



TRANSCRIPT OF PROCEEDINGS

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COMMISSION OF INQUIRY INTO NATIONAL PROVIDENT FUND

Mr Tos Barnett, Chairman

Mr Donald Manoa, Commissioner

Lady Wilhemina Siaguru, Commissioner
(in absentia)

AT WAIGANI, THURSDAY 25 OCTOBER 2001 AT 9.40 AM

(Continued from 18 October 2001)

[9:40 am] THE CHAIRMAN: This is a resumption of the inquiry into the National Provident Fund. Yes Mr Reeve?

MR REEVE: Thank you chairman. Chairman again the purpose of our adjourning this inquiry until today was to report to the commission what responses have been received from people who wish to exercise their right to be heard. If I can just run quickly through the list. Firstly we have received a response from Mr Simon Sipo who is the first secretary to the Honourable, the leader of the Opposition Mr Skate and I have provided copies of the transcript to Mr Sipo. Mr Skate has indicated that he is willing to appear before the commission and wishes to do so and I have indicated in a letter to both, to Mr Sipo that I would prefer that Mr Skate not give evidence until the other evidence is in and particularly the evidence of Mr O'Neill. And I understand that will be acceptable to him but if he feels otherwise then the opportunity has been offered to appear sooner but I think it would be more orderly if Mr Skate is the last witness and I have told them that in writing.

The second response that has been received is from Mr Moses Maladina who is the PNG High Commissioner in Wellington, New Zealand. We have no address to which we can forward a notice for Mr Jimmy Maladina and rumour having it that he was in New Zealand, we forwarded the letter to Mr Moses Maladina in New Zealand. Mr Maladina has responded that he does not accept service on behalf of Jimmy Maladina and he does not reside at my address nor am I in communication with him at this point in time. So I just mention that as a matter of record.

THE CHAIRMAN: Thank you.

MR MANOA: Mr Reeve, I think, I mean he is responding, did we send any letter to Mr Maladina, Mr Moses Maladina?

MR REEVE: Care of Mr Moses Maladina.

MR MANOA: Of the high commission in New Zealand?

MR REEVE: Yes.

MR MANOA: And that is why he is responding as the high commissioner representing PNG in New Zealand.

MR REEVE: Yes that is right. The third response that we have received is from Young and Williams Lawyers who act for Mr Maurice Sullivan and Mr Greg Lay has indicated that Mr Sullivan would need 3 weeks from the date that the third supplement was posted on the website in which to respond and I have written back to Mr Lay indicating to him that I believe 3 weeks is excessive. I believe it would be a matter of Mr Lay making an application and having that matter argued if that circumstance arose.

[9:43 am] THE CHAIRMAN: And what about the question of the transcript on the website, has that been- - -

MR REEVE: It only went on the website yesterday as I understand it.

THE CHAIRMAN: Do you know what the cause of the problem was?

MR REEVE: No, I do not, but I am told that apparently when the text is produced that it requires work to put it in the format where it is accepted by the website and being 300 odd pages, it may be that that was the reason.

THE CHAIRMAN: So how many - if there was - is there any way - we can discuss this later? Is there a way to adapt the material which we present so that it automatically accepts it to foreshorten this delay.

MR REEVE: Well, one would have to find out, it would be the transcription service that will have to do it because it is their product that goes on.

COMMISSIONER MANOA: I think Mr Chairman, according to the secretary of the commission, Mr Dogimab, he advised me last week that the website was down for a couple of days.

THE CHAIRMAN: It is a different story, is it not?

COMMISSIONER MANOA: Yes.

THE CHAIRMAN: Thank you.

MR REEVE: The final response we have received at this stage is from Warner Shand Lawyers who act of course for Mr O'Neill and I think for Mr Dawson they have previously appeared. Those lawyers have indicated that their clients will required two months to respond and I have indicated in a letter that I would object to that length of time being allowed. I have spoken with Mr Wilson this morning. He is on his way to the inquiry but he is running a little late, and obviously, he would need to be heard and I have indicated to him that I will oppose the commission allowing two months. It is an excessive time and some ruling would need to be made in relation to that.

THE CHAIRMAN: Mr O'Neill seems to be here now.

MR REEVE: Yes. The third response I have received is a communication from Pacific Helicopters Network. My communication has been with Mr Philip Smith who is the general counsel of the Pacific Group.

THE CHAIRMAN: What is his name?

MR REEVE: Philip Smith.

THE CHAIRMAN: Philip?

MR REEVE: Yes. And Mr Smith's response includes a statement and annexures of Mr Malcolm Roy Smith-Kela which has been faxed to the commission and the original of which will be delivered to the commission by Mr Philip Smith tomorrow as he is passing through Port Moresby.

[9:46 am] The position I wish to take Mr Mal Smith-Kela is available to verify that statement and will make himself available for cross examination, much the same way as Mr O'Neill himself did earlier. So what I would seek is a direction that that statement be included in the transcript and I then seek to go through the statement and describe and make some remarks in relation to the annexures to the statement.

THE CHAIRMAN: Okay well I direct that the statement, what is the date of the faxed statement?

MR REEVE: 24 October 2001 and it is a statement of Malcolm Roy Smith Kela, MBE DFC.

THE CHAIRMAN: Well I direct that the statement of Mr Malcolm Smith Kela dated 24 October be read into the transcript subject to it being verified by him before the commission on oath.

"STATEMENT OF MALCOLM ROY SMITH-KELA

BUSINESSMAN

PO BOX 342

GOROKA

E.H.P.

1. **Background:**

1.1 I am a citizen of Papua New Guinea. I am the owner and Managing Director or an associate of a number of companies operating in Papua New Guinea and overseas. These companies operate in diverse areas including tourism, gaming, aviation, primary production and aerospace engineering.

1.2 I knew Peter O'Neils father very well. I have known Peter O'Neil closely since 1977 and I trusted him absolutely.

2. **Acquisition of R.I.F.L.**

2.1 I had owned, but sold, Kina Securities in Port Moresby. I maintained an interest in banking and was interested in acquiring a banking licence if the opportunity arose.

2.2 On a date I cannot accurately recall, but in September 1999, I was telephoned in Madang by Mr. Peter O'Neil.

2.3 O'Neil asked me if I would be interested in a shareholding in Resources and Investment Finance Limited ("R.I.F.L.") He told me that the company was wholly owned by PNGBC and had approximately 1 million kina in its accounts. He said that if we paid approximately K1 million for it we would get R.I.F.L. and the 1 million Kina. Most importantly I asked and was told that we would get a clean company with a Banking Licence and a good past trading record for free.

2.4 I advised that I liked the idea but warned that I did not have the time to be involved in the running of R.I.F.L. and that suitable managerial staff would have to be acquired. I also told O'Neil that I would not have the time to participate in the acquisition and that I trusted him to carry out the purchase and to look after my interest.

2.5 O'Neil claimed to have P.N.G.B.C. personnel that could operate the company and told me that he would act in my interest. I had no reason to think that he would not do so. I did become aware that Jimmy Maladina was also a fellow purchaser.

2.6 At all times I believed as a result of what O'Neil told me, that the company RIFL had a Banking Licence and one million Kina cash and this was what was being purchased for a total price of one million kina.

3. **The Purchase:**

3.1 The next contact I received was on or about 23rd September 1999. I received a faxed draft letter which was apparently prepared by a Garry Hersey and sent to O'Neil to forward to me for re-engrossment on Pacific Helicopters Ltd. letterhead. A copy of that fax is annexed hereto and marked "A". I was told that the letter was required by PNGBC to expedite the sale. I have never met Hersey and had no conversation with him as recorded in that letter.

3.2 I signed and returned the letter to O'Neil. I have not retained a copy of the original.

3.3 I have recently learned from Mr. Greg Lay that he, on the basis of a Consent to Act as a Director signed by me, as a result of instructions given to him by Jim Dawson and Maurice Sullivan and as a result of the letter of the 23rd September 1999 (supra), considered that his client and the purchaser of R.I.F.L. was Pacific Helicopters Ltd. I never met Mr Lay and gave him no instructions directly.

3.4 Pacific Helicopters Ltd. did receive three letters from Greg Lay. The first is dated the 21st of October 1999. A copy of same is annexed hereto and marked "B". The letter was filed by the Group Finance Director whose handwritten note to "file" appears at the head of the letter. I do not recall

actually seeing the letter.

3.5 A second letter dated the 12th November 1999 and was received on or about the 16th. This is a draft letter to the Governor Bank of Papua New Guinea. A copy is annexed and marked "C". The document bears handwritten changes but they were not made by me. I scanned the letter but considered that everything was being attended to by O'Neil or his staff and had no reason for concern. I was only a minority shareholder and believed that Greg Lay knew this.

3.6 The third letter from Mr. Lay is dated the 14th December 1999. It is a copy of a letter for Young and Williams to the Bank of Papua New Guinea. I do not recall actually reading the letter. A copy of that letter is annexed and marked "D".

3.7 At no time was I the sole owner of RIFL. The funds sent were to purchase only 25% of the shares in that company and I believed that Bluehaven No. 67 Ltd was the company formed to effect the purchase.

3.8 At no time did anyone have permission to represent Pacific Helicopters Ltd or myself as other than a 25% shareholder.

3.9 On the 28th October 1999 Pacific Helicopter Ltd paid to Port Moresby First National Real Estate the sum of K250,000.00 to purchase 25% of RIFL. Annexed hereto and marked "E" is a copy of the deposit slip in the sum. I was asked to pay into this account by O'Neil and did so.

3.10 I received a signed receipt from O'Neil. A copy is annexed and marked "F".

3.11 Upon a date that I cannot recall, O'Neil asked if I would be available to be the temporary Chairman until the bank was operational. I agreed, and I believe that I was appointed Chairman but was later relieved some 9-12 months ago.

3.12 I have received virtually no information about the company. I and certain employees of Pacific Helicopters Ltd. made persistent demands for proof of my shareholding. Nothing has been received. No Directors meetings have been held and I have been unable to obtain information as to what precise business the company was engaged in except a few comments made to me by Dawson or O'Neil socially.

3.13 I became increasingly worried that something was wrong. I resolved in early 2001 to sell out of the company, but was not able to speak to O'Neil on the subject. In fact the company did not fit within the profile of our core businesses and was of little or no value to the Group.

4. The position of Pacific Helicopters Ltd.

4.1 I received a letter from Counsel Assisting the Inquiry into National Provident Fund on the 18th October 2001. I immediately instructed that General Counsel of the Pacific Group, Mr. P.W. Smith to deal with the matter.

4.2 I have read the relevant parts of the transcript. I have no knowledge of any dealings with NPF monies or of the allegations of "stripping" of RIFL as alleged in the Opening Address.

4.3 Neither I nor any company in the Pacific Group have ever received any money at all from the RIFL share purchase from any source whatsoever. I note that K250,000.00 was withdrawn from RIFL and cannot be traced. I have searched all accounts of companies within the Pacific Group and asked the Finance Director to perform similar searches and I say that no monies have been received from any source relating to or arising from the RIFL share purchase that can be found. So far as I knew, the sum of K250,000.00 was part of the purchase price paid for RIFL in return for which I received a 25% shareholding in the company which still has not occurred.

4.4 As a result of certain enquiries and searches, I have now become aware that:

(i) There is in existence a company called Bluehaven No. 69 Ltd. I had never heard of the company and have no knowledge of why it was formed.

(ii) Neither I nor Pacific Helicopters Ltd has or ever had a shareholding in RIFL or any company associated with that company.

Annexed hereto and marked "G", "H" and "I" are searches of the Companies Resources and Investment Finance Limited, RIFL Holdings Ltd. (formerly Bluehaven No. 67 Ltd.) and Bluehaven No. 69 Ltd. Neither Pacific Helicopters Ltd nor myself are shareholders. This is clearly contrary to advice received from Mr. Dawson.

4.5 As a result of these enquires I have resigned as a Director of RIFL as of the 21st October 2001. Pacific Helicopters Ltd. has given notice to RIFL that a full refund in the sum of K250,000.00 is required by the close of business on the 26th October 2001.

4.6 On the 24th October 2001 I telephoned Mr. Jim Dawson to discuss newspaper reports and my demand for repayment to Pacific Helicopters Ltd. and to ascertain why no shareholding was ever issued to me or to Pacific Helicopters Ltd. in accordance with the original agreement.

4.7 I noted the terms of that discussion. Annexed hereto and marked "J" are my notes of the conversation made immediately after the telephone call and transcription of those notes. At no time have I been told prior to this discussion that the payment of K250,000.00 was a loan to Port Moresby First National or RIFL.

4.8 In any event, the transcript of the Opening Address by Counsel Assisting is incorrect insofar as it may assert or infer that Pacific Helicopters Ltd. or myself personally are or ever were a shareholder in RIFL or any company associated with that company.

[signed]
Malcolm Roy Smith-Kela MBE DFC
Managing Director
24/10/2001"

THE CHAIRMAN: Will he be doing that tomorrow?

MR REEVE: It is his brother who will be here tomorrow. Mr Smith is available and he has indicated his availability and his willingness to cooperate. I seek to hand copies of that statement and its attachments to the commission. I have a copy for Mr Wilson when he arrives.

THE CHAIRMAN: Now I notice some of the people that are clearly interested in the statement are actually outside the room now and may not know what is happening. Do you wish to - Mr Wilson has not arrived yet?

MR MANOA: I think he is there.

MR REEVE: No or we can either wait until Mr Wilson arrives or we can proceed and invite them to come in if they wish to.

THE CHAIRMAN: Well let us adopt the latter course. Unless there was something in your discussion with Mr Wilson which makes you feel that he must be about to appear any moment and it would be appropriate to wait.

MR REEVE: I think he is on his way as I understand it.

MR MANOA: He may be outside. I have not seen him but he may be outside.

THE CHAIRMAN: I will just give you a moment to check outside.

MR REEVE: Well probably it is worthwhile adjourning for a few minutes until he gets here and then we can go through it.

THE CHAIRMAN: We will take a short adjournment.

SHORT ADJOURNMENT

[9.55 am] THE CHAIRMAN: Yes, Mr Reeve?

MR REEVE: I would just like to go through the statement of Mr Smith-Kela which I will give Mr Wilson a copy and in relation to the annexures to it. In paragraph 1, Mr Smith essentially gives the background of himself and his knowledge of Mr O'Neill's father and Mr O'Neill and his trust in Mr O'Neill.

In paragraph 2, he deals with the acquisition of RIFL and you will notice from paragraphs 2.1 and 2.3 that Mr Smith's interest was in the acquisition of a clean company with a banking licence. And that is in essence the value that he saw in the transaction. It was the acquisition of the banking licence.

You will see that in the arrangements whereby RIFL was acquired by PNGBC originally from the Commonwealth Trading Bank and its nominee company, the price was the asset value and there was no value attributed to the banking licence. Similarly, in the purchase by Blue Haven No. 67, there was no value attributed to the banking licence. But it is clear when one reads Mr Smith's statement that that is the value that he sought.

In paragraph 2.2, you will notice that Mr Smith says that the initiator of his involvement was Mr Peter O'Neill and that is plain through the whole of this that Mr O'Neill was the initiator and it is clear he was the person who was in charge of the funds.

In paragraphs 2.3 and 2.6, Mr Smith says that the arrangement was that there would be a K1 million cash asset plus the company plus the banking licence and that in effect K1 million cash would be paid for that. So, you get the cash equivalent plus in effect the company and the licence for nothing. And that is the position as Mr Smith says it was put to him.

Now, when one looks at how events fell out, that is important because as I have already shown in the supplement, K1 million was left in RIFL. Other funds were returned.

[9.58 am] It will also be seen that in 2.5 Mr Smith says that Mr O'Neill assured him that he had PNGBC personnel, who could operate RIFL because Mr Smith did not wish to be involved in the day to day running of the company. Most importantly in paragraph 2.6 Mr Smith, in describing his discussions with Mr O'Neill before this transaction was entered into says, I did become aware that Jimmy Maladina was a fellow purchaser. Now, that - - -

THE CHAIRMAN: 2.5?

MR REEVE: 2.5. That is significant because when you look at how the money was arranged and where the money came from, as I said earlier, the notations in Port Moresby First National Real Estate's records indicate the money came from Carter Newell per PON. Now, that taken with this evidence shows us who was organising the monetary aspects of things.

In paragraph 3.1, Mr Smith deals with the letter dated 23 September 1999 which he signed addressed to Mr Gary Hersey. He does say that the original of that letter is returned by him to Mr O'Neill and that he did not retain a copy. The original of that letter you will find in the Gadens' file which is commission document 1364. Now, what I said about that letter in the supplement was, it was a strange letter, particularly a strange letter for a businessman as astute as Mr Smith to have written, because what it says is Pacific Helicopters is the beneficial owner of the purchasing company. The second thing it says is, we exercise our option for another 49 percent of the capital of RIFL. The third thing it says is, having exercised that option can you tell us what the price is in actual terms. Now, Mr Smith says the history of that letter, which is annexure A to his statement, is that he received a draft of that letter which he understood was prepared by Mr Gary Hersey and which was sent to Mr O'Neill and on to Mr Smith to re-engross on Pacific Helicopter's letterhead.

Now, you will see from annexure A that that is the draft letter that Mr Smith was given. The draft letter with the note on it that reads: "Hi Peter. Draft letter as discussed. Regards Garry." Now, that has some rather serious fallout. Mr Hersey was the officer in the PNGBC who was giving the instructions to Gadens over the sale of RIFL to Blue Haven No. 67. Here we see Mr Hersey apparently either generating or facilitating the transmission of a letter, which on the face of it seeks to represent that Blue Haven No. 67 is purchasing the shares on behalf of Pacific Helicopters which builds the impression that the beneficial owner of the purchase or entity was Mr Smith and he explains how that letter came into existence and what he did with it. That he had the letter typed on his letterhead, he signed it and returned it to Mr O'Neill.

[10.02 am] In paragraph 3.3, Mr Smith says that he has been advised by Mr Greg Lay that as a result of the consent which he signed to act as a director of Blue Haven No. 67 and importantly as a result of

instructions given to him by Jim Dawson and Maurice Sullivan and as a result of that letter, Mr Lay believed that his client and the purchaser of RIFL was Pacific Helicopters. And Mr Smith says he never met Mr Lay and he gave him no instructions directly. So, the instructions were coming from the other people whose names have been given.

Annexures B, C and D are letters which Mr Smith - the only letters Mr Smith says he has received. Annexure B is a letter from Mr Lay which clearly indicates that Mr Lay believed that Mr Smith was the principal, but he does not refer to the conversation with Mr Smith. He refers to a conversation with Mr Jim Dawson about organising settlement of this transaction.

Annexure C is a letter from Mr Dawson to Mr Lay about certain matters containing suggested changes to a letter to the Bank of Papua New Guinea about his knowledge of merchant banking, certain things are said and a copy of that letter, the letter of 12 November addressed to the Governor of the Bank of Papua New Guinea with certain handwritten alterations. And you will see in the second paragraph of that letter that the representation is made to the Central Bank for the purposes of establishing a business under the Banking and Financial Institutions Legislation, "We write to you to inform you that Blue Haven No. 67 Limited's beneficial owner is Mr Malcolm Smith-Kela of Pacific Helicopters Limited." So, what the Central Bank was being told is quite clear. There it is in black and white.

[10.05 am] MR DAWSON: What the bank had been told?

MR REEVE: But if you read the transcript, what the bank has been told is there in black and white.

MR DAWSON: Is that what you said?

MR REEVE: Yes.

MR DAWSON: Sorry, I did not - I could not just hear it, that is why.

THE CHAIRMAN: So Mr Dawson, are you here represented by Mr Wilson or are here on your own behalf?

MR DAWSON: I am actually here carrying the bag for Mr Wilson as I have been on a number of occasions. I am of the belief that - so I have written to Mr Wilson as a response of Mr Reeve's letter to Mr Wilson addressed to Mr O'Neill and myself saying; look at, you can look at things on the Website and you know, the usual letter that comes out, there may be something you want to make comments about, I am paraphrasing and- - -

MR REEVE: The standard letter.

MR DAWSON: And I have written to Mr Wilson saying I will respond seven days after, seven days after I see it on the Website but it was not there as of yesterday when I looked.

MR REEVE: It went up yesterday.

MR DAWSON: So I might make one or two comments, I only wanted to but I do not want to respond to that at the moment. I think it needs a more definite response and I need to go to our records, things like that but I would need to talk to Mr Wilson for a couple a seconds on that.

MR REEVE: Well, that is the reason I wanted to through this today so that both Mr O'Neill and Mr Dawson are aware of this additional material which I did not have at that time I opened.

THE CHAIRMAN: I just to make - I asked you the question in the interest of having orderly proceedings.

MR DAWSON: Yes.

THE CHAIRMAN: Because if you are going to join us as a party and you clearly have an interest.

MR DAWSON: Well, my name has been mentioned once or twice. I have a prick in my ears.

THE CHAIRMAN: Yes. I will have you put on oath so you can be subject to cross examination. If you are here being represented by Mr Wilson and not talking then Mr Wilson will be talking for you and he will be not put on oath. So I just want to formalise the relationship to the - - -

MR DAWSON: Well, thank you. Chairman, well, right now, I am not to be put on oath. I may be prepared after some discussions with Mr Wilson before I make a statement.

THE CHAIRMAN: All right then if you could be a silent observer?

MR DAWSON: I will.

THE CHAIRMAN: And if you wish to, talk to Mr Wilson. Mr Reeve?

MR REEVE: I think I was at the point where I dealt with annexure C and we were looking at annexure D which was the third letter, sorry, the fourth letter which Mr Smith has produced, and which is a copy of the letter to the Central Bank regarding a meeting which was proposed with Mr Benny Popoitai of the Central Bank.

[10.08am] Paragraph 3.7 Mr Smith says that the way he understood matters was that at no time was he the sole shareholder of - he is referring to these annexures. That the funds that he sent were to purchase 25 percent of the shares in that company and that he believed Blue Haven No.67 was the company that was formed to effect the purchase. And he also says that no-one had any permission or leave to represent the Pacific Helicopters or himself was other than a 25 percent shareholder. In paragraph 3.9 Mr Smith annexes the banking documents evidencing the transfer by him of K250,000 being what he understood to be 25 percent of the purchase price and those documents are already in the tendered documents where we have the deposit slip and the bank statement recording that deposit.

In paragraph 3.10 in my view, this is quite important. Mr Smith says that he received a signed receipt from Mr O'Neill for the money. That is annexure F. And annexure F is a letter dated 28 October 1999 addressed to Mr Smith-Kela, apparently signed by Mr O'Neill. It says that: "I acknowledge upon receipt of the sum of K250,000 to the following account that these funds are being received by me for an investment in a merchant bank on your and or Pacific Helicopters behalf. The funds are to be deposited in the following account." And the letter then gives the details of the account of Port Moresby First National Real Estate with Papua New Guinea Banking Corporation, Port Moresby. The relevance of that in my submission is that it again clearly shows that Mr O'Neill was controlling the funds and the funds gathering. I also say in relation to that that tends to reinforce what the notations on the Port Moresby First National Real Estate receipts and cash book which indicate the National Provident fraud derived monies that came from Carter Newell, the receipt says received from Carter Newell per PON or PO. So, what I say is, it in essence indicates who was in the driver's seat as far as that is concerned. Paragraphs 3.12 and 3.13 are indicated- - -

[10.12 am] MR O'NEILL: Sorry, may I interrupt there? Your reference about the driver's seat, has anyone - could I, Mr Chairman, ask a question in relation to this or do I make a statement right after Mr Reeve has?

THE CHAIRMAN: I think it is best if you wait so that we get it out and then you can choose what you want to answer- - -

MR O'NEILL: I will make a statement but I would like to have a specific question for Mr Reeve, is that possible? This is in relation to the driver said he is making reference to. Has he any evidence or any person has stated or any witness who appeared before this inquiry to state that PON or PO has reference to Peter O'Neill? Has he got anything in writing to make that reference?

MR REEVE: Well, I can answer that by saying literally there are dozens and dozens and dozens of documents.

MR O'NEILL: They are documents- - -

MR REEVE: Coupled with other things that show that that is what clearly - - -

MR O'NEILL: You are stating the initials but has anyone told you that those initials refer to me?

THE CHAIRMAN: Mr O'Neill, this will not get us anywhere. If you want to make a statement denying that PON refers to you, that is fine.

MR O'NEILL: It may very well but as I said has anyone who has entered those documents and made those initials have stated that that has made reference to me.

THE CHAIRMAN: At this stage I am not interested in that.

MR REEVE: Well, I think they have in fact and I think Mr Rupa Siba has and I think Mr Joseph Kup has.

MR O'NEILL: I have read the transcripts thoroughly but I think you are misleading the inquiry, Mr Reeve.

MR REEVE: Well, I will give the transcript references.

MR O'NEILL: Thank you.

MR REEVE: Where I asked Mr Siba quite clearly, I have a clear recollection of asking Mr Siba what PO was and he said Peter O'Neill.

MR O'NEILL: Perhaps Mr Siba has stated to you- - -

THE CHAIRMAN: No, well, look, I am sorry- - -

MR O'NEILL: On very many occasions that- - -

THE CHAIRMAN: Mr O'Neill, I do not want this interchange to continue. We will hear what Mr Reeve has to say and then either you personally can make a statement- - -

MR O'NEILL: I will make a statement, Mr Chairman, you are allowing him to make references of which he has no knowledge of.

THE CHAIRMAN: He is acting as counsel assisting the commission. He is saying what he is saying.

MR O'NEILL: That does not give him the right to go and defame people, Mr Chairman.

THE CHAIRMAN: This is totally untrue. You have got your lawyer here who can be taking objection. You certainly will be given the right and if you wish to take that opportunity today, you may do so immediately after this matter has been presented. There is no question of you not being given the right. Yes, Mr Reeve?

MR REEVE: I was down I think to paragraph 3.12 and 3.13 where Mr Smith says that he received virtually no information about the company. That he had asked persistently and his staff had for details of proof of his shareholding and had received nothing. He says no directors meetings had been held. He has been unable to obtain the information as to the precise business the company was engaged in except for a few comments made to him by Mr Dawson and Mr O'Neill socially. And he then speaks of having become concerned that something was wrong having made up his mind about something and that he was unable to speak to Mr O'Neill on this subject.

[10.15 am] In paragraph 4 of the statement, Mr Smith deals with the position of Pacific Helicopters. He talks about the K250,000 which he contributed and indicates that no return has ever been made of those funds. And that is something that arises in a later annexure because as you are aware the commission is seeking to trace K250,000 of this money and one of the possibilities would of course have been that that had gone back to Pacific Helicopters, but Mr Smith says that is not the position. So, that money obviously went somewhere else.

In paragraph 4.4, Mr Smith produces company searches of a number of companies. Firstly, Resources and Investment Finance Limited, secondly RIFL Holdings Limited which was formerly Blue Haven No. 67 and another company Blue Haven No. 69. And he draws the conclusion from those searches that neither Pacific Helicopters nor Mr Smith himself are shareholders in those companies and says this is clearly contrary to advice received from Mr Dawson.

Those searches the commission obviously would look at and if required, we can obtain copies of the companies office files. What they essentially show is that Blue Haven No. 67 was renamed RIFL Holdings Limited. Its directors are Mr O'Neill and Mr Dawson. That the company had two shares until July 2000 and that the substantial shares were then issued to Blue Haven No. 69 and Blue Haven No. 69 has the same shareholders as the two original shareholders - I will withdraw that - the two shareholders of the first issue ordinary shares in Blue Haven No. 67.

Mr Smith says he is not a shareholder and that is certainly what the searches indicate and it is

certainly contrary to what has been represented I would suggest perhaps innocently by Mr Lay and been represented at the Central Bank. Mr Smith then indicates that he has resigned as a director of RIFL and that he has demanded a refund of his quarter of a million kina.

Finally, he speaks of a conversation that he had with Mr Dawson to discuss his resignation and his demand for repayment of his money and to ascertain why no shares were ever issued to him in accordance with the original agreement. And he attaches a handwritten, what he says is a contemporaneous note of his discussion with Mr Dawson and a typed version of that note.

[10.18am] That note indicates that Mr Dawson told Mr Smith that his K250,000 was an interest free loan. And Smith says he had been told at no time prior to that that the payment of K250,000 was a loan to Port Moresby First National or to RIFL. And Mr Smith says in his final paragraph that in the supplement: "I am incorrect insofar as I say or infer that Pacific Helicopters Limited or Mr Smith personally are or ever were a shareholder in RIFL or any company associated with that." I want to certainly concede that on the basis of the searches that have been produced as distinct from the representations that are made in the correspondence that we have had that that would appear to be the case, that Mr Smith is not and has not been a shareholder and that Pacific Helicopters is not and has not been a shareholder. Obviously that is what the documents say and I am quite prepared to say that that is what the documents say.

COMMISSIONER MANOA: Mr Reeve, again the last comment there, when you say Mr Smith said I am, meaning you, is that what you said in there?

THE CHAIRMAN: Reeve is wrong.

MR REEVE: Yes, he is saying that in so far as I have said in the supplement that Mr Smith and or Pacific Helicopters was a shareholder in RIFL or in Blue Haven No.67, that is not correct. And I am saying based upon the searches that have been produced, that is correct. What I am also saying is, of course that is not the representation that was made in other documents.

COMMISSIONER MANOA: Thank you.

THE CHAIRMAN: Mr Reeve, is that the end of what you want to say at this stage about this statement?

MR REEVE: Yes. Other than if Mr Wilson is in a position to do so being heard on the question of how much time should be allowed.

THE CHAIRMAN: Okay, now, Mr Wilson, Mr O'Neill has been raising what I think he has been saying is that he wants to talk right now about the statement. I do not know whether you want to take a break to discuss with him whether, perhaps the best course of action or not. And if you are proposing to make an application regarding the timing, we have got these two matters to deal with today. How do you want to deal with it?

MR WILSON: What I need to know is the length of time this commission has to run and that must be a fact.

THE CHAIRMAN: We have been extended until the end of November.

MR WILSON: I wrote a letter saying that I wanted a two month adjournment in reply to the opening or the evidence that had been submitted by counsel to support his opening on the supplement. I read that in the newspaper, therefore it became a public issue in itself.

[10.22 am] I am just concerned to that fact that it has been - that that letter got to the newspaper. I was not expecting that.

MR REEVE: Well, I do not know. It certainly did not get to the newspaper from us because I did not receive that letter until after I had read it in the newspaper when I came back from Rabaul on Tuesday.

THE CHAIRMAN: I thought you were communicating to us through the newspaper actually, Mr Wilson.

MR REEVE: We certainly did not give it to the papers.

MR WILSON: Absolutely not. I did not release that to the newspapers.

MR REEVE: It certainly did not go to the papers through us.

MR WILSON: Well, that is strange. Well, therefore I thought that it had and was wondering why that was so thinking that I had been compromised to some extent in our position without any further - - -

MR REEVE: Well, I can certainly say to that tune, I went to Rabaul at 3 o'clock on Friday. That letter arrived here at - the fax time in is 1738 on Friday and I came back from Rabaul on Tuesday and I read the paper on the plane and after I had arrived back in the office I saw this letter for the first time.

MR WILSON: Well, I am unable to explain that. It is only faxed and the original is still on the file. So, it was the - that obviously goes beyond the life of the commission, the request that I have made so that it raises the need then to extend the hearings. It is simply based on the fact that it took two months to prepare the submission. I am simply saying it will take two months to reply to it. I have got a reply from Mr Reeve saying that that should not be so and he objects in his own correspondence to me that that time should be required. The fact is that my instructions remain to do these things. To firstly collate all the documents and to some extent that has been completed although they have not been given in their entirety to my clients.

Secondly is to prepare a statement and response to what has been tendered and thirdly to get a forensic accountant engaged by Mr O'Neill to go through all the documents and particularly test the conclusions that have been reached and how they have been reached and whether that is proper and whether there are any alternatives and whether, on the face of it, that there was - a full response can be made to exonerate my client.

Now, I cannot see that being done within two weeks, which is what has been suggested is the period of time.

[10.25 am] Presently I have commitments, not that it should hold up the commission, but it is a fact that both my clients here are in business themselves and they cannot give their time exclusively to this. It is a fact that it has take two months to prepare. It does take time to read and digest and particularly for myself, I am not familiar with it or even my clients are not necessarily familiar with it for them to prepare and to deal with.

I just feel that their right to be represented, their right to be present must be supported by the right to prepare themselves adequately to deal with the allegations that are contained in the document. So, there is a need there to I think request the two months and I am instructed so to do. And I realise that that will go beyond the life of the inquiry. We are not attempting to create any difficulties. I realise that is a matter for the commission's discretion, but I think that a strong case can be made that the same period should be given to the persons affected as has been given to the counsel assisting the commission to prepare the case.

The inquiry has been going for 18 months almost and I mean, what is now on the table is really conclusive in so far as the work of the inquiry is concerned. At the very end of it, it seems to be the concluding supplement and it seems to rest upon what has been done before and both my clients here have not taken a close interest in the 9000 odd pages that has been written. But what has been said now rests on what has been said before and it is a pretty onerous task for myself and for them I think to put this together in the space of two weeks or even two months for that matter.

I am prepared to say this, we will give all the time that we can to it and get all the help we can for it and be prepared to follow some timetable in terms of getting a reply prepared and to be reasonable about that and to hold the line. But we will need more than two weeks which is what has been suggested and we will certainly need two months I think whatever difficulty that creates. So, that is how I put it. I cannot say it is not further complicated by the fact that the opening, the length of the supplement is not - now is supplemented or changed to some minor degree perhaps by the statement of Malcolm Smith-Kela which has now been tendered.

[10.28 am] Today, we are at 25 October, I think we are going to need time until mid December to adequately deal with it.

THE CHAIRMAN: What date?

MR WILSON: I think about the middle of December which goes beyond your commission.

THE CHAIRMAN: Mr Reeve, what do you wish to say, if anything, with regard to that request?

MR REEVE: I would like to make it clear from the outset that I certainly do not oppose anybody having a reasonable opportunity to defend themselves and to meet what has been said. Clearly, that is their right. Clearly, the rules of natural justice require it. I do wish to say a number of things.

Firstly, Mr O'Neill is not here for the first time. Mr O'Neill knew of the earlier evidence and was given something in the order and I can show you the documents, if you wish, of two and a half months to prepare a statement to answer the matters that had previously been raised. And he took those two and a half months and he made his statement. What is contained in this third supplement is to a large extent a testing and a placing in comprehensive form of the evidence that has been adduced.

Mr Wilson seems to seize on the fact that it took two months to prepare. That two months was necessary because dozens and dozens and dozens of summonses had to be given to the banks. Summonses had to be given and efforts made to extract material from Port Moresby First National Real Estate, much of which was not forthcoming. And in that process, if you are doing it, in my view by the correct methodology, you can take one step at a time. You get a set of material and you trace and it has been necessary for us to take that length of time to trace the money. Mr O'Neill said, show me where my money went? We have endeavoured to do that. And as I say, the exercise has been revelatory. To say that in order to meet that, the same length of time is required, is just not tenable.

The evidence is all there. We are not told whether further evidence is going to be adduced? We are not told whether they are going to seek to meet what has been said on the evidence that is there. And the questions of time of course, one cannot devote time solely way to it, but one's concentration can be concentrated or focused on it. It is clear what has been said. The documentary support is there for it. And the inferences that can be drawn from it in my respectful submission, are clear. And it should not take that long with the two and a half months already having been given to address what has been said.

I do not seek to be unreasonable, but, one has to be mindful, as Mr Wilson said, of the time this commission has already taken, of the cost of the commission continuing to the government. That has to be married with the right of both Mr O'Neill and Mr Dawson to be adequately heard and given adequate time to prepare to respond to what has been said. But, I do not think - I think that, in my respectful submission, the suggestion of two months is ludicrous. Perhaps two weeks is too short. But, it is really a matter for the commission, gauging and being persuaded, what time is reasonable. That is obviously the test to afford a reasonable opportunity to peruse what has been said. A reasonable opportunity to prepare a response to it and then to present that response. That is their right and I certainly do not seek to limit or in any way deprive them of those rights.

[10.32 am] THE CHAIRMAN: Do you have any comments about the indication that Mr Wilson gave that he may wish to call a forensic accountant to check back through the - - -

MR REEVE: Well, they can do that if they like. I mean, everything has been constructed from cash book extracts and journal extracts from the company that was controlling the money. So, you can get a dozen accountants if you like but you cannot change the base records that they are relying on.

THE CHAIRMAN: But, that exercise would not itself take a great deal of time I would not have thought in view of the fact that - - -

MR REEVE: It took me a great deal of time because they were saying to me, we do not have ledgers, we do not have this, we do not have that. So, what we had to do was extract the cash book and construct the ledgers from the cash books. Now, that would not need to be done. They would certainly need to verify it.

THE CHAIRMAN: Yes. Well, that is what I mean. It would not take such a long time to do that.

MR REEVE: Not having been done initially.

THE CHAIRMAN: Thank you. But, on the question of how long to allow you to prepare, I would want to reserve on that at the moment and discuss it with my fellow commissioners and it also may involve consulting with the Prime Minister. If we were mindful to give a longer extension than two weeks, then we would have to look at the closing date of the commission. So, it is not something that I can actually do off my own back if it involves an extension of the commission. So, on that question, we will reserve and give a ruling on that. Is the Prime Minister in town now, do we know, or is he - do you know when he is coming back?

MR REEVE: No idea.

MR WILSON: By way of response to Mr Reeve, I mean another point that seems to be relevant to me is that the result of the commission ultimately will depend upon both this basic principle of justice that the persons who have been implicated have time to prepare. Just for the sake of an extension of the commission and giving what we want will remove all criticism of any haste and anything that can in other ways block the result of the commission.

[10.35am] It seems important that that should not happen after this time. To rush to the conclusion would possibly damage the result. So for that reason alone which is entirely objective, it seems to me that the request is reasonable and it would assist the commission in its overall purpose.

THE CHAIRMAN: If we reach the conclusion that we should allow one month, that already takes us to within a few days of the end of the present commission. So, I am going to need to consult with the Prime Minister and- - -

MR WILSON: It is our busy time of the year. To arrange accountants to come in and do this and I was going to add that when we come to retain these people, to some extent we are going to be in their hands as to how long they are going to take. I know for a fact that KPMG put a lot of work into reconstructing the set of accounts and it took time.

THE CHAIRMAN: I do not think it will be appropriate- - -

MR REEVE: KPMG could not have anything to do with this at all.

MR WILSON: Well, I know. Some other context I have forgotten what but whatever it is to some extent.

THE CHAIRMAN: They have been doing something like that on the Sandaun Motel.

MR WILSON: Yes, that is right. And it takes time to do it and time for them to get them to do it. So, what I am prepared to say is that when I have consulted with my clients, we will see what is available, we will come back with an actual timetable of how we can be able to get done what we have to do. And then that would be more factual than what I am saying at the moment, which is mostly supposition that we will need this time and as John said we have not been able to say what we are going to put back by way of evidence or otherwise.

THE CHAIRMAN: So, how long would it take you to come up with that timetable which would give us an indication of what the nature of the response was?

MR WILSON: Well, I want to speak to counsel and engage counsel. And I think that because I can do that over the weekend I can be back here in one week with a really considered response - what we need to do we think to deal with these allegations. So if one week can be given to me to do that or if it is too long, perhaps early next week. Whenever you wish to resume.

THE CHAIRMAN: I think in view of the fact that at this stage, the time is extremely pressing and if you could come back early next week with an indication of what you are proposing to do by way of response and an indication in board terms of the nature of the preparations which will be required.

MR WILSON: Well, I think you got to judge our bona fides and not seeking time for the sake of it.

THE CHAIRMAN: Because that would probably coincide approximately with the Prime Minister's return and then armed with that I could discuss with the commissioners approach the Prime Minister if we need to.

[10.38 am] MR WILSON: What is the date you- - -

THE CHAIRMAN: We would be resuming next Tuesday at 9.30 am. Would you be able to give us an indication by then as to- - -

MR WILSON: Yes, I can.

MR REEVE: I suppose, the other thing I should say chairman is one thing that would need to be taken into account is that I have indicated to Mr Skate that he would be the last witness called. I did not wish to call him until Mr O'Neill's evidence was complete. So, we would have to allow a reasonable time for anything further that may arise which might touch Mr Skate.

THE CHAIRMAN: We will be able to determine to what extent he is going to be touched when we see what you come up with on Tuesday. But what you have just said is not written in stone and it would be possible nevertheless to alter the order. But it is in the interests of orderly proceedings, it is preferable for Mr Skate to await to see what comes but we will not wait now till Tuesday to see what you come up with.

MR WILSON: Yes, I would like a short adjournment now for say five minutes just to consult- - -

THE CHAIRMAN: Yes. I think you should think whether you want to say something now in answer to this or not and there could be various considerations as to at what speed you want to go on the air, if you like, with an immediate response and also take your lawyers advice as to the advisability of either talking or not talking. But if you do want to make a response now, you will be on air and you will be cross examined. You will be liable for cross examination.

MR WILSON: Yes, I would like to advise my clients.

THE CHAIRMAN: Okay. 10 minutes?

MR WILSON: Yes, thank you.

THE CHAIRMAN: If you need longer, if you find that your discussions are dragging out and you are going into really meaty stuff, just seek a further time. I think, probably by 10 minutes you should know where - in 10 minutes if you say, yes, they want to talk today before it goes on the air, we could adjourn until a later time today for that to happen.

SHORT ADJOURNMENT

[11.24 am] THE CHAIRMAN: So we will resume. Yes, Mr Wilson, what is the situation?

MR WILSON: The position, Mr Commissioner, is that we will return on Tuesday as we undertook to do with a detailed response of what we intend to do to rebut the allegations that have been made throughout the case on - the third supplement todate.

My instructions from Mr O'Neill are to refute every allegation that goes against him as unfounded and untrue. Mr O'Neill wishes me to express the very unfair media coverage todate and how it is affecting his businesses and his life and he says that he has made attempts to get something into the newspaper by way of response and this has been refused him. For the understandable reasons I explained to him of the fear that the press have it will be charged with defamation. He wants however from the press a fairer coverage in the future and he proposes to make his position crystal clear and a statement will be prepared for Tuesday.

THE CHAIRMAN: All right, that is good.

MR WILSON: Now, so far as Mr Dawson is concerned he is - - -

THE CHAIRMAN: Does that mean - I am sorry - does that mean that Mr O'Neill proposes to put a statement before the commission on Tuesday or is it you that is going to be doing that?

MR WILSON: No, a statement of what he intends to do in regard to the preparation of his defence.

THE CHAIRMAN: So that will be your statement?

MR WILSON: Yes.

THE CHAIRMAN: In fact yours. Yes.

MR WILSON: So far as the statement of Malcolm Roy Smith-Kela is concerned, Mr Dawson who is affected by this statement says there are a number of basic factual errors in the statement and that for this reason he will put on a response on Tuesday to the affidavit of Mr Smith-Kela. The reason for that is also because of adverse media comment and the allegations that seem to be made both in the supplement and in the affidavit that, (a) the company is not owned in part by Mr Smith-Kela, and (b) there has been a misrepresentation to the Central Bank as to the ownership of the company and he is

afraid that this will adversely affect, the viability of that business and for that reason he will be prompt in rebutting what is stated here. So that will be our position, Mr Commissioner.

[11.27 am] THE CHAIRMAN: Thank you.

MR REEVE: Can Mr Wilson indicate whether you wish to cross examine Mr Smith-Kela?

MR WILSON: I would say, yes. We would want to cross examine Mr Smith-Kela.

MR REEVE: He is represented by his brother so I would need to speak to him about that. Mr Phil Smith is acting for - as the group lawyer is acting for him.

THE CHAIRMAN: Where is he physically located?

MR REEVE: Goroka. But Mr Phil Smith will actually be coming through Moresby tomorrow. That is why I was asking now because I can raise it with Mr Phil Smith when I see him tomorrow.

MR WILSON: My instructions, Mr Commissioner, are that we would defer any decision to cross examine Mr Smith because largely this statement is not at odds with what the true position is. There are fundamental assumptions within this story and in the supplement that need to be challenged. So, it will not necessarily turn on a cross examination of Mr Smith.

MR REEVE: Well, I just indicate we do not- - -

MR WILSON: What I am saying now is that we cannot make a decision on whether we will cross examine him or not. We mean in fact agree with what is in here in part.

THE CHAIRMAN: So, you will let us know on Tuesday.

MR WILSON: Yes.

MR REEVE: I say in fairness just so we know where we are coming from that if he is not cross examined, then I would rely on the rule of Brown and Dunn.

MR WILSON: Yes, I understand. My position is that we must examine this in detail to see whether we can agree with it or not.

THE CHAIRMAN: Okay, so we will hear from you on that topic also on Tuesday. Is that all for now then?

MR WILSON: Yes, thank you.

THE CHAIRMAN: Mr Reeve, did you have anything else?

MR REEVE: There is only one final matter. In the process of the things being said this morning when it got a little warm, Mr O'Neill did indicate that I was misleading the commission about having evidence that PO meant Peter O'Neill when I said that I believed Mr Siba had given that evidence. In that regard I would draw the commission's attention to the transcript of proceedings at page 5401 and say I did not mislead the commission. The evidence is there.

[11:30 am] MR O'NEILL: Sorry, can you state the number again?

MR REEVE: 5401.

THE CHAIRMAN: And if you need to look at that before you go we have got all the transcripts. In fact probably you can look at that straight away.

We will adjourn this inquiry then until 9.30 on Tuesday 30 October.

AT 11:31 AM THE COMMISSION OF INQUIRY WAS ADJOURNED UNTIL TUESDAY 30 OCTOBER 2001 AT 9.30 AM

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