In many cases, therefore, statutes confer contractual capacity on Ministers.

Section 10(1) of the Crown Proceedings Law, 1958, confers a right to sue the Crown. Although for the litigant it is some consolation that at long last he may now sue the Crown—ten years after a similar enactment in the United Kingdom—yet historically both the United Kingdom and Jamaica have been lamentably slow in enacting a statute of this nature. Australia anticipated the Crown Proceedings Act by more than forty years; America threw off the shackles of sovereignty from suits when the Tucker Act of 1888 was passed which provided that the United States could be sued upon its contracts. In France too, since the Revolution of 1789, the State has been suable on its contracts.

As a result of the Crown Proceedings Law 1958, proceedings by or against the Crown are, to a large extent, governed by the same rules of procedure as proceedings between subjects. But the substantive law of contract to be administered in those proceedings is subject to the same reservations of liability on the part of the Crown which existed before the 1958 Law.

GOVERNMENT CONTRACTS AS A SEPARATE BRANCH OF THE LAW

The question might be asked—Are Government contracts a legal category separate from private contracts? In some systems of jurisprudence—in America and France for instance—the answer is clearly “yes”; under our systems of law, largely inherited from the Common Law of the United Kingdom, the answer is by no means straightforward although the orthodox Common Lawyer would very likely answer the question in the negative. But whatever be the correct answer to the question posed it is undeniable that Government contracts possess certain characteristics that are unique.

First and foremost, there is in contracts made by all administrative authorities “a public interest in the prevention of corruption, an interest normally safe-guarded by special provisions regarding tenders, bids and disclosure of interest”. Again every expenditure on public works or services is expenditure of money that might have been applied to a different public purpose. Decisions on this type of expenditure are, therefore, of public concern and should be under effective public control. Further, “the question of public accountability and control add another dimension of interest and importance to the study of Government contracts.”

Another difference arises from the constitutional relationship of the legislature and the executive. If the legislature is to preserve its traditional supremacy over the executive and its financial control; the law of Government contracts must control the agency powers of executive officers to make contracts binding on the State.

Finally, as one learned author has commented:

“In Contract, Government enters the market place not as Sovereign. On the other hand, contract is a device that can be used as a method of coercion and to that extent it can be used to accomplish more of the regulatory ends of Government.”

An illustration of Government's use of its contractual power for this purpose is the “Fair Labour Standard Resolution” passed by the House of Commons in England and which is incorporated in all government contracts. Thus Clause 51 of the General Conditions of Government Contracts for Building and Civil Engineering Works provides:

“The contractor shall in the execution of the contract observe and fulfil the obligations upon contractors specified in the Fair Wages Resolution passed by the House of Commons.”

This Resolution was first passed in the House of Commons in 1891 the current Resolution was approved by the House of Commons on the 14th October, 1946. A similar Resolution of the House of Representatives—doubtless based on the English precedent—is as a rule incorporated in Government contracts. The effect of the inclusion of this Resolution is that a contractor must pay the recognised rates of pay, observe the usual hours and conditions of labour, allow his employees to be members of Trade Unions and ensure that his sub-contractors also observe these conditions. Indeed it is a pre-condition of a contractor being allowed to tender that he should show that in the past he has complied with these General Conditions.

CONTRACTUAL CAPACITY OF THE CROWN

There is authority to support the proposition that there are certain limitations upon the Crown's contractual freedom: These are said to derive from its dependence upon parliamentary approval of expenditure and from the Crown's governmental responsibility. These suggested limitations are discussed below.

IS APPROPRIATION A CONDITION PRECEDENT TO CONTRACTUAL VALIDITY?

This question can hardly be said to be academic in view of what occurred at the Ministry of Education in connection with the Building Programme. Indeed, from the report of the Auditor General and the Public Accounts Committee the problem of over-expenditure—let alone over-commitment is endemic and perennial in Jamaica.

In practical terms, the matter might be stated quite simply. A Government department has \$X provided in the Annual Estimates to spend on its building programme in a particular year. It spends \$X plus \$Y in that year. The additional sum of \$Y would clearly be over-expenditure. In addition during the same year it enters into commitments amounting to \$Z without any previous authorisation from the Ministry of Finance. Now the position of a contractor who has entered into a contract on the assumption that the department is in a position to pay him might be serious indeed, for Parliament might refuse to sanction the provision of funds to pay him. In colloquial parlance, such a contractor would be left "high and dry".

This situation is not as academic as it may seem for it arose in one of the leading cases on the subject—*Churchward v. The Queen (1865) 1 Q.B. 173*. In that case, the Admiralty covenanted to pay the plaintiff \$18,000 per annum for the carriage of cross-channel mails. The appropriation for the contract was expressly and deliberately withheld by Act of Parliament. The plaintiff sued for the promised sum, and failed on the ground that the contract provided for payment "out of monies provided by Parliament", and no such monies were provided.

It has often been suggested that obligations under-taken by the Crown to pay money are subject to the implied condition that the funds necessary to satisfy the obligation shall be provided by Parliament and, indeed, a number of modern text books on Constitutional Law have supported this proposition. It was based largely on an *obiter dictum* of Shee J. in *Churchward's* case when he said:

"I am of opinion that the providing of funds by Parliament is a condition precedent to (the covenant) attaching."

None of the other three Judges expressed a similar opinion. Indeed, Cockburn C.J. was by no means in agreement for at pages 200-201 he observed:

"I am very far, indeed, from saying, if by express terms, the Lord's of the Admiralty had engaged, whether Parliament found the funds or not, to employ Mr. Churchward to perform all these services, that then whatever might be the inconvenience that might arise, such a contract would not have been binding; and I am very far from saying that in such a case a petition of right would not lie, where a public officer or the head of a department makes such a contract on behalf of the Crown, and then afterwards breaks it. . . . I agree that, if there had been no question as to the fund being supplied by Parliament, if the condition to pay had been absolute, or if there had been a fund applicable to the purpose, and this difficulty did not stand in the petitioner's way, and he had been throughout ready and willing to perform this contract, and had been prevented and hindered from rendering these services by the default of the Lords of the Admiralty, then he would have been in a position to enforce his right to remuneration."

There are, however, a number of cases subsequent to Churchward's case that are sufficiently ambiguous in their ratio decidendi as to lend support to the views put forward by Shee J. The first was *Commercial Cable Company v. Government of Newfoundland* (1916) 2 A.C. 610—which was decided almost fifty years after Churchward's case. There followed a number of decisions by the Privy Council and one—*Attorney General v. Great Southern & Western Railway Company of Ireland* (1925) A.C. 754—by the House of Lords. In all the Privy Council cases, Viscount Haladane delivered the leading judgments and he also delivered a judgment in the House of Lords in the *Great Southern & Western Railway Company of Ireland* case (supra). These cases are critically analysed by Professor Street in his monograph on *Governmental Liability* at pages 87 to 89.

The Canadian and English decisions did not follow Churchward's case. In this state of dubiety it was left to the High Court of Australia to clarify and state the principles governing the matter. In 1934 the case of *New South Wales v. Bardolph* 52 C.L.R. 455 came before a distinguished panel of judges, including Dixon J. of Commonwealth fame. The facts were as follows:

"An Officer of the Premier's department on the authority of the Premier entered into an advertising contract with the plaintiff for more than one State financial year. A parliamentary appropriation for 'Government advertising', exceeding the amount involved in the plaintiff's contract but not specifying particular contracts, was made. After a change of Government during the period covered by the contract, the new Administration refused to continue the contract, whereupon the plaintiff sued under the Judiciary Act for breach of contract. The Crown contended that no contract for the payment of money can expose it to suit unless and until Parliament has appropriated monies therefor, and that without such a specific appropriation any contract is void for non-performance of a condition precedent."

The High Court of Australia rejected the Crown's contention and unanimously affirmed the decision of Evatt J. at first instance. Evatt J. summed up the law in the following propositions:

"In the absence of some controlling statutory provision, contracts are enforceable against the Crown if (a) the contract is entered into in the ordinary or necessary course of Government administration, (b) it is authorised by the responsible Ministers of the Crown, and (c) the payments which the contractor is seeking to recover are covered by or referable to a parliamentary grant for the class of service to which the contract relates. In my opinion, moreover, the failure of the plaintiff to prove (c) does not affect the validity of the contract in the sense that the Crown is regarded as stripped of its authority or capacity to enter into a contract. . . . The enforcement of such contracts is to be distinguished from their inherent validity." (at pages 474-5)

Dixon J. at pp. 509-510 (ibid) quoted with approval the "clear and correct" exposition of the doctrine by Isaacs C.J. in *Australian Railways Union v. Victorian Railways Commissioners*:

"It is true that every contract with any responsible Government of His Majesty, whether it be one of mercantile character or one of service, is subject to the condition that before payment is made out of the Public Consolidated Fund Parliament must appropriate the necessary sum. But subject to that condition, unless some competent statute properly construed makes the appropriation a condition precedent, a contract by the Government otherwise within its authority is binding."

In addition to rejecting the argument of the Crown that contracts are subject to the condition precedent of parliamentary appropriation, the Court also dealt with the submission that specific appropriations are required. It may be asserted without much fear of contradiction that had such a view been upheld the results would have been somewhat disastrous. Its effect would be that in Appropriation Acts Parliament would have to itemise each contract before a right of action could vest in the contractor—from the practical point of view an impossible task. The Court rightly held that no such specific appropriation was ever needed and cited in support a number of leading authorities on Parliamentary Procedure.

It is clear, therefore, that payment in satisfaction of a judgment debt against the Crown can only be made out of appropriated funds; on the other hand, it is not a requirement of the law that monies shall have been appropriated by Parliament before any judgment can be given. In the final analysis, no doubt Parliament may frustrate the implementation of a judgment in favour of a contractor by declining to appropriate the money. It can also, if it so desires, pass a subsequent statute abrogating the contract or the judgment given thereon. It is submitted, however, that these rather remote possibilities do not render the original contract either invalid or in any unusual sense "unenforceable". Professor Street, however, takes the view that unenforceable must be here given the same meaning as for contracts within the Statute of Frauds, i.e. although the contract is perfectly valid one cannot sue on it (see Street *ubi sup.* p. 92). Professor Street's view is, however, opposed to that of Dixon J. in *New South Wales v. Bardolph* (1935) 52 C.L.R. 455 at 514-5 and one must hesitate in rejecting any view coming from that learned judge. In short, a contractor may get a judgment against the Crown but he will be unable to enforce his judgment.

FREEDOM OF EXECUTIVE ACTION

The second limitation upon the Crown's contractual freedom is that the Crown cannot validly contract so as to fetter its freedom of executive action. The proposition derives its principal support from the case of *Rederiaktiebolaget Amphitrite v. The King* (1921) 3 K.B. 500. It was a decision of Rowlatt J. at first instance and no decision was cited in support. In that case.

The Swedish owners of the ship *Amphitrite* obtained from the British Legation in Stockholm a guarantee that, if the ship sailed to England with an approved cargo, she would be allowed a free passage and not detained as a result of the war-time blockade of Germany. The ship was nevertheless refused a clearance and her owners brought a petition of right against the Crown claiming breach of contract.

Rowlatt J. dismissed the suit. At page 503 he observed:

"No doubt the Government can bind itself through its officers by a commercial contract, and if it does so it must perform it like anybody else or pay damages for the breach. But this was not a commercial contract; it was an arrangement whereby the Government purported to give an assurance as to what its executive action would be in the future in relation to a particular ship in the event of her coming to this country with a particular kind of cargo. And that is, to my mind, not a contract for the breach of which damages can be sued for in a Court of law. It was merely an expression of intention to act in a particular way in a certain event. My main reason for so thinking is that it is not competent for the Government to fetter its future executive action, which must necessarily be determined by the needs of the community when the question arises. It cannot by contract hamper its freedom of action in matters which concern the welfare of the State."

The case was not followed in the later decision of *The Steaua Romana* (1944) P. 43 where the application of the rule in the *Amphitrite* case would have led to an opposite result. It was critically examined by Denning J. (as he then was) in *Robertson v. Minister of Pensions* (1949) 1 K.B.227. There the learned Judge observed that the ratio of the case was that there was no intention to contract and that the further remarks of Rowlatt J. were, therefore, obiter. With respect, however, the view of Denning J. can hardly be right. Rowlatt J. decided that there was no contract but only an expression of intention because, as he held, the Crown could not fetter its future executive action. In any event however, Denning J. did not reject the existence of the doctrine but held that it was of limited scope and only availed the Crown "where there is an implied term to that effect of that is the true meaning of the contract." Denning J. further held that the rule had no application to the case before him.

There is hardly any doubt that a principle which struck down every contract by which the future action of the Crown was impeded could be a serious hindrance to the Government in its contracting activities. It has been contended that this rule cannot be taken to extend to "ordinary commercial contract"; but as Anson has pointed out "the extent of the Crown's incapacity seems to depend rather on the nature of the power which it is sought to fetter than on the type of contract involved" (*Anson's Law of Contract*, 23rd Edn. page 180).

It is evident that even in the case of commercial contracts the Crown must be free to exercise discretionary powers conferred upon it for the public good. As Devlin L.J. (as he then was) observed:

"No one can imagine, for example, that when the Crown makes a contract which could not be fulfilled in time of war, it is pledging not to declare war for so long as the contract lasts." (*Commissioners of Crown Lands v. Page* (1960) 2 Q.B. 274 at page 292.) "The Crown must be at liberty to detain ships, to requisition property or to perform other essential acts in time of war," and it is submitted that "no contract would be enforced in any case where some essential governmental activity would be thereby rendered impossible or seriously impeded." (*See Chitty on Contracts—23rd Edn.—General Principles p. 250 citing Mitchell—The Contracts of Public Authorities 1954, page 7.*)

The principle laid down in the *Amphitrite* case may be regarded as a general rule of public policy, which applies to public authorities in general, that an authority upon which a power or discretion is conferred by statute, or common law, cannot disable itself by contract from exercising that power or discretion—(*Eyre Harbour Trustees vs. Oswald* (1883) 8 App. Cas. 623 and *Kerr & Lawson—Cases on Constitutional Law*, 5th Edn. 1967 pp.334/8).

The principle was lucidly summarised by Lord Birkenhead in the case of *Birkdale District Electric Supply Co. v. Southport Corporation* (1926) App. Cas. 365 at 364. The House of Lords in the recent case of *British Transport Commission v. Westmoreland County Council* (1958) App. Cas. 126 emphasised that the limitation upon the capacity of the Crown and other public bodies applied only to contracts that were "incompatible" with the powers or functions with which these bodies were entrusted in the sense that performance of the contract will certainly, or as a matter of probability, prevent the body in question from discharging its public duty. It is submitted that in respect of contracts made by the Crown "incompatibility" must be shown either with the purposes of a particular statute conferring powers upon the Crown or with the essential purposes of Government. So expressed, the rule appears as a very limited qualification of the contractual capacity of the Crown and is founded upon public policy.

The usefulness of the rule under consideration in its application to contracts made by the Crown is dubious indeed, especially as the Crown enjoys immunity from orders of specific performance in respect of any contract and an award of damages is much less likely than specific relief to impede an essential government activity or to render it impossible. In practice, the rule stated in the *Amphitrite* case does not often have to be applied since many contracts falling within its scope contain cancellation clauses which usually make provision for compensation.

AGENCY

The general rule is that a servant or agent of the Crown who contracts on behalf of the Crown, cannot himself be sued on the contract. As Professor Street observes:

"The cases show that the courts are most reluctant to find that a civil servant has contracted personally. Indeed, there seems no reported case where a civil servant legally capable of contracting as agent in the particular circumstances, and not having expressly contracted personally, has failed when setting up agency as a defence to an action for breach of contract. (Street *ubi sup.* page 92).

A public officer is, therefore, only liable where he has expressly pledged his personal credit.

Further, under the ordinary law of agency, an agent who makes an unauthorised contract may be personally liable on an "implied warranty of authority" but it appears that this doctrine has no application to servants of the Crown though it is a little difficult to see why they should enjoy this exemption from ordinary legal liability.

The Crown generally contracts through agents and the ordinary principles of agency apply to such cases, with some modifications. The Crown is liable where the agent acts within his actual or ostensible authority—*Attorney General for Ceylon v. Silva* (1953) A.C. 461 at 479. In accordance with the ordinary principles of agency, however, ostensible authority cannot arise merely from a representation by the agent that he possesses authority; there must be a holding out by the principal or someone authorised by him. If the principal is the Crown, and since the Crown can act only through its executive officers, the representation must be that of an officer with authority to bind the Crown.

The representation giving rise to apparent authority need not, however, be expressed. In particular a person may be entrusted with an office or responsibility such as gives rise to a reasonable inference that he has authority to act in a certain way. This may arise because, in the normal experience, other persons with similar offices or responsibilities usually possess such authority or because the authority appeared to any reasonable observer a necessary concomitant of the office. In this event the principal may be bound by what is sometimes distinguished from apparent authority as "usual authority". Doubts have been expressed, however, whether the Crown is liable under the doctrine of "usual authority".

ESTOPPEL

The Crown, it is said, may not be bound by estoppels by deed but it may be bound by estoppels by conduct (*Orient Steam Navigation Co. vs. The Crown* (1925) 21 L.L. Rep. 301). In its most familiar form, the rule of estoppel is that a person who has expressly or by conduct affirmed the

existence of a certain fact is prevented or "estopped" in any subsequent proceedings from denying its existence if the person to whom the affirmation was made has, in reliance upon it, altered his position to his prejudice. Estoppel cannot by itself provide the basis of an action but may supply an element that is wanting in a cause of action or it may be used to destroy a defence raised by the other party.

In *Robertson v. Minister of Pensions* (1949) 1 K.B. 227, the plaintiff was assured by the War Office that for the purposes of a pension his disability had been acceptable as attributable to war service. Relying on this assurance, he forebore to obtain an independent medical opinion. But the officer who gave the assurance had no authority to give it since the administration of certain disablement claims (including the plaintiff's) had been transferred from the War Office to the Ministry of Pensions. It was held that the Minister of Pensions could not deny that the plaintiff's injury was attributable to war service. This decision may be regarded as an application to the Crown of the ordinary principles of estoppel. The enunciation of principle by Denning J. in *Robertson's* case was in very wide terms which have subsequently been disapproved by the House of Lords in *Howell v. Falmouth Boat Construction Co. Ltd.* (1951) A.C. 837 at 834: but the correctness of the actual decision in *Robertson's* case was not called in question.

While estoppel may cure the want of authority of a servant to act on behalf of a public body, it cannot by itself clothe the public body with a legal power that it lacks. Thus, if the Crown or any government department acts *ultra vires*, i.e. purports to do something that it has no legal power to do, estoppel cannot have the effect of supplying the capacity that is wanting in the public body in question—*Minister of Agriculture and Fisheries v. Matthews* (1950) 1 K.B. 148. This qualification on the operation of estoppel is clearly laid down by the House of Lords in *Howell's* case where Lord Simonds observed that "the illegality of an act is the same whether or not the actor has been misled by an assumption of authority on the part of a government officer however high or low in the hierarchy." (1951) A.C. 837 at 845.

Estoppel is a device of equity, and will not be upheld where to do so would be contrary to public policy.

STANDARD FORMS

In the United Kingdom, the law of Contract and the Common Law generally, form the framework of Government contracts. These contracts, however, are normally carried out by means of standard forms and conditions of contract. In the complexity of today's world, standard forms of contracts are becoming of increasing use in normal commercial transactions.

In Jamaica, the situation is reversed; in so far as Government Departments can be said to utilise contracts in standard form they are somewhat rudimentary. It must be admitted that there are certain advantages in the standardisation of contractual terms. Both parties to a contract will naturally benefit from the regular use of familiar conditions which have acquired a settled meaning. The likelihood of disputes about the interpretation of the contract is diminished and each party is aware of the obligations placed upon him.

It is axiomatic that the formal contract should ensure both fair treatment for the contractor and adequate protection of the public interest. Two forms are now in standard use in the United Kingdom generally referred to briefly as CCC/Work/1 and GC/Stores/1. They are in fact a set of model conditions intended to be selectively incorporated in particular contracts.

The form CCC/Works/1 deals with building and engineering contracts. The form consists of a comprehensive set of conditions which can be incorporated by reference in the forms of tender or other document constituting the contract between the parties, which in consequence may be relatively brief. Particular conditions may, however, be expressly excluded and some are appropriate for use only in certain cases. The complete contract will normally also include specifications, bills of quantities, and drawings describing the work to be done.

Clause 7 empowers the Government supervising officer to give directions as to how the work is to be carried out and gives him the right to uncontrolled supervision. If his instructions are disobeyed, Clause 8 enables the Government to have the work carried out at the contractor's expense. Clause 9 provides that when the superintending officer requires alterations in the work done under the contract, the contract price shall be increased or reduced accordingly. Clause 27 provides that the contractor shall not, without the consent in writing of the Authority (i.e. the appropriate Department), assign or transfer the contract or any part, share or interest therein. Clause 29 makes time the essence of the contract and provides for the payment of liquidated damages in the event of default. Clauses 44 and 45 enable the Government to determine the contract at any time by notice in writing, leaving the Government liable only for work done and discharged from future liability under the contract.

The termination of a contract might take place in one of two events. In the first instance, a contract might be determined because the contractor is not performing with due diligence. In the second instance, the contract may be determined because Government has taken a decision on the basis of policy that the contract should be terminated on the payment of just compensation although there has been no breach by the contractor.

Most standard forms of any consequence provide for the first case and, as mentioned above, the United Kingdom standard form provides additionally for termination in the second instance. It is a matter for comment that the form employed by the Ministry of Education provides for neither. Thus, in one case the Minister of State peremptorily in the course of performance by a contractor terminated a number of contracts without assigning any reasons. Obviously, such a state of affairs is quite undesirable and one must deplore the arbitrariness of such a procedure.

In the Report itself, it has been urged that the time has come when standard forms of contract in modern shape should be employed by the Government. It may even be urged that it would perhaps be fruitful to examine the American law on the subject where certain clauses are written into Government contracts by law and others are dealt with by standard terms and conditions. The former type of clauses would contain principles which the Government regard as fundamental to its contracting procedures.

RELIEF

The normal remedies and relief available to a litigant in an action between subject and subject are available against the Crown but no order for the recovery of land or delivery of property can be granted or made against the Crown. Further, no injunction or order for specific performance can be granted or made against the Crown. Many systems of law recognise the special position of the

APPENDIX B

EXHIBIT 3—MINISTRY OF FINANCE CIRCULAR No. 43 OF 1963

Circular No. 43
M.F. No. 182/02

Ministry of Finance,
24 East Race Course,
P.O. Box 312
Kingston.
18th November, 1963.

Employment of Private Architects and Control of Government Contracts

Further to Ministry of Communications and Works Circular No. 67 of the 25th October, 1961, P.W.O. No. C1439, Permanent Secretaries and Heads of Departments are requested to note that the Cabinet has approved a revised procedure in connection with the employment of Private Architects and the control of Government Contracts.

2. The procedure that has been agreed by the Cabinet is stated hereunder, and where Permanent Secretaries and Heads of Departments are affected, they are asked to ensure strict compliance with the instructions.

3. The Government Contracts Committee which has been established to deal with the works of all Ministries (except Schools and Government Housing) is made up as follows:—

- Chairman:* Director of Technical Services, Public Works Department. (In cases of contracts over £100,000 in value, the Chief Technical Director will be Chairman and the Director of Technical Services a member).
- Permanent:* Chief Architect, Public Works Department, in the case of buildings;
- Members:* Chief Engineer (Civil) in the case of Civil Engineering Works, Senior Officer of the Ministry of Finance, Finance Officer, Ministry of Communications and Works.
- Secretary:* Supplied by the Director of Technical Services.
- Part-time* When discussing tenders, contract conditions or awards—Permanent Secretary of Ministry concerned or a nominee approved by the appropriate Minister. Chief Quantity Surveyor, Public Works Department.
- Members:* When Projects are designed by Public Works—Director of Construction, Public Works Department. Private Architects, Consultants and Quantity Surveyors employed are required to attend when contracts supervised by them are under discussion.

4. This Committee will have the following responsibilities—

- (a) recommending to the appropriate Ministry, for transmission to the Cabinet, Private Architects, Quantity Surveyors or Specialist Consultants in order of suitability, for Government buildings or Civil Engineering work and maintaining a list of those suitable for employment on different classes of work;
- (b) reviewing and maintaining the classified list of Government contractors for approval of the Cabinet;
- (c) advising the Accounting Officer concerned for transmission to the appropriate Minister on the type of contract conditions to be used for projects over £10,000 in value;
- (d) advising the Accounting Officer concerned for transmission to the appropriate Minister on the method of calling for tenders for projects over £10,000 in value
- (e) opening all tenders or negotiated prices for projects over £10,000 in value;
- (f) recommending to the Accounting Officer concerned, for transmission to the appropriate Minister the award of contracts in order of preference for projects, over £10,000 in value, having fully investigated the tenders, the financial stability of the tenderers, and their *sureties* and their ability to execute the work in the period and manner required;

5. The recommendations of the Contracts Committee in regard to private architects, quantity surveyors, specialist consultants and the award of contracts for construction shall be submitted by the Ministry or the Accounting Officer, as the case may be, to the Cabinet or the appropriate Minister, as the case may be, for final decision.

6. The Cabinet or the Minister concerned with regard to paragraphs (a), (b), (c), (d), (f) of paragraph 4 of this circular shall have the right to accept or reject or vary any of the recommendations or advice of the Contracts Committee.

7. The Technical Services Directorate of the Ministry of Communications and Works will be responsible for coordinating all design functions, including those allocated to private architects, quantity surveyors and consultants.

8. The functions of private architects relative to those of the Ministry of Communications and Works are generally as indicated in the Appendix to this Circular. All the work entailed in determining the requirements of the Ministry and preparing approximate estimates will be completed by the technical staff of that Ministry before the question of calling in private architects is examined.

Once an outside architect is employed, the Technical Services Directorate will advise him as to whether he will have to consider employment private quantity surveyors, engineers or other specialist consultants, or whether that Ministry will, itself, be able to provide any of these services.

9. Payments to the Contractor will be made by the Ministry concerned on the basis of interim certificates submitted to it direct by the private architect or the Chief Architect of the Public Works Department as appropriate. This practice will render unnecessary the transfer of funds from various Ministries to the Public Works Department and remove the attendant difficulties of accounting and accountability as between the Accounts Branch of the Public Works Department and the client Ministries concerned.

10. As regards direct labour payments where the Public Works Department is undertaking the Architectural function on behalf of other Ministries, such bills will be paid by the Public Works Department and charged to an appropriate advance account e.g.—

“Advance Account, Ministry of Finance—
Ministry of Trade and Industry Building.”

These advances will be reflected on the monthly statements of accounts which are issued to Ministries by the Public Works Department, and all Ministries are required to reimburse the advances reflected on these statements within seven (7) days of the receipt of the statements. Failure to comply with this instruction might necessitate the withdrawal of the facility.

11. Ministry of Communications and Works Circular No. 67, P.W.O. No. C1439 of the 25th October, 1961, is hereby revoked.

G. A. BROWN,
Financial Secretary.

APPENDIX C

EXHIBIT 41—STATEMENT BY NORMAN SAILSMAN

NORMAN SAILSMAN STATES:—

I am a contractor living at New Forest in Manchester. I do contracts in building primary schools and benches for the Ministry of Education since 1957.

I know Mr. Arthur Williams the former Member of Parliament for this area (constituency).

I am registered with that Ministry as a contractor on the recommendation of Mr. Williams. When a school is to be built or other contracts to be given out, Mr. Williams would recommend which of us contractors is to be given the job.

There was a Committee which met at 13B West Road, Mandeville, I was summoned to it by Mr. Arthur Williams, M.P. This was first convened on the 21st January, 1971, commencing at 7.00 p.m. I attended. I found there Laurentine Johnson, Mr. Sibliss, Mr. Arthur Williams, Winston Thompson, Clement Bloomfield, Roy Walters, Teacher Young and another Mr. Eric Spencer. The meeting was called to order by the M.P. Mr. Arthur Williams. He explained that it was a secret meeting and that he expects everyone present to maintain the secrecy. He told us the purpose of the Committee was to carry through the then coming General Election campaign, and request each of us to stand by him financially by making liberal financial contributions and assist in any other necessary and possible way. The Committee unanimously agreed. It was decided to have a Secretary/Treasurer, as he (Mr. Arthur Williams) said he did not want to keep the money turned in himself.

Mr. Williams nominated Mr. Young but Mr. Young being a Returning Officer some of the members did not agree.

After some discussion it was decided that Mr. Young should receive and keep the cash until other arrangement is made. Other than Messrs. Bloomfield, Roy Walters, Mr. Williams, M.P., and Mr. Young, all the others were contractors and each pledged various sums.

In that meeting, Mr. Williams handed over \$400.00 and told us it was from a Mr. Leiba of May Pen as his contribution.

Sometime in February 1971 there was another meeting. Messrs. Young, Williams, M.P., Bloomfield, Eric Spencer and myself were present. Pledges were handed over to Mr. Young. I handed in \$100.00.

At that meeting the Committee decided to purchase a jeep for Mr. Williams to be used in the electioneering. Mr. Johnson undertook to buy the jeep with his money pending payments from others. It was decided that the jeep be licensed in Mr. Laurentine Johnson's name and at a later date pass over to Mr. Williams' name. The estimated cost of the jeep was \$4,500 but it was bought for \$—.

Frequent meetings were held thereafter and I, among others, handed in contribution each time.

Since 1971 I got contracts for Austin All-age School for \$30,000.00 and New Forest for \$28,000.00. I also had one for a school at Lititz for \$26,000.00. I have also got several contracts for building furnitures for various schools for sums which I don't remember.

I have money owing on all the aforementioned schools and only Lititz is completed. There is a work stoppage at Austin due to alleged shortage of funds at the controlling section of the Ministry.

We pledge the contributions and contributed with a common understanding that that will assure our obtaining contracts from Government through Mr. Williams.

Mr. Williams, M.P. checked from time to time to find out those contractors who contributed. Those who failed to contribute got no contract.

(Sgd.) N. SAILSMAN,

25/ 1972.

APPENDIX D

EXHIBIT 46—STATEMENT BY DR. A. BURT DATED JULY 17, 1972

AWARD OF CONTRACTS—MINISTRY OF EDUCATION

STATEMENT BY DR. ARTHUR BURT

After the General Elections of 1967, I was invited by Sir Donald Sangster, the then Prime Minister of Jamaica, to be Parliamentary Secretary in the Ministry of Education. I accepted this job first on secondment for two years from my post at the University of the West Indies as Senior Assistant Registrar in charge of Student Affairs. Two years later, I resigned my post at the University to continue serving the Government.

When I entered the Ministry of Education I was asked by the Hon. Edwin Allen, Minister of Education, to take policy responsibility for the Primary School building programme among other things. This was done by a circular letter and a copy of this circular should be on the files of the Ministry of Education. The political composition of the Ministry of Education at that time was, the Hon. Edwin Allen, Minister; Senator the Hon. Hector Wynter, Minister of State and Senator Dr. Arthur Burt, Parliamentary Secretary.

There was a Contract Awards Committee in existence consisting of Mr. E. A. Rae (deceased) as Chairman, Mr. Emile Joseph; the Permanent Secretary, the Chief Architect, the Engineers in the Ministry, Mr. Louis Douet and Mr. Don Samuels, the Officer appointed by the Permanent Secretary to be Head of the Building Section—the files of the Ministry of Education will show that at one time Mr. G. E. V. Sherman occupied this position, then he was succeeded by Mr. Rutherford and who was later succeeded by Mr. Leslie Magnus—the Building Officer, Mr. Vaughan, with Senior Assistant Building Officers as advisers. I started sitting in at meetings of the Committee because of my interest in the Primary School programme but at no stage was I ever appointed a member of the Committee.

As far as I could ascertain the Contract Awards Committee had no legal status as it was not set up by law or by an act of Parliament. I understand, though I have not seen proof of this, that it was set up by Sir Alexander Bustamante as an Advisory body to the Minister of Education. Recommendations of this Committee, therefore, had to be endorsed by the Minister of Education before they were regarded as decisions.

The Committee was concerned with the awarding of contracts for the building or extension of Primary and Secondary Schools but the World Bank Programme for the building of 50 Junior Secondary Schools was not included in its terms of reference. A special Unit in the Ministry of Education was set up to deal specifically and exclusively with this programme as it involved international tendering for the contracts. This Unit was headed first by Mr. G. R. Woodham and later by Mr. L. Brown. The World Bank team worked very closely with the Permanent Secretary on this programme. From time to time both the Minister of Education, Mr. Wynter and myself were given up to date reports on the progress of the programme but we were not involved in the actual running of this programme.

In relation to the working of the Contract Awards Committee the administrative head of the Building Section, in consultation with the Permanent Secretary would submit to the Contract Awards Committee from time to time, a list of schools to be built or extended. This would depend on the amount of money available. Members of Parliament, both P.N.P. and J.L.P. were asked to submit to the Building Section a list of contractors to do school building projects in their constituencies. The Contract Awards Committee named contractors to different projects from the list submitted by the various members of Parliament. If an urgent matter should come up, the Building Section would consult with me for Primary School building project, and with Senator the Hon. Hector Wynter for the Secondary School building project. The Chairman of the Contract Awards Committee, Mr. E. A. Rae would immediately be contacted to get his approval for the work to proceed and for it to be done by one of the contractors named by the Member of Parliament concerned. All such emergency decisions had to be ratified at the next meeting of the Contract Awards Committee.

From 1967 to the summer of 1970, my role was an observer status and sometimes an Advisory status on the Contract Awards Committee. Sometime in 1969, the Hon. Hector Wynter was transferred from the Ministry of Education to the Ministry of Youth and Community Development. The Minister of Education then asked me, again by a circular letter, a copy of which should be in the files of the Ministry of Education, to take over the responsibilities of the Ministry of Education that were normally performed by the Hon. Hector Wynter, including the Secondary School building programme. Mr. Arthur Williams was at the same time brought into the Ministry and took over my previous responsibilities as Parliamentary Secretary including the Primary School building programme. The instructions to Mr. Arthur Williams was also in the form of a circular letter and a copy should be on the files of the Ministry of Education. Mr. Ernest Rae, Chairman of the Contract Awards Committee died in early 1970 and Mr. Emile Joseph sat in the Chair for two or three meetings although he was not formally appointed Chairman. This can be confirmed by the Minutes of the Contract Awards Committee kept by the Ministry of Education.

From late 1969 to the first half of 1970 there were many complaints from some members of Parliament about the procedure for the awards of contracts. Those who complained now wished to be informed by the Contract Awards Committee of all projects to be undertaken in their constituencies so that at that particular time they could name a contractor for each project. Many of these complaints were put in writing and should be on the files of the Ministry of Education. The Members of Parliament who complained felt that by naming a contractor for the particular project at the time the work was to be undertaken would assist in a better distribution of work among contractors in their constituencies.

In the summer of 1970, I was asked by the Prime Minister at a meeting of Ministers to take policy responsibility for the School building programme, primary and secondary, but still responsible to the Minister of Education. I conveyed this information to the Permanent Secretary in writing and a copy of that letter should be on the files. I agreed with members of the Contract Awards Committee that for each individual project the Member of Parliament concerned was to be consulted and asked to name a contractor to do the work. If the Member of Parliament named a contractor, who in the opinion of the Technical Officers of the Ministry was not capable of carrying out the work, the Member of Parliament would be approached either by me or any of the Technical Officers concerned and asked to name a more capable contractor. The records of the Ministry of Education will verify this.

It was not my duty to name any contractor to any particular project. The Committee that carried out this exercise consisted of myself, sitting in the Chair, the Permanent Secretary, the Chief Architect, the Engineers in the Ministry, the Building Officer, the Administrative Head of the Building Section and the Assistant Building Officers concerned. This new change made it unnecessary to invite Mr. Emile Joseph to meetings as the entire exercise consisted of getting names of Contractors from various Members of Parliament for individual project. There were regular meetings of this Committee with me as Chairman. I believe the records of the Ministry of Education will show that this Committee met roughly every two weeks and that all business were unanimous decisions.

There were two areas in which this system did not work satisfactorily—electrical works and the building of school furniture. The Committee tried to get these two to fit into the regular pattern and consequently invited Members of Parliament to name contractors for electrical work and for the building of school furniture. A number of Members of Parliament named contractors to do school furniture but the majority of them, after being tested by the Chief Architect and other Technical Officers of the Ministry were found to be incompetent of building school furniture and the Member of Parliament concerned was so notified. Many of those who were acceptable could not finance the jobs given for the building of school furniture. This can be confirmed from the records of the Ministry of Education. The difficulty arose because the Ministry of Education had no storage space for school furniture and when an order to build school furniture was given to a contractor, he had to finance the building of the furniture and was only paid when all furniture requested was completed, put in the school, checked and approved by the Building Officer concerned as satisfactory.

The system therefore reverted to a position where the Committee had to depend on big furniture contractors according to the areas in which they resided and could serve easily, e.g. Mr. Cooke and Mr. Bravo in Sav.-la-Mar would serve western area, Mr. Pantry would serve the Portland, St. Thomas area, Mr. Cover and Mr. Lewis would serve the Corporate Area and sometimes St. Catherine. The Committee sometimes had to vary from this according to the urgency of the situation. If in September when school re-opens an urgent telegram should come from Manchester, St. Elizabeth, etc. that 200 children were without desks and benches, we had to check all furniture contractors to find out which contractor had this amount in their store-room and would ask them to rush the required amount immediately to the particular school.

In the case of Electrical Contractors, the files of the Ministry of Education will show that a number of Members of Parliament did not name any Electrical Contractor for their area, but wherever an Electrical Contractor was named by a Member of Parliament he was used to do work in that constituency. Sometimes two or three Members of Parliament named the same Electrical Contractor to do work in their areas. When the records of the Ministry of Education are examined they will show that there was a considerable spreadout of electrical contracts since I assumed policy responsibility for the building programme in the summer of 1970. The records of the Ministry of Education will show that in contrast to the period 1967 to the summer of 1970, in the period July, 1970 to February, 1972, far more Electrical Contractors were given work from the Ministry of Education.

Sometimes in order to expedite the school building programme, I would tour a number of constituencies at the invitation of the Member of Parliament concerned. My touring party consisted of the Permanent Secretary, the Building Officer concerned, the Administrative Head of the Building Section, sometimes Mr. Sherman, Mr. Rutherford and Mr. Magnus, the Engineers in the Ministry, Mr. Douet or Mr. Samuels and sometimes the Chief Architect, Mr. Patterson, plus the Member of Parliament for

the constituency. If the Member of Parliament made an on the spot request for a new school, extension of an existing school or repairs to a school etc., I would have a private, but on the spot discussion with the Officers of the Ministry and particularly with the person responsible for control of the vote for the school building programme. If the Member of Parliament's request was agreed by the Officers of the Ministry concerned and the Permanent Secretary confirmed that funds were available I would return to the Member of Parliament and assured him that his request would be granted. All decisions would be noted by the Officers for execution and at that time the Officers would ask the Member of Parliament to name contractors to do the projects. This action would not constitute the award of a contract and the Ministry Officers would still have an opportunity when they return to their desk at the Ministry of Education to recheck to see if funds were available for the award of a contract.

Before a Contract was awarded it was the responsibility of the Technical Officers to:

- (a) negotiate with the contractor concerned rates to be paid for various aspects of the particular job;
- (b) agree on what would constitute extras on the job.

It should also be noted from the files of the Ministry of Education that all Contracts were signed by:

- (a) The Contractor;
- (b) The Technical Officer concerned;
- (c) The Administrative Head of the Building Section on behalf of the Permanent Secretary.

The files of the Ministry of Education will show that only contracts under \$10,000 should be brought to the Contract Awards Committee for awards. All other contracts should go to tender unless otherwise directed by the Cabinet. The files of the Ministry of Education will show that there were instances when the Cabinet agreed that certain contracts over \$10,000 may be awarded by negotiation. The records of the Ministry of Education will also show that frequently the Technical Officers in the interest of speed and to avoid the long drawn out process of tendering would agree to award contracts over \$10,000 by negotiating a schedule of rates with the Contractor.

It was the responsibility of the Administrative Head of the Building Section to ensure that no contract was let *unless funds were available*. This control was easily exercised as every contract required his signature or that of the Permanent Secretary. The Technical Officers of the Ministry would also be responsible for laying out the building, provide the contractor with the necessary drawings, sign the necessary contractual agreements.

The further responsibility of the Technical Officers was to measure the job at various stages of progress and approve payment on the contract, decide and settle the cost of variations. Indeed, the Technical Officers supervise the job throughout and approve payment until the job was completed. The politically appointed person responsible for the school building programme at no time participated in any of these decisions as this would be contrary to his functions.

I must re-emphasise that the fact that I took the Chair after June, 1970 and gave policy directions to the building programme did not cancel the Contract Awards Committee. The Contract Awards Committee continued in existence until the end of the life of the former government. The only change

that was made was that instead of selecting a name from a list of contractors supplied by Members of Parliament the Contract Awards Committee would now deal with the Member of Parliament concerned on the individual contract to be awarded. The records of the Ministry of Education and the files in that Ministry on meetings held will not only show membership but will show that no other functions of the Committee changed.

Mr. Magnus' statement from the verbatim record of Statement before your Committee on July 4, 1972, that Officers would be called and told to start jobs without reference to him is incorrect. The records will show that as Minister of State, when touring constituencies, Mr. Magnus was always with me and before a decision on the award of a contract, Mr. Magnus' approval had to be given since he was responsible for the control of the vote for the building programme. It is not true that I would give instructions to Senior Building Officers to start work. Frequently after a meeting of the Contract Awards Committee and decisions were taken to carry out certain work I would personally get in touch with the member of Parliament concerned for the name of the Contractor to do the work and then supply that name to the Building Officer concerned. There is abundant evidence of this in the files of the Ministry of Education. The files of the Ministry of Education will also confirm that at no stage had I instructed Building Officers to do work without the knowledge of Mr. Magnus or the Permanent Secretary.

Mr. Magnus stated that at a meeting with the Minister of State the stand was taken that no further new work should be given out. This is true in part. Mr. Magnus explained that the amount of work that was going on at the time was more than the Building Officers could satisfactorily supervise and the Building Section could not cope. He at no stage said there was lack of funds.

About September of 1971 the Permanent Secretary and Mr. Magnus told me that there was an over-commitment of close upon \$5 million on the Primary School Building Programme. This was immediately brought to the attention of the Cabinet and in October of 1971 the Cabinet discussed the over-commitment in the Primary School Building Programme and after long deliberations instructions were issued by the Cabinet to the Ministry of Education to close all school building projects. These projects remained closed until the General Elections of 1972.

(Sgd.) ARTHUR BURT,
July 17, 1972.

APPENDIX E

EXHIBIT 47—JOINT STATEMENT DATED 29TH JULY, 1972 BY OFFICERS OF THE MINISTRY OF EDUCATION IN REPLY TO DR. BURT'S STATEMENTS

JOINT STATEMENT BY SENIOR OFFICERS OF THE BUILDING SECTION, MINISTRY OF EDUCATION, FOR THE COMMISSION OF ENQUIRY

We,

VICTOR L. PATTERSON, *Chief Architect*,
DONALD A. SAMUELS, *Executive Engineer*,
JAMES A. BROWN, *Senior Assistant Building Officer*,
HARCOURT F. IVEY, *Senior Assistant Building Officer*,
RAOUL S. HOLNESS, *Senior Assistant Building Officer*,
LESLIE E. MAGNUS, *Principal Assistant Secretary*,

make jointly the following statements apropos the statement dated July 17, 1972, submitted by Dr. Arthur E. Burt.

For ease of reference, the paragraphs in his statement have been numbered consecutively from 1—22, and our statements are submitted, seriatim, in respect of these paragraphs.

Page 1—Paragraphs 1 and 2:

There are no comments on these statements. A copy of a letter dated 20th March, 1967, from the Minister of Education, outlining Dr. Burt's general responsibilities is however enclosed.

Paragraph 3:

At the time when Dr. Burt first began attending meetings of the Contracts Awards Committee, the members were:—

MR. E. A. RAE (now deceased)—*Chairman*
MR. EMILE JOSEPHS, *M. P.*
MR. A. W. G. SHAW, *the Permanent Secretary*
MR. V. I. PATTERSON, *the Chief Architect.*

There was an unfilled vacancy created by the resignation of Mr. Eustace Bird, who had been a member.

Other Ministry officers, as named by Dr. Burt in this paragraph, attended meetings in advisory capacities or, on occasions, as representatives of the Ministry member officers on the Committee.

It is not clear whether Dr. Burt was ever officially appointed a member of the Committee, but he attended almost, if not all, meetings of the Committee and served on one or two Sub-Committees to which he had been appointed. However, the confirmed Minutes of a meeting held on the 13/7/67 record the following:—

“Dr. Burt who had recently been appointed a member of the Committee, was cordially welcomed.”

Page 2—Paragraph 5:

The Committee also awarded contracts for maintenance and repairs of school buildings.

Although the political heads of the Ministry were not involved in the day-to-day administration of the World Bank Programme, they were however involved in *policy decisions*, both at Ministry and Cabinet levels.

Paragraph 6:

Emergency works were dealt with in several ways and by several people, including the Permanent Secretary and, later, Dr. Burt, but we do not recall having consultations at any time with Senator Hector Wynter re-the awards of contracts for works at Secondary Schools during that period.

Paragraph 7:

The statements concerning the responsibilities of both Dr. Burt and Mr. Arthur Williams, after the Hon. Hector Wynter's transfer from the Ministry coincide with our recollections of this matter. However, the Circular Letters referred to in this paragraph have not been found.

Page 3—Paragraph 9:

We wish to add here that, on occasions, the Technical Officers were directed to use a contractor who was not considered capable, and to ensure a reasonable job, certain conditions such as engaging the services of a specifically named competent foreman, had to be inserted in the contract before the officers eventually agreed with the award.

Paragraph 10:

At first, the Contracts Awards Committee, chaired by Mr. Josephs and latterly by Dr. Burt, functioned in the manner described in this paragraph, but, at a later stage, contracts were awarded at other meetings held by Dr. Burt or by Memos sent by him directly to Officers or by oral instructions from him.

There were no formal recordings of many of these meetings, and it is true that all *awards* were unanimous. The nominated contractors had to be acceptable to the political heads of the Ministry and/or the Members of Parliament or the “Caretakers” in some Constituencies as well as being considered capable by the Technical Officers of the Ministry. In cases where they were not initially acceptable to the Technical Officers, conditions regarding their organisations were imposed and usually met.

For the records, it should be pointed out that at that time the post of Building Officer was vacant (and still is) and Senior Assistant Building Officers, not Assistant Building Officers, were involved.

We also wish to add though that at all or nearly all the various meetings held during 1971, the administrative head of the Section (Mr. Magnus) warned against commencement of new projects, as the available funds were insufficient, but was assured by Dr. Burt that the additional funds would be forthcoming.

Page 4—Paragraph 11:

As was customary, after the 1967 elections, Circulars were sent to all Members of Parliament, requesting nominations of contractors in their Constituencies capable of doing building and maintenance works. Circulars requesting nominations of furniture contractors were subsequently sent later in 1971, at the direction of the Contracts Award Committee.

In response to the first circular, in all instances, contractors for building and maintenance works were named but, only in some instances, contractors for electrical works, site works and furniture were named as well.

Consequent on the response to the second circular, a survey was carried out by the Technical Officers of the Ministry of the nominated furniture contractors, and the majority of them were found to be unsatisfactory.

The furniture was not always checked and approved by Technical Officers before payment was made, but the contractor was usually paid on the strength of a delivery slip, usually signed by the Principal of the receiving School. In many instances, a retention of 10% was held pending inspection by the Technical Officers.

Page 4—Paragraph 12:

This statement is generally correct.

Page 5—Paragraph 13:

In the early stages, prior to the Election of 1967, electrical contracts were awarded either by tender or to contractors included in the list of licenced electricians all over the Island.

For a period after the Elections of 1967, electrical contracts were awarded to a limited number of contractors.

In the period 1970-72, the system of awards of these contracts bore more similarity to that obtaining in the period prior to the Election of 1967, except that there was no tendering.

Paragraph 14:

Senior Officers, including the Permanent Secretary, usually toured with Dr. Burt on a number of occasions. However, the assurances given by Dr. Burt to M.Ps. and other persons, who usually met the touring party as to whether or not a requested project could be undertaken, did not necessarily depend on whether advice was given, by the Ministry Officers responsible for financial control as to the availability of funds.

Paragraph 15:

After a contract was awarded to a contractor, the procedure stated in this paragraph was followed, except that all contracts were not necessarily signed by the administrative head of the Building Section, but also by an Administrative Officer to whom this function had been delegated.

Page 6—paragraph 16:

All contracts to be awarded normally went before the Contract Awards Committee, which normally operated along the following lines:

- (a) Contracts for projects valued at \$10,000 and under were awarded by the Minister on the advice of the Committee;
- (b) projects valued at between \$10,000 and \$20,000 were submitted to tender and the contracts therefore subsequently awarded by the Minister on the advice of the Committee; and
- (c) projects valued at \$20,000 and over were also submitted to tender and the award of the contracts therefore made by the Cabinet.

Where speed was essential, the Chief Architect and the Technical Officers would advise that a contract for over \$10,000 may be awarded by negotiation with a nominated contractor on the basis of a Schedule of rates or, in the case of standard buildings, a fixed rate could be agreed with selected contractors and/or suppliers.

Paragraph 17:

The Administrative Head of the Section has never denied nor attempted to deny his responsibilities in regard to the expenditure of funds under his control. But these controls could not be easily exercised, particularly when many projects (some of magnitude) were commenced without his knowledge, and there were even reported cases of contractors being instructed to commence jobs by Members of Parliament external to the Ministry, without any prior consultation with the Officers of the Building Section.

Paragraph 18

Interim and final payments on projects are recommended by the Chief Architect and the Technical Officers of the Section, after an assessment of the value of work done. In the case of major projects, Quantity Surveying firms are appointed to measure the work in progress and to prepare final accounts and sometimes interim certificates before payments are made.

Pages 6-7—Paragraph 19:

After June, 1970, the Contracts Award Committee, chaired by Dr. Burt or Mr. Emile Joseph awarded contracts to contractors nominated by members of Parliament for individual projects. This change assisted in expediting the process of awarding contracts. Apart from this procedure, however, contracts were awarded by Dr. Burt and individual officers of the Building Section directed by him to execute some of these contracts.

Page 7—paragraph 20:

Officers of the Section were called by Dr. Burt and directed by him to start jobs without prior reference to Mr. Magnus.

Paragraph 21:

It is not clear whether the statement "He at no stage said there was lack of funds" refers to the meeting mentioned in this paragraph or is intended to cover the entire period of Dr. Burt's tenure of office as policy director of the building programmes. Mr. Magnus' statements re lack of funds, made in Dr. Burt's presence, were many and often.

Paragraph 22:

It is not known whether the Cabinet discussed the matter in October 1971. The sequence of events although not known in detail by all the officers signing the statement, but were known to Mr. Magnus, were as follows:—

- (i) In early October, 1971, the Accounting Branch of the Ministry informed the Building Section that there had been actual over-expenditure of some \$500,000 on the vote for the Primary Schools' Building Programme.
- (ii) An application for supplementary funds of \$3,000,000 was submitted by letter dated 20th October, 1971 to the Ministry of Finance.
- (iii) On the 25th October, 1971 all Permanent Secretaries and their finance officers were summoned to a meeting at the Ministry of Finance. The Permanent Secretary, and Mr. Magnus were among those who attended from the Ministry of Education. At this meeting, the representatives of the Ministry were humiliated by the Minister of Finance who promised to have the offending application framed and hung in his office and stated that he would be requesting the Auditor General to examine the Ministry's accounts with a view to instituting surcharge proceedings against the officers concerned.
- (iv) On the instructions of the Permanent Secretary, the application mentioned at (ii) above was withdrawn by a letter dated 1st November, 1971 and a draft Cabinet Submission making a case for the additional funds forwarded by letter dated 8th November, 1971 to the Ministry of Finance for their comments before submission to the Cabinet.
- (v) No comment or reply was received until the afternoon of Friday 10th December when a letter of the same date was delivered by special bearer. This letter, a lengthy one, requested a comprehensive submission to the Cabinet for its meeting on the following Monday—13th December.
- (vi) No written submission in regard to Primary Schools was sent to the Cabinet as the time was too short for preparation of the type of submission requested by the Ministry of Finance. Nevertheless, at that meeting, Cabinet approved among other things, a provision of supplementary funds of \$1,900,000 in the Primary Schools programme, instructed the Ministry to suspend all projects at the most convenient tie-off stage, and at the same time, noted with strong disapproval the over-expenditure of the funds.
- (vii) During the period in which the reply from the Ministry of Finance was awaited, the matter was apparently the subject of discussion in the Cabinet as the Permanent Secretary was summoned and appeared before a Cabinet meeting and accompanied by the Minister of Education and Dr. Burt had audience with the Prime Minister.

Even at this stage, Dr. Burt's assurances that the money would be received, continued. The Permanent Secretary however authorised the Accounting Branch to over-expend an additional \$1,000,000 on the particular vote so that the total over-expenditure stood at some \$1,500,000 when the approval for the supplementary provision of \$1,900,000 was given by the House of Representatives. Many contractors received no payments at all during that time.

(viii) In the meantime, letters from the Financial Secretary and the Minister of Finance were received by the Permanent Secretary in his capacity as Accounting Officer requesting his explanation of the circumstances and the reasons as to why he and other responsible officers should not be surcharged.

The preceding paragraphs have attempted to place the matter in its proper context and concluded our comments on Dr. Burt's statement as written. But we wish to comment also on a few facts which in our opinion could or should have been included in the statement.

No mention has been made of the fact that Dr. Burt as policy director of the Building Programme was given copies of the draft estimates submitted to the Ministry of Finance in connection with the Ministry's Budget for 1971-72 attended, along with the Minister and Senior Officers of the Ministry, budget discussions held at the Ministry of Finance at which officials of that Ministry and the Minister of Finance were present and therefore knew that the provision of \$2,500,000 eventually approved for the Primary School Building Programme for that year was insufficient to cover the commitments brought forward from the preceding financial year.

Neither is any mention made of the innumerable occasions on which the Administrative Head of the Section had reminded him of this fact; had warned against and protested at the commencement of new projects for which no funds were available and that on all occasions, Dr. Burt's assurances were that the funds would be forthcoming.

Signed: this 29th day of July, 1972—

V. I. PATTERSON, (*Chief Architect*)

D. A. SAMUELS, (*Executive Engineer*)

J. A. BROWN, (*Senior Asst. Building Officer*)

H. F. IVEY, (*Senior Asst. Building Officer*)

R. S. HOLNESS, (*Senior Asst. Building Officer*)

L. E. MAGNUS, (*Principal Asst. Secretary*)

APPENDIX F

EXHIBIT 28—STATEMENT BY LAURENTINE JOHNSON

Laurentine Johnson states:—

I am a Civil Engineer and Managing Director of Pedro Engineering Company Ltd., with Head Office at 10B West Road, Mandeville since 1968.

I am a graduate of Howard University and holds the degree of Bachelor of Science of Engineering from that University.

In 1968 I was desirous of being a candidate in the Parish Council's General Election of that year and knowing Mr. Arthur Williams as Labour Member of Parliament for that constituency I approached him for information on the matter. He advised me and I was selected a Labour Candidate. I competed without success but the nearness built up between Mr. Williams and myself continued.

In the same year I brought up the question of my obtaining contracts from Government and solicit his help. He told me he did not then know of anything (contract) pending but he recommended me to one Mr. Allan Blake, a business-man in Mandeville. I was successful in getting job from Blake in 1969. When Blake's job was finished I kept requesting his assistance and he advised me to get registered with the Ministry of Education and he would try to help. I applied accordingly and with his recommendation was successful in getting registered as a contractor. I then awaited the outcome.

Between September and November, 1969 I received a telegram from the Ministry of Education requesting me to attend at that office. I went and was processed by Mr. Don Samuels or Mr. Henry. I was given a site plan for the building of a school at Villa Road. A date and time for my meeting—the Officers on the site were appointed—Villa Road is in Mandeville. That was done and on the site they pointed out what building or part of building should be where. The rate for the site preparation was mentioned amounting to a total cost \$5,000.00 or \$6,000.00. I accepted that contract. I completed the site within 8-10 weeks, and soon after I attended at the Ministry.

Up to then I had got most of the money for the site preparation. There being an understanding that if I was successful in the site job I would be given the contract for the school. I then asked about the contract for the school building. I was referred to Mr. John Douglas who drew up a contract and gave me—the contract and the plan. The amount decided on was \$7,439 with other amounts for contingencies amounting to \$8,390.00. Agreement No. SL 2/78 69/70 d/d 30.10.1969 and Bill of Quantity d/d 30.10.69 refer.

As a result of further additions refers to as 'Variations'. The total amount for the contract went to \$10,300.00 less 5% which by the policy is held back for three months.

To date \$792.50 plus amounts due for further additional work approximately \$1,000.00 is owing on the Villa Road (Canadian Aid) School.

Soon after this the Building Officer who dealt with this matter was transferred and one Mr. Holness took charge.

My next contracts with the Ministry were during late 1970 to early 1972 when I got Harmons and Ferguson Canadian Aid Schools. Harmons for about \$9,000.00 and Ferguson School and Site about \$14,000.00.

Between July and September, 1970 I got contracts for building and site works of primary school at Villa Road for \$80,000.00 and \$46,000.00 respectively. These jobs have been completed and I have been paid leaving a 'Retention' amount \$4,000.00 owing for over one year. Ref. Agreement No. 02/274 70/71 d/d 22.10.72 File B.S/P. 903.

On January 1971, I received a circular requesting me to attend a meeting at my office. This was after I had been asked by Mr. Arthur Williams, M.P. to permit him to use my Office at 10b West Road, Mandeville.

The meeting was scheduled for 7.00 p.m. Present were Messrs. Arthur Williams, M.P., Norman Sailsman, H. A. Young, Clement Bloomfield, Sibbliss, Roy Walters, Eric Spencer, Winston Thompson and myself. The Meeting was called to order by the M.P. All but Messrs. Young, Bloomfield, Walters, Williams, M.P., were contractors.

Mr. Williams explained that the purpose of the meeting was for the raising of finance for his campaign in the then forth-coming General Election. He warned all to make the meeting be a confidential one and that if not kept so, it would be damaging to his campaign. He told us he was relying on us to give generously, especially the contractors. This was agreed to unanimously. It was decided that Mr. Young should be the Treasurer for the time being. Mr. Williams handed over \$400. and told us it was from one Mr. Leiba a contractor at May Pen. It was the said Leiba who did Harmons Primary School site. The meetings were kept monthly and I gave \$250.00 twice at meetings. At the first meeting it was decided to buy a Land Rover for use by Mr. Williams. I bought the Land Rover and subsequently handed it to Mr. Williams. The other members of the Committee were to pay back the \$3,600.00 paid by me for the Land Rover, but they paid back only \$1,000.

After the meeting in January 1971, I got contracts as follows—Ramble \$44,000 and to finish of about \$60,000.00 Ref. Contract 02/141—71/72 d/d 29.7.71.

Caledonia Road (Mandeville) Primary School \$59,000.00 but owing to additional work paid \$63,000.00 less 10% as 'Retention' Ref. Contract No. 02/144/71/72 d/d 29.7.71.

McIntosh Primary School for \$40,000.000 paid to date including additions \$40,5000.00 less 10% 'Retention' Ref. Contract No. 02/142/71/72 d/d 29.7.71.

Hatfield Primary \$50,000.00. Paid \$45,00, less 10%—Ref. Claim No. 02/143/71/72.

When the site was being given me Mr. Holness, the Building Officer from the Ministry told me in my Office that he does not want a cut from that contract but he wanted a slice. Resulting from what he showed I later gave him a cheque for \$300.00 and on another occasion \$300 more. His claim as 'slice' \$1,000.00 initially. His Claim for a slice was made in the presence of Donald Williams and Samuels, both of that Ministry.

Porus Infant School figure for construction \$26,000.00. I have been paid \$24,000.00 less 5% as 'Retention'. I was experiencing difficulty in getting my pay. As a result I had to pay Mr. Holness between \$650.00 and \$800.00 before I was able to get my first payment, as I paid him along I got the further payments. Ref. Contract No. 02/414/71/72. I am now being harassed to do work not falling within my contract.

When I got the Ramble, Caledonia Road, McIntosh and Hatfield contracts and they were in progress I was told by a Building Officer whose name I don't wish to disclose, that Dr. Arthur Burt, Minister of State in the Ministry of Education was enquiring about me and how I was getting on with the jobs and wanted to see me. I attended at his office one morning in about November, 1971. After a brief talk with him, he told me, among other things, that I should hurry on with my contracts and any contracts for that area that comes up after then he would let me have them; This was on the third floor of the building.

When I came down to the second floor I met the same Building Officer who told me Dr. Burt wanted to see me. This Officer told me I should give Mr. Burt a gift as he (Burt) was responsible for the last four jobs I had got.

Some days after I returned to the Ministry and saw the said Building Officer. I had gone to collect some cheques. The Building Officer again told me to give Dr. Burt a gift and suggested \$250.00 off each of the last four contracts I had got. I went back and gave Dr. Burt \$500.00 cash in an envelope.

Later I was told by the said Building Officer that there is a contract for a Junior Secondary School and I should go in and see Dr. Burt. After a brief talk Dr. Burt promised to give me the job and I handed him a cash cheque for \$800.00. I never got the contract and election came up soon after. I have been back to the Ministry to see Dr. Burt and the Building Officer and enquired of the contract without success.

During the latter part of 1971, Mr. Arthur Williams, M.P. told me funds were getting low and asked me to help him. I consented and he told me to draw the cheque in the name of Beryl Young. I drew three cheques on different occasion of \$250.00 each totalling \$750.00.

I was prompted in paying these amount by contracts obtained from Ministry of Rural Land and the Manchester Parish Council respectively.

Before I gave Dr. Burt the monies a job which I got in Clarendon was taken from me on Burt's order. I was paid up for what work I did and the job given to another contractor. This was the building of the school at Rest in Clarendon.

(Sgd.) LAURENTINE JOHNSON,
25.6.72.

APPENDIX G

EXCERPTS FROM REPORTS OF THE PUBLIC ACCOUNTS COMMITTEE

- (1) Report from the Public Accounts Committee covering the Appropriation Accounts for the financial year ending 31st March, 1965, Session 1967-68.

Paragraph 11: *Inadequacy of Audit Staff***Paragraph 12:**

"Your Committee was disturbed to learn that the neglected areas of audit could be regarded as very important phases of financial activity. Your Committee appreciates that the absence of effective accounting systems and the inadequacy of internal audits influence the Auditor General's adherence primarily to a routine audit programme. Nevertheless, Your Committee would like to be assured that greater emphasis is given to the wider duties relating to the detection of waste and extravagance, and the examination of systems, schemes, contracts and so on."

Page 6 applies to Audit queries:

Paragraph 36:

"Your Committee sympathises with the Accounting Officer who faced special problems at the inception of this new Department. Your Committee must, however, reiterate that the accountability of the Accounting Officer to Parliament for funds placed at his disposal is of prime importance, and it is his duty and responsibility to see that no obstacle is placed in the way of accomplishing that objective."

Paragraph 66:

"For the most part the Accounting Officers who appeared before Your Committee were well prepared and dealt with Your Committee's enquiries in a full and frank manner. However in one instance, Your Committee was most disturbed to find that a particular Accounting Officer could give little or no assistance and enquiries had to be dealt with by his subordinates. Your Committee trusts there will never be a recurrence of this because, if there is, Your Committee may find it necessary to name and recommend for censure whatever Accounting Officer defaults in this way."

- (2) Report from the Public Accounts Committee covering the Public Accounts Committee Report on the Accounts for the financial year ending 31st March, 1965, Session 1969-70.

Page 3—*Excess on Votes*

Paragraph 9:

"Your Committee examined excesses on Votes for the year ended the 31st of March, 1967, as shown in Appendix 'B' of the Auditor General's Report as well as excesses on the operations of the Supply Division of the Ministry of Finance for years ended the 31st of March,

1966 and the 31st of March, 1967, amounting to £33,959 14s. 5d. and £336,309 11s. 4d., respectively all of which required Parliamentary approval. During the course of examination Your Committee gained the impression that many of these excesses could have been avoided by a proper system of commitment control and greater attention of budgeting. The explanations for the excesses given by Accounting Officers were in most cases a re-statement of the fact of the excess and Your Committee will in future require more detailed information regarding the necessity to incur excesses on sums approved by Parliament for expenditure."

Page 4—Internal Audit

Paragraph 20:

"Your Committee noted the inadequacies of internal audit staff in most Ministries and Departments and observed that where internal audit staff did exist, they were used interchangeably with accounting staff. The Auditor General has pointed out in his Report for 1966-67 and previous Reports that due to absence of proper internal audits, he is compelled to restrict his examination of the accounts to a test audit based on a routine audit programme."

Page 5—

Paragraph 21:

"Your Committee is greatly concerned with the reliability of accounts which have either not been internally audited or audited by the staff involved in preparing those accounts, and recommends that the provisions of adequate internal audit staff for all Ministries and Departments be given priority. If necessary, the Auditor General could be asked to assist the Ministry of Finance to work out plans immediately for organising and training internal audit staff for Ministries and Departments."

Page 9—

Paragraph 44:

"Your Committee is sympathetic with the general plea of Accounting Officers that the unsatisfactory state of the accounts is due mainly to the chronic shortage and high turnover in accounting staff and the difficulty to obtain and retain suitable replacements. Your Committee is, nevertheless, of the firm view that much can be achieved if better use is made of available resources, and based on observation in the Auditor General's Report. Your Committee sees the urgent need for—

- (1) greater attention to supervision at all levels;
- (2) preparation of an Accounting Manual for guidance of staff in all Ministries and Departments;
- (3) intensive in-service training programmes at all levels;
- (4) the proper organisation of internal audit and separation of accounting and internal audit staff."

Public Accounts Committee Report, Session 1971/72

Page 2—

Paragraph 5:

"Your Committee recognises that a serious situation now exists in that although the Reports of the Auditor General are presented to the Speaker of the House of Representatives on the 31st of December in each year, a period of two to four years has elapsed before the Reports and accounts were brought before Your Committee. Your Committee, therefore, undertook the simultaneous examination of the Appropriation and other Accounts of the Government of Jamaica for the three financial years ended 31st March, 1968, 1969 and 1970, together with the Auditor General's Report thereon and also the Report on the accounts of the Department of Supply for 1964-65."

Delay in Printing

Page 3—

Paragraph 8:

"In evidence before Your Committee the Auditor General explained that the time lapse between the presentation of the Auditor General's Report and its examination by Your Committee is due primarily to the lack of printing facilities. At date of the first sitting of Your Committee the last Report which had been printed was for the financial year 1967/68. On the recommendation of the Auditor General, the Chairman of Your Committee agreed to examine cyclostyled copies for the years 1968/69 and 1969/70 in order to bring the work of Your Committee up to date. At the date of adjournment the Report for 1968/69 was still not printed."

Page 4—

Paragraph 9:

"Your Committee considers that the delay in printing had the effect not only of nullifying the effectiveness of corrective action, but also deprived interested parties of an up to date report on the operations of the Government."

*Excess on Votes—Final Supplementary Estimates:***Paragraph 12:**

"Your Committee examined excesses on Votes as shown in Appendices to the Auditor General's Report as under—

| | | | | |
|-----------|----|----|----|---------------|
| 1967-1968 | .. | .. | .. | \$423,796. 34 |
| 1968-1969 | .. | .. | .. | 933,184. 39 |
| 1969-1970 | .. | .. | .. | 619,890. 66." |

Paragraph 13:

"Your Committee is concerned at the increasing amounts of unauthorised expenditure as reflected in these excesses and also at the manner of financing them contrary to the provisions of Section 13(2) and (3) of the Financial Administration and Audit Law, Law 34

of 1959. During the course of examination, Your Committee gained the impression that there is a general laxity in the maintenance in most Ministries and Departments of proper records of commitment control. Faulty budgeting and confusion by the delay in presentation of bills from the Supply Division of the Ministry of Finance were also contributory factors."

Page 5—

Paragraph 16:

"Your Committee views with deep concern the obvious disregard for the principles laid down for parliamentary control of expenditure, and urges the Ministry of Finance immediately to issue such circular instructions which will forcibly bring to attention of Accounting Officers not only the proper procedures but the penalties that will be imposed if those procedures are not faithfully observed."

Page 6—

Paragraph 18:

"Your Committee is satisfied that to a great extent there is an absence of a proper system of vote control in most Ministries and Departments, and that the Ministry of Finance should accept as a priority the establishment of such a system of vote control which will not merely keep a watch over unexpended sums but pay great attention to uncompleted projects and outstanding orders which have been committed against the provisions of the financial year."

Page 7—

Paragraph 22:

"Your Committee is concerned at the general lack of accounting discipline and the general non-compliance with financial instructions. Your Committee is aware of the adverse effects this neglect could have on the revenues and expenditure of Government as well as the opportunities which could be created for irregularities."

Paragraph 23:

"While Your Committee was sympathetic with the general plea of all Accounting Officers concerning the inability to recruit and retain suitable staff, Your Committee considers that much could be done by:—

- (1) designing regular training programmes which will provide all recruits with a knowledge of the regulations and possible effects of breaches;
- (2) preparing job description and procedures for each job, and
- (3) improving supervision to ensure compliance with these procedures.

Page 11—

Internal Audit:

40. The unsatisfactory state of the internal audit in most Ministries and Departments continues to be the subject for concern in the Reports of the Auditor General. Your Committee noted that as a result the Auditor General in evidence before previous Committees stated that he is compelled to adhere to a programme of routine audit to the detriment of his responsibilities in relation to an audit for economy and propriety in the conduct of Government business, and for the discovery of weakness in the systems of control.

41. Your Committee is aware that the Auditor General by law conducts a test audit of the accounts of the Government. He can only do so effectively if supported by the existence of adequate internal audit in Ministries and Departments as the Audit Department is not staffed to undertake work which should be done by internal audit.

42. Your Committee is therefore very concerned that improprieties are likely to go undetected and will continue to do so if real efforts are not directed towards the development of internal audits manned by suitably trained staff."

Page 4—

Paragraph 2:

Your Committee is concerned that the internal audit system in the various Ministries and Departments is not adequate to ensure that the accounts of the Government are properly audited and that the expenditure of Government funds is properly controlled.

Paragraph 12:

Your Committee is concerned that the internal audit system in the various Ministries and Departments is not adequate to ensure that the accounts of the Government are properly audited and that the expenditure of Government funds is properly controlled.

Paragraph 13:

Your Committee is concerned that the internal audit system in the various Ministries and Departments is not adequate to ensure that the accounts of the Government are properly audited and that the expenditure of Government funds is properly controlled.

APPENDIX H

LIST OF WITNESSES APPEARING BEFORE THE COMMISSION

A

Allen, E. L.

B

Bailey, I. F.
 Bailey, Maisie (Miss)
 Barber, George
 Barber, H. G.
 Barrett, E. V. A.
 Bond, Rupert
 Brice, Don
 Brown, J. A.
 Brown, L. E.
 Brown, L. P.
 Burke, P. W. C.
 Butler, R.

C

Cairney, M. M.
 Campbell, McGayle L.
 Campbell, Mustyn Fitzgerald
 Carberry, H. D.
 Cardoza, R.
 Carey, V. C.
 Carnagie, O. V.
 Carter, Douglas
 Chan, Francis
 Cheung, Wah Lak
 Chung, Alvin H.
 Chung, Patrick
 Clarke, Titus
 Cleary, B. J.
 Collins, L. A. (Mrs.)
 Cousins, R. T.
 Cover, Albert
 Critchlow, Ronan A.

D

Darby, Milton
 Davis, S.
 Deans, E.
 DePass, E. C.
 Douet, L. M.
 Douglas, C. (Miss)
 Downie, A.
 Dujon, A. S.
 Dyer, D.
 Dyson, M. D.

E

Elliott, O. K.

F

Ford, K. V.
 Fuller, Allan

G

Gabay, L. O.
 Gibbs, N.
 Glasgow, G.
 Glegg, N. O.
 Goldson, L. A.
 Goldson, O. H.
 Gordon, E.
 Green, C. D.
 Grell, E. H.
 Gunter, E. L.

H

Hall, Frank
 Hall, S. A. G.
 Hardie-Henry, H. G.
 Harris, L. F.
 Hart, Hugh

LIST OF WITNESSES APPEARING BEFORE THE COMMISSION, *contd.***H, contd.**

Harvey, C. A.
 Haughton, H. H.
 Hayle, A. G.
 Hill, Wilton O.
 Holness, Gloria (Mrs.)
 Holness, R. S.

I

Irvine, R. V.
 Ivey, H. F.

J

Johnson, L. E.
 Jones, E.
 Joseph, Emile

K

Kirlew, Levi

L

LaFayette, A. P.
 Langford, C. C.
 Lee, T. G.
 Leslie, A. N.
 Lewis, N. C.
 Lewis, Noel
 Lindo, David
 Little, Alvin
 Livingston, C. F.

M

Madden, C. O.
 Magnus, L. E.
 Mair, H. A.
 Marston, Jez
 Martin, G. W.
 Martin, Wycliffe
 Massey, A. V.
 McCalla, Noel
 McCann, E. S.
 McDaniel, V.

M, contd.

McDonald, O.
 McDonald, W.
 McGann, C.
 McKoy, P.
 McLaren, D.
 McLaren, W. G.
 McMorris, H. E.
 McNeile, R.
 Mignott, T. G.
 Miller, D. E.
 Miller, E. C.
 Miller, E. L.
 Moore, M.
 Morris, Edward
 Morris, S. S.
 Morrison, L. E.

N

Nelson, W. V.
 Nembhard, C. J.
 Newland, L. G.

O

O'Gilvie, Edward A.

P

Parslow, F. D.
 Patterson, L. N.
 Patterson, V. I.
 Pennant, Aubrey
 Picart, M. E. (Miss)
 Powell, B. B.

Q

Nemo

R

Ramdhatt, F. E.
 Richards, T.
 Ridsen, O. St. C.
 Rodney, C. N.
 Rose, P. E.
 Rutherford, O.
 Rutkowski, C. R.

LIST OF WITNESSES APPEARING BEFORE THE COMMISSION

| S | U |
|---|--|
| Sailsman, N. Samms, Alfred Samuels, Donald P. Scott, I. Seaton, Y. P. Sewell, L. Shaw, A. W. Shearer, H. L. Shearer, L. Sherman, G. E. Simmons, J. C. Smith, A. B. Smith, David Spence, E. L. Stewart, R. Stoppi, M. Strudwick, F. M. | Nemo V Vaughn, J. R. W Waite, L. Walker, L. S. Walter, S. C. Watson, R. Watts, O. E. Weller, D. Williams, A. A. Williams, Arthur Williams, Donald Williams, Stanley G. F. Wint, Douglas A. Woodham, G. R. Woodstock, C. A. Wright, Ashton |
| T | X |
| Taylor, J. E. Taylor, R. G. Thomas, S. Thompson, A. Thompson, John Thompson, Vincent R. Thompson, Winston Thorbourne, O. J. | Nemo Y Young, H. A. Z Nemo |
| T | |

APPENDIX I

LIST OF MINISTRIES AND THE
DEPARTMENTS UNDER THEIR CONTROL BEFORE
AND AFTER FEBRUARY, 1972

| MINISTRIES | DEPARTMENTS | MINISTRIES | DEPARTMENTS |
|----------------------------------|--|------------------------------|---|
| Before February 1972 | | After February 1972 | |
| Office of the Prime Minister | Jamaica Information Service | Office of the Prime Minister | Jamaica Information Service Department of Statistics |
| Ministry of Defence | — | Ministry of Defence | — |
| Ministry of External Affairs | — | Ministry of External Affairs | — |
| Ministry of Finance and Planning | Accountant General | Ministry of Finance | Accountant General |
| | Collector General | | Collector General |
| | Geological Survey | | Income Tax, Estate Duties and Stamp Duties |
| | Income Tax, Stamp Duties and Estate Duties | | |
| | Savings Bank | | Savings Bank |
| | Town Planning | | Land Valuation |

| MINISTRIES | DEPARTMENTS | MINISTRIES | DEPARTMENTS |
|---------------------------------------|---|---|---|
| Before February 1972 | | After February 1972 | |
| Ministry of Agriculture and Fisheries | Agricultural Credit Board Co-operative Registration of Titles Rio Cobre Irrigation Works | Ministry of Agriculture | Agricultural Credit Board Co-operative Forest Electoral Office Printing Office |
| Ministry of Rural Land Development | Forests Survey | — | — |
| | | Mining and Natural Resources | Registration of Titles Surveys Geological Surveys Mines Town Planning Rio Cobre Irrigation Works |
| Trade and Industry | Mines Trade Administrator | Industry, Commerce and Tourism formerly Ministries of (1) Industry and Tourism, (2) Commerce and Consumer Protection | Trade Administrator |

| MINISTRIES | DEPARTMENTS | MINISTRIES | DEPARTMENTS |
|--------------------------|---|--|---|
| Before February, 1972 | | After February, 1972 | |
| Ministry of Health | Bellevue Hospital | Ministry of Health and Environmental Control | Bellevue Hospital |
| | Government Chemist | | Government Chemist |
| | Registrar General and Island Records Office | | Registrar General and Island Records Office |
| Ministry of Home Affairs | Electoral Office | Ministry of Home Affairs and Justice | Administrator General |
| | Police | | Attorney General |
| | Printing Office | | Bankruptcy Court of Appeal |
| | | | Crown Solicitor |
| | | | Director of Public Prosecutions |
| | | | Office of the Parliamentary Counsel |
| | | | Police |
| | | | Resident Magistrates Courts |
| | | | Revenue Courts |
| | | | Supreme Courts |

| MINISTRIES | DEPARTMENTS | MINISTRIES | DEPARTMENTS |
|--|--|--|---|
| Before February, 1972 | | After February, 1972 | |
| Ministry of Legal Affairs | Administrator General Attorney General Bankruptcy Court of Appeal Crown Solicitor Office of the Director of Public Prosecutions Office of the Parliamentary Counsel Resident Magistrates Courts Supreme Courts | — | — |
| Ministry of Local Government | — | Ministry of Local Government | — |
| Ministry of Public Utilities and Housing | — | Ministry of Public Utilities, Communications and Transport | Civil Aviation Harbours Post and Telegraphs |
| — | — | Ministry of Housing | — |
| Ministry of Communications and Works | Civil Aviation Harbours Post and Telegraphs | Ministry of Works | |

APPENDIX J

LIST OF EXHIBITS TENDERED

| No. | Date | Description |
|-----|---------|---|
| 1 | 21.6.72 | Memorandum dated 14th June, 1972 dealing with the award of contracts. |
| 2 | 21.6.72 | Letter dated 2nd May, 1972, to all Permanent Secretaries advising of the appointment of the Commission. |
| 3 | 21.6.72 | Ministry of Finance Circular No. 43 M.F. No. 182/02 dated the 18th November, 1963, dealing with the employment of Private Architects and Control of Government Contracts. |
| 4 | 3.7.72 | Memorandum dated the 16th June, 1970, signed by Dr. A. Burt and addressed to Mr. Shaw, Permanent Secretary, Ministry of Education. |
| 5 | 3.7.72 | Letter No. C.506 with enclosures from the Permanent Secretary, Ministry of Education, addressed to the Commission dealing with over-expenditure 1971/72. |
| 6 | 22.8.72 | Minute Book of Finance Committee, Southern Manchester Election Campaign. |
| 7 | 22.8.72 | Scotia Bank Lodgement Book No. 1538 re funds of the Finance Committee of the Southern Manchester Election Campaign. |
| 8 | 22.8.72 | Financial Statements regarding the Southern Manchester Election Campaign. |
| 9 | 22.8.72 | Bank of Nova Scotia Lodgement Slip dated 5.3.71 for \$1,000 to the credit of H. Young for Account L. Johnson. |
| 10 | 22.8.72 | B.N.S. Cheque No. 29219 in the sum of \$200 in favour of Beryl Young and drawn by L. Johnson. |

LIST OF EXHIBITS TENDERED, *contd.*

| No. | Date | Description |
|-----|---------|---|
| 11 | 22.8.72 | Five (5) B.N.S. Cheques—Mandeville Branch, number as under:— (a) No. E74175 d/d 8.6.71 for \$200 in favour of H. A. Young, issued by L. Johnson. (b) No. A91413 d/d 3.8.71 for \$220 cash, issued by L. Johnson. (c) No. 29179 d/d 12.11.71 for \$200 cash, issued by L. Johnson. (d) No. 29116 d/d 29.10.71 for \$250 cash, issued by L. Johnson. (e) No. E735050 d/d 28.8.71 for \$300 cash, issued by L. Johnson. |
| 12 | 22.8.72 | Two (2) C.I.B.C. Cheques—Mandeville Branch, numbered as under:— (a) No. A17594 d/d 9.11.71 for \$200 cash, issued by L. Smith. (b) No. A14036 d/d 9.7.71 for \$100 cash, issued by L. Smith. |
| 13 | 22.8.72 | Statement of Expenditure, Manchester South, Election Campaign October 1-9 and Statement of Receipts and Payments d/d 12.11.71. |
| 14 | 22.8.72 | Rough Note Book of collections and payments re Manchester South Election Campaign. |
| 15 | 23.8.72 | Receipt Book |
| 16 | 23.8.72 | Letter dated 9.11.71 from Arthur Williams to H. A. Young re Election Campaign. |
| 17 | 23.8.72 | Letter dated 11.1.72 from Arthur Williams to H. A. Young re Election Campaign. |
| 18 | 23.8.72 | Letter dated 13.7.72 from E. E. Miller to H. A. Young re Finance Committee of the Manchester Southern Constituency, J.L.P. |
| 19 | 23.8.72 | Schedule of Meetings—Southern Manchester. 12.2.72 to 28.2.72. |
| 20 | 24.8.72 | Memorandum dated 30th September, 1971 by Mr. A. Williams to Dr. A. Burt re School Equipment. |
| 21 | 24.8.72 | Memorandum dated 20th January, 1971 by Mr. A. Williams to H.M.O.S. (Dr. Burt) regarding problems at a number of schools. |
| 22 | 24.8.72 | Memorandum dated 2.12.70 by Dr. A. Burt to Mr. Don. Samuels regarding Milk River School. |

LIST OF EXHIBITS TENDERED, *contd.*

| No. | Date | Description |
|-----|---------|---|
| 23 | 25.8.72 | Memorandum dated 1st February, 1972 by Mr. D. Williams for Permanent Secretary, M.E. to Messrs. D. Samuels and H. Holness regarding work by Contractor L. M. Johnson. |
| 24 | 29.8.72 | Summons to Dr. A. Burt to appear before the Commission on the 29th August, 1972. |
| 25 | 29.8.72 | Four (4) cheques as under:— (i) J.C.B. Cheque No. PP492122 dated 3.9.71 drawn by E. C. Miller for \$340 in favour of H. A. Young. (ii) J.C.B. Cheque No. PP426389 d/d 24.9.71 drawn by E. C. Miller for \$100 in favour of H. A. Young. (iii) J.C.B. Cheque No. PP426386 d/d 17.9.71 drawn by E. C. Miller for \$334 in favour of H. A. Young. (iv) J.C.B. Cheque No. B389920 dated 26.8.71 drawn by E. C. Miller for \$200 in favour of H. A. Young. |
| 27 | 29.8.72 | Nine (9) letters from Mr. A. Williams to the Permanent Secretary regarding repairs to a number of schools. |
| 27 | 29.8.72 | J.C.B. Cheque No. B389999 dated the 25th October, 1971, issued by E. C. Miller and G. Miller for \$100 in favour of South St. Andrew P.N.P. |
| 28 | 29.8.72 | Statement d/d 25.6.72 by Mr. Laurentine Johnson of Mandeville. |
| 29 | 29.8.72 | Specimen signature of witness Mr. Edward Morris. |
| 30 | 30.8.72 | Letter dated 20.1.70 from Levi Kirlew to Mr. E. Allen, Minister of Education regarding contract for the building of Franklin Town Primary School. |
| 31 | 30.8.72 | Letter dated 20.1.70 from E. L. Allen, Minister of Education to Mr. Levi Kirlew regarding payment of the construction of Franklin Town Primary School. |
| 32 | 30.8.72 | Statement dated 7.7.72 by Mr. Edward Morris of Mandeville. |
| 33 | 30.8.72 | Letter in draft d/d 11.2.71 to Mr. W. B. Thompson by the Ministry of Education regarding the termination of eight (8) contracts awarded to Mr. Thompson. |

LIST OF EXHIBITS TENDERED, *contd.*

| No. | Date | Description |
|-----|---------|---|
| 33A | 30.8.72 | Letter dated the 12.2.71 to Mr. W. B. Thompson from the Ministry of Education regarding the termination of eight (8) contracts awarded to Mr. Thompson. |
| 34 | 30.8.72 | Letter dated the 28.6.71 from Mr. W. B. Thompson to the Chief Technical Director, Ministry of Education regarding the contract for the Chantilly School. |
| 35 | 30.8.72 | Letter d/d 1.4.71 by Mr. Bentley Brown, Attorney-at-Law to the Permanent Secretary, Ministry of Education regarding the termination of contracts awarded to Mr. W. B. Thompson of Mandeville. |
| 36 | 31.8.72 | Copy of summons to Laurentine Johnson of Mandeville to appear before the Commission on the 29th August, 1972. |
| 37 | 1.9.72 | Statement No. 2567 dated 9.10.71 showing balance of \$1007 due Delta Thompson Engineering Works by Pedro Engineering Ltd. |
| 38 | 1.9.72 | B.N.S. Cash Cheque No. E68968 dated 7.4.71 for \$350 issued by Laurentine Johnson and endorsed by a 'R. Holness'. |
| 39 | 5.9.72 | Financial Statement in respect of Contracts awarded to Messrs. Y. P. Seaton and Associates by the Ministry of Education during period 67/68—71/72. |
| 40 | 5.9.72 | Financial Statement of contracts awarded to N. E. Lewis by the Ministry of Education during period 1967—1971. |
| 41 | 6.9.72 | Statement by Mr. Norman Sailsman of Mandeville regarding contracts awarded to him by the Ministry of Education to build a number of Primary Schools. |
| 42 | 19.9.72 | Copy of Personal and Confidential letter dated the 30th April, 1971, by Mr. E. Josephs to the Prime Minister, the Hon. H. L. Shearer, stating ' <i>inter alia</i> ' that 'it is nearly a year now that no meeting of the Awards Committee has met'. |
| 43 | 25.9.72 | Letter dated 24th July, 1972 by Rutkowski, Bradford and Partners to Project Architect, World Bank Project, Ministry of Education, regarding the award of the electrical subcontract to Y. P. Seaton and Associates in connection with wiring of the new buildings at the Jamaica School of Agriculture. |

LIST OF EXHIBITS TENDERED, *contd.*

| No. | Date | Description |
|-----|---------|---|
| 44A | 25.9.72 | Loan Agreement No. 468 J. M. (Education Project) between Jamaica and the International Bank for Reconstruction and Development dated September 30, 1966. |
| 44B | 25.9.72 | International Bank for Reconstruction and Development – General Conditions Applicable to Loan and Guarantee Agreements dated January 31, 1969. |
| 44C | 25.9.72 | Junior Secondary Schools Programme – Ministry of Education, Jamaica— Agreement and Conditions of Contract, Consultants, Architects/Engineers:- Rutkowski, Bradford and Partners; Architects and Engineers:- Shearer & Morrison; Chartered Architects:- Caudill, Rowlett, Scott; Architects:- Planners, Engineers:- Stoppi, Cairney, Bloomfield, Quantity Surveyors. |
| 44D | 25.9.72 | Instrument of Amendment dated 2nd May 1968 between the Permanent Secretary, Ministry of Education acting on behalf of the Government of Jamaica ("The Employer") and J. G. Fitzpatrick Construction Limited, General Structures, Incorporated and Mancon Ltd. ("The Contractor"). |
| 44E | 25.9.72 | Agreement d/d 17th January, 1967 – World Bank Project for Junior Secondary School Buildings – between the Permanent Secretary, Ministry of Education for and on behalf of the Government of Jamaica (referred to as the Client) and Messrs. Claudill, Rowlett, Scott Architects, Planners, Engineers (referred to as the Consultant Architects/Engineers.) |
| 45A | 25.9.72 | Confidential letter dated 5th February, 1971, from C. R. Rutkowski to Permanent Secretary, Ministry of Education with enclosures dealing with breakdown of escalation of building costs for the last eight (8) schools under the Junior Secondary Schools Programme. |
| 45B | 25.9.72 | Confidential letter dated 28th January, 1971, with enclosures from C. R. Rutkowski to Permanent Secretary, Ministry of Education regarding the projected cost of building for Second Programme. |
| 45C | 25.9.72 | Letter dated 17th May, 1972, from Ian A. Scott of Stoppi Cairney Bloomfield to C. Smart, c/o Ministry of Education, supplying contract cost and estimated final costs of each school under the Junior Secondary School Building Programme. |

LIST OF EXHIBITS TENDERED, *contd.*

| No. | Date | Description | | | | | | | | | | | | |
|-----------------|----------------------------|---|-----------------|-----------------|---------------|--------------------|-------------|---------------------------|------------|---------|---------------|---------|--------------|----------------------------|
| 45D | 25.9.72 | Letter dated 9th June, 1972, for J. S. Thompson of Rutkowski, Bradford & Partners to Colin Smart, Project Architect, World Bank Projects, Ministry of Education regarding final Accounts Jamaica School of Agriculture. | | | | | | | | | | | | |
| 46 | 25.9.72 | Statement by Dr. A. E. Burt dated the 17th July, 1972, dealing with his administration as Parliamentary Secretary and Minister of State in the Ministry of Education during period 1967-1972. | | | | | | | | | | | | |
| 47 | 25.9.72 | <p>Joint Statement dated 29th July, 1972, by the following officers in the Ministry of Education in reply to the Statement by Dr. A. E. Burt dated 17.9.72:—</p> <table data-bbox="386 529 757 655"> <tr> <td>V. L. Patterson</td> <td>Chief Architect</td> </tr> <tr> <td>S. A. Samuels</td> <td>Executive Engineer</td> </tr> <tr> <td>J. A. Brown</td> <td>Snr. Asst. Bldgs. Officer</td> </tr> <tr> <td>H. F. Ivey</td> <td>" " " "</td> </tr> <tr> <td>R. S. Holness</td> <td>" " " "</td> </tr> <tr> <td>L. E. Magnus</td> <td>Principal Asst. Secretary.</td> </tr> </table> | V. L. Patterson | Chief Architect | S. A. Samuels | Executive Engineer | J. A. Brown | Snr. Asst. Bldgs. Officer | H. F. Ivey | " " " " | R. S. Holness | " " " " | L. E. Magnus | Principal Asst. Secretary. |
| V. L. Patterson | Chief Architect | | | | | | | | | | | | | |
| S. A. Samuels | Executive Engineer | | | | | | | | | | | | | |
| J. A. Brown | Snr. Asst. Bldgs. Officer | | | | | | | | | | | | | |
| H. F. Ivey | " " " " | | | | | | | | | | | | | |
| R. S. Holness | " " " " | | | | | | | | | | | | | |
| L. E. Magnus | Principal Asst. Secretary. | | | | | | | | | | | | | |
| 48 | 6.10.72 | Private Diary 1971 - Arthur H. Williams. | | | | | | | | | | | | |
| 49 | 6.10.72 | Financial Statement of Mr. A. Williams in respect of his 1969 Volvo Motor Car Licensed BM. 871. | | | | | | | | | | | | |
| 50 | 6.10.72 | Financial Statement of Mr. A. Williams in respect of his 1971 Mercedes Benz Motor Car Licensed KL. 265. | | | | | | | | | | | | |
| 51 | 6.10.72 | Statement of Hire Purchase Agreement No. 14/19960 dated 14.7.72 between Investment & Finance Co. Ltd. and Arthur Williams showing arrears of \$224.00 in respect of 1971 Mercedes Benz. KL. 265. | | | | | | | | | | | | |
| 52 | 6.10.72 | Canadian Imperial Bank of Commerce Statements - Mandeville Branch in respect of Mr. A. Williams' account during period January 1971 to September 1972. | | | | | | | | | | | | |
| 53 | 6.10.72 | Letter from Manager, C. I. B. C., Mandeville, d/d 4.11.71 informing Mr. Williams that although his authorised credit limit was \$4000 his overdraft was \$5,037.37. | | | | | | | | | | | | |

LIST OF EXHIBITS TENDERED, *contd.*

| No. | Date | Description |
|-----|------------|---|
| 54 | 6. 10. 72 | Bank Statement, C. I. B. C., Mandeville, in respect of Mrs. Mary L. Williams Savings Account during period March 1971 to April 1972. |
| 55 | 6. 10. 72 | Demand Note d/d 21st August, 1972, regarding loan of \$4000 by C.I.B.C., Mandeville to A. H. Williams with interest at the rate of 12% per annum. |
| 56 | 25. 10. 72 | Copy of summons served on Arthur Williams to appear before the Commission on the 25th October, 1972. |
| 57 | 25. 10. 72 | Copy of summons served on Norman Sailsman to appear before the Commission on the 25th October, 1972. |
| 58 | 25. 10. 72 | Register of Refusals - Work Permits - Ministry of Home Affairs and Justice 22. 12. 64 - February '68. |
| 59 | 12. 12. 72 | Cabinet Submission M.R.L.D., M.P. No. C/L 6004TT dated February 1970, dealing with the acquisition of Cape Clear and Koningsberg, St. Mary. |
| 60 | 12. 12. 72 | Letter dated 3. 10. 68 from Clinton Hart & Co. to Patrick W. Chung dealing with the acquisition of Cape Clear. |
| 61 | 12. 12. 72 | Letter d/d 5. 8. 69 from Clinton Hart & Co. to the Manager, Bank of London & Montreal Ltd., re mortgage of P. W. Chung - Cape Clear. |
| 62 | 12. 12. 72 | Letter d/d 7. 8. 69 from Patrick W. Chung to Clinton Hart & Co. advising that he would accept the offer of £134,000 from Mr. Hugh Hart for Cape Clear Estate. |
| 63 | 12. 12. 72 | Letter d/d 11th August, 1969 from Clinton Hart and Co. to P. W. Chung advising that Mr. Hugh Hart has accepted the offer of £134,000 cash for Cape Clear and Koningsberg comprising approximately 2500 acres. |
| 63A | 12. 12. 72 | Letter d/d 11th August, 1969, from Clinton Hart and Co. to Manager, Bank of London and Montreal Ltd. advising that Clinton Hart and Co. have accepted the offer of £134,000. |
| 64 | 12. 12. 72 | Statement of Account re Sale of Cape Clear and Koningsberg d/d 23rd October, 1972, Clinton Hart & Co. to P. W. Chung. |

LIST OF EXHIBITS TENDERED, *contd.*

| No. | Date | Description |
|-----|----------|--|
| 65 | 12.12.72 | Unwitnessed and un-dated Contract of Sale between Patrick Chung and Hugh Hart regarding sale of Cape Clear and Koningsberg. |
| 66 | 12.12.72 | Instrument of Transfer d/d 31st March, 1970, in respect of the sale of Cape Clear and Koningsberg properties by P. W. Chung to Koningsberg Ltd. |
| 67 | 12.12.72 | Letter dated 29th January, 1970, from Commissioner of Lands to the Permanent Secretary, Ministry of Rural Land Development valuing Cape Clear and Koningsberg for \$401,000. |
| 68 | 13.12.72 | Transfer No. 228060 under the Registration of Titles Law in respect of Lot No. 184 part of Heywood Hall, St. Mary. from Commissioner of Lands to Peter Denizil Martin. |
| 69 | 13.12.72 | Certificate of Title Registered at Volume 1047 Folio 258 in the name of Peter Denizil Martin in respect of 16 acres, 1 Rood, 7 Perches, being Lot 184, House Reserve, Heywood Hall Land Settlement, St. Mary. |
| 70 | 13.12.72 | Letter dated 19th March, 1962, from Commissioner of Lands to Collector of Taxes advising that Lot 184, Heywood Hall Land Settlement comprising of 17 A, 2 Rds. & 19 Pchs. and the House thereon (Reserve) has been leased to Mr. V. A. Whitbourne for five years with effect from 1st January, 1962. |
| 71 | 13.12.72 | Letter d/d 7th January, 1965, addressed to Mr. Peter Martin, Port Maria by the Commissioner of Lands advising that Lot No. 184 Heywood Hall, St. Mary has been allotted to him (Mr. Martin) and memo. d/d 7.1.62 from the Commissioner of Lands to Lands Officer, Port Antonio, advising that Lot No. 184, Heywood Hall has been sold to Mr. Martin. |
| 72 | 13.12.72 | Schedule 1 - Application Form dated 6th January, 1965, completed by Peter Martin in respect of Lot 184, Heywood Hall Land Settlement, St. Mary. |
| 73 | 13.12.72 | Letter dated 16th November, 1965, from Commissioner of Lands to Mr. Peter Martin, Port Maria forwarding financial statement regarding Lot 184, Heywood Hall Land Settlement, St. Mary. |

LIST OF EXHIBITS TENDERED, *contd.*

| No. | Date | Description |
|-----|----------|---|
| 74 | 13.12.72 | Declaration by transfer of land dated 18th March, 1966—Lot No. 184, Heywood Hall Land Settlement, St. Mary from the Commissioner of Lands to Peter Martin (Form LVD 1). |
| 75 | 13.12.72 | Declaration by transfer of land dated 12th February, 1966—Lot 184, Heywood Hall Land Settlement, St. Mary, from Commissioner of Lands to Peter Martin (Form LVD 2). |
| 76 | 13.12.72 | Completed form of Particulars required of Purchasers of Land Settlement lands in order to issue Title for Lot 184, Heywood Hall, St. Mary, to Peter Martin. |
| 77 | 13.12.72 | Letter d/d 23rd December, 1964, from J.P. Gyles, Minister of Agriculture and Lands to C.C. Langford, Commissioner of Lands, authorising the Commissioner of lands to sell the House Reserve of 17½ acres with building and tank at Heywood Hall Land Settlement, St. Mary for £925 (\$1850). |
| 78 | 13.12.72 | Letter dated 20th July, 1964, from N.C. Lewis, Parliamentary Secretary Ministry of Agriculture to C.C. Langford, Commissioner of Lands to terminate lease on Heywood Hall House Reserve as it was not being utilized for any purpose whatsoever. |
| 79 | 13.12.72 | Certified copy of Birth Certificate FB6292 regarding the Registration of the Birth of Peter Denzil Martin. |
| 80 | 13.12.72 | Letter d/d 3rd March, 1961, from Wycliffe Martin to Commissioner of Lands applying for 17 acres of land at Heywood Hall Land Settlement in the Parish of St. Mary on which is situated the Overseer's House. |
| 81 | 18.12.72 | Memo. No. L2212/iv—253 d/d the 16th February, 1967, from R.T. Cousins, Permanent Secretary, Ministry of Agriculture & Lands to Commissioner of Lands stating that he was directed by the Minister to inform him to allot approximately 50 acres of land part of Vernamfield to Brigadier David Smith under normal land Settlement Terms and Conditions. |
| 82 | 18.12.72 | Minute No. 6 d/d 20th March, 1967 from Commissioner of Lands to Asst. Commissioner of Lands Development, instructing the latter to have survey carried out in respect of 50 acres of lands allotted to Brigadier Smith. |

LIST OF EXHIBITS TENDERED, *contd.*

| No. | Date | Description |
|-----|----------|--|
| 83 | 18.12.72 | Schedule I—Application for allotment of land on a Government Land Settlement d/d 30th March, 1967, by David Smith for 50 acres of land at Vernamfield, Clarendon. |
| 84 | 18.12.72 | Schedule 3—Acceptance Certificate d/d 30th March, 1967, in respect of 50 acres of land Lot 97, Vernamfield, Clarendon, to David Smith. |
| 85 | 15.1.73 | Water Commission's Plan of lands below catchment area with particular reference to Water Commission's lands in the Constant Spring Area Water Works Road. Drawing No. E589. |
| 85A | 15.1.73 | Water Commission's Plan, part of Constant Spring Estate showing lands adjoining proposed subdivision. Drawing No. B—1796. |
| 86 | 15.1.73 | Letter No. 1199/iv—48 dated the 20th February, 1956, from the Ministry of Local Government and Housing to the Chairman, Water Commission, dealing with the method of disposal of surplus lands by the Water Commission. |
| 87 | 15.1.72 | Letter No. E1199—16 dated 25th July, 1955, from the Ministry of Local Government and Housing to the Chairman, Water Commission, advising that the Commission discontinue the practice of sale of such lands by private treaty and adopt instead a practice of sale of such lands by advertisement and competitive tender. |
| 88 | 16.1.73 | Letter No. 1166/11—82 dated the 21st April, 1953, from the Colonial Secretary to the Chairman, Water Commission, conveying the Executive Council's approval for the sale of 30 acres of land by private treaty and that in future when the Commission has lands for sale it would be preferable to advertise the fact rather than sell by private treaty. |
| 89 | 16.1.73 | Letter No. 203/56 dated 16th August, 1956, from the Chairman, Water Commission, to Permanent Secretary, Ministry of Local Government and Housing pointing out certain dangers in the disposals of land by advertisement and competitive tender. |
| 90 | 16.1.73 | Letter No. E1199 (iv)—163 dated the 28th November, 1956, from the Permanent Secretary, Ministry of Local Government and Housing to the Chairman, Water Commission, advising of the Government's decision to acquire 5 acres of its lands part of Constant Spring Estate which the Commission proposed to sell by private treaty, as this would be more in the public interest. |

LIST OF EXHIBITS TENDERED, *contd.*

| No. | Date | Description |
|-----|---------|--|
| 102 | 25.1.73 | <p data-bbox="433 268 997 330">Copy letter dated 6th July, 1966, to Casa Monte Hotel Limited from Samuel & Samuel re-loan of £44,000— Note dated 15/8/66 to Mr. Watkis from ? re Casa Monte.</p> <p data-bbox="433 353 997 395">Statement of Account—Casa Monte Hotel Ltd. sent to Messrs. Samuel & Samuel by Development Finance Corporation.</p> <p data-bbox="433 418 997 480">Memorandum No. W/E/B. 19 dated August 22nd, 1966, to Deputy Chairman and Mr. E. C. DePass from General Manager (B.A. Watkis) re Casa Monte Hotel Limited.</p> <p data-bbox="433 503 997 544">Letter No. W/P/B. 19 dated 27th September, 1966, to Hon. Edward Seaga from B.A. Watkis re Casa Monte Hotel Limited.</p> <p data-bbox="433 568 997 609">Letter No. W/P/B. 19 dated 27th September, 1966, to Hon. Donald Sangster from B.A. Watkis re Casa Monte Hotel Limited.</p> |
| 103 | 3.4.73 | <p data-bbox="433 632 997 755">Circular letter dated the 3rd December, 1964, from the Ministry of Home Affairs regarding the machinery, advisory to the Minister, for the grant of work permits under the Foreign Nationals and Commonwealth Citizens (Employment) Act, and copy of Cabinet Decision No. C174/52/11—Work Permits—Advice on individual cases dated the 23rd November, 1964.</p> |
| 104 | 27.6.73 | <p data-bbox="433 783 997 845">Note by the Ministry of Commerce and Consumer Protection regarding the grant or refusal of Import and Export Licences by the Trade Administrator's Department.</p> |