

**TRANSCRIPT OF PROCEEDINGS**

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**COMMISSION OF INQUIRY INTO THE NATIONAL PROVIDENT FUND**

Mr Tos Barnett, Chairman  
Mr Donald Manoa, Commissioner  
Lady Wilhelmina Siaguru, Commissioner

**AT WAIGANI, WEDNESDAY 1 NOVEMBER 2000 AT 9.43 AM**

(Continued from 27 October 2000)

[9.43 am] THE CHAIRMAN: Yes, good morning everybody. We will resume with our hearing. Mr Reeve?

MR REEVE: Mr Chairman, we proposed to begin proceedings this morning with Mr Yapane. I have been in touch with Mr Henao, he has contacted me. Mr Yapane's evidence will proceed by way of a statement followed by the necessary cross examination or supplementary examination in chief. Mr Henao has run out of time last evening and has indicated that he would need a few hours this morning to complete the statement, and I have indicated to him that that would probably be the most orderly way to proceed and I would ask the commission to accordingly extend the summons for Mr Yapane to attend and give evidence until 1.30 this afternoon.

THE CHAIRMAN: Yes, it is extended. We have notice. Thank you, Mr Reeve.

MR REEVE: Thank you, Mr Chairman. So, that being so we would be reversing the order of what was proposed and I would seek to call Mr Fabila to ask him some questions in relation to both the Waigani land and the National Provident Fund Tower.

THE CHAIRMAN: Thank you. Mr Fabila, would you go to the witness table there, please. Can you get in and get your feet under. You have been sworn before, Mr Fabila, and so you are still bound by the former oath. So, please have a seat.

**HENRY FABILA, recalled:**

HIS HONOUR: And before we start could I just ask you to try and adjust the way you give your evidence in one small way. In the past you have been - in an endeavour to show respect to the commission you have started every answer with "Through you, Mr Chairman," or something like that, and it would save a lot of time and a lot of paper if you could just give question and answer. We appreciate your attempts to be respectful but we do not require that degree of respect. Thank you.

MR FABILA: Thank you, chairman.

THE CHAIRMAN: Yes, Mr Reeve?

**XN: MR REEVE:**

Q: Thank you, Mr Chairman. Mr Fabila, I would like to start, if I may, with the Waigani land and

ask you some questions about the formative part of that transaction. Now, when, to your recollection, did you first hear about the Waigani land in your capacity as the managing director of the National Provident Fund?

A: Thank you, very much. Towards the end of 1998 I received a letter and the letterhead was called Waiem Number 1992 and it was signed by two gentlemen, two Phillips in fact; Mr Phillip Mamando and Mr Phillip Eledume, and my recollection of the contents of that particular letter was asking the NPF if we were interested in buying the piece of land as we just outlined at Waigani and they mentioned a figure of about between K8 and K10 million. Now, before that I had been always saying that I was under instructions not to invest any more money into any other projects, but this one here I felt that maybe because of the shortage of good prime land available especially within the Port Moresby city and it was my intention to source out other interested institutions whether they would like to participate. So, we did not come to that stage yet so what I did was I did pass the letter onto Mr Herman Leahy to ask for quotations from some reputable real estate firms to do a valuation of the land.

Q: Just stop there for a minute. Now, this letter from Waiem No 92 was addressed to you, was it?'

[9.47 am] A: Yes, that is correct.

Q: How did it come to you, through the post or delivery or what?

A: I cannot recall. It was in my in tray when I went to work one morning and I found the letter and I read the contents of it and then I passed it on to Mr Herman Leahy.

Q: Now, that letter if I could assist your recollection was dated about September 1998, was it not?

A: September, October, thereabouts, yes.

Q: Do you know where that letter has gone to, because we cannot find that in any of the National Provident Fund files?

A: Well, the last time I saw the letter was when I passed it on to Mr Herman Leahy to call for quotations for reputable valuation firms to do quotation on their- - -

Q: Did you actually hand that letter to Mr Leahy?

A: I did.

Q: Have you seen that letter again since you gave it to Mr Leahy?

A: No.

Q: So one would assume that the letter would be in one of Mr Leahy's files, would that be your presumption?

A: Correct.

Q: When you spoke to Mr Leahy and gave him that letter, precisely what instruction did you give him?

A: Well, exactly what I told him to do was to get quotations so that we could make comments and put it up to the board. And when that was not forthcoming, suddenly I was hit with a couple of invoices. So apparently, he had gone ahead and got the evaluation done by those two firms, Iori Veraga and M Lakae and Associates.

Q: When you gave Mr Leahy instructions about the Waigani land, was that to your observation the first that he appeared to know about it?

A: Not at that time, no. I was not aware.

Q: Just listen to me. When you gave the letter to Mr Leahy and gave him the instruction to obtain quotations for valuations, from your observation, did it appear that that was the first Mr Leahy

knew of the Waigani land?

A: I was of the view, yes.

Q: When you gave him the instructions to obtain quotations, did you instruct him which valuers to contact?

A: No, I did not. All I just said was to get at least two or three quotations from two or three of those reputable firms.

Q: Why did you give that instruction to Mr Leahy rather than Mr Noel Wright who was the investment manager?

A: Well, at that time I was not getting anywhere with Mr Wright towards the end of that particular year so I asked Mr Herman Leahy to follow it up on my behalf or to carry out those instructions on my behalf.

Q: So did Mr Leahy follow your instructions?

A: No, he did not. As I said, immediately after that I did not get quotations but I got two invoices.

Q: With respect, that is not correct, is it? Did you not see some quotations?

[9.51 am] A: No.

Q: You did not?

A: No quotations.

Q: Well, can you explain then why you wrote to the valuers accepting their quotations; you personally wrote to the valuers accepting their quotations? Can you explain? I will show you a document which is MFIW1, which is a letter from Veraga Valuation Centre Proprietary Limited to Mr Leahy of 19 October 1998 quoting K60,300 to value the Waigani land. Do you recall having seen that letter previously?

A: No, I have never seen this letter.

Q: Never seen it?

A: Mr counsel, no.

Q: I will now show you a letter, which is marked MFIW2, which is a letter dated 21 October 1998 to Iori Veraga saying: "Further to your letter of 19 October 1998," which is the document you are looking at, W1, "please proceed to undertake a full valuation report on the above mentioned property. We accept your fee K60,300." I will show you that letter, MFIW2. It is a copy of a letter signed by you, is it not?

A: Yes, that is my signature.

Q: That letter accepts the valuation, does it not?

A: Yes.

Q: That is your letter accepting the valuation, is it not, accepting the quotation?

A: Yes, it appears so.

Q: Did you draft that letter accepting that quotation or did someone else do that?

A: No, I would say that Mr Herman Leahy did draft this letter.

Q: When you say you would say, do you have a recollection that Mr Leahy drafted that letter or is that what you are guessing?

A: Well, as it said, I gave the original letter to get the quotations and I must admit I cannot recall

receiving the valuation but the letter - well, now that I have got it, a copy of this one here - - -

[9:55 am] Q: So, you agree that it was you who accepted the quotation for K60,300 from Mr Varaga.

A: Yes.

Q: I will now show you a document which is MFI-W3 which is a letter from Mr Mariano Lakae dated 20 October 1998 which refers to an invitation of 19 October to quote and quotes K60,000 to value the Waigani land. Have you ever seen that letter before?

A: No.

Q: You have not seen it. Who is that letter addressed to?

A: Mr Herman Leahy, both letters.

Q: I am now going to show you a letter dated 21 October to Mr Lakae which refers to his letter of 19 October - I know that letter is dated the 20th - and asks him to proceed to undertake full valuation report of the above mentioned property and says we accept your fee of K60,300 whereas his quote is only K60,000 and that document I am about to show you appears to be signed by you. That document is MFI-W4. Is that your signature on that document, W4?

A: Yes.

Q: How would you have written that letter if you had not seen the quotation?

A: I cannot really recall. Again as I said earlier, this has always been approved by Mr Herman Leahy and given to me to sign on those occasions.

Q: So, you are saying that you have a clear recollection that Mr Herman Leahy was the author of that letter?

A: Well, as I said earlier on, it was certainly a matter from the outset when I first received the letter from Waiem Number 1992.

Q: Now, I am going to show you another letter which is dated 19 October from Mr Leahy to Mr lori Veraga dated 19 October 1998 which asks Mr Varaga to provide a quote for the valuation of the National Provident Fund Tower. That document is MFI-W5. Then I am going to show you a copy of a letter from Varaga Valuation Centre dated 19 October 1998 which is marked MFI-W6, a letter addressed to Mr Leahy's attention which quotes a valuation fee of K250,000.

[9:59 am] Would you agree with me that the first of those documents, W5 shows Mr Leahy as you say you instructed him asking Mr Varaga for a valuation of the NPF Tower? And that the second letter W6 is Mr Veraga's response quoting a fee of K250,000 to value the NPF Tower?

A: I cannot really recall under whose authority he was given to quote a quotation for valuation of the tower.

Q: You do not know whose authority?

A: No.

Q: I see. Well let me show you the next letter which is the letter dated 21 October 1998 to Mr Varaga referring to his letter of 19 October which is the one that you have, W6 and telling him that his "quotation for a full valuation report on the tower of K250,000 is too high. Please let me know whether you are prepared to accept a fee of K175,000. If this fee is acceptable to you, please proceed with the valuation of the abovementioned property." And that document appears to be signed by you. I will show you that document. Do you agree that that letter is signed by you?

A: Yes.

Q: Well can you answer why in October 1998 you were obtaining a valuation of the NPF Tower and you were counter offering for K175,000 for that valuation?

[10.02 am] A: Well, yes, I cannot recall. At the time I was told by Mr Leahy that the harbours board were interested in the tower as well too.

Q: That is a year later, Mr Fabila?

A: Sorry?

Q: That is a year later, the harbours board. We are talking October 1998.

A: Yes, I can recall sometime towards the end of that year as well too. Well, harbours board wanted to buy 50 per cent of the building.

Q: I think with respect you will find that happened a lot later? Let us just continue. I will come back to that soon. I am now going to show you a document which is MFIW8, which is a letter from Mr Leahy dated 19 October 1998 to Mr Lakae asking him to quote the value in the NPF Tower. And, I want to show you a letter which is MFIW9 of 20 October 1998 from Mr Lakae to Mr Leahy quoting a figure of K280,000 to value the tower. I will show you those two documents. Do you have a recollection of instructing Mr Leahy to obtain a quote to value the NPF Tower from Mr Lakae or any other valuer around that time?

A: No, I really cannot recall.

THE CHAIRMAN: I am sorry I cannot hear you.

A: I cannot really recall, Mr Chairman.

Q: Thank you.

MR REEVE: Have you ever seen that document W8 before?

A: No.

Q: Have a look at the document which is MFIW9, the letter from Mr Lakae quoting K280,000. Have you ever seen that document before?

A: No.

Q: I am now going to show you another letter. It is a letter dated 21 October 1998 which is addressed to Mr Lakae in relation to the National Provident Fund Tower. It refers to his letter of 19 October, which you can see is wrong because his letter is dated 20 October- - -

A: 20th.

Q: And it refers to his quotation of K250,000, which is wrong because his quote is K280,000. And it also says: "That quote is too high. Let me know whether you are prepared to accept a fee of K175,000, and if this fee is acceptable to you, please proceed with the valuation of the above mentioned property." That is document MFIW10 which I will now show you. Do you agree that is your signature?

[10.06 am] A: Yes.

Q: Did you write that letter without seeing Mr Lakae's letter?

A: No.

Q: So, you had seen Mr Lakae's letter which is MFI-W9 before you wrote it, had you?

A: I had never seen the letters. Because normally I would have to write handwritten comments on the letter when we received them to give certain instructions. These ones are all very clean and no handwritten comments either for myself or for Mr Leahy.

Q: Well, what I am asking, you see, is why was Mr Leahy obtaining valuations of the National Provident Fund Tower or asking for quotations for valuations of the National Provident Fund Tower around 19 and 20 October 1998? Did you instruct him to do that?

A: Well, my own recollections are, I instructed him only to get quotations only for the Waigani land only. But with The Tower I am just trying to recall whether it was in fact because of Harbours Board interest in the building or something else must have happened to necessitate us to - - -

Q: Well, can you think and give us an explanation if you could about - I want to know whether you gave instructions to Mr Leahy at that time to obtain valuations of The Tower firstly, and if so, what caused you to give him those instructions?

A: I cannot recall why because I know my specific instructions too, were to carry out or call for quotations for the evaluation of the Waigani land. But, with regard - - -

Q: But, you also told us in that regard that he then went and committed you. But, that is not true, is it? You committed. You are the one who wrote the letters accepting the quotes, did you not?

A: Yes, it appears that way.

Q: Well, when you say it appears that way, are you suggesting that that is not the fact?

A: Sorry, I was just now trying to recollect in between how the NPF Tower sort of came into being a subject of proposed evaluation.

Q: Let us go back and we will try it one proposition at a time. You agree that you gave instructions to Mr Leahy to obtain quotes to value the Waigani land?

A: Correct.

Q: And Mr Leahy did that?

A: Yes.

Q: And you have seen the two letters from Mr Leahy and Mr Varaga - - -

A: I have seen it now, yes.

Q: And you, yourself, accepted those quotations, did you not?

A: By virtue of me signing those letters, yes.

Q: Now, dealing with the second aspect, I want you to answer me whether you instructed Mr Leahy to obtain valuations of the National Provident Fund Tower?

A: No, I cannot recall that. No. I do not recall giving instructions to value The Tower.

Q: Are you saying you did not give him instructions or that you cannot remember?

A: Well, sorry, I will rephrase that too. I did not give him any instructions to value The Tower.

Q: Well, why then, if you did not give him instructions to value The Tower, did you write letters to both valuers making counter offers of valuation fees to value The Tower?

[10.10 am] A: I cannot really recall why.

Q: Did you draft yourself those letters accepting the two - I withdraw that - that counter offering K175,000 for the two valuations of the tower?

A: No, I did not.

Q: Do you have any recollection of who prepared those letters?

A: Well, as I said, Mr Leahy was handling the overall evaluation aspects regarding the Waigani land so I take it that he would be the one to have prepared the letter and no one else.

Q: But Mr Wright was still there at that time, was he not?

A: Yes, Mr Wright was still there but at that time, I was dealing with Mr Leahy most of the time - all the time anyway.

Q: But Mr Wright was dealing in the main with the National Provident Fund tower, was he not?

A: That was only on the drawing down of funds whenever packages and invoices et cetera were to be paid.

Q: I am sure the commission would like your explanation as to why at that point in time October 1998 you committed the National Provident Fund if your offers were accepted to pay K350,000 for two valuations of the National Provident Fund tower. So would you like to give that explanation.

A: I really cannot. As I said, all I can recall is that and I still maintain that I believe that the Harbours Board was interested in the tower. I mean, unless you have got certain correspondence to show otherwise.

Q: Well, no, I do not have any correspondence that shows that, but I have board minutes for the whole of 1998 which show no intention to sell down any equity in the tower. It is all go go go and go Century 21, let us get the building completed, let us market it, there is no suggestion of sell down in the whole of 1998. That is why I am asking you why in October 1998 you were committing to valuations of the National Provident Fund tower?

A: I really cannot recall that.

THE CHAIRMAN: We are going to be getting evidence from other people on this topic Mr Fabila and on all sides of this issue. I really ask you to dredge your memory and come up with honest answers.

A: I really cannot recall Mr Chairman. As I said, whether Mr Leahy was acting on instructions from outside of the fund, I am not aware of that as well too.

MR REEVE: See, this is what I am finding difficult to explain. I understand you are saying that as you said earlier, you did not authorise the obtaining of the valuations for the tower?

A: No.

Q: If that be the case, then you have to explain why you signed the letters committing to pay K175,000 if the valuers accepted?

[10.14 am] A: I cannot recall.

Q: Well, are you suggesting you were tricked into signing them or they were just put among other documents and you were not consciously aware of them? Otherwise, you must be able to respond- - -

A: Well, it would have stood out if I had seen The Tower, would have raised the question, but something did happen. I just really cannot recall at this point in time.

COMMISSIONER MANOA: Mr Fabila, you are certain that is your signature on those letters?

A: That is my signature, yes.

MR REEVE: You are not able to offer any explanation about why you were spending K350,000 or committing to spend K350,000 if the valuers agreed?

A: No, I cannot recall now.

Q: Perhaps I will just have those documents back and I can move on.

THE CHAIRMAN: Is this the first time you have been confronted with this issue?

A: Sorry, I do not understand that question?

Q: Well, have you been asked these questions before?

A: No.

MR REEVE: Well, were you not asked those questions by the finance inspectors?

A: Yes, but like I said, I only gave the answers regarding receipt of the letter from Waiem number 2 and my instructions to Mr Herman Leahy and not recalling those letters, then I was hit with two invoices.

Q: But you told the finance inspectors the same as you have told this commission that you asked Mr Leahy to obtain quotations and then you were presented with invoices?

A: Correct.

Q: The finance inspectors, you have read their report, have you not?

A: Yes.

Q: And they said that was a lie.

A: Well, from our own recollection - I mean when I was waiting for the quotations, I was hit with two invoices.

Q: Well, did you read the finance inspectors' report?

A: Yes.

Q: And did it not come to your notice that the finance inspectors said that your statement, that you only instructed Mr Leahy to obtain quotations and that he confronted you with the invoices, was a lie. Do you not recall saying that?

A: Well, my recollection is that there were no quotations. I was hit with the invoices and then there were some veiled threats from the two firms, real estate firms, or two valuation firms, that we had to pay up quickly or else they would start legal proceedings against the NPF.

Q: Yes, I am going to come to that. Do you not remember the finance inspectors - I will read you what the finance inspectors said: "This investigation" - this is on page 6 of commission document 2, paragraph (e). I will just read it to you: "This investigation observed that Mr Fabila is putting the full blame on Mr Leahy. As when he lied to the board during its 8 October 1999 meeting, Mr Fabila lied also to this investigation. He said that while his instruction for Mr Leahy is to obtain fee quotations, Mr Leahy proceeded to engaging the valuers. This is not true as maybe noted above". You remember reading- -

[10.18 am] A: Yes.

Q: So, when you said no to the chairman it had not been raised before, the finance inspectors pointed out this very inconsistency to you, did they not? That what you told them and what you have told this commission could not stand because you had signed the letters accepting the quotations.

A: Well, again as I said, I cannot recall how I came to sign the letters. But my normal practice is that any letters that come in from outside or from within the office itself, I make my own handwritten comments on what next action to do or to take or make any other relevant comments. I find it rather strange that there is no comments or even in-house memos when dealing with that particular issue.

Q: So that we are very clear what you are saying as I understand you is Mr Leahy did not obtain instructions from you to get valuation quotes for the National Provident Fund Tower, is that what you are saying?

A: Well, when I said reputable firms, I was surprised that he got those two and I was thinking of others who- -

Q: Well, let us just deal with this one at a time. Let us just get this clear. Did you give Mr Leahy instructions to obtain the two tower valuations or not; yes or no?

A: No.

Q: So, you believe those instructions would have come from somebody else or by Mr Leahy's own initiative, is that correct?

A: Well, as I said, I believe he may have been influenced by somebody from outside.

Q: Well, let us get the someone from outside specified. Who is the someone from outside that would have given him instructions?

A: I could not answer that. I mean, I would have to guess.

Q: Well, I am not asking you to guess unless you have some basis to guess.

A: Well, I do not have any evidence to prove my statements.

Q: Now, after Mr Leahy had arranged these valuations, what was your next personal participation in the Waigani land episode?

A: Like I said, when I received the quotations, I immediately called him into my office and asked him, I said, look, where is the quotation that you were supposed to have done. And I said if anything then I think you should prepare a submission to the board because it is beyond my delegation to approve this. So, that was the next set of instructions I gave him to prepare a submission to the board regarding the invoice that were received from those two valuers.

Q: That is after you received the valuations, is it?

A: Correct.

Q: Now, do you recall seeing a proposal document from Pacific Capital Limited, a draft proposal in relation to the Waigani land?

[10.22 am] A: Pacific Capital?

Q: Pacific Capital. Just yes or no first?

A: No.

Q: I will show you a document which I am going to mark MFI-W11 which is taken from commission document 96 which is the National Provident Fund file on the Waigani land and that document is "Investment Memorandum," which is dated in October 1998. I am going to ask you whether you ever saw that document?

A: I do not recall ever seeing this.

Q: Do not recall seeing that document?

A: No.

Q: When the proposal was put to the board, the written proposal that was circulated to the board was prepared before the November 1998 board meeting, who prepared that proposal?

A: I believe it was Mr Herman Leahy in conjunction with Noel Wright.

Q: And at the November board meeting the board decided that they wanted a second valuation, is that correct, to your recollection? The matter was put to the board and the board said we need to obtain another valuation. They resolved that you should obtain that valuation and then circulate it to the board members.

A: I cannot recall that. But, all I know is that it was discussed at the Vulupindi Haus where the meeting was held, if I can recall that, and that - - -

[10.26 am] Q: Let us - just before we go that far I am going to show you another document which is MFI-12 which is a copy of the proposal circulated, I believe, after the November board meeting, the board meeting on 6 November and covered by a board paper which has your signature on it - I withdraw that - which has your name on it. I will just ask you, this is MFI-W12

and I want you to tell me whether you recognise that document? Just have a look at the memo and have a look at the contents of the proposal that follows it. I want to ask you some questions about that document.

COMMISSIONER MANOA: Mr Reeve, while Mr Fabila is looking at that, these proposals are for the development of the Waigani land, you say?

MR REEVE: Yes.

A: Yes, I can recall this proposal was put up.

Q: And can you see, if you read the first paragraph of the memo that covers it, it is dated November 1998, that was written after the board meeting on 6 November, was it not?

A: Yes.

Q: It refers to the board meeting in November and the direction of the board to obtain another valuation, does it not? First paragraph.

A: I cannot recall why we wanted a second valuation when we already had the valuations done already by the same two firms.

Q: We will come to that in a moment, if I can. Just have a look at that memo. Is that memo written by you, the memo that covers that proposal?

A: No.

Q: Although your name is typed on the bottom, is that your signature?

A: No, it is Mr Herman Leahy's.

Q: It is Mr Leahy's signature?

A: Yes.

Q: Do you have any knowledge who prepared that document?

A: Well, if Mr Leahy has signed for me, obviously he would have been the author of the contents of the memo.

Q: And you yourself did not draft that document?

A: No.

Q: Have a look at the proposal document inside, the typed part of the proposal. Did you draft that or did somebody else draft it?

A: Well, just reading this one here, obviously there are very similar wordings.

Q: I will come to that, just answer that one first. Did you draft that document?

A: No, no.

Q: Because that document is virtually copied from- - -

A: I was just going to say yes from the POSF.

Q: From the document which is- - -

A: MFIW11.

Q: A letter?

A: Yes.

Q: Correct. If you can look at MFIW12 it is obvious, is it not?

A: Yes.

Q: That is copied off MFIW11?

A: Yes.

Q: And you have not seen MFIW11 before?

A: I have not seen this one at all.

[10.30 am] Q: Can I just have those two documents. I was asking you before what the sequence of events was that you say that you received this letter, just go to where we are from Waiem No. 92, that you then gave that letter to Mr Leahy with instructions to obtain valuation quotes and the letters were then signed accepting those quotes. This is for the Waigani land. That is all I want to deal with at the moment. And they were on 21 October 1998. What, if anything, did you have to do with the Waigani land as far as NPF is concerned between that time 21 October 1998 and the board meeting on 6 November 1998 when the Waigani land was first put up to the board?

A: My own recollection of events following that when the Secretary of Finance at that time Mr Brown Bai was the chairman and we discussed it at the Vulupindi Haus in one of the conference rooms and I can recall although it does not specifically say that in the minutes which Mr Leahy tends to disagree. But I believe that the whole deal was thrown out.

Q: No, no, no, that is later. This is why I want to get an ordered sequence of what occurred. That occurred in the meeting on 22 December. I am asking you between 21 October and 6 November board meeting when the matter was first brought up to the board, what role did you play in the preparations in the period between 21 October and 6 November in having the Waigani land proposal put before the board at the meeting on 6 November?

A: To the best of my knowledge, I cannot recall, the issue had gone quiet.

THE CHAIRMAN: Sorry, you cannot recall.

A: The issue had gone quiet.

MR REEVE: Do you remember after these acts were done on 21 October 1998, do you remember going to Goroka for the National Volleyball Federation Annual General Meeting? You recall that?

A: Yes.

Q: You recall what date that was?

A: That was sometime in October 1998.

Q: 24 October I think was the date of the meeting, the Saturday.

A: Yes. As soon as I arrived there on a Friday, I made my way across to the National Sports Institute at Goroka, I was told that I was supposed to return the Prime Minister's call who at that time was Mr Skate. When I returned his call he said, generally sorry to bother you but how long are you going to be there for and I said just for the weekend and I will be back on Monday morning and he said can you come a bit earlier than that. I said okay then so I left on Sunday morning and I was instructed to go straight to Mirigini Haus but for some unknown reason, I was not allowed to go in. That was all.

Q: In that telephone conversation that you had with Mr Skate, did Mr Skate tell you why he wanted you to come back to Port Moresby earlier than you had already planned?

A: Yes, he had mentioned something about the Waigani land and in the main that was it and I said okay, when shall we discuss this and that is when he asked me when are you coming back and I said Monday morning and he said well can you come back a bit earlier. So, Sunday morning I flew down and he said to go to Mirigini Haus but I was not allowed to go in.

[10.34 am] Q: Let us go back to the conversation. What did Mr Skate say to you about the Waigani land?

A: My own recollection was, he was asking about the progress of the land itself on how it was going and I said, well, I could not answer that over the telephone. I basically said I will come and I will brief you on what is going on and he said OK come back a bit earlier than Monday.

COMMISSIONER MANOA: Mr Fabila, was the question on progress of the development of the land or the purchase of the land?

A: All he said was the progress of the land because I think, obviously, he must have known something about it at that time.

MR REEVE: So the specific purpose of the prime minister asking you to come back early was to discuss the progress with the Waigani land, was it?

A: I would assume so, yes.

Q: Well, let us not assume. Was that what he told you the reason was?

A: Well, I am just saying, yes, about the land, maybe other issues I guess but mainly because of the issue on the Waigani land.

Q: So what date did you say you came back again?

A: On a Sunday morning.

Q: On a Sunday morning?

A: Yes.

Q: And you then went to the Mirigini House?

A: Mirigini House like I was instructed to but for some unknown reason, I was not allowed in at the gate.

Q: The security would not allow you in?

A: I told them that I was under instructions but they still would not allow me in.

Q: So from what you told the finance inspectors, the prime minister then contacted you again a couple of days later, is that correct?

A: He wanted to ask me why I did not turn up to meet with him and I said, well, ask the guards at the gate.

Q: And in that conversation, did the prime minister and yourself discuss the Waigani land?

A: Well, I said, it was not in any detail, all he asked was about the progress. I said, well, can we discuss that when I get back and then he asked when I was coming back and I said Monday and obviously he wanted me to come back a bit earlier than that.

Q: I understand that, but in the subsequent conversation, you now had a second conversation with the prime minister saying to you, why did you not come and see me as we had arranged and you gave your explanation.

A: Correct.

Q: In that telephone conversation, was there any discussion between the prime minister and yourself concerning the Waigani land?

A: No, not until after we were summoned to a meeting at the Vulupindi Haus, that had gone back a few weeks after that.

Q: A few weeks after that you were summoned to a meeting?

A: Correct. I was at a Steamships board meeting when I was summoned. All the department heads and statutory bodies were summoned to Vulupindi Haus for a meeting.

Q: Let us just go slowly Mr Fabila. That meeting according to what you told the finance inspectors was in March 1999. I want to stick with October 1998.

A: Oh sorry, nothing was discussed after that, after I came back.

Q: So the prime minister got you to come back early from Goroka?

A: Correct.

Q: To see him about the Waigani land?

A: Yes.

Q: And he asked you why you did not turn up and then there was nothing more than that?

A: Nothing more than that, yes.

Q: But you yourself knew did you that the prime minister obviously had some interest in what was happening with the Waigani land?

A: Well, I assume that because him being the prime minister and anyone who wants anything go and see the prime minister and see if he could lend a hand or to apply pressure on whatever.

Q: Well, did you think that you were lending a hand by your assistance with putting the Waigani land before the National Provident Fund board of trustees?

[10.38 am] A: No, I do not believe so. I would just do what any normal person would do using normal procedures before making the final decision whether it is a good investment or not.

Q: In these context, when do you say that you first knew that the prime minister had made a determination, decision if you like, that he wanted Mr Jimmy Maladina appointed chairman of the National Provident Fund board of trustees?

A: I only got word of that from Mr Herman Leahy himself saying that Mr Maladina was going to be the new chairman. That was in December '98.

Q: In December '98?

A: Correct, before Christmas.

Q: Are you sure of that?

A: Yes, he told me himself.

Q: Because we have got documentary evidence that Mr Leahy knew that- - -

A: I am sure Mr Leahy told me.

Q: Because he got a fax from- - -

A: I am sorry.

Q: Just listen to me. We have evidence, documentary evidence that Mr Leahy received a fax from Mr Ori Avea of the finance and treasury department telling Mr Leahy that in the middle of September 1998. So, you are saying it was not until two or three months later that Mr Leahy broke the news to you. Is that what you are saying?

A: Yes, it was in December. And then the next month in January 1999 that was when the appointment was confirmed.

Q: Well, did the prime minister make any mention to you in your discussions with him that he

was determined that Mr Maladina would be the chairman of the National Provident Fund board of trustees?

A: No.

Q: This Waigani land proposal came before the board of trustees at the meeting on 6 November 1998. Do you remember that?

A: Yes.

Q: Do you remember that there was not time to prepare a board paper that was included in the board reports for that board meeting - sorry, in the management report for that board meeting?

[10.42 am] A: I cannot recall that.

Q: You do not recall that?

A: No.

Q: Well, do you have any recollection of that - independent recollection of what occurred at that board meeting on 6 November 1998?

A: I have to consult the minutes to refresh my memory.

Q: Well, let me show you the minutes and I draw your attention to item 10.5 on page 14 and we will see if that helps. You see from the minutes that that item was raised under general business, was it not? Just have a look?

A: Yes.

Q: I would say that that would indicate that it was not the subject of any particular manager's report. Would you agree with that?

A: That is right, yes.

Q: Do you have a recollection of who raised that matter at the board meeting?

A: I cannot recall because when I used to look at the contents of the minutes prepared by the secretary, and which has subsequently been changed, it does not say who was discussing what and so on. It was only resolutions to which it is very hard to - - -

Q: Those board minutes have not been changed at all. The ones you are looking at now.

A: Yes, but I am saying only when the new board came in, in early 1999, the minutes from then on started to change where they actually named trustees and mentioned who said what on whatever issues. But, I cannot recall who actually pushed for that.

Q: Was it you?

A: No.

Q: That raised the Waigani land proposal?

A: No.

Q: Well, who circulated the proposal to the board members? Was that you or somebody else? The proposal that is referred to, the minutes say reference was made to a document that had been circulated to the trustees. Who circulated that document, you or somebody else?

A: It would have been the secretary. Mr Leahy would have done that.

Q: I do not want to know 'would have', Mr Fabila. Did you, yourself, direct the circulation of that proposal?

A: No, not that I can recall.

Q: So, someone else circulated the proposal?

A: Correct.

Q: Do you know of your own knowledge, not guessing, who circulated that proposal to the trustees?

A: Well, my guess would be Mr Leahy.

Q: No, I do not want you to guess. Do you know yourself that Mr Leahy circulated that proposal?

A: Well, from the evidence I have seen, it is quite obvious.

Q: Does that assist your recollection about who may have raised this matter at the board meeting on 6 November?

[10.46 am] A: Sorry, I cannot, no.

Q: Do you recall that prior to that board meeting on 6 November 1998, you had received the valuation of the Waigani land from Mr Veraga?

A: Well, I said it was an invoice together with the valuation details.

Q: Yes, do you recall you received that?

Q: Yes.

Q: So you recall that you had the valuation from Mr Veraga?

A: On the Waigani land, yes.

Q: And you also recall that you had the valuation on the Waigani land from Mr Lakae?

A: Yes, from both of them, yes. They came virtually about the same time.

Q: And that was well before the board meeting, was it not?

A: That is correct.

Q: And that being so - just have a look at the board minutes again - you knew as at the time of that meeting on 6 November that you had those two valuations, did you not?

A: Yes.

Q: Can you explain to me why that being the case, you sat there and let the board say in relation to the Waigani land, we will defer this until we get a second valuation and then we will circulate it? That is what the minutes say effectively, is it not?

A: Well, my own recollection of this is because may be the two valuations that were done were virtually so close in terms of the amount they evaluated it for and the cost as well too. So, we, the trustees decided well, let us have a third opinion.

Q: Well, let us not guess. The minutes strongly suggest that only one valuation was before the board, do they not? I suggest they had one valuation and the board was saying, well, we will get a second valuation and circulate that and then we will make a decision. That is what the minutes say.

A: Well, I cannot read into this, whether it says one or two valuations were at the board at the time.

Q: Could you try and recall how many valuations were before the board on 6 November?

A: Well, my recollection would have been the two of them because they came almost at the same time together.

Q: Did you receive a copy of that proposal that is referred to?

A: The proposal from?

Q: The proposal - the document that was circulated to the trustees prior to the meeting on 6 November 1998.

A: The one that you showed me earlier on?

Q: The one I showed you earlier on is a later version.

A: No.

[10.50 am] Q: The one I showed to you, do you recall?

A: Mr Leahy signed on my behalf.

Q: The one I showed to you says - it is dated November 1998, this is MFI-W12 and it says: "In keeping with the directive of the board meeting dated 7 November 1998, the management of the fund has provided me for circulation a second valuation report prepared by Messrs Lakae MJ & Associates in respect of the above property" That is the first paragraph.

A: So there was only one evaluation.

Q: Well, I am asking you what your recollection is. That document would seem to suggest that Mr Lakae's valuation was not put before the board on 6 November but only Veraga's valuation was put before the board. That is what document would indicate to us. Does that accord with your recollection or is your recollection different or if you cannot recollect, just be honest and say I do not remember.

A: I cannot really recollect but as I said I was hit with two invoices, that is all I can recall.

Q: Let us go away from the invoices. What I am asking you is, which valuations to your recollection were before the board with the document that had been circulated prior to the board meeting of 6 November when the board decided they wanted a second valuation?

A: I cannot recall that.

THE CHAIRMAN: If you are coming to an appropriate place to pause, I think we could all do with some air. Is this an appropriate place?

MR REEVE: Yes.

THE CHAIRMAN: Okay, we will resume at 5 past 11 on that clock.

SHORT ADJOURNMENT

[11.06 am] THE CHAIRMAN: Yes Mr Reeve?

MR REEVE: Thank you Mr Chairman. I think we have gone past the 6 November board meeting now and we have already seen MFI-12 which is the document that was circulated before the December 1998 board meeting, the one on 22 December.

THE CHAIRMAN: Would you mind repeating your question again Mr Reeve?

MR REEVE: I think it was more a statement chairman as to where we are up to but we have gone past the 6 November 1998 board meeting and we had already seen the proposal which was put before the board meeting of 22 December which is MFI-12. Now, I was taking Mr Fabila to the minutes of the board meeting of 22 December. Without looking at those minutes, do you have a recollection of what occurred in relation to the Waigani land at the board meeting on 22 December without looking at the minutes?

A: The matter was discussed at Waigani at the Vulupindi Haus to my recollection and that there were some discussions against the purchase of the land. And although, I had spoken briefly on

the proposal and as I said earlier on my reason for wanting to proceed, although I was not really pushing for the purchase of the land, also not knowing about the background as to the principals who were involved in the land, it was basically on the basis that it was good prime land and I believed that to be a worthwhile investment for the NPF and failing that, if it was a bit too much for the NPF alone then we would have to source it out to other institutions who could be interested as well in terms of sharing the risk of the investment. After the discussion, we decided that we would have to reject the proposal and the chairman at that time Mr Brown Bai was secretary for the Department of Treasury mentioned that NPF should await, should the land be forfeited, meaning that if it did not meet with the improvement covenant as set down by the Lands Department and the land is forfeited then NPF should have a go in terms of applying for the land.

Now, that was what I can recall, although Mr Leahy tends to say that there was no real decision taken and although he did amend the minutes to suit his own sayings, my belief was that the actual proposal was thrown out at that particular meeting.

[11.10 am] Q: I then take you back to MFI-W12, and I read to you the third paragraph of that letter - of that proposal, sorry. The third paragraph reads this way: "I seek the approval of the board to contract with Waiem Number 92 Limited for the purchase of the above property at a price to be negotiated between the parties of up to K15 million subject to all documentation and necessary approvals." I will just show you that document, if I may, and draw your attention to that paragraph on page 1. Now, that document says: "I seek the board's approval," does it not, "to pay up to K15 million?"

A: Correct.

Q: And that document is covered by a memo over your name although signed by Mr Leahy and not by you, is that correct?

A: Yes, correct.

Q: Now, who is it that put up this proposal at the board meeting on the 22nd for which that document was prepared asking the board to approve the purchase of the Waigani land for up to K15 million? Was it you or was it somebody else that was asking for that approval?

A: No, I believe it was Mr Leahy in conjunction with Mr Wright.

Q: Mr Leahy and Mr Wright?

A: But, Mr Leahy was the main mover of the proposal at the time. Well, he spoke to the proposal.

Q: Do you recall the price that was put to the board? Was it K15 million or K10 million or some other figure?

A: The letter that was sent to me explicitly showed between K8 and K10 million. The letter was written to me by one Waiem Number 92.

Q: This is the letter that you had earlier received?

A: Correct.

Q: Are you able to explain how the figure has now gone up to the negotiated price, up to K15 million?

A: I do not know why it has inflated, why.

Q: Just have a look at the board minutes would you, please. Board minutes I have shown you from the meeting of 27 December. What is the figure that is put to the board according to those minutes, the recommendation?

A: Management recommended that NPF negotiate a price of around K10 million.

[11.14 am] Q: Are you able to explain how in the period between the board paper being circulated recommending up to K15 million by the board meeting that had come down to up to K10 million?

A: I cannot recall why it was increased to K15 million.

Q: Do you have any knowledge of why that was so, why the figures changed?

A: No. I do not know why it was changed.

Q: And do you recall at the board meeting who the people were that were vocally opposed to proceeding with the proposal to purchase the Waigani land?

A: It was trustee John Paska and trustee Tau Nana. They were the two trustees who were vocally against the purchase of the land.

Q: If you have a look at those minutes, look back earlier than the part dealing with the Waigani land. Do you agree with me that when Mr Wright was dealing with the finances of the National Provident Fund, he reported to the board at that meeting that there were losses up to October 1998 which totalled K66 million? There is K44 million for loss in value of shares and there is something over K10 million for exchange losses and something over K10 million for interest.

A: Yes.

Q: Now, can you explain when the fund had reported at that meeting K66 million totalling losses up to October 1998 management was putting forward to the board a suggestion that it buy a block of land for up to K10 million, spend K3 million at least satisfying the improvement for the infrastructure covenant thus obtaining an asset that was non income productive and would not be for years until it was built?

A: I think when we were informed about these losses, as I said, the proposal was just something I thought that NPF could be interested in but then again it would have to be resolved by the entire board. So, there was no real pushing on my behalf or the management for that matter but obviously it must have come from some other quarters.

Q: Well, what other quarters was the pushing coming from to your knowledge?

[11.18 am] A: Well, I would imagine that it came after 1998 year when the new chairman came on board.

Q: But you see, what I am trying to understand and I am sure the contributors of the National Provident Fund are trying to understand is, at the same board meeting as there has been reported accumulated losses at the end of October of K66 million, why is the management suggesting to the board let us buy this block of land for up to K10 million on which we have to spend another K3 million because that was the figure to satisfy the infrastructure requirements and then we have got to look at where we get the money from to develop it. It is clearly not going to produce income and you have got these massive losses and you have already told us that the Prime Minister's instruction to you is, no new investment. How do you explain management even suggesting that the board should contemplate such an investment?

A: Well, that is why as I said earlier that if we were successful or if the board had decided to proceed with the purchase of the land, then it will be better if we share the risk amongst other institutions.

Q: Let us go to that point. You in fact wrote to some other institutions, did you not?

A: No, I did not.

Q: I am going to show you a sequence of letters, MFI-W13 which is a letter dated 13 November 1998, to the Managing Director of the Public Officers Superannuation Fund, attention: Mr Shem Pake. A letter dated 13 November 1998, to the General Manager of the Papua New Guinea Harbours Board which is MFI-W14. A letter dated 13 November 1998, to the Managing Director of the Investment Corporation of Papua New Guinea. A letter dated 13 November 1998, to the General Manager of the Motor Vehicles Insurance Trust which is marked MFI-W16, all of which four letters are in identical terms, inviting participation in the Waigani land and all of which appear to be signed by you.

A: Yes, I recall.

Q: The signatures on those four letters are your signatures?

A: Yes.

Q: Did you draft that letter?

A: No. I got Mr Leahy to draft the letter.

Q: Mr Leahy drafted the letter?

A: Yes.

Q: On your instructions?

A: Yes.

Q: Seeking participation by the- - -

A: The other institutions.

Q: Other institutions in the purchase of the Waigani land?

A: Correct.

Q: By the board meeting of 22 December 1998, had you received any responses from any of those people?

A: Nothing.

Q: Nothing at all. Okay, give those back to me.

[11.22 am] Just look at the circular on MFI12 which deals with the board. Do you see at one of the items there that says that the NPF has received expressions of interest from other statutory bodies?

A: Yes.

Q: So from what you said, that is not true, is it, as at November 1998?

A: Well, I have not seen any letters from the institutions responding to my letter.

Q: So, so far as you are aware there was no expression of interest by anybody at that point, was there?

A: Verbally or in writing, no, I have never seen anything in writing as well.

Q: Would you have a look at the board minutes of 22 December relating to the Waigani land? There is a suggestion, I think it is in the third item of the presentation there, is there not, that there will be sell offs to other statutory corporations such as, for the nominated sum? Do you see that?

A: Yes.

Q: So, are those minutes accurate in that respect, about talking about other statutory bodies being involved in equity sharing?

A: Yes, because I also made attempts to talk to the people to get a meeting together, but it never eventuated; never eventuated.

Q: And no one expressed interest at the time of that board meeting?

A: No.

Q: So, did you tell the board that what they were being told was untrue, there had been no

expressions of interest from any other statutory bodies?

A: Well, I do not believe we discussed very much after that.

Q: If you look at MFIW12, one of the principal points that is being put to the board is, this is not something we will be doing on our own, other people have expressed interest in equity sharing with us, is it not?

A: Well, as I said, if there was expressed interest, it was not to me.

Q: Well, so far as we can find there is no evidence either. So, that would indicate that statement is untrue, would it not?

A: That is right.

Q: One of the main selling points that was being put to the board was untrue?

A: That is right. Exactly.

Q: What I am asking you is whether as managing director you said to the board at the board meeting, listen trustees, this document says that there are expressions of interest from other statutory bodies. I have tried to speak to the other statutory bodies but I have had no response as yet, or did you just let the board be misled by the statement in the proposal which said other bodies had expressed interest?

A: No, that could be wrongly worded, because I can recall saying that - words to the effect that I will have to talk to other institutions and find out whether they are interested as well too.

Q: You recall saying that at the board meeting?

A: Yes.

Q: And did you make it clear to the board that nobody had expressed any interest at that point, contrary to what the board paper said?

A: Well, it was never mentioned either in the minutes definitely because I can recall trying to talk to Mr O'Neill, Mr Warupi and Mr Shem Pake.

[11.26 am] Q: But all without success?

A: Without success.

Q: While I am on those board minutes, I want to ask you if you would please to turn to the item in those board minutes that deals with the National Provident Fund Tower. That is the item before the Waigani land. That is item 8.3 on page 9 of the minutes. Do you have a clear recollection of that item? I want you to concentrate on Part A of it which deals with the kina devaluation claim raised by Kumagai Gumi company.

A: Correct.

Q: You have a clear recollection of that?

A: Yes. I can recall discussing with Mr Roger Dalton from PAC and he and Mr Mike Simpson, but Mr Dalton was basically the main guy I was dealing with at that time, I can recall. He said to me that NPF was not obliged to increase the contract price because as far as they were aware it was a fixed lump sum contract price plus there was no clauses in their contract regarding fluctuation of the currencies. But on the other hand he was saying, look, it would be better if you give some due consideration because they were certain to walk off the job if we did not provide the extra finance because of the kina being devalued and most of the items that were being imported to complete the building was of very important essence and as such it should be discussed by the NPF, both the management and the board.

Q: Who presented the situation, if you look at the minutes - sorry, I withdraw that. Without looking at the minutes, who briefed the board on what they were being asked to consider?

A: Well, I can recall Noel - I think Noel was there, I think. As I said, he was the one who was actually the main principal at NPF who was dealing with The Tower, the funding, et cetera. And I believe he actually did raise the issue with the board.

Q: Was Mr Leahy involved at all in the discussion about this kina fluctuation claim?

[11.30 am] A: No, I do not believe so. I do not think so, no.

Q: Just have a look at the board minutes now. Who do the board minutes indicate outlined to the board what the position was?

A: Deputy managing director.

Q: That is Mr Wright?

A: Noel Wright, yes.

Q: Yes.

A: Seeking a letter from Pacific Architects Consortium, the following facts.

Q: And then he set out the position?

A: Yes.

Q: And the position I think is, as you have said, is essentially was that the contract was a fixed-price contract?

A: Correct.

Q: That PAC advised you that legally there was no obligation for NPF- - -

A: For it to have to increase, correct.

Q: To increase the price because the Kina had fallen and the cost of materials and so forth was greater.

A: Correct.

Q: But I think what Mr Dalton did say was if the situation is not addressed, Kumagai are saying in effect that they are going out backwards, they will just stop work?

A: Correct.

Q: The board was asked to consider whether in those circumstances it would make some gesture by increasing the amount?

A: Correct.

Q: That was discussed extensively by the board, was it?

A: Yes, correct.

Q: The board resolved, did they not, to put a final all-up figure to Kumagai Gumi of K50.5 million?

A: Yes.

Q: So that was all finished, everything, including the Kina fluctuation claims?

A: Correct.

Q: You were clear about how that was calculated?

A: Well, we had to rely on Kumagai Gumi, and Kinhill Kramer and PAC who were the advisers on the building.

Q: So the board resolved - put a final price to Kumagai of K50.5. That was the total final price. No more claims?

A: Correct.

Q: The board at the same meeting rejected the proposal for the Waigani land?

A: Correct.

Q: Do you recall that in December 1998, there were memos about the second valuation for the Waigani land and about the valuation fees between yourself, and Mr Wright and Ms Dopeke? You have a recollection of that?

A: Sorry, Mr Wright and?

Q: Ms Dopeke as well, Salome Dopeke?

A: Oh, sorry, Ms Dopeke? I cannot recall that. Internal memos, you are saying?

Q: Internal memos, yes, regarding the invoices and the level of valuation fees?

A: I cannot recall seeing those.

Q: Well, I will show, if I may, these are marked MFI W17, a series of documents, I will just describe them to you first.

[11.34 am] The first is a memo from Mr Wright to yourself, dated 27 October 1998, dealing with land valuations and talking about proposed fees to be charged by Veraga and Lakae, for valuations of the Waigani land and talking about the fees being outrageous and giving you alternate fees that he obtained from Graeme Dunnage and also referring to fees that Mr Veraga and GDA had quoted to value the Steamship Supermarket at Waigani. The second memo I will show you is from yourself to Mr Wright, asking him after the board meeting to arrange second valuations of three properties and to prepare circulars for the trustees and if he could not complete it before he was finished, he should get Mr Mekere to attend to it. And with a handwritten note which appears to be in your writing saying as to a property in Lae and as to the Waigani land, please get First National Real Estate to do these. And I will show you a third memo of 11 November 1998, to yourself from Mr Wright, referring to the fact that a valuation had already been obtained from First National Real Estate on the Waigani Land, asking whether the Professionals could be used, pointing out some deficiencies in Mr Veraga's valuation and that it was inflated and asking you whether the Professionals could do the second valuation. And there are more documents than I am showing you. I will just show you those three documents and see if that helps your recollection.

THE CHAIRMAN: If your mic come off this thing, can you talk right into it. Does that help. Mr Fabila might do the same.

COMMISSIONER MANOA: It is close by.

MR REEVE: Do those documents assist your recollection, Mr Fabila?

[11.38 am] A: Yes, correct.

Q: Do you remember that now that there were memos querying the level of valuation fees; those memos to Mr Wright?

A: Yes.

Q: Do you also remember that there were memos regarding the need to obtain board approval because the level of the fees payable was over your delegation limit?

A: Correct.

Q: Do you recall what happened in relation to those memos?

A: As soon as I became aware that pressure was being applied by Lakae and Varaga valuers I then for the second time instructed Mr Leahy to prepare a submission to the board that we will pay by submitting to the board ratifying management's action. And from the best of my knowledge that has never happened as well.

Q: Now, when you say that you received pressure from the valuers, what pressure do you say you received from the valuers?

A: Well, threats regarding taking legal action because we had not paid the valuers for some time because we were still querying the level of the fees.

Q: Were those threats made directly to you or did somebody else tell you about them?

A: Via Mr Leahy.

Q: The reason I ask you that, you see is, we can find no evidence of any pressure at all from the valuers and indeed what they have told us so far is that neither of them were pressing for their fees and that Mr Varaga only had written one quite polite letter pointing out the account was overdue but not threatening anything.

A: Well, my own recollection of what Mr Leahy when he approached me was that the two valuers were providing some veiled threats for NPF to pay up.

Q: Do you recall that there was resistance to paying by both Mr Wright and by Mrs Dopeke?

A: Well, also from me, yes. Mr Wright and Mrs Dopeke were against it and so was I. That is why I asked Herman, I said, look, see if you can have a chat with them and say, look, we still have to get board's approval because the board was not sitting at that time and so when it became apparent that they were still applying the pressure, I instructed Mr Leahy and said, let us pay them but subject to a submission being put to the board for the ratification by management's action.

Q: And do you remember Mr Wright writing you a memo telling you that he was very uncomfortable with paying these fees without board approval?

A: Yes, I think I can recall that.

Q: And do you recall that you paraded Mrs Dopeke into your office with Mr Leahy present and gave her a direction that the cheques were to be drawn to pay these fees?

A: Well, like I said, she was the chief accountant at that time and basically to pay and for Mr Leahy to prepare his submission to the board to get the ratification.

Q: What I am asking you is do you remember parading Mrs Dopeke in your office with Mr Leahy present and directing her in Mr Leahy's presence that these invoices were to be paid?

[11.42 am] A: Well, I mean I do not see the word paraded there. I called her up and gave her instructions to issue the cheques.

Q: And you did that?

A: Yes.

Q: In your office?

A: Yes, and then subject to Mr Leahy also preparing his submission to the board eventually for the board to ratify management's action and to - - -

Q: Do you recall that whilst Mrs Dopeke was in your office you also made a point in her presence and the presence of Mr Leahy of ringing down to Mr Wright and directing him that the payment was to be made as well?

A: I cannot recall that, no.

Q: You do not. Well, who initiated you directing Mrs Dopeke that these bills were to be paid? Did

you do that yourself or was someone else exerting some pressure on you?

A: Well, like I said earlier on the way Herman Leahy approached me saying that he was getting veiled threats for us to pay up and that was when we were discussing in my office at the time and that is what made me call up Mrs Dopeke and instructed her to do likewise and at the same time I told Mr Leahy to prepare a submission to the board.

Q: Well, who was exerting the pressure on you? Why did you - you, as we understand the evidence we have, had already agreed these payments should be board approved. Then someone seems to have pressured you into authorising the payments on the basis, we will tell the board about it later. Now, what I want you to do is tell this commission who was exerting that pressure on you?

A: Well, all I can recall is Mr Herman Leahy was the one who was saying that the pressures were coming from these two valuers.

Q: And pressuring you to the extent where you had to instruct two of your staff, who were correctly resisting it, to make the payments, is that what you are saying?

A: Correct, yes.

Q: And you actually authorised those two payments personally, did you not? I withdraw that. Whoever was responsible for preparing the cheques ensured that you personally signed off the authorisations to pay, did they not?

A: Well, I cannot recall whether I signed off for Mr Leahy but the instructions came for me to pay it but again, as I said, I asked Mr Leahy to prepare the submissions to the board.

Q: And that submission never got prepared, did it?

A: Obviously, in hindsight when I look back now nothing was ever done about getting the board's ratification or approval.

Q: Now, if you just look at the minutes of the board meeting on 6 November 1998, the subjects of The Tower and the Waigani land are dealt with one after the other, are they not?

A: Correct.

[11.46 am] Q: And at that time, that is prior to 6 November, you had signed the letters committing the National Provident Fund to pay K60,300 to Mr Veraga and K60,000 to Mr Lakae for the Waigani land. Do you remember that?

A: Yes.

Q: And you had also offered those same two valuers a counter offer of K175,000 to prepare valuations of the National Provident Fund Tower. Correct?

A: Yes.

Q: Now, can you explain to the commission why with that knowledge you did not, with those items on the agenda and valuations for the Waigani land actually being spoken about, why you did not then seek the board's approval to pay the valuation fees that you had already committed to and which were in excess of your delegated authority?

A: I cannot recall that.

Q: See, what I am putting to you is there was the ideal opportunity. The items were on the agenda, they are talking about valuations, you knew you had made these commitments beyond your delegated authority. Why did you not raise those matters and seek the board's approval when the perfect opportunity existed?

A: I cannot recall why I did not raise that at the time.

Q: Sorry, I did not hear you.

A: I cannot recall why I did not raise that issue at the time for getting the board's approval.

Q: If you go to the board minutes of 22 December 1998, the Waigani land and valuations were on the agenda again and the tower was on the agenda again, was it not?

A: 22 December, sorry?

Q: 22 December both the Waigani land and the tower- - -

A: Yes.

Q: Were again on the agenda?

A: Correct.

Q: Why did you not as managing director knowing that you had made these commitments on behalf of the National Provident Fund which were in excess of your delegated authority then raise with the board the question of approving the payment of these valuation fees?

A: Again, I cannot really recall why I did not raise it at that particular meeting. There was so much on the agenda for me not to recall my instructions to Mr Leahy to prepare a submission to the board earlier on, which he did not do that.

Q: Mr Fabila, Mr Leahy clearly had not followed your instruction. You were present, the matters were on the agenda. Why did you not as managing director raise the matter, say to your board, I have incurred these valuation fees, I would like the board's approval of them. Why did you not raise it?

A: Well, I cannot recall why I did not raise this at the particular meeting.

Q: Would you agree you had a perfect opportunity to do so?

A: Yes. But like I said, with so many things happening at the time whether they just slipped my mind or - yes, I just do not know whether it slipped my mind at the time.

[11.50 am] Q: Now, I want to now go past that board meeting and going past 22 December. After the National Provident Fund Board rejected the Waigani land proposal, did you have a further discussion with the Prime Minister Mr Skate, not the March meeting, when you were called out of the Steamships meeting. Did you have another meeting with Prime Minister Skate or discussion with Prime Minister Skate about the Waigani land?

A: No.

Q: You see, I want to read to you to see if this assists your recollection. Page 9, paragraph 6 (b) of the finance inspectors' report on the Waigani land. "When queried Mr Fabila told this investigation that it was in October 1998 that the events happened" - this is the prime minister contacting you - "however, he denied he was asked by the then prime minister Bill Skate to re-visit the investment proposal. He said that when he told Mr Skate that the board rejected it, he was told to leave it and that Mr Skate accepted Mr Fabila's judgement on that". Do you remember telling the finance inspectors that?

A: I cannot recall that.

Q: Well, that is what apparently you told the finance inspectors in response to a statement by Mr Mitchell that you had a discussion with the then prime minister over the Waigani land. And what Mr Mitchell was saying was that his recollection of your discussion was that the prime minister had asked you to re-visit the Waigani land proposal. And your response to that was, no, no, no, there was a discussion with the prime minister in October 1998 and after the proposal was rejected by the National Provident Funds, I told the prime minister that and I told him that we should leave it and the prime minister accepted that. Now, I am trying to work out out of that confusion what occurred.

A: I really cannot recall when in fact I did tell him that we did reject it and he told me to re-visit the proposal because that never came from me. It came from the new chairman in the new year, following year.

Q: Yes, I understand that. I do not want to get involved with Mr Maladina. I just want to know you had the earlier discussions with Mr Skate, the two that you have told us about. Was there another discussion with Mr Skate after the board rejected the proposal on 22 December and before the prime minister called you out of the Steamships meeting in March 1999? Do you have a recollection of a conversation during that period with the prime minister?

A: No. Nothing at all.

[11.54 am] Q: So you say that the Waigani land was raised again by the new Chairman. Is that correct?

A: That is correct.

Q: Was that raising directly with you or through somebody else?

A: With me directly.

Q: Was it in person or by telephone or by what means?

A: In person. When he came - after he was appointed he came up just to say hello to myself and the rest of the senior management staff and then he said to me to put it back on the agenda and that is when I asked him, what for, it has been rejected already. He said no put it back on again. So I put it back exactly what was put on back in December.

Q: Did he say a bit more than that, put it back on again?

A: Well, he said that put it back on and we will put on more added conditions to any approval that the board may wish to give.

Q: Now, that conversation took place at the National Provident Fund office. Is that correct?

A: Correct.

Q: Whereabouts in the National Provident Fund office?

A: In my office.

Q: In the managing director's office?

A: Correct.

Q: Who was present?

A: Just myself and the chairman at the time.

Q: Are you able to fix the time? Just the month if you can first and then what part of the month?

A: It was not long after he was appointed the chairman. I cannot recall, somewhere in January.

Q: Late January or thereabouts?

A: Yes, late January, thereabouts.

Q: And up until Mr Maladina raised it with you, do you say that the Waigani land was just a dead issue?

A: Well, as far as we were concerned when the decision was taken in December and what Mr Brown Bai at the time suggested to all the board members, he said well let us reject the proposal on the basis that if the Department of Lands ever forfeits that land back, then in effect if we are still interested we would then reapply or we would apply for the land if ever it was forfeited. That was what was decided in December.

Q: What I am asking you is, would the matter have come back, from your knowledge, if Mr Maladina had not asked that it be put back on the agenda?

A: Well, I think it is a bit hard for me to answer that, but, yes I would imagine so because after all he was the one who raised it when he became the chairman. As far as we were concerned, we thought that was a dead issue already.

Q: Yes, that is the point I was getting to. It was a dead issue as far as you were concerned- - -

A: Correct.

Q: And it was Mr Maladina that reactivated it?

A: That is right. As I said he asked for it so I just put it back, exactly the same proposal that was put to the previous board.

Q: Did you do that yourself or did you get someone else to do that for you?

A: Well, I just instructed Herman to assist. He prepares all the agenda items, all the board papers. I said just put it back - just put the same proposal to the previous board back to the new board and let the chairman to raise the issue himself and we can answer the questions.

Q: Just before I leave that subject, are you aware, where the documents came from that were used in the proposal that was put to the board, the November 1998 proposal?

[11:58 am] A: No. Well as I said it must have come from either Herman in conjunction with Mr Wright but I would imagine Mr Wright, because he is the one who prepares all the board papers and I did give him a letter.

Q: And you do not know the source of those documents?

A: No.

THE CHAIRMAN: And you have to talk closer to your mike Mr Reeve. Hopefully we are getting some record of this.

MR REEVE: Now, to your knowledge, was there ever any briefing of Mr Maladina about the Waigani land by NPF staff?

A: Briefing from him to the staff?

Q: No, from you briefing him what the position was with the Waigani land?

A: No. Because at that time because I felt that obviously he must have known something about the land and that is why he asked to be put back on the agenda, the first meeting of the new year.

Q: Was there ever any briefing by you of Mr Maladina about the Kumagai Gumi claim in relation to the NPF tower?

A: No that was only raised at the board meeting which I put my sentiments agreeing with comments made by PAC at that time. This is regarding the kina fluctuation.

Q: What I am suggesting to you is this, at the board meeting on 22 December, the board had resolved to make a final offer to Kumagai Gumi of K50.5 million. What I am asking you now is, that board meeting had ended, Mr Maladina was now chairman. Was there any briefing by you of Mr Maladina as to what the position was regarding Kumagai's fluctuation claim?

A: Because you would have seen from the minutes of why the decision was taken to increase the amount.

Q: Now did you discuss that matter with him or not?

A: No I did not. No.

Q: The question of Kumagai and the kina fluctuation claim was dealt with at the first board meeting at which Mr Maladina presided on 8 February 1999, do you have a recollection of that?

A: I cannot recall because as I said that would have to have been decided by the previous board and it would be in the minutes as a matter of record. So I do not know why Mr Maladina would want to raise that issue.

Q: I notice chairman that it is 12 and this is a fairly substantial subject which obviously I am not going to finish today.

THE CHAIRMAN: You cannot finish today or this morning?

MR REEVE: It is certainly going to take me more than half an hour.

THE CHAIRMAN: Yes I understand that. So we will adjourn but what are we going to do when we resume?

MR REEVE: We had arranged for Mr Henao to come at 1.30.

THE CHAIRMAN: Very well. We will deal with that and maybe Mr Fabila can just sit by while we deal with that first.

MR REEVE: Yes unfortunately that cuts into Mr Fabila's time but I do not think we really have any great alternative. I doubt whether we will finish both matters today. We will probably have to carry over until tomorrow.

THE CHAIRMAN: So what are you asking me to do about Mr Fabila?

MR REEVE: I think probably if we could just adjourn until 1.30 and stand Mr Fabila down and perhaps we can reassess our position over the lunch hour and - - -

THE CHAIRMAN: All right thank you. So we will resume at 1- - -

MR REEVE: It may be that - it might be quite simple because it might be desirable for Mr Fabila to be here this afternoon anyhow in case there are any matters touching him which arise.

THE CHAIRMAN: Yes I think that would be very desirable because we anticipate quite significant things are going to be given in evidence and it would be to your advantage to hear it. So we will adjourn now to 1.30. Adjourn.

## **THE WITNESS WITHDREW**

### LUNCHEON ADJOURNMENT

[1.40 pm] THE CHAIRMAN: Yes, good afternoon everybody. Some new but welcome faces. Mr Coady, are you here for some purpose that I do not know about?

MR COADY: Chairman, I appear for Mrs Perks. And you have previously granted me leave to appear- - -

THE CHAIRMAN: That is right.

MR COADY: For her. I am here today to observe the evidence of Mr Yapane and if necessary to ask him one or two questions on his testimony.

THE CHAIRMAN: Correct. Thank you very much. And Mr Henao, you are here representing Mr Yapane?

MR HENAO: Yes. Thank you, Mr Chairman and the commissioners. First of all I want to apologise for not being able to be ready at 9.30 this morning. We were still in the process of finalising our submissions. We have finalised our submissions and I now would like to ask the commission to have our submissions incorporated into the transcript of evidence, and my client is also here for any questions to be asked.

THE CHAIRMAN: Well, I think we will ask him to read his statement, Mr Henao so that we can all hear it, because we cannot ask any questions yet not having seen it.

MR HENAO: I have also, Mr Chairman, brought the disk for the transcript.

THE CHAIRMAN: Thank you very much, that is very considerate. It will be of great help to the transcription service.

MR HENAO: In view of that, do you still wish me to read the submissions?

MR COADY: We need him to go into the witness box.

THE CHAIRMAN: We need Mr Yapane and I thought he might read his own submissions.

MR HENAO: Yes.

THE CHAIRMAN: Have you got submissions there or his evidence?

MR HENAO: Yes, we have the submissions here.

THE CHAIRMAN: Well, we would like to hear his evidence first. What have you got there on your disk or on your on papers?

MR HENAO: This is his evidence.

THE CHAIRMAN: All right. Well then, he better be sworn.

MR HENAO: Yes.

THE CHAIRMAN: And he can read his evidence if he wants.

MR HENAO: Very well, Mr Chairman.

THE CHAIRMAN: Thank you, Mr Yapane. Can you come forward, please. Thank you. Mr Reeve, I think I will put him on oath again. He was sworn previously in the other premises but I want it to be quite clear to him that he is on oath.

**KEN YAPANE, sworn:**

THE CHAIRMAN: Thank you. Yes, sit down please.

**XN: MR HENAO**

Q: Mr Chairman, I would like to hand up copies.

THE CHAIRMAN: Thank you. There is nobody to hand them up for you. I am sorry about that.

MR HENAO: Mr Yapane, is your name Ken Yapane?

A: Yes.

Q: And are you the owner of Ken Yapane and Associates?

A: Yes, sir.

Q: Mr Yapane, you have given evidence before this inquiry on two previous occasions. Is that correct?

A: Yes, that is correct.

Q: I want you to read your evidence that you wish to present to the inquiry. Could you start?

THE CHAIRMAN: Thank you.

A: Thank you.

**RE: KEN YAPANE**

**1. K401,000.00**

On or about 20 or 24 February 1999, I received a telephone call from Jimmy Maladina on my mobile phone. He asked if he could get some money through my account. Thinking that it was a small amount, I said "That's okay". He asked for my bank account number and I gave him an account number, not knowing whether it was my personal or company account number. I later established that it was the company account number.

On or about 7 March 1999, Mr Maladina phoned me at my office and asked if the money has come through to my account. I said that I do not know and that I will check and call him back. I telephoned my bank and was advised that the money had arrived. I telephoned Mr Maladina and told him accordingly. He told me to arrange a bank cheque in favour of Kuntila No. 35 Limited for the sum of K399,000.00 and have it dropped off at his Carter Newell office. He told me to retain K2,000.00 as my fees.

I did not know the owners of Kuntila No. 35 Limited at the time. I now know from the Inquiry hearing that Kuntila No. 35 Limited shareholders were, Jimmy Maladina's wife, Janet Karl and Ango Wangatau holding the shares in trust for Moses Maladina.

As told, I organized a bank cheque for K399,000.00 leaving the sum of K2,000.00 in my account.

I took the bank cheque to the offices of Carter Newell and gave it to Mr Maladina in person. I have no idea as to how the money was spent or used.

**2. K652,421.00**

On or about 5 or 7 April 1999, Mr Maladina phoned me again and told me that there will be some money coming into my account again. I told him to use my personal account at the Bank of South Pacific, Port Moresby and I gave him that account number. He promised me a fee of K35,000.00. On the 9 April 1999, an amount of K652,421.29 was deposited into the account. On the morning of 13 April 1999, I was telephoned by Mr Maladina and was told to arrange two (2) bank cheques both in favour of Finance Corporation for K332,000.00 and K285,000.00. I was also told to deliver both of these cheques to Mrs Barbara Pecks at Carter Newell's office.

Again, I did not know where the money was coming from, I was beginning to be concerned as the monies were in large sums.

As a friend, I felt obliged to assist him and did not feel that it was my business to know the source of the monies and their purpose.

According to Mr Maladina's instructions, I got the bank to raise two (2) bank cheques for K332,000.0 and K285,000.00. K35,000.00 remained in my personal account as promised. At the same time when I arranged for the 2 bank cheques to be raised, I also asked the bank to raise a bank cheque for K30,000.00 made payable to JR Creative Network Limited which is the Rain Money scheme at that time. Again, I have no idea where the monies eventually went to. I then took the 2 cheques in an envelope and took them down to Mrs Barbara Pecks at Carter Newell office.

At Carter Newell office I asked for Mrs Barbara Pecks. She came out and I gave her the envelope containing the cheques. I told Mrs Pecks that the envelope was for Jimmy and asked if she could pass it onto him.

**3. K595,453.00**

On or about the 5th May, 1999 the sum of K595,453 was deposited into my personal account. On the same day Mr. Maladina phoned me and asked if I have received further funds. I told him that I do not know and that I will check with the bank and call him back. I did, and phoned him back and told him that some funds have arrived. He told me to have a bank cheque in the sum of K560,000 made payable to Finance Corporation made out, and have it delivered to Mrs. Barbra Pecks at the Carter

Newell office. He told me to keep K35,000 as my fees.

On 7th May, I arranged a bank cheque for K560,000 made payable to Finance Corporation and another one to JR Network for K30,000. I took the K560,000 bank cheque in an envelope to Carter Newell office. At the reception I asked for Mrs. Pecks. She came out and I delivered the envelope to her and told her that it was for Mr. Maladina. I then left.

To this day I have no idea how or what the money was used for.

#### **4. K446,941.84**

On the 1st June, 1999 another amount of K446,941.84 was paid into my personal account again. On the morning of 9th June Mr. Maladina phoned me and advised that further deposits have been made into my account. Like previous times, I told him that I will check and call him back. I did and confirmed the deposit. He told me to organise a bank cheque for the amount of K440,000 made payable to Finance Corporation and keep the balance.

At the bank I asked the lady who was serving me to tell me where this money and the previous deposits were coming from. She quipped, "Do you mean to say that you do not know where the money is coming from?" I replied, "I just want to confirm, that's all." She went and checked and came and told me that they were from Kumagai-Gumi through BSP Waigani.

I began to worry and wondered whether I have been doing the right thing by allowing the money to come through me. Up to that point in time, I was thinking that the monies were coming from overseas and it did not occur to me to question whether the monies were for proper payments or not.

I went straight to Mr. Maladina's office and spoke to him. I told him that I did not want any more money coming through my name or account. Since then, no further funds from Kumagai-Gumi came into my account. I later learnt that two (2) other large sum payments by Kumagai-Gumi were made directly to Mr Maladina.

#### **5. SUMMARY OF PAYMENTS FROM FEBRUARY – JUNE 1999**

##### **27/2/99 Received Ken Yapan & Ass. A/C. K 401,000.00**

8/3/99 Bank Cheque to Kuntila No. 35 Ltd. 399,000.00

##### **9/4/99 Received Personal Account BSP POM K652,421.29**

8/3/99 Bank Cheque to Kuntila No. 35 Ltd 399,000 .00

There is a typing error there

13/4/99 Bank Cheque to Finance Corporation 332,000.00

Bank Cheque to Finance Corporation 285,000.00

13/4/99 Bank Cheque to JR Creative Network 30,000.00

##### **5/5/99 Received Personal Account BSP POM K595,453.00**

7/5/99 Bank Cheque to Finance Corporation 560,000.00

7/5/99 Bank Cheque to JR Creative Network 30,000.00

##### **1/6/99 Received Personal Account BSP POM K446,941.84**

9/6/99 Bank Cheque to Finance Corporation 440,000.00

Monies Cleared in Cheques 2, 076, 000. 00

Balance in Ken Yapan & Ass. and Personal A/C 19,816. 13

**Total Monies Received: 2,095,816.13**

#### **6. SUB – CONTRACT FOR PR 1 ACCELERATED WORK**

On 27th September, 2000 Jimmy Maladina phoned me and told me in Pidgin that Kumagai – Gumi is in fear of the Commission of Inquiry and have prepared a sub-contract for you to pick up from Mrs. Barbara Pecks. Next day I went to Mrs. Pecks (

at the offices of Carter Newell) and obtained from her a copy of a sub – contract agreement made between Kumagai Gumi Co. Ltd and Ken Yapane & Associates. Neither I nor my company, Ken Yapane and Associates or our representatives gave any instructions for the preparation of this document. I did not sign it on Ken Yapane and Associates' behalf nor did I authorize anybody to sign on Ken Yapane and Associates' behalf.. The contents of it are just simply false, as far as my company, Ken Yapane and Associates and I are concern.  
Annexed hereto and marked with the letter "**A**" is a copy of the Sub – Contract Agreement.

**7. LETTERS – YAPANE to JIMMY MALADINA - Dated 20th July, 1999  
- YAPANE to M.D. KUMAGAI GUMI CO. LTD – Dated 23August ,  
1999**

Mr Maladina telephoned me from either Brisbane or Cairns, (I cannot remember) on or about the 30 September 2000 and told me that he would be sending two draft letters with somebody for me to re-type on my letterhead. One was to go to Kumagai-Gumi and the other to himself. He told me to deliver the letter to Kumagai-Gumi and the one for him to Mrs Pecks.

On or about Monday, 2nd October, 2000 I received the two draft letters in my office.

I re-typed the letters on my letterhead, signed them and took the one for him to Mrs Pecks and the one for Kumagai-Gumi to Kumagai-Gumi's office on the same day. Kumagai-Gumi's Managing Director refused to see me so I did not deliver the letter.

Annexed hereto and marked with the letters "**B**" and "**C**" are copies of the letters dated 20 July 1999 and 23 August 1999.

The dates and the contents of the letters are again simply false.

**8. TRUST ACCOUNT – KEROWA TIKI # 990393**

On or about the evening of the 9th October, 2000 Mr Maladina telephoned me on my mobile and told me to pick up from Mrs Barbara Pecks, a detailed Trust Account Statement. The next day, 10th October I went to Mrs Pecks and received from her a Trust Account Statement entitled Client: Kerowa Tiki, Matter #990393.

Annexed hereto and marked with letter "**D**" is a copy of the Trust Account Statement of Kerowa Tiki.

I do not know who Kerowa Tiki is and I have no idea as to who prepared this statement.

**9. K40,000 RE – FURBISHMENT of N.P.F. OFFICE, GROUND FLOOR**

At the outset may I say that Jimmy Maladina was not involved in securing this contract.

I had learnt of this contract coming up, I cannot recall from who (not from Mr. Maladina) and I telephoned Mrs. Nelly Andoiye who referred me to Mr. Herman Leahy. Consequently, I went and met Mr. Leahy and Mrs. Andoiye and followed up the discussions with a letter dated 16th October, 1998.

Annexed hereto and marked with the letter "**E**" is a copy of the letter.

I engaged Peddle Thorp in October, 1998 to help with the design work.

Annexed hereto and marked with the "**F**" is a copy of Peddle Thorp's letter of 15th October, 1998.

There were two stages to the job. First stage involved the re-furbishment of the ground floor and the second stage involved the first floor. The second stage was not done due to lack of funds.

Stage Design was completed and on the 18th October, 1998 I rendered my company's

Invoice No. NPF0 for K40,000 payable.

I went to Mr. Maladina's office, (I cannot recall what I went to see him about). He asked how the contract with NPF was coming on. I asked, "What contract." He replied, " The fit-out". I was surprised. I said, "We are about to finish". He asked how much my fees were. I replied, "K50,000." He asked, " Can you give me K20,000. I need some money and I'll pay you back." I said, "O. K."

On 1st of March, 1998 I received payment and arranged express clearance. I went and paid K20,000 to Mr. Maladina by way of a cheque payable to Kuntila No.35. He has not paid me back yet In April, 1998 I paid Peddle Thorp 's fee of K8,000 as agreed.

Annexed hereto and marked with letter "**G**" is a copy of the fee note dated 31st March, 1998.

#### 10. INCONSISTENT STATEMENTS

I have given evidence on two separate occasions to this Inquiry. I did not give those statements freely. I was under tremendous pressure. I received threatening phone calls before to the effect that I should not co-operate with the Inquiry for my benefit. I cannot tell as to who or from where the calls came from.

What I have said on oath in this Inquiry has been totally against my conscious. I have had a long and hard talk with my legal counsel, Mr Loani Henao and I have decided to come out and tell the truth. I know the risk I am taking in so far as my personal safety is concern and the possible perjury charges that may arise out of this. I hereby, retract all previous statements I made in the Inquiry that are inconsistent with the above statements, and sincerely apologize for any inconvenience I may have caused to this Inquiry.

.....  
**KEN YAPANE**

1 November 2000"

Thank you.

[2.01 pm] THE CHAIRMAN: Thank you, Mr Yapane. Mr Henao?

MR HENAO: Mr Yapane, on page 2, the second paragraph in there and go to the sentence starting with "At the same time." Have you come across that, "At the same time,"?

A: Second paragraph?

Q: The second sentence in the second paragraph.

THE CHAIRMAN: It is the first - - -

A: Yes.

MR HENAO: You said, "At the same time when I arranged for the two bank cheques to be raised, I also asked the bank to raise a bank cheque for K30,000 made payable to JR Creative Network Limited. Again, I have no idea where the monies eventually went to." The K30,000 made payable to JR Creative Network Limited, was that from the K35,000 that was promised to you as your fees by Mr Maladina?

A: Yes.

Q: And the K30,000 to JR Creative Network was deposited on your own accord?

A: Yes, that is correct.

Q: And not as directed by Mr Maladina?

A: No, it was on my own accord.

Q: Thank you, Mr Chairman, I have no further questions.

THE CHAIRMAN: Yes, thank you. What about the documents that we have, do you want to tender those separately?

MR HENAO: Sorry, Mr Chairman?

THE CHAIRMAN: The documents that have been referred to and are attached to the statement, are you going to get those into evidence somewhere?

MR HENAO: Yes.

THE CHAIRMAN: You can just- - -

MR REEVE: I think they are already before the inquiry.

THE CHAIRMAN: Are they?

COMMISSIONER MANOA: Yes.

THE CHAIRMAN: All right. Well then that is okay. Maybe if you just tender the whole statement.

MR HENAO: Just one more question, please, Mr Chairman.

THE CHAIRMAN: Yes.

MR HENAO: Page 2 again, Mr Yapane. Item 3, the second paragraph, the first sentence reads: "On 7 May I arranged a bank cheque for K560,000 made payable to Finance Corporation and another one to JR Network for K30,000." Again, was the bank cheque for JR Network for K30,000 made on your instructions and not on Mr Maladina's?

A: That is on my instructions.

Q: And was that coming out of that K35,000 as promised as your fees by Mr Maladina?

A: Correct.

Q: Thank you, Mr Chairman.

THE CHAIRMAN: Yes, Mr Reeve?

MR REEVE: Thank you, Mr Chairman.

[2.05 pm] **XXN: MR REEVE**

Q: Mr Yapane, you have said that the first contact that Mr Maladina made with you over this matter was between 20 and 24 February 1999, is that correct?

A: That is correct.

Q: You have had earlier contact with Mr Maladina in 1999, had you not?

A: That I cannot recall.

Q: Do you have a recollection about drawing a cheque for Mr Maladina early in 1999 - I withdraw that. Have a recollection of drawing a cheque in favour of Kuntila Company Number 35 Limited in early 1999?

A: Yes, I remember that.

Q: What was that cheque for?

A: That is under item - - -

Q: I beg your pardon?

A: Item 9, refurbishment for NPF ground floor. Item 9 on page 5.

Q: A cheque for K2,000?

THE CHAIRMAN: He seems to be referring to the 20,000 at the bottom of page 5, is that right?

MR REEVE: No, I am referring to another cheque for K2,000. Remember writing out a cheque on 11 January 1999 on your BSP account at Waigani - sorry, at Port Moresby. Sorry, I withdraw that. On your PNGBC account at Port Moresby in favour of Kuntila Company Number 35 for K2,000?

A: I have to check my account. I cannot recall it. I may have done it but I cannot recall.

Q: Let me show you a document, if I may, which is a letter from your bank, PNG Banking Corporation which I have marked MFI-Y1, it has two documents behind it. The second document is the cheque I am asking about. Do you see that cheque?

A: Yes.

Q: For K2,000?

A: Yes.

Q: That cheque was originally made payable to Carter Newell Lawyers, was it not?

A: Yes.

Q: And then it is changed to Kuntila 35, is that correct?

A: I cannot recall. I must have done it.

Q: Well, what is that cheque about, Mr Yapane?

A: I cannot recall now. For what purpose I cannot recall.

Q: What dealings were you having with this company, Kuntila Number 35 Limited in January 1999?

A: As I said, I cannot recall. The cheque got paid but for what service provided, I have no idea.

Q: Remember you engaged HLD Niugini Chartered Accountants to prepare your tax returns for the 1999 year?

A: Yes.

Q: Do you remember giving them instructions to prepare a cash book for you?

A: Yes.

[2.09 pm] Q: You remember giving them instructions for the purpose of preparing that cash book about that K2000?

A: No, I cannot recall.

Q: I will just show you the cash book and I will draw your attention to the fact that that cheque drawn on 11 January 1999, to Kuntila Company Number 35, being cheque number 233023 for K2000 is shown as being for consultation fee. I will show you that. Does that assist you to recall what you were paying, K2000 consultancy fees for that company in January 1999?

A: Yes, now I recall.

Q: So what were you paying this company for then?

A: I got a small job from Jimmy assisting MVIT on something and then I- - -

Q: What is the something?

A: From my recollection it is a - there was a tender for, I think the Pineapple Building and there were two tenders, company that bid for the tender and I was to do a recommendation on behalf of MVIT.

Q: And Mr Maladina asked you to perform that work, did he?

A: Yes.

Q: And what fee did you obtain for that work?

A: I think K10,000 or something.

Q: Did you have a prior agreement with Mr Maladina that if he got you the work that you would pay him something?

A: Yes.

Q: What was the prior agreement? What percentage were you going to pay him?

A: That I cannot recall.

Q: When did you make that agreement with him?

A: When I got the job. Before he gave me the job I said I will pay you something. He asked for something so- - -

Q: I would say you paid Mr Jimmy Maladina K2000, that was the agreement?

A: And then he wanted it to be paid to Kuntilla Number 35 to I did a cheque to that.

Q: He directed you to do that, did he?

A: Yes.

Q: To pay that money to Kuntilla 35. Is there any other money that you earlier or any other earlier dealings with Mr Maladina of a similar nature?

A: No, not that I recall.

Q: Now, what you are telling us is that you did not have any discussion with Mr Maladina about contracts to do with Kumagai Gumi before this year?

A: No.

[2.13 pm] Q: I will just show you a document if I may. It has already been marked MFI-K1. The sub contract agreement between Kumagai Gumi and Ken Yapane and Associates. I want to draw your attention to the second last page of that document which has the number 47 on it and I will show that document to you. Do you recognise the signature on that document purporting to be made on behalf of Ken Yapane and Associates?

A: I have no idea.

Q: You do not know whose signature it is?

A: No.

Q: Do you know the signature of the person who witnessed that?

A: No idea too.

Q: Looks very like Jimmy Maladina's signature, does it not? Do you recognise that as Mr

Maladina's signature?

A: Yes, he signs like that.

Q: So you do not know who signed that document on behalf of Ken Yapane and Associates?

A: I have no idea.

Q: It is not your signature?

A: No, not mine.

Q: That is not any signature that you are familiar with?

A: No.

Q: And you do not know how that contract came into existence?

A: No idea.

Q: When you were asked to go and pick up the copy from Mrs Perks by Mr Maladina, was the document already signed as it appears in the document I have shown you?

A: It was signed and bound.

Q: Signed and bound?

A: Yes.

Q: Did Mr Maladina give you or ask you to go and pick up that contract so that you could answer the summons that had been issued by this commission of inquiry by producing it?

A: Yes, that is correct.

Q: So that document was given to you for the specific purpose of producing it to this commission of inquiry as evidence?

A: I think that is correct.

Q: Who did you collect the document from?

A: A Barbara Perks.

Q: From Mrs Perks personally?

A: Personally, she hand delivered it to me.

Q: And do you know Mrs Perks, do you?

A: Yes.

Q: The two letters that you referred to, the letter to Kumagai Gumi. That is a letter which you produced to this commission of inquiry?

A: Yes, that is correct.

Q: And you tell the commission, do you that document was prepared and given to you to sign?

A: A draft was given to me to put on my letterhead and sign.

Q: With the letter to Kumagai Gumi, what did you do with the original letter after you signed it?

A: I went to deliver the letter to Kumagai and Mr Taniguchi, the managing director did not want to see me so I brought it back and it is probably with me in my office.

Q: Still in your office?

A: Yes.

Q: And you produced a copy of that document to this commission?

A: Yes.

Q: Taken from the original that was given to you?

A: Yes.

Q: Who was the original given to you by?

A: It was dropped off at my office by somebody who came from Australia. Because on the telephone Jimmy said he will send it through somebody who is coming up.

[2.17 pm] Q: I see. Do you know who that somebody was?

A: No, it was - my secretary said somebody dropped the letter for me. It was from Jimmy.

Q: Well, do you think it may have been Mr Peter O'Neill who dropped it in?

A: No.

Q: You are not sure?

A: No.

Q: Well, you see Kumagai Gumi have given evidence that Mr Maladina told them on the phone that Mr O'Neill his good friend was going to carry some documents to drop in to them. You do not know about that?

A: No.

Q: And that document was prepared for the purpose of you producing it to this Commission of Inquiry, was it not?

A: Yes, that is correct.

Q: Now, the second letter that you refer to, the one to Mr Maladina of Carter Newell Lawyers- - -

A: Yes.

Q: That document was also prepared recently?

A: It came with the other one, together with the one to Kumagai Gumi the same day. That is in an envelope.

Q: And you typed it up on your letterhead?

A: On the same day.

Q: And what did you do with the original of that letter?

A: I gave it to Barbara Perks in person.

Q: To Mrs Perks personally?

A: Yes.

Q: And was Mrs Perks expecting the letter or was she surprised or- - -

A: No, she was a bit surprised.

Q: A bit surprised?

A: Yes.

Q: And you produced a copy of that letter- - -

A: Yes, to the inquiry.

Q: To this Commission of Inquiry?

A: Yes.

Q: That letter was produced or manufactured if I can put it that way, for the purpose of you producing it for this Commission of Inquiry, was it not?

A: Yes, that is correct.

Q: And the purpose of that letter was to suggest that monies that went into Carter Newell trust account were applied for your benefit?

A: That is correct.

Q: And that is untrue, is it not?

A: No, that is completely false.

Q: So the first you say you knew about Kumagai Gumi and this money coming from Kumagai Gumi was after you enquired at the Bank of South Pacific when you received the fourth cheque. Is that correct?

A: That is correct.

Q: And at that stage you told Mr Maladina that you would have nothing further to do with them?

A: To do with them. Yes, that is correct.

Q: Now, in your company accounting for 1999, you were asked some questions by your accountant about these monies, were you not?

A: Yes.

[2.21 pm] Q: You told your accountant that the K401,032 deposit on 26 February 1999 was a personal deposit, is that correct?

A: Sorry, the K401,000?

Q: You told your accountant that the deposit of K401,032 on 26 February was a personal deposit?

A: That is correct.

Q: Because he queried that with you, did he not?

A: Yes.

Q: And he also queried with you the K399,000 withdrawal, did he not?

A: Yes.

Q: And you told him that that was a withdrawal of your personal deposit?

A: Yes.

Q: And you told him that the K2,032 was a fee for the use of the company account, is that correct?

A: Yes, that is correct.

Q: In your company account for 1999 you deposited the K40,000 from the National Provident Fund?

A: Yes.

Q: And do you have a recollection that you drew a cheque for K20,000 in favour of Carter Newell Lawyers?

A: Yes, that was changed to Kuntila.

Q: It was originally written out Carter Newell Lawyers K20,000, was it not?

A: Yes.

Q: And then it was changed to - - -

A: Changed to - - -

Q: Kuntila 35?

A: That is correct.

Q: Who made that change?

A: Jimmy.

Q: With your authority?

A: Yes, he asked me to change it to Carter Newell.

Q: And this is the 20,000 from the National Provident Fund refurbishing? And you showed that in your cash book for 1999 as a payment to Kuntila Company Number 35 by cheque 233050 for K20,000 as consultancy fees, did you not?

A: Yes.

Q: Why did you show it as consultancy fees when it was a loan to Mr Maladina?

A: Well, initially I put it in a consultancy fee to him.

Q: Yes, what I am asking you is - - -

A: And that is the way I told my accountants. That is the way I told my accountant.

Q: So, when you loan people money you call it consultancy fees, do you?

A: No, because I did not get paid on my loan quickly so I put it as a consultancy fee.

[2.25 pm] Q: But your cash book you have another column for loans, do you not?

A: I am sorry.

Q: In your cash book, there is another column for loans, is there not?

A: Yes.

Q: You remember a loan for K4000 to Augustine and K1000 to Mel Resources?

A: Yes.

Q: They come under loans, do they not?

A: Yes.

Q: Why did you put this K20,000 under consultancy fee?

A: Well, at that time I thought it was convenient and I put it under consultancy fee for two of my accountants to prepare the books this year.

Q: And the K399,000 that was shown as consultancy fees in your cash book too, was it not?

A: Not really.

Q: Would you like me to show you the cash book?

A: Well, to my accountant that is personal kina. I think it is a consultancy fee.

Q: Would you agree with me that is the way it is shown in your cash book?

A: Probably is, now.

Q: Would you like to have a look to make sure?

A: Okay.

Q: You agree that is how it is shown?

A: Yes.

Q: Have a look at the other two amounts there for K20,000 for consultancy fees as well. What do they relate to? You see there is one for JR Creative Network, is there not? That says consultancy fees too. What were those consultancy fees for?

A: That is I borrowed that myself and I paid it back a few months later. A K20,000 cheque was put back.

Q: Two months or two weeks?

A: No, no, two weeks or something later.

Q: So, although it says JR Creative Network, that cheque was in fact paid to cash, was it not?

A: It was a bank cheque made to JR Creative Network. I borrowed K20,000 from the company to put into Rain Money and in a fortnight's time I picked up K40,000 and I paid back the K20,000 in cash later.

Q: Now, tell me about the second cheque for K20,000 that is shown as consultancy fees to J Luia?

A: That is cash given to my cousin brother.

Q: Cash given to your cousin brother.

A: Yes.

Q: Is he a consultant or is that something else too?

A: My cousin.

Q: Was it given to him for consultancy fees or is it a loan or a gift or what is it?

A: It was supposed to be a loan.

Q: A loan?

A: Yes.

Q: But it found itself into the consultancy fees column as well, did it?

A: Yes.

[2.29 pm] Q: These monies to JR Creative Network, K20,000 that you made K20,000 on, you doubled your money?

A: Yes.

Q: And two lots of K30,000.

A: Yes.

Q: Did you double your money on those as well?

A: I lost those two.

Q: You lost those two?

A: Yes.

Q: So that is why we do not see them coming back into your accounts? Those so called consultancy fees or fees that Mr Maladina paid you, there were two lots of K35,000 and the others, they were not brought to your account in your company books, were they?

A: Not appearing because I cleared it. The cheques were cleared under my own name.

Q: Cleared out of your own name?

A: Yes.

Q: You put in a personal tax return?

A: No.

Q: You do not. So that money has not been disclosed to the tax department, is that correct?

A: That is correct.

Q: Now, if you can just go to page 5 of your statement if you would please, Mr Yapan. In the second last paragraph you say that you went to Mr Maladina's office. When was that that Mr Maladina put the bite on you for this K20,000?

A: I would say about February or something.

Q: February 1999?

A: I cannot recall the exact date.

Q: You think that it was February?

A: Around February, yes.

Q: And in the next paragraph I think you referred to 1 March 1998. Do you mean 1998 or do you mean 1999?

A: Sorry, 1999, typing error.

THE CHAIRMAN: Which paragraph is this?

A: Last paragraph of page 5.

Q: Thank you.

MR REEVE: I have no further questions at this stage.

THE CHAIRMAN: Thank you. Mr Batari, did you have any questions?

MR BATARI: Yes.

THE CHAIRMAN: Well, you and Mr Coady can pick up what is left if he wishes. Sorry, I was just suggesting Mr Batari should cross exam first and then- - -

MR COADY: I beg your pardon.

THE CHAIRMAN: And give you the right of reply.

MR COADY: Thank you.

**XXN: MR BATARI**

Q: Just a question on taxation. In your last evidence before this Commission and also today, you indicated that you admitted not paying or disclosing to the tax man certain monies that you have received, is that right?

A: That is correct.

Q: Are you going to do that? You undertake to pay tax on those monies that you have received?

A: Yes.

Q: And you would undertake to fill out or conform with the necessary taxation laws in relation to those monies that you received?

A: Depending on which monies we are talking about here.

Q: There were a number of monies that you have disclosed as having been received by yourself either as consultancy fees or pocket monies. Are you going to do that?

A: Yes.

Q: Now, I am just wondering also about your association with Jimmy Maladina. From the beginning did it ever occur to you that what you might be doing or what you were getting yourself into might be against the laws of this country?

A: That, I did not realise that time.

Q: It did not occur to you?

A: No.

Q: You did not even address your mind to it?

A: No.

Q: What do you think- - -

A: I know I was doing some things that were not right but I was forced to do it.

Q: Yes?

A: Yes.

[2.33 pm] Q: And do you now realise that what you may have gotten yourself into may be against the laws of this country.

A: Probably correct.

Q: Sorry?

A: Probably correct.

Q: Yes, thank you.

THE CHAIRMAN: Mr Coady?

**XXN: MR COADY**

Q: Thank you, Mr Chairman. Mr Yapane, I am looking again at your document here and at the bottom of the first page in paragraph 2, the last sentence of that first paragraph, you say: "I was also told to deliver both of these cheques to Barbara Perks at Carter Newell's office." Was it Mr Maladina who told you to do that?

A: Yes.

Q: Now, on page 2, still in paragraph 2, the last paragraph says; you went to the office and you asked for Mrs Perks and she came out and "I gave her the envelope"?

A: Yes, that is correct.

Q: Did you have Mr Maladina's name on the front of the envelope?

A: I think so.

Q: This I think is the first occasion that you met Mrs Perks, was it? Was that the first occasion?

A: Yes, that was the first time I met her.

Q: Now, do you have a clear memory that you actually saw her?

A: Yes.

Q: It is not the case that you gave it to the reception?

A: No, I gave it to her.

Q: Did you tell her who you were?

A: No.

Q: So you came in and you said I have got an envelope for Mr Maladina, did you?

A: Mr Maladina.

Q: But you did not say my name is Ken Yapane?

A: No.

Q: Okay. In paragraph 3 again in the - well, it is the second last paragraph commencing on 7 May, you see that paragraph?

A: Yes.

Q: Second paragraph section 3; "On 7 May I arranged the cheque" and then the last sentence in that paragraph there you say, you asked for Mrs Perks, "she came out and I delivered the envelope to her." Now, this particular envelope, did you have Mr Maladina's name written on the front of it?

A: I cannot recall but I must have.

Q: You must have?

A: Yes.

Q: And did you tell Mrs Perks who you were?

A: No.

Q: I am on page 3 now, the bottom of page 3 and section 6. You say that Jimmy Maladina rang you and spoke to you in Pidgin and said he wanted you to pick the sub-contract from Mrs Perks?

A: Yes.

Q: "Next day I went to Mrs Perks." Now, this contract that you are you talking about, when it was delivered to you, was it delivered in an envelope?

A: No.

Q: Was not in an envelope?

A: Not in an envelope.

Q: It was open?

A: Yes.

Q: Did you tell Mrs Perks who you were?

A: Yes, that time she met me and we shook hands and that time when I got the contract, we met and we shook hands and we talked and then I asked for another extra copy for me.

Q: I am sorry?

A: I asked for an extra copy, photocopy of the contract so she gave me the original and the contract.

Q: And what? She went off and copied that, did she?

A: Yes.

[2.37 pm] Q: Is it the case that you said earlier to Mr Reeve's question that when you got that contract, it was already signed?

A: Yes, it was signed, so I just asked her to give me a photostat copy of the actual contract.

Q: The next section, section 7 talks about these two letters and Mr Maladina telephoned you and he told me to deliver the letter to Kumagai and the one for him to Mrs Perks?

A: Yes.

Q: Now, when you delivered that letter to Mrs Perks, was it in an envelope?

A: No.

Q: It was not in an envelope?

A: It was in an envelope and I took it out and I gave it to her.

Q: I am sorry?

A: It was in an envelope and I took it out of the envelope and I gave it to her.

Q: Did you give her the envelope as well?

A: No.

Q: You kept that?

A: Yes.

Q: Did the envelope have Mr Maladina's name on it?

A: No, it was a clean envelope. A1 size envelope.

Q: What did Mrs Perks say when you gave her the letter, what did she say?

A: She did not say much.

Q: Did not say much. She just took the letter and said good afternoon or whatever?

A: Yes.

Q: Now, there are two instances in which you receive and deal with these letters. One was when you received the draft?

A: Yes.

Q: And you say you do not know who it was that dropped that off to you?

A: It was dropped in my office.

Q: By someone you do not know?

A: Yes, and my security gave it to me.

Q: Okay, and later on you delivered the one back to Carter Newell's office?

A: Yes.

Q: In section 8, you have used the word "trust account." You see the heading of section 8?

A: Yes.

Q: It says, trust account - Kerowa Tiki?

A: Yes.

Q: 990393. Is that in your words?

A: These ones here?

Q: Yes?

A: Yes, those were my words.

Q: And you think that that is a trust account, do you?

A: Well, that was what I was told.

Q: Who told you that?

A: Jimmy Maladina.

Q: Jimmy told you it was a trust account?

A: Yes, a trust account.

Q: Thank you, I have nothing further Mr Chairman. Although, I just do wish to make an observation that the document that we last referred to as a trust account is really not a trust account statement, certainly not. I am sure Mr Reeve must already have produced to this court, to this inquiry the typical locus trust account statements produced from the computer of Carter Newell and I would observe that this is not one of those documents. And I would observe also that in respect to the second half of the document where it refers to monies received via Fin Corp

that those monies on the evidence as I understand it did not go through the trust account at all. So I just observe that this is not a Carter Newell trust account statement. I have nothing further. Thank you sir.

THE CHAIRMAN: Thank you.

MR REEVE: Perhaps, I should just clarify that that document is in fact headed trust details.

MR COADY: No, the first half of it is, John.

MR REEVE: And there are receipt numbers shown which I will be able to produce evidence are Carter Newell trust account receipts.

THE CHAIRMAN: Do you have any re-examination Mr Henao?

MR HENAO: No thank you Mr Chairman.

[2.41 pm] THE CHAIRMAN: You had Peddle Thorp to do the architectural work on that design for the NPF?

A: That is the old NPF office building in Boroko.

Q: Yes. And they got a fee of K8000 for that?

A: Yes.

Q: What work did you do in addition to what they did?

A: I did the liaison, went to the site and measured the existing buildings and these things; existing premises.

Q: And you got a fee altogether of some K30,000?

A: Yes.

Q: Thank you. No, I have no further questions at this stage anyway. So thank you. You are excused.

### **THE WITNESS WITHDREW**

THE CHAIRMAN: We might just take a short break now, Mr Reeve and then we will call Mr Fabila back in.

MR REEVE: Perhaps we might need a bit longer because I did not bring the documents that I will need for Mr Fabila. So I will have to arrange to get them.

THE CHAIRMAN: Okay. Well, by 3 o'clock, do you think?

MR REEVE: Yes.

THE CHAIRMAN: We will adjourn to 3 o'clock. Thank you, gentlemen.

### **SHORT ADJOURNMENT**

[3.09 pm] THE CHAIRMAN: Yes, Mr Reeve?

MR REEVE: Thank you, Mr Chairman. Mr Chairman, I regret that we are not in a position to continue this afternoon. Ms Kora has arrived, but the message was garbled and the documents did not arrive with her. By the time we get them back here this afternoon we will probably end up running out of time. So the suggestion we would make is that we meet for probably no more than 2 hours tomorrow. It maybe significantly less than that to complete the evidence of Mr Fabila on this aspect.

THE CHAIRMAN: Okay, thank you. Well, look I have another matter to attend to at 8.30 tomorrow so we will not be able to start until 11, Mr Fabila. So, we will be adjourning until 11 o'clock tomorrow and if possible try and complete it and work through the lunch hour if necessary to get it done in one day.

MR REEVE: Maybe we could finish before the normal lunchtime, but if we do not it certainly should not be more than, say half an hour long.

THE CHAIRMAN: Okay. All right, thank you. So, we will resume at 11 o'clock.

THE REEVE: As the commission pleases.

AT 3.10 PM THE COMMISSION OF INQUIRY WAS ADJOURNED UNTIL THURSDAY, 2 NOVEMBER 2000 AT 11 AM.

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