

Parliament of Barbados

REPORT

of the

PUBLIC ACCOUNTS COMMITTEE

2013-2018

Members

Hon. M. A. Mottley, Q.C., M.P. (Chairman)

Rt. Hon. O. S. Arthur, M.P. (2013-2015)

Mr. D. D. Marshall, Q.C., M.P. (*Appointed 12 May, 2015*)

Hon. R. L. Sealy, M.P.

Hon. A .D. Brathwaite, Q.C., M.P.

Mr. K. D. Symmonds, M.P.

Hon. D. O. Inniss, M.P.

Dr. the Hon. D. C. Estwick, M.P.

Senator Hon. Miss M. P. O. McClean

Senator Hon. D. W. Boyce

Senator J. Ince

Senator Dr. J. X. Walcott

Senator J. A. Watson

Senator W.A. Abrahams

REPORT OF THE PUBLIC ACCOUNTS COMMITTEE

BACKGROUND

1. In his report for the year 2013 the Auditor General observed that the National Housing Corporation (NHC) was requiring advances of \$2.29 million from the Ministry of Finance without parliamentary approval or without entering an agreement for the advances as contemplated by sections of the Financial Management and Audit Act Cap 5 and Regulations.
2. Against this background and keeping with its historical and legislative mandate, the Public Accounts Committee (PAC) decided to examine the operations of the NHC and its parent Ministry, The Ministry of Housing and Lands. It was within this context that the government's Housing Every Last Person (HELP) programme came under its microscope and sharp focus. The National Housing Corporation follows the Financial Administration and Audit Rules in relation to its procurement processes.
3. Legislatively, the work of the Public Accounts Committee is regulated by the Parliament (Privileges, Immunities and Powers), Act, Cap. 9 of the Laws of Barbados, Standing Order 59 and the Public Accounts Committee Act Cap. 10A of the Laws of Barbados.
4. This legislation and the Standing Order conflict in their approach to the manner and functioning of the Public Accounts Committee. Notwithstanding this, the Public Accounts Committee commenced an examination into aspects of the work of the National Housing Corporation on the 5th Meeting of the PAC on the 17th June, 2013. During the course of the examination witnesses were called. Their testimony forms part of this report and is incorporated by reference herein.
 - **See Appendix A for a list of witnesses.**

5. The objects and purposes of the examination are as set out in the summons convening the Committee; to wit:

- (i) *the nature and payment of \$2.46 million to the National Housing Corporation by Government; whether the said payment was a loan or grant and whether it was a payment in accordance with sections 31 and/or 35 of the Financial Management and Audit Act upon the authority of Parliament;*
- (ii) *the production of a list of all loans made to the National Housing Corporation by Government and whether those loans were being repaid and the state of the repayment;*
- (iii) *the staffing component at the National Housing Corporation and efforts made to fill the vacant posts at the National Housing Corporation and to explain the employment of 47 additional persons over and above staffing complement;*
- (iv) *the auditing of accounts and the laying of those accounts before Parliament;*
- (v) *the role of the Board Chairman after 2008 in the operations of the National Housing Corporation and specifically under what authority was he signing cheques;*
- (vi) *the awarding of the Exmouth and Grotto contracts;*
- (vii) *generally, the solvency of the National Housing Corporation*

6. The Committee aimed to examine the following:

- I. *To examine the government procurement practices over a range of contracts for the establishment of high rise apartments and whether those practices conformed to the legislative and regulatory requirement.***
- II. *To examine Government's propriety in spending on such a program given NHC's insolvent state.***

- III. How and to what extent companies affiliated were able to consolidate contracts with the NHC in the shortest possible time*
- IV. The nature and structure of financing arrangements for the realisation of the PPP ventures. Was the risk inherent in these contracts evenly shared. Basically, the terms and conditions under which contracts were entered into.*
- V. How could the committee resolve the issue of spending without parliamentary approval.*

- 7. In pursuing this examination, the PAC followed the framework set out by the Public Accounts Committee Act, Cap. 10A (the Act) in preference to the framework set out in the Parliament (Privileges, Immunities and Powers) Act Cap. 9 or Standing Order 59.
- 8. Section 3 of the Public Accounts Committee Act, Cap 10A established “A joint committee of Parliament, to be known as the Public Accounts Committee” The composition of that body is regulated by section 3(2) as follows;

“ (2) The Committee shall consist of 13 members, who shall be appointed as follows:

(a) 6 members shall be Senators, and shall be appointed by the Senate;

(b) 7 members shall be members of the House of Assembly, and shall be appointed by that House, in accordance with the Standing Orders of the Senate and of the House of Assembly respectively.

(3) Each member shall hold office during the pleasure of the House by which he was appointed unless he sooner retires or otherwise ceases to be a member of that House.

(4) Either House may appoint one of its members to fill a vacancy among the members appointed by that House.

(5) Each member shall cease to hold office when Parliament is dissolved.”

9. By virtue of section 5 of the Act the Committee is mandated to meet at least once within every six months and may meet at such other times as the Committee by resolution determines. Section 5(2) allows the committee to meet and transact business notwithstanding any prorogation of Parliament. Five (5) members constitute a quorum and all question to be decided by the Committee “shall be decided by a majority of the votes of the members present” The Chairman or other members presiding “shall have a vote as a member and, in the event of an equality of votes, shall also have a casting vote.” (see section 6 (3)).

10. DUTIES OF THE COMMITTEE

The duties of the Committee are detailed in section 7 of the Act as follows :

- a. *to examine the audited financial statements of*
 - i. *authorities of the Government to which this Act applies and inter-governmental bodies to which this Act applies;*
 - ii. *all statutory corporations, entities in which the Crown owns not less than 50 per centum of the share capital, or controls at least 50 per cent of the voting rights in the entity;*
- b. *to examine all reports of the Auditor-General, including reports of the results of performance audits, that are tabled in each House of Parliament;*
- c. *to report to both Houses of Parliament with any comment it thinks fit on any items or matters in those accounts, statements and reports, or any circumstances connected with them, that the Committee thinks should be drawn to the attention of Parliament;*
- d. *to report to both Houses of Parliament any alteration that the Committee thinks desirable in;*
 - i. *the form of the public accounts or in the method of keeping them; or*
 - ii. *the mode of receipt, control, issue or payment of public moneys;*
- (e) *to inquire into any question connected with the public accounts which is referred to the Committee by either House of Parliament, and to report to that House on that question;*
- (f) *to consider*
 - i. *the operations of the Office of the Auditor-General*
 - ii. *the resources of the Office of the Auditor-General, including funding, staff administrative structures, information collection analyses, retrieval and reporting capabilities; and*
 - iii. *reports of an independent auditor on operations of the Office of the Auditor-General or any authority of Government to which this Act applies;*

- (g) *to report to both Houses of Parliament on any matter arising out of the Committee's consideration of the matters listed in paragraph (f), or on any other matter relating to the Auditor-General's functions and powers that the Committee considers should be drawn to the attention of Parliament;*
- (h) *to report to both Houses of Parliament on the performance of the office of the Auditor-General at any time; and*
 - i. *any other duties given to the Committee by this Act, by any other law or by Joint Standing Orders approved by both Houses of Parliament.*
- (2) *Nothing in subsection (1) authorises the Committee to direct the activities of the Auditor-General or the independent auditor.*
- (3) *For the purposes of this section, an authority of the Government to which this Act applies is*
 - (a) *a body corporate or an unincorporated body established for a public purpose by, or in accordance with the provisions of an enactment, not being an inter-governmental body;*
 - (b) *a body established by the Governor-General or by a Minister in accordance with an enactment; or*
 - (c) *an incorporated company over which the Government exercises control.*
- (4) *Where the parties to an agreement relating to the establishment of an inter-governmental body consent to the examination, by the Committee, of the financial affairs of that body, the Minister shall notify the fact that they have so consented in the Gazette; and the body shall thereupon become an inter-governmental body to which this Act applies.*
- (5) *Where a party to an agreement relating to the establishment of an inter-governmental body, being an inter-governmental body which, by virtue of subsection (4), is an inter-governmental body to which this Act applies, withdraws its consent to the examination by the Committee of the financial affairs of that body, the Minister shall notify the fact that that party has withdrawn its consent in the Gazette; and the body shall thereupon cease to be an inter-governmental body to which this Act applies.*

11. In the preparation of this report some reference must be made to sections of the Act which deal with the sittings of the Committee and the summoning of witnesses and the collection of evidence. In this Connection the Committee reproduces the following sections of the Act:

[10.] (1) *Subject to subsection (2), the Committee shall take all evidence in public.*

(2) *The Committee may, and at the request of the witness giving the evidence shall, take in private evidence, whether oral or documentary, which in the opinion of the Committee relates to a secret or confidential matter.*

(3) *The Committee may take evidence on oath or affirmation, and the Chairman or the Deputy Chairman may administer oaths or affirmations to witnesses appearing before the Committee.*

(4) *The oath or affirmation administered to a witness may be in accordance with Form A or Form B in the Schedule, as the case requires.*

[11.] (1) *The Committee may summon a person to appear before it to give evidence and produce documents.*

(2) *A summons to a witness may be in accordance with Form C in the Schedule, and shall be signed by the Chairman or the Deputy Chairman.*

(3) *A summons to a witness may be served upon the witness either personally or by being left at, or sent by post to, his usual place of business or of abode.*

[12.] *Where the Committee as constituted at any time, or a sub-Committee of the Committee as constituted at any time, has taken evidence in relation to a matter, but the Committee as so constituted has ceased to exist before reporting on the matter, the Committee as next constituted may consider that evidence as if it had been given before it.*

[13.] (1) *Where, at the request of a witness, evidence is taken by the Committee in private,*

(a) *the Committee or a member shall not, without the consent in writing of the witness; and*

(b) *a person other than a member shall not, without the consent in writing of the witness and the authority of the Committee under subsection (3), disclose or publish the whole or a part of the evidence, other than evidence which has already been lawfully published.*

(2) *Where evidence is taken by the Committee in private otherwise than at the request of a witness, no member of the Committee or any other person shall without the authority of the Chairman in writing disclose or publish the whole or a part of that evidence other than evidence which has already been lawfully published.*

(3) *The Committee may, in its discretion and without the consent of a relevant witness, disclose or publish, or authorise the disclosure or publication of, evidence taken in private where it is satisfied that the disclosure will not reveal any secret or confidential matter.*

[14.] *Where a person upon whom a summons under section 11 has been served fails to appear or, having appeared, fails to continue in attendance in obedience to the summons, the Chairman or the Deputy Chairman shall report the matter to the House and the House may order the person to attend the Committee.*

[15.] *A person upon whom a summons under section 11 has been served shall not, without reasonable excuse, proof whereof shall lie upon him, fail to appear or to continue in attendance in obedience to the summons.*

[16.] *A person shall not knowingly dissuade or prevent a person from obeying a summons under section 11.*

[17.] *A person summoned to appear before the Committee shall not, without just cause, proof whereof shall lie upon him, refuse*

(a) *to be sworn or make an affirmation;*

(b) *to answer a question put to him by the Committee or by any member thereof; or*

(c) *to produce a document which he is required by the Committee or by a member thereof to produce.*

[18.] *A witness appearing before the Committee shall be entitled to be paid such fees and travelling expenses as the Chairman or the Deputy Chairman allows in accordance with the prescribed scale.*

[19.] (1) *A person summoned to appear or appearing before the Committee as a witness shall have the same protection and privileges as a witness in proceedings in the High Court.*

(2) *A person shall not use, cause, inflict or procure any violence, punishment, damage, loss or disadvantage on or to a person for or on account of his having appeared as a witness before the Committee, or for or on account of any evidence lawfully given by him before the Committee.*

[20.] *Any person who in the course of giving evidence before the Committee wilfully makes a statement material to the subject of the inquiry of the Committee*

(a) *that he knows to be false or does not believe to be true; or*

(b) *where he is reckless as to the factual content of the evidence is guilty of an offence and is liable on summary conviction to a fine of \$25 000 or to imprisonment for a term of 2 years or to both.*

[21.] A person who contravenes, or fails to comply with, section 15, 16, 17 or 19(2) of this Act is guilty of an offence and is liable, on summary conviction, to a fine of \$25 000 or to imprisonment for a term of 2 years or to both.

12. Before the Committee commenced its work certain procedural matters were raised. It was at this juncture that the conflicts inherent in the earlier mentioned legislation, the functioning of Parliamentary Committees, including the Public Accounts Committee came into stark focus. The conflict occurred when the question was raised regarding whether the hearing should be open to the public. Notwithstanding the desire of certain members of the Committee to abide by the framework of the PAC Act, there was contentious debate on this issue when other members pointed to Standing Order 61 of the House of Assembly.

13. Standing Order 61 reads as follows:

“PREMATURE PUBLICATION OF EVIDENCE

The evidence taken before any Select Committee shall not be published by any Member of the Committee or by any other person, before the committee has present its report to the House.”

The opinion of the Government Members of the Committee was that if section 10 (1) of ‘the Act’ was followed and all of the evidence was taken in public, that there was a strong possibility that Standing Order 61 would be breached. After much debate, the Committee passed a resolution as follows;

That this Committee requests of the House a determination as to whether Standing Order 61 shall be suspended for the functioning of the Public Accounts Committee.

The House of Assembly was duly informed about the resolution in an Interim Report to the House with notice having been given by the Chairman of the PAC on October 15th 2013.

The House never determined the question inherent in the Resolution.

See Special Report hereto annexed as Appendix (B)

14. Another procedural issue that engaged the Committee before commencing its examination had to do with passing a set of Regulations to give effect to the Act. Section 22 of 'the Act' lays down as follows:

22. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

Without debating or giving an opinion about whether the Committee contravened this section, a set of Procedural Guidelines, as amended, were adopted upon motion, for the operation and functioning of the Public Accounts Committee. It should also be added that it was mandated that the "guidelines were to be read subject to the Public Accounts Committee Act Cap. 10A and in the event of conflict with any other rules or Standing Orders these Rules shall take precedence."

15. The issue whether inaction of the House of Assembly on request to have Standing Order 61 suspended should affect the work of the Committee was addressed by Chairman Ms Mia Amor Mottley, QC., MP as follows:

"For avoidance of doubt, the Public Accounts Committee cannot take any decision in relation to Standing Order 61 without the decision of the Honourable the House of Assembly and the Honourable the Senate, and I would not imagine that this would ever happen. If the House does not take a vote on Standing Order 61 for 2 months, then it is open to the Public Accounts Committee to meet and to proceed as if Standing Order 61 still obtains rather than having its business stymied because a vote has not been put in the Honourable the House of Assembly.

What we are doing is seeking guidance on Standing Order 61 from the Honourable the House of Assembly but we are not agreeing that our work should forever cease in the event that no vote is put in the House of Assembly. I would never imagine that would happen, but in the event that it did, this Public Accounts Committee must be able to meet even if it adheres to the interpretation that it disagrees with, but which government contends. Does that make it clear?"

16. Another procedural matter that occupied the PAC before consideration of the agenda had to do with whether the proceedings would be streamed on the internet. This issue was strenuously debated and upon a division it was decided not to stream the proceedings of the

Committee. (*For discussion this motion see pages 1-9 of the transcript of the Eighth meeting.*)

17. These procedural matters precipitated a decision by the government to repeal the Public Accounts Act, and accordingly, a Bill entitled the Public Accounts Committee (Repeal) Bill was laid in Parliament on the 30th January 2014. This caused some uncertainty as to the future of the Committee and the statutory framework under which it would operate, and accordingly there arose a hiatus in the calling of meetings for the next 5 months. Regrettably, this Bill, though not yet debated, remains hanging like a sword of Damocles over the Committee. Notwithstanding this, the Committee resolved to continue with its work

18. The preliminary matters having been completed the Committee began addressing matters set out in the summons convening the meeting and as set out in paragraph 5 hereof.

19. In or around 2011 the National Housing Corporation embarked on a Capital Works Programme providing houses under the Housing Every Last Person Programme (HELP). It was proposed that this project was to be funded through a Joint Partnership Housing Programme. This approach was in keeping with the policy approved by the Cabinet on 28th May, 2009 for the Joint Partnership Housing Programme between the NHC and the private sector. It was intended that the construction of the houses was to be funded through a \$18.4 million line of credit at the Barbados National Bank and a \$40.0 million line of credit from First Caribbean International Bank.

See MHLUR.INF.01 here annexed to as Appendix C.

20. In a decision of January 13, 2011 Ref 0020/6/4T5 the Cabinet agreed to a programme for the construction of the High Rise Apartments and Residential Houses (*See Appendix D*). The Board

of the National Housing Corporation on February 11th 2011 noted the Cabinet's decision of January 13th 2011 in a "Circular Resolution".

21. The Cabinet then on August 11, 2011 confirmed its unconfirmed decision taken on July 28th, 2011. A status update formed part of the minute of that meeting. Ref 0020/6/4T⁷ hereto attached (*Appendix E*)

22. In a letter dated January 19th, 2011 addressed to General Manager, National Housing Corporation Ref 0641/5/Vol.12, Mr Edison Alleyne, Permanent Secretary (Ag) gave detail of the projects to be undertaken as follows:-

	Project	No of Units	Estimate Cost	Contractor
I.	Valerie	72 units	\$15,799,545	Preconco Ltd
II.	Mason Hall Street	84 units	\$15,522,107	Innotech Services Ltd
III.	Exmouth	108 units	\$18,000,000	Rotherley Construction Inc
IV.	Grotto	76 units	\$18,000,000	Preconco Ltd

(*Appendix F*)

23. By the 30th April, 2013 Valerie was completed; the Grotto was about to be started even though in the words of the Permanent Secretary of Finance, "once again the Ministry of Finance is being led into a Valerie type situation by NHC/MHL where it will be expected to 'walk on water' to find \$27+ million dollars to pay Preconco without the NHC/MHL having any clear plan to deal with the housing units produced." Mason Hall Street was by then abandoned and Exmouth was still being considered. By then the prevailing view was that the Central Government would have to meet the cost of

construction when the units were completed as NHC was not in a financial position “to support even itself”. Once the units were completed Government would have to find resources to meet the cost of construction. **See the minuted conversation of F. Miller SBA(ag), and Martin E. Cox (P.S.E.) of 30th April, 2013 and rejoinder of unnamed person of 6 May, 2013 annexed hereto as Appendix G.**

24. Eventually, the Central Government issued a Letter of Comfort in respect of the construction costs associated with the Grotto Project. Essentially the Minister of Finance and Economic Affairs by this Letter guaranteed the payment to RBC Royal Bank (Barbados) Limited of the debt incurred by Preconco Limited. The repayment was to be done “in accordance with the terms and conditions as per the Agreement between the Government of Barbados, National Housing Corporation, Preconco Limited and RBC Royal Bank (Barbados) Limited”.

See annexed Letter of Comfort Ref: 5028/5/144/71 Vol.1 dated May 29, 2013 Appendix H.

25. The first issue dealt with concerned a statement in the Auditor General’s Report 2013 that an advance was made to the National Housing Corporation without Parliamentary approval.

Section 31 of the Financial Management and Audit Act, Cap. 5 states as follows:-

31. (1) Subject to such conditions as the Minister may determine, the Accountant-General is hereby authorised to advance from the Treasury Account to any Government or Administration to which this section applies such sums as he may be requested by that Government or Administration to pay on its behalf.

(2) All sums advanced under subsection (1) shall be recovered by the Accountant-General from the Government or Administration that requested the payment on its behalf.

32. Loans which are given by the Government to government enterprises and non-government enterprises shall be secured by way of a loan agreement or debenture mortgage depending on the circumstances of the loan, the terms of which are to be agreed by the Cabinet.

WITNESSES

26. A number of witnesses, including private individuals were summoned to appear before the Committee.
27. Mr. Anthony Wiltshire, Chairman of the Board of the NHC, was repeatedly summoned to give evidence before the committee, but never put in an appearance. As the result of Mr. Wiltshire's persistent refusal to appear before the committee in answer to the Summonses, the Chairman of the Committee felt compelled to write to the Speaker by letter dated the 14th day of September 2016. The Speaker responded to the Chairman of the Committee in writing dated the 1st November, 2016. Thereafter, correspondence under the Speaker's hand was sent to Mr. Wiltshire, commanding his appearance before the committee. This is the next procedural step available to Parliament following intransigence of this kind. Mr Wiltshire did not respond to this either. Attached is the correspondences between the NHC and Mr Wiltshire relative hereto.
28. Mrs. Lanette Napoleon-Young, General Manager of the NHC, gave evidence on two occasions before the Committee. However, despite being summoned to complete her evidence before the Committee, Ms. Napoleon-Young was persistently ill, submitting sick certificates for the following meetings: 25th, 29th, 31st, 35th, 38th, 39th and the 41st (meetings). Ms. Napoleon-Young did not appear at the 40th meeting, but a letter dated the 2nd day of December 2016, was received from her attorney-at-law, Mr. Adrian King.
29. The Committee also summoned the Honourable Christopher Sinckler, Minister of Finance, the Honourable Michael Lashley and the Honourable Denis St.E. Kellman, the past and incumbent Ministers of Housing. They never appeared on the ground that the Committee did not have the power to summon Ministers of the Crown to give evidence

before it. Against this background the Committee sought the opinion of the Clerks-at-the-Table. An Opinion was prepared by Mr. Richard Byer, Clerk to the PAC, who opined that Ministers of the Crown can be summoned. The relevant requirement is that the Committee can send for “persons, papers and records...”. Ministers being persons, could therefore be summoned and should appear. That Ministers fall within the definition of “papers, persons and records.....” was also the opinion of the PAC Committee examining the accounts of the St Joseph Hospital in 1993. Then, Mr Branford Taitt was “invited”, not summoned. The invitation never reached him because of bureaucratic and administrative bungling of the Office of the Clerks-at-the-Table. The correspondence connected to this aspect of the examination and the opinion are attached to as *Appendix I*.

SUMMARY OF EVIDENCE OF WITNESSES

30. The Committee called a number of witnesses in an effort to determine the issues confronting it. However, the work of the Committee was hampered by the poor state of the government’s record-keeping. In numerous instances, files germane to the matters being enquired into could not be found, despite diligent search This reflects negatively on the government and allows fertile breeding ground for doubts as to transparency of executive action.

Evidence - Mr. Ronald Bascombe – Permanent Secretary, Ministry of Housing

31. Mr. Bascombe, Permanent Secretary in the Ministry of Housing and Lands from September 2011 and until he proceeded on retirement in November 2013, acknowledged that the NHC had not filed audited financial reports since 2007. He attributed the tardiness to a number of internal and external challenges, including staffing constraints such as not having a

management accountant and the lack of a prompt response from the private firm which audits the NHC's accounts. When he was asked how much money the NHC had received from the Consolidated Fund since 2008, Mr. Bascombe gave way to Ms. Barton who provided the information.

32. Mr Bascombe acknowledged not seeking initial clarification from the Ministry of Finance on how it regarded the transfers. Because of the NHC's inability to repay, he said he regarded the transfers as subsidies. According to him, the Ministry of Finance began providing support to the NHC on a monthly basis in response to requisitions from the Ministry of Housing and Lands which has responsibility for the NHC. This was after the financing problem was brought to the attention of the Ministry of Finance by the Ministry of Housing and Lands.
33. The PAC heard that the issue of the NHC's insolvency was raised by officials of the Ministry of Housing and Lands at several meetings with counterparts of the Ministry of Finance. However, no extra budgetary provision was made for the NHC as all ministries at the time were cutting back on expenditure with the objective of reining in a growing fiscal deficit. A request for a supplementary provision to validate the transfers was subsequently made to the Ministry of Finance in late 2012 but it was denied. The transfers continued, nevertheless, and Mr Bascombe said he subsequently brought the matter to the attention of the Minister of Housing and Lands, as required under the Financial Administration and Audit Act.
34. Mr Bascombe also confirmed that he had received a copy of the Revised Medium Term Fiscal Strategy of November 2011 and that he was aware of a commitment therein to eliminate transfers to other Government owned Corporations and Authorities and conceded that the transfers were inconsistent with what was stated in the document "but obviously a policy stance was made elsewhere."

35. The PAC heard that the NHC's financial position had been weakened by a decision to allow tenants who had been renting for at least 20 years and were up to date in their payments, to acquire the housing units where they resided. There was a consequent reduction in rental income to the NHC because as soon as eligible tenants communicated their intention to purchase, they were no longer required to pay rent.
36. The PAC heard that despite the financial challenges which impacted negatively on the NHC's ability to meet monthly payroll without the Government's support, it had brought on an additional 50 persons in the three months leading up to the February 2013 general election. Mr. Bascombe explained that 47 were temporary workers who were hired to do debushing on a number of NHC properties while the remaining three were employed for a specific project-related purpose over the next five years.
37. Mr Bascombe stated that the hiring of the 47 temporary workers between November 2012 and January 2013 was done without authorisation from the NHC Board and the Ministry of Housing and Lands which, in keeping with procedure, would have had to ask the Ministry of the Civil Service to establish these posts. When the matter came to his attention, he said he asked for a response from the acting general manager and issued a cease and desist order from further hirings until an appropriate request had been made.
38. Mr Bascombe was unable to state exactly how many persons were employed by the NHC. He said when he became permanent secretary in the Ministry of Housing and Lands, there was uncertainty surrounding the number. As a result, the Ministry of the Civil Service had attempted to bring clarity to the matter and had conducted a staff audit. He said he believed the general manager would be in a better position to state exactly how many persons were employed by the NHC in 2011.

39. Mr Bascombe was questioned about the construction of high rise apartments by the NHC. The PAC's initial focus was on the projects at Exmouth and the Grotto for which contracts reportedly had been signed. At the time, public announcements were made about the projects, questions were triggered about who had legal authority to commit the NHC to these arrangements since no Board of Directors had been in place in the three months following the February 21, 2013 general election.
40. Mr Bascombe, who initially said that he had seen no such contracts during the said three months, later acknowledged copies of the contracts for Exmouth and the Grotto had been signed and were on his desk. His hesitance in answering the question, he explained, was due to his inability to give the date on which the contracts had been signed. He said the chairman of the former Board, Mr Anthony Wiltshire, would have been a signatory to the contracts but he could not recall seeing any date on the documents.
41. Asked about the Exmouth contract which was initially awarded to Rotherley Construction at a cost of \$28 million but was subsequently assigned to "a Preconco company" for \$33 million, Mr Bascombe replied he had no recollection of any decision by the NHC Board to this effect. Mrs Napoleon-Young and Mrs. Bourne-Forde also spoke on the issue but as no satisfactory answers were provided, the PAC chairman declared that the investigation had reached a "stumbling block". She said there was a number of things that required the NHC officials to "gather themselves and return".
42. In subsequent testimony, Mr Bascombe provided full details about the NHC's high rise apartment projects. He quoted from a Cabinet decision, dated January 13, 2011, authorising projects at Mason Hall Street, Valerie, Exmouth and the Grotto. Joint partnerships involving the NHC and the various contractors were envisaged under which the contractors were to

provide full financing for the construction. Two small contractors were to be engaged in each instance.

43. Details of each project are as follows:

- 72 units to be built by Preconco Ltd at Valerie at an estimated cost of \$15,799,545.
- 84 units to be built at Innotech Services Ltd at Mason Hall Street at an estimated cost of \$15,522,107.
- 108 units to be built by Rotherley Construction Inc at Exmouth at an estimated cost of \$18 million.
- 76 units to be built by Preconco Ltd at the Grotto at an estimated cost of \$18 million.

44. Mr Bascombe said there were variations with the contract sums from time to time. However, he said he had seen no variations which had come from Cabinet. He said as far as he was aware, the NHC Board had the authority to enter contracts. This applied to all statutory boards, he added, and they generally reverted to the Minister for approval of the said contracts. In the case of the Exmouth project, he acknowledged that a contract was issued to a new builder, B.J. Investment Ltd, based on a document he had seen. He said the document was from then acting General Manager of the NHC, Mr Garvey Alleyne.

45. He said there was a file reference to a signed construction agreement dated May 29, 2013 between the NHC and the new contractor in which the estimated price was \$33.7 million for the same 96 units. Mr Bascombe said according to Board minutes at his disposal, the last Board meeting prior to the signing of the new agreement took place in late January 2013. He mentioned the 23rd and 29th as dates.

46. Mr Bascombe said when he demitted office in November 2013, there was no Cabinet note giving authorisation to the NHC to enter the contract with BJ Investments Ltd. However, on

checking files in his possession, he noted that there was a letter dated February 18, 2013 signed by the Minister of Housing and Lands, Hon. Michael Lashley, stating that Cabinet, at a meeting on February 14, 2013, was informed of Rotherley Construction's financial inability to execute the project and had given the go-ahead for a new contractor to be hired. The minister instructed the NHC via the letter to enter an agreement with BJ Investment Ltd. Mr Bascombe however confirmed that he had no knowledge of such a decision to terminate the agreement with Rotherley and to issue a contract to BJ Investments being made at the Board Level. In later evidence Mr Bascombe confirmed that he had no knowledge of any authority granted for the NHC to enter into the contract prior to when the matter was passed to him by the then Acting Chairman as the file contained directions by the then Minister instructing the chairman that there was a Cabinet decision for the award of the contract. Mr Bascombe further confirmed that when he demitted office in November 2013 there was no Cabinet note authorising the NHC to enter into a contract for the building of 96 units at Exmouth by BJ Investments.

47. Mr Bascombe further confirmed that while there was a yellow paper on the file confirming that at a Meeting of Cabinet held on February 14, 2013 the Minister of Housing and Lands "updated the Cabinet on the Exmouth Project" on the 18th February 2013 The Minister Michael Lashley wrote to the Chairman of the NHC advising that at a meeting of the Cabinet on 14 February 2013 Cabinet had instructed that "...the NHC should enter an agreement with another contractor so as to expedite the matter" and directed "*I am instructing you as Chairman of the Board of Directors to enter a contract on behalf of the National Housing Corporation and BJ Investments Ltd which has the financial capability to construct the said condominium buildings in keeping with the directive from Cabinet*". Mr Bascombe confirmed that he saw no authority on the file for the Minister to give the instruction which he did. Mr Bascombe was further of the opinion that if the contract with Rotherley had indeed fallen through, the appropriate course of action would have been to go back to tender.

48. This instruction was given by the Minister without Board approval in circumstances where the Ministry of Housing was not and was not contemplated to be a party to the eventual contract.
49. At page 23 of the August 11, 2014 transcript Mr Bascombe also confirmed that there was documentation on file confirming that the Ministry of Finance did not support the construction of new urban high rise apartment units and residential houses on the basis that the guarantees given by the NHC would expose the Consolidated Fund to the liability for the project given that the NHC could not support its own budget.
50. Mr Bascombe confirmed that it was only months after the Contract was signed with BJ Investments that the General Manager of the NHC sought an opinion from the Solicitor General on the conflicting contracts entered into by NHC with two different entities for the same Exmouth project.
51. Mr Bascombe in his evidence of September 15, 2014 expressed concern that the Contract for the construction of units at the Grotto being a contract over \$100,000.00 did not go out to competitive open tender as prescribed by the Financial Management and Audit Act 2007/11. Further he was concerned that the original agreement with Preconco was for the construction of 76 units at the cost of \$18 million. On 9 October 2012 Preconco submitted a revised proposal for the construction of 80 units for the total amount of \$27, 850,000.00. Effectively an additional 4 units at an increased cost of \$9,850,000.00 and that there was nothing on the file to justify the variation of the proposal. Further there was nothing on file to justify the basis on which the initial \$18 million was proposed and whether it was a fair price. There was a minute on the file from January 2013 by A. Jordan specifically ...” The Developers, Preconco Limited have not submitted the requested information which details the variation in cost between the original estimate of \$18 million and the new estimate of \$27.85 million.” Further at page 15

Mr. Bascombe confirmed that the matter of a \$27 million contract price for the Grotto was never even discussed by the Board of the NHC at any formal Board meeting.

52. Minute 25 addressed to the Minister from Mr Ronald Bascombe should be noted in full. It is extracted on page 8 of the September 15, 2014 transcript. It concludes that “I am therefore recommending that there be no acceptance of the contract sum unless and until the reconciliation report as requested is received, reviewed and accepted as to reasonableness.”

53. In relation to the Grotto project, Mr Bascombe said he was not aware that it had been put out to tender, given the sum of money involved (\$28 million), and as required under the Financial Administration and Audit Act. He also voiced concerns that the contractor, Preconco Ltd, had not provided a satisfactory response to requests from the Ministry to explain the \$9.8 million price variation on the original cost of \$18 million but had chosen to communicate directly with the Minister instead of the Permanent Secretary as the accounting officer.

54. Mr Bascombe also read from a note which he had sent to Minister Michael Lashley in which he appeared to express concern about the Minister’s request to submit the project for Cabinet approval in the absence of the requested information and also plans by the NHC for an official launch of the project during the week of January 28, 2013.

55. Mr Bascombe expressed concerns that despite Cabinet Papers and other communications which he shared with Minister Lashley, his reservations and major concerns about the lack of appropriate authority to go forward with the contract with BJ Investments and lack of justification about the contract sum being fair, his concerns were not addressed.

56. Further on a number of occasions cabinet papers which addressed the Contract between the NHC and BJ Investments were prepared at the direction of the Minister, submitted and then withdrawn from consideration with no explanation. Further, the custom for amending Cabinet

papers was not observed in some instances in that the matter addressed in the Cabinet paper was approved but paragraphs were deleted subsequently. **(pg 24 of the 15th September, 2014 transcript)** The specific concerns of Mr Bascombe over the contractual obligations and liabilities of the NHC, the justification for the initial contract sum of \$18 million and then the revised sum of \$27 million and the ability to fund the projects were deleted from the relevant Cabinet Papers.

57. Mr Bascombe also opined that Public Private Partnership contracts do not preclude the need for putting contracts out to tender. In his own words “The Public Private Partnership basically allows for financing, but as a public contract the need for competition, the need for accountability and transparency still lives on.”

Evidence - Ms. Carolyn Barton - Finance Officer, NHC

58. Ms. Barton said the NHC had received monthly advances, following requests to the Ministry of Finance, from around August 2011. They totalled \$2,466,721 over the 18 months in question. Ms. Barton provided this information after Mr Bascombe was unable to do so and had requested her assistance. She said approximately \$1.8 million of this amount had gone towards paying wages and salaries and the remaining \$600,000 was assigned to repaying two loans of \$18.4 million and \$6.3 million from Republic Bank, formerly the Barbados National Bank (BNB). The larger loan was used to finance the construction of houses at various sites including Workhall and Marchfield, St Philip and Greens, St George, while the smaller loan covered infrastructural works.

59. Ms. Barton said the NHC was treating the monthly advances as a grant because they had not been told that it was a loan. However, at this point, the PAC heard from Ms. I. Blunt, an official of Inland Revenue, that they were told it was an advance while the Auditor-General, who was then asked to provide clarification, said he was treating the matter as an advance based on the

instructions of the Ministry of Finance. He explained that under Section 35 of the Financial Management and Audit Act, any loan or advance should have parliamentary approval but, to his knowledge, none had been given in the NHC's case.

60. As Ms. Barton continued her testimony, it was revealed that the NHC was insolvent. In response to a question, she said the corporation's 2011 expenditure had amounted to \$48 million and would have risen to around \$50 million in 2012. She agreed with the PAC chairman that approximately \$30 million had been received via monthly transfers that year to support the NHC's operations. She went to say that the NHC was treating these advances as a grant because of its inability to repay.

61. Ms Barton acknowledged that a previous loan of around \$20 million from Government in 2007 had cleared the NHC's overdraft and that the corporation was in a position then to pay its bills without an annual subvention from Government. She said funding still remained insufficient and the overdraft was built back up.

Evidence - Mrs. Lanette Napoleon-Young – General Manager, NHC

62. Mrs. Napoleon-Young is the General Manager of the National Housing Corporation.

63. In her evidence, she stated that the National Housing Corporation follows the Financial Administration and Audit Rules its procurement rules.

64. The question of the size of the NHC's staff arose as Ms. Barton mentioned the financial challenges the NHC continued to have after receiving the 2007 loan. Mrs. Napoleon-Young gave a figure of approximately 657 staff employed by the NHC. She was asked to be precise, to which she replied she would say 657. She was unable to state if this was the figure in 2008

but said she could do so after double-checking. Asked if more than 200 persons had been hired since 2008 despite the financial challenges, Ms. Napoleon-Young said those were the numbers.

65. Asked how many additional persons had been taken on since January 2013, she replied 36 but then changed the figure to 50. She said the latest batch was hired to work on a temporary debushing project which was coming to an end in two months. In response to a question, she said the 50 were included the figure of 657. Mrs Napoleon-Young said the Board of the NHC had knowledge of the decision to hire the 50 workers. However, she said she could not say if it was a written decision as she was away from work during the first quarter of 2013. Mr Bascombe, being a member of the NHC Board, was asked to provide clarification but said he had no recollection of any such decision., Mrs. Napoleon-Young was asked to produce evidence of the Board's decision the next time she appeared.

66. Mrs. Napoleon-Young was asked about the contracts for the high rise apartment buildings at Exmouth and the Grotto. She said none had been signed within the last three months -- i.e. March, April, and May 2013 -- as no Board was in place. After the Committee heard that at least one contract had been signed, Mrs Napoleon was asked to give the value. She said the Exmouth contract was for \$33 million. The Committee had heard earlier that B.J. Investments was the contractor in question.

67. In response to further questioning, she said Rotherley Construction had originally submitted a bid of approximately \$28 million but the NHC had sent correspondence to the company after a certain amount of time had elapsed. She said she was unable to say if the chairman had signed the contract with B.J. Investments because she was away from work. She also denied signing the contract along with the chairman.

68. On the next occasion when Mrs. Napoleon-Young appeared before the Committee, she said she was uncomfortable continuing her testimony without the presence of her attorney, seeing that

the previous proceedings were streamed live and had caused distress to her family, senior officials of the NHC and their families. Mrs. Napoleon-Young said she had nothing to hide.

69. Mrs. Napoleon-Young was excused and informed she would receive a summons to reappear at a future date with her attorney, Sir Maurice King. However, resumption of her evidence had to be deferred on three consecutive occasions because her attorney was unavailable. When Mrs Napoleon-Young, accompanied by her attorney, eventually made herself available after some time had passed, she began by stating she first acted as general manager from around May 2009 and was confirmed in the post in 2012. She described her main duties as managing the corporation on a day-to-day basis and reporting to the Board on a regular basis. She said her post also involved consulting with the Ministry of Housing and Lands as required but not taking day-to-day instructions. She also said she was familiar of the Housing Act, the legislation governing the NHC.

70. Questioned about the genesis of the high rise apartment project, Mrs Napoleon-Young said from her recollection, it stemmed from a decision to take particular properties out of certain lands intended for the building of rental units. Asked who made the decision, she said she could not remember if it was taken by the Board as she was not present at any such meeting. However, she said what influenced the decision was the large outstanding list of persons who had applied to the NHC for rental units over the years but had not been accommodated. The intention of the project, she said, was to build rental housing for those persons who could not afford to purchase their own housing.

71. Mrs. Napoleon-Young said there were proposals from developers expressing interest in undertaking high rise projects for the NHC. However, she had difficulty recalling if these proposals had come directly to the NHC or had been made “at a higher level”, meaning direct approaches to the Minister. With specific reference to the Valerie project, she said the initial cost was \$18 million but it rose after the project was further fleshed out. Asked if the NHC had

carried out a cost analysis to determine if such a project would have met the requirements of the target market, in light of the projected cost, she said she could not recall. However, she said there was a recognition at the management level that the \$18 million construction price was a bit high and the level of rent likely to be charged would be out of the reach of the target market.

72. Mrs Napoleon-Young gave “I cannot remember” responses to a number of questions, including about her familiarity with a circular resolution which was sent from the NHC’s management to the Board in relation to the project. After she was given some time to refresh her memory, she acknowledged that she had submitted the document and it was based on information provided by the then acting Permanent Secretary in the Ministry of Housing and Lands, Mr. Edison Alleyne. She said the resolution informed the Board that Cabinet had approved the project and high rise apartment buildings were earmarked for Valerie, Mason Hall Street, Exmouth and the Grotto. It also said that the process of awarding contracts should begin. Innotech, Rotherley and Preconco were mentioned as the main contractors.

73. Contrary to what Mrs. Napoleon-Young had earlier indicated, namely that the project would provide units that were strictly for rent, she revealed that the information for the acting PS had noted there would be units for sale -- the number of which would be determined by Cabinet -- and that all sales would be done through the NHC to control the distribution of the homes. The PS’s note also stated, she revealed, that the NHC was required to purchase all units which remained unsold. All of this information was put into the circular resolution, she said.

74. As questioning of the witness continued based on this information, Mrs. Napoleon-Young was told that in relation to how NHC lands were to be used, she had been dictated to by Cabinet even though the Housing Act had made it clear such responsibility fell to the Board. Asked if that was the ordinary and appropriate course of affairs, Mrs. Napoleon-Young acknowledged it was not “the normal course of action” Asked next to explain what would be the normal course of action, she said the proposal would be considered by the NHC and once its feasibility was

established, it would go to Cabinet. Mrs Napoleon-Young said she could offer no explanation why it happened the other around in the case of the high rise apartments project.

75. Asked if the NHC had recommended to Cabinet that Preconco be chosen to execute the Valerie project, Mrs. Napoleon-Young's response was "no". However, she acknowledged having some knowledge that Preconco was the preferred contractor before receiving the acting PS' correspondence because the NHC would have seen information. Mrs. Napoleon-Young was asked if she were aware of Government's procurement rules. She replied in the affirmative and agreed that the related should be applied in all circumstances.

76. However, she said in this particular case, there were decisions made to as to the way forward. She was then asked if Cabinet and the NHC were entitled to break the law. The response in each instance was no. She also agreed that if the law sets out a process for procurement, she was duty-bound to follow it. Mrs Napoleon-Young was asked if she had negotiated the terms of the agreement with Preconco in relation to the Valerie project. She replied no, "not that in particular way". She said the initial cost was \$15.8 million.

77. Asked if this figure was accepted without a murmur, she suggested not. She said there would have been meetings to discuss the project and at that level there was agreement. Mrs. Napoleon-Young's attention was drawn to Section 9 of the Housing Act which says that the functions of the NHC shall be to carry out development, building, maintenance, repairs, improvements and other operations. Asked if contracting for the construction of a high rise unit fell within this scope, she replied yes. She accepted that responsibility for construction fell neither to Cabinet nor the Ministry of Housing and Lands but to the NHC.

78. Mrs Napoleon-Young was asked about the preparation of a Cabinet paper on the entire High Rise project. She said she would not say the NHC had input since, apart from supplying information, it was the Ministry of Housing and Lands which would prepare the paper.

However, she said she would be privy to the contents. Mrs. Napoleon-Young was later told that the acting PS, Mr Edison Alleyne, in his testimony to the Committee, had said it was the NHC which had first put forward Preconco's name in relation to building the high rise. He also said it was the NHC which did the first draft of the preliminary Cabinet paper.

79. Mrs. Napoleon-Young later said she had nothing on file showing the NHC had prepared the initial draft Cabinet paper. Asked who initially raised the name of Preconco, she replied former Minister of Housing, Hon Michael Lashley, was the person. Later asked if the former Minister had ever advised her that Preconco was the builder whom he wanted the NHC to engage, Mrs Napoleon-Young replied "Not necessarily". She was unable to state whether contractors interested in working on the project had first made contact with either the Minister or herself. She also said she did not know if there was a practice of the Minister communicating directly with the contractors or a case of them communicating directly with him.

80. Mrs. Napoleon-Young was asked why did she sign the circular resolution asking the NHC Board to approve the project, despite earlier expressing concern about its viability. Her response was that Cabinet had already given approval. However, it was drawn to her attention that the circulation resolution was dated January 10, 2011, while Cabinet's decision came two days later on the 13th. Pressed to explain why she did not draw her concerns to the Board's attention, Mrs. Napoleon-Young said any reservation she had in relation to the cost of the project was comforted by the knowledge that Government was going to guarantee the arrangement and, as a result, if the NHC was unable to pay for the project, Government was guaranteeing the loan.

81. Seeing that Cabinet had indicated the contractors they would be working with based on the proposals they had submitted, Mrs. Napoleon-Young was asked if, in her judgement, that was not a directive as to who the NHC should enter a contract with and pay once services were delivered. She agreed. Told this was not procurement, Mrs. Napoleon-Young said it was based

on her definition. The NHC General Manager had been asked earlier to explain what was policy and what was procurement. Her understanding of the difference was questioned.

82. Mrs. Napoleon-Young was asked if she was aware if the Financial Rules of Barbados. She replied in the affirmative. Reminded that earlier in her evidence she had stated that the NHC follows the Financial Rules, she was then asked what those rules say should be done with any contract for services to a value of over \$200,000. She said the requirement was that such contracts must be put out to tendering. She agreed that the construction of a building for \$15 million was over \$200,000. She said there was no tender because it was decided that the project would be done under joint partnership arrangements with the contractor putting in all the financing up front.

83. She was informed that tendering for services valued over \$200,000 must apply unless there are certain exceptions listed under Rule 239. Namely, that the services are of a specialised nature, not normally available in Barbados and are required as a matter of urgency. She agreed that a building of the proposed nature did not require services which are not normally available in Barbados. With regard to the urgency of the building, she mentioned the need to satisfy the outstanding demand for housing for the many persons on the NHC's long waiting list. The explanation was deemed unacceptable.

84. When Mrs. Napoleon-Young was due to resume her testimony the following day, the Committee was informed that she was ill, was seeing her doctor and would be submitting a medical certificate.

Evidence – Margaret Sivers – Former Permanent Secretary of Finance (Acting)

85. Appearing before the PAC, Ms. Sivers revealed that she had acted as Permanent Secretary in the Ministry of Finance and Economic Affairs for just about 15 months from 2011. Before that, she had served two months in this capacity, making it a total of 17 months

- 86.** She acknowledged being made aware of the financial state of the NHC during her tenure. Ms. Sivers was asked to share with the Committee her own opinion and assessment of the state of the NHC's finances during that 17-month period. She described the finances as being "very shaky in that they would not have been able to make all of their expenditure based on the revenue collections that they would have made."
- 87.** Ms. Sivers revealed she would also have done an audit of the NHC before, in her capacity as Accountant-General, which would have been brought into her capacity as Permanent Secretary in the Ministry of Finance and Economic Affairs (Acting) and it also indicated the NHC faced challenges meeting all of its expenditure. She said there were some months when the NHC would have been able to meet the payroll and other months when it was unable to do so.
- 88.** Expanding on the issue, Ms. Sivers said she would have also been aware of challenges the NHC faced in meeting payroll and payroll related obligations which might or would have included National Insurance and PAYE.
- 89.** Asked about the NHC's receipt of an almost monthly cash or capital injection of roughly \$2.4 million from the Government of Barbados, Ms. Sivers said she could not remember how much the Corporation would have benefited from but this policy would have commenced prior to 2010. In fact, as she explained, it would have been in place from as far back as 2006/2007, whereby if a statutory corporation was unable to meet its expenditure, an advance would have been made from the Consolidated Fund which it was required to repay by the end of that financial year, the financial year in which the funds were loaned or advanced to them.
- 90.** In cases where a statutory corporation was receiving financial support from Government to meet its routine expenses, Ms. Sivers said the establishment of a loan agreement between the Ministry of Finance and the particular statutory corporation was not the practice that was in place. As

she explained, the practice was that the Treasury would have been instructed to make an advance to the statutory corporation, very much similar to how advances were done to other agencies, and the amount would have been indicated to the Ministry of Finance and Economic Affairs which would ensure that the necessary action is taken to ensure that that advance is cleared by the end of the financial year.

91. Asked if these kinds of transfers of funds would not be governed by the Financial Management Act, Ms Sivers replied in the affirmative, noting they became governed by the said Act when Government implemented accrual accounting in 2007, which would have stated that all advances had to be noted by Parliament.

92. Committee Member, Hon. Kerrie Symmonds, who was questioning Ms. Sivers, said his understanding of the Financial Management and Audit Act's requirements was that there ought to be some written agreement in place between the statutory corporation, which is the beneficiary of the transfer of funds, and the Ministry of Finance which is moving the funds, so that it is known whether it is a loan; and if it is a loan, when it is expected to be repaid. Alternatively, whether it is an advance or a grant or whatever the nature of the movement of the money is.

93. Ms Sivers was asked if that too was her understanding. She replied: "The Financial Management and Audit Act would say that all advances, whether long term or short term, have to be noted in Parliament. The practice had been that if it was a loan, it had to go to Parliament for approval and go through the normal parliamentary process. In the cases of advances, the practice had been that, because an advance is treated as a short term transfer of funds between the central Government and another agency, loan agreements were not drawn up, but the Ministry of Finance was made aware of the transfer and their responsibility was that it would be cleared off by the end of the year. In that case, it would go to Parliament to have that amount of money appropriated by way of a supplementary transfer to the organisation. So, because it was short

term – less than one year – the formal contract was not drawn up. It was done by way of exchange of letters.

94. Ms. Sivers was questioned about the applicability of Section 32 of the Financial Management and Audit Act in relation to the transfer of funds to statutory boards from Central Government and whether it had been bypassed. Section 32 says: “Loans which are given by the Government to Government enterprises or non-government enterprises shall be secured by way of a loan agreement or debenture mortgage depending on the circumstances of the loan, the terms of which are to be agreed by the Cabinet.”

95. Ms Sivers said Section 32 would not have been bypassed because the transfer of the funds would not have been done under Section 32. She explained: “As I said we were looking at it as a short term advance, and this was the practice that had taken place prior to my becoming Accountant General in 1999, so we had been operating on a basic practice. What we did was tighten up that practice, which required the Ministry of Finance to have an exchange of letters which would say when the funds are to be repaid by, and those funds were usually repaid by the end of the financial year in which the funds were advanced.”

96. What should have occurred at a minimum, Ms. Sivers agreed, was an exchange of letters between the Ministry of Finance and the National Housing Corporation. Miss Sivers said there were some challenges with respect to some of the statutory corporations whereby it often did not seem as though they were clear as to how they should treat the funds in their books. “There is a difference between your understanding of what was given and your understanding as to how you should treat it in your books, but the Government, we, would always indicate to them the methodology that we were given and how we were treating it,” she told the Committee.

97. She continued: “They would sometimes have challenges in terms of treatment of transactions in their books as opposed to how they were treated in the Government’s books. That is why we

are trying to work toward consolidations, where the statutory corporations will treat items in the same way as the Accountant General in terms of reporting for transparency and accountability. That was the reason why the whole concept of accrual accounting was introduced into the Public Service; to ensure that all agencies and all entities treat transactions in a similar way in their financial statements.”

98. Ms. Siverson was then asked if the monthly transfers of \$2.46 million were covered by an exchange of letters between the Ministry of Finance and the NHC. She replied that she could not say whether what the method was, “because normally as a Permanent Secretary you would write, give an instruction on a file and you would expect that instruction to be carried out. I know from my perspective when I was sitting in the Accountant-General’s chair, I would expect that if I received an instruction from the Ministry of Finance as to what to do in terms of any advance that was made, so I would expect that a similar thing would have been done in 2010 and in 2011 or any other year subsequent.”

99. Mr Symmonds asked Ms. Siverson to explain what section of the Financial Administration and Audit Act would govern short term loans of the type the NHC was receiving since they did not fall under Section 32. He also asked Ms Siverson if she was aware that the Department of the Auditor-General had raised this matter in its Report of 2013. In those reports, there were similar concerns that the loans given to the NHC had not been secured in the manner contemplated in Section 32.

100. Ms. Siverson explained: “You would remember I said that when this process started in the period that I would have been there, it was started as a short term advance and at the end of the financial year, the outstanding balance had to be covered by a request for supplementary to cover the amount advanced by the Treasury so that they could be repaid and that was the practice. I cannot account for 2013/2014 because I would not have been at either the Ministry of Finance or at the Treasury Department.”

- 101.** Ms. Sivers was asked, given that the monthly advances continued to the NHC without supporting documentation for over two years, whether, to her knowledge, a supplementary was brought to Parliament at the end of the financial year 2010/2011 to deal with the advances that have been approved to avoid them going over into the next financial year.
- 102.** She replied: “I remember it being drawn to my attention some time in 2011 or 2012 that there was an issue relating to the advances that had been made to the National Housing Corporation for 2010/2011, in that at the end of 2010/2011, they were still on the book and the supplementary had not been requested. That was for 2010/2011.
- 103.** A question was raised as to whether the NHC never requested a supplementary. Ms. Sivers replied: “Usually, from my memory, the notification would have been done. I would normally as Accountant-General indicate to the Budget Section to not forget that we have made an advance to the National Housing Corporation or whomever and that we need to go for a supplementary. So, it was initiated by me.”
- 104.** Ms Sivers’ full testimony puts in clear and unequivocal terms the history and practice surrounding section 31 advances.

Evidence - Mrs. Henrietta Bourne-Forde – Chief Legal Officer, NHC

- 105.** Making an input while Mr Bascombe was giving evidence, Mrs Bourne-Forde, who has served as the NHC’s Chief Legal Officer from 2008, told the Committee that to the best of her knowledge, contracts related to the high rise apartments had been signed or had been in circulation prior to the three months in question. She said the chairman was involved in the matter and possibly the general manager as well.

106. Mrs Bourne-Forde said she was sure to the extent that she had witnessed the signature of the chairman. She promised, however, to double-check the information to be on the safe side but recalled the signing of at least one contract -- related to Exmouth -- had possibly taken place during a function at the Hilton in December 2012. She said the new Exmouth contract was awarded to "one of the Preconco companies".

107. When it was the turn of Mrs. Bourne-Forde to give her testimony, she began by explaining her duties as the NHC's Chief Legal Officer. She said the job involved, among other things, reviewing contracts, if requested to do so, to ensure there is compliance with the wishes of the Corporation and/or the legal implications that may affect it. She also said while she does sign contracts on the NHC's behalf, she may witness them after the signature of the chairman and/or Board secretary or any other official assigned to do so. Mrs. Bourne-Forde said she also reviews, if requested to do so, contracts which may have come to the NHC from external sources. She also said she does not attend Board meetings unless invited. Mrs. Bourne-Forde also said she did not have a role in the unauthorised expenditure by the NHC of monies received from Central Government through the Ministry of Finance.

108. Mrs Bourne-Forde was asked to shed some light on the arrangements related to the construction of the high rise apartments project, beginning with the one earmarked for Exmouth. Confirming familiarity with this particular venture, she said the NHC was in negotiation with Rotherley Construction to carry out the construction at Exmouth but, to the best of her knowledge, no formal written contract was entered. She said the negotiations began after the Cabinet had approved the company for the job.

109. Asked if it was not the duty of the NHC Board to determine the award of contracts for projects, she said that was correct. In a follow-up question, she was asked if the NHC Board had done so, to which she replied yes. Asked how she became aware that this had taken place, she said there was a Board decision ratifying the decision taken by Cabinet. Mrs Bourne-Forde

said the General Manager, Mrs Napoleon-Young, subsequently handed to her a contract for the same project in which B.J. Investments was identified as the contractor. Mrs. Young-Napoleon did not give any instructions as to what she should do with the contract, Mrs. Bourne-Forde said.

110. Mrs Bourne-Forde acknowledged there was a Letter of Intent between Rotherley Construction and the Ministry of Housing and Lands related to the Exmouth project for the construction of 108 high-rise units. In fact, mention of the Letter of Intent was made in a legal opinion which Mrs Bourne-Forde wrote for the NHC on December 19, 2013. She said the Letter of Intent preceded the contract which the NHC had entered with B.J. Investments. She said the legal opinion had addressed the question of whether any obligation was created by the Letter of Intent that was issued to Rotherley Construction. She said the legal opinion also addressed the question of whether the contract with B.J. Investments was properly executed.

111. It was subsequently revealed, during further questioning, that there was another written legal opinion dealing with the same issues, dated December 27, 2013 and also provided by Mrs Bourne-Forde. She could not immediately provide an answer explaining the reason for the existence of two opinions but Mr. Kerrie Symmonds, who was questioning the witness at the time, said having read both of them, he might be of assistance. He said he had concluded that the December 27th opinion was the “real substantive opinion”.

112. Mrs Bourne-Forde did not challenge this conclusion and proceeded then to answer questions related to the December 27th opinion. She said her opinion was that since it was the Ministry, rather than the NHC, which had issued the Letter of Intent to Rotherley Construction, and had instructed the company to prepare the site, any responsibility would fall to the Ministry and not the NHC. She said for the NHC to bear responsibility, it would have had to enter some contractual arrangement with Rotherley which it had not.

113. Mrs Bourne-Forde said she could not speak as to whether there was a Board resolution authorising the NHC to enter a contract with B.J. Investments. With regard to the Grotto project, she acknowledged that she had witnessed a contract. She said this contract was prepared by a Karen Ferreira and her role was to review it, based on instructions she had received from the General Manager. The review took place on December 21, 2012. Asked if there was a Board resolution authorising the NHC to enter a construction agreement with Preconco and a second contract involving the NHC, Preconco, Royal Bank and the Government of Barbados in relation to the Grotto project, she said there was just a decision ratifying the Cabinet decision but she would have to check the files.

114. When Mrs Bourne-Forde resumed her testimony the following day, she reported that from her research, she could confirm based on the minutes that there was a meeting of the NHC Board on February 1, 2011 where there was a Resolution approving construction of the high rise units at Valerie, Exmouth, and the Grotto, among other places, using the joint venture arrangement. The meeting was asked to ratify two circular Resolutions which, in the first instance, noted Cabinet's approval of the high rise apartments project and, in the second instance, a proposal for financing the project by the joint venture partners with a Letter of Comfort from the Ministry of Finance. Mrs Bourne-Forde said she was not present at this meeting.

115. Mrs Bourne-Forde considered the Board's approval of the project and the various contractors as approval for the NHC to enter the building contracts. However, in answer to a follow-up question, she agreed that the circular Resolution approving the project had only given the NHC authorisation to start negotiations with the various contractors. Asked if she did not need a separate Resolution from the Board to enter into contract upon successful conclusion of those negotiations, Mrs Bourne-Forde replied that she did not think it was always necessary.

116. The cost of the Valerie project came up. Mrs Bourne-Forde said the figure of \$18 million was mentioned in the circular Resolution from the Board authorising the NHC to enter negotiations with the builder, Preconco Ltd. However, she agreed the figure mentioned in the actual contract was around \$23 or \$24 million. It was put to the witness by the chairman that the NHC management had signed a contract which was 50 per cent higher than what the Board had envisaged. In response, Mrs Bourne-Forde said Board approval should have been given in light of the substantial variation in the price.

117. Mrs Bourne-Forde revealed that she did not review the Valerie contract as a lawyer was hired outside of the NHC to handle the job. She named Mr Milton Pierce as the attorney. Asked what was her usual role in such circumstances, she said it involved sending the external counsel any information as requested from management and liaising with management about any concerns which the attorney may have. She also said where an external attorney is involved, she would not normally review the contract to determine its fitness for signature by the NHC.

118. Mrs Bourne-Forde said it was her evidence that she did not review the contract or construction agreement. She also said she did not see the agreement prior to execution. Mrs Bourne-Forde was also asked about a second agreement -- a purchase agreement -- related to Valerie. She said she was just requested to witness the signature of the chairman, Mr Wiltshire, and that was her only involvement with the agreement which, she explained, was subsequent to the construction agreement. Mrs Bourne-Forde was told of a finance agreement but she said it was incorporated in the purchase agreement.

119. She agreed there was a clause in the finance agreement calling for the contractor to be paid 14 days after practical completion of the building. Mrs Bourne-Forde said she read the agreement before signing to witness the chairman's signature but did not vet it in her role as the NHC's Chief Legal Officer. She said it was the responsibility of the external counsel who was dealing with the matter. Mrs Bourne-Forde was asked if she was aware of a memorandum that

Mr Pierce had sent to the NHC initially expressing his understanding of his drafted instructions dated October 10, 2011. She said she could not recall seeing it but promised to check her files.

120. The memorandum was an appendix to an email from Mark Maloney to the Minister of Housing and Minister of Finance, Hon. Christopher Sinckler, and copied to one Bjerkhamm with an attachment reflecting an email from Mr Pierce to Peter R.P. Evelyn, attorney-at-law, and copied to the NHC. Mrs Bourne-Forde said Mr Pierce was speaking about a draft contract between the NHC and Preconco that was prepared by Mr Evelyn. It was revealed that the cost of the Valery project was \$15.8 million, as stated in Mr Pierce's instructions. That was up to October 10, 2011. Asked about the subsequent price variations, Mrs Bourne-Forde said she thought Cabinet had approved the changes. However, to be certain, she was advised to make a check.

121. Mrs Bourne-Forde said she had had no part in the decision with Mr Maloney on the terms and conditions of the contract. She acknowledged correspondence sent by the said Mr Maloney to the Minister of Housing that raised issues related to the content of the contract. Mr Maloney was referring to correspondence sent from Mr Pierce. She quoted from the correspondence in which Mr Maloney said, "what has been sent to us as attached is not what was agreed and we would appreciate if we could have a meeting with your good selves and your attorney and PS, so we can all agree on what needs to be done as per our contract currently in place".

122. Mrs Bourne-Forde was asked to explain who provided instructions for the drafting of contracts. She said they normally came from the Board Secretary or from the General Manager or the Deputy General Manager. She said her only input towards the Valerie contract was giving Mr Pierce the format which would have been approved. The contract, she said, basically incorporated the decision of the Cabinet. If there was any subsequent change, she said she would have expected it to come from the NHC Board or management team, subject to any policy directive issues. She said it was not normal to hear of contract changes through third parties.

- 123.** Because of a Letter of Comfort tied to the contract, the Committee heard that the NHC had to begin discussions on a loan agreement with the Ministry of Finance which had to foot the bill after the NHC was unable to pay the contractor within the stipulated time on completion of the Valerie project. As she spoke, Mrs Bourne-Forde said the agreement was before the Board for its consideration and decision before signing off. It was for the sum of \$23.8 million, the witness revealed. Mrs Bourne-Forde said she drafted the agreement at the request of the General Manager, acting on instructions from the Ministry of Housing.
- 124.** Mrs. Bourne-Forde was referred to the Letter of Comfort dated June 8, 2011 associated with the project in which a construction cost of \$21.1 million was stated. It was also drawn to her attention that the construction agreement, signed two weeks later on June 23, 2011, contained a figure of \$22.9 million. Mrs Bourne-Forde was asked who perused the construction agreement. She replied that she did not know. She said the agreement was signed by Mr Wiltshire, the chairman, and Ms Angela Springer, the acting Board Secretary who also affixed the NHC's seal. Mrs. Bourne-Forde said there were no witnesses to the signing, pointing out that such documents were normally witnessed. She also agreed that the document contained no "drawn and prepared" statement, contrary to normal practice.
- 125.** Questioned further about the issue, Mrs Bourne-Forde said she did not know who prepared the contract or who reviewed and deemed it fit for signature by the NHC. Asked to point the Committee to the NHC Board's authorisation for signing a \$22.9 million contract for Valerie, she said she could not do that. Asked why, Mrs Bourne-Forde said she had never seen the authorisation. Mr Bourne-Forde was then asked about instructions she had given Mr Pierce and told those instructions mentioned the sum of \$15.7 million. She replied that sounded correct.
- 126.** Mrs Bourne-Forde agreed what existed here was a case where the external lawyer hired on the project was told the cost was \$15.7 million but the signed construction agreement was for

\$22.9 million. She said she had not seen the construction agreement before giving Mr Pierce instructions that the sum was \$15.7 million. In a case where there was a variation in the contract sum, as happened here, she agreed there ought to have been an amendment to the executed contract. It was revealed that the construction agreement was dated June 23, 2011 while the finance agreement was dated March 9, 2012.

127. Mrs Bourne-Forde said she subsequently sent Mr Pierce a letter on November 11, 2011 informing him that the NHC's management was advising that the revised sum for the Valerie project was now \$21.1 million. He was asked to amend the contract in light of this change. Mrs Bourne-Forde said she was advised of the revised figure via a memorandum from the Deputy General Manager and requested to forward the information to Mr Pierce. She said she was unaware at this point that the cost of the project was higher than the revised sum. Had she known, she said she would have advised Mr Pierce of the \$22.9 million figure.

Evidence - Mr Martin Cox – Former Director of Finance of Economic Affairs

128. Mr Martin Cox, acting Director of Finance and previously permanent secretary in the Ministry of Finance, confirmed that no terms had been established in relation to the advances of \$42.1 million to the NHC from August 2010 to March 2013. He said these transfers had begun before he assumed duties as PS, Finance on September 1, 2011.

129. Additionally, he disclosed, \$29.6 million had been transferred to the NHC during the 2013-14 financial year and had received parliamentary approval. In the meantime, he said, the Ministry of Finance was moving to regularise the transfers of \$42.1 million by establishing a loan agreement between the NHC and the Crown. It would then be sent to Parliament for approval in order to satisfy the requirements of the legislation. However, Mr. Cox expressed doubts about the NHC's ability to repay, given its poor financial state.

130. The transfers to the NHC were continuing in the meantime. In the 2014-15 financial year, a sum of \$7.1 million was involved and additional support was planned during 2015-16, both going to cover mainly debt servicing. Mr Cox said Government's finances were tight and explained that the NHC was in possession of land which it was supposed to put up for sale to generate income. It was from the proceeds of land sales that the NHC was supposed to repay loans obtained from Government. However, doubts were expressed as to whether such sales had taken place because no repayments had been made.

131. Besides a reduction in rental income arising from the decision of the incumbent administration to allow tenants who had been renting for at least 20 years, to acquire their units once their payments were up to date, it was revealed that another contributor to the NHC's poor financial state was the slow pace of land and property sales at housing developments such as Lancaster. In response to a question that the limited financial returns being realized by the NHC possibly stemmed from the negotiation of arrangements with private sector partners that were not to its best advantage, Mr Cox said it was a possibility.

132. Specific mention was made of one arrangement under which the NHC had entered a 99 year lease agreement for the commercial use of five acres of land with a private developer under which it would receive \$100 a year for 99 years. Asked if such an arrangement represented "prudent use" of the NHC's resources, Mr Cox replied that in his opinion, it did not make sense. The project in question, at Coverley, involved the construction of 1,000 houses by Preconco Limited .

133. It was also revealed that NHC land had been sold in one instance for as low as \$3 per square foot to a private developer. Mr Cox said that price sounded rather low in present day Barbados. Under the arrangement, the NHC then stood to receive the equivalent of 1.5% of the purchase price of the completed property, less the amount paid for the land. At 1.5%, it was pointed out

that if a property were sold for \$300,000, just \$4,500 would go to the NHC and the remainder presumably to the developer. Mr Cox expressed the view that this arrangement appeared to be not in the best interests of the NHC.

134. Reading from notes, Mr Cox estimated the NHC's full liability to the Ministry of Finance, as he spoke, at about \$183.3 million. He said the figure included \$84 million for the Barrack building at Warrens, the Valerie and Grotto high rise apartment buildings for which the Ministry had paid Preconco Ltd \$23.5 million and \$27.8 million respectively, and \$5.7 million which was spent on the removal of asbestos roofs from NHC properties. Added to these amounts was the \$42.1 million in transfers between 2010 and 2013. Mr Cox described the NHC as "just one of the horsemen of the fiscal apocalypse" facing Barbados.

135. Mr Cox said the same description could be applied to other statutory corporations. Given the financial challenges, he said the Ministry of Finance was moving to provide better oversight of statutory corporations with the assistance of the International Monetary Fund (IMF) through its Caribbean Regional Technical Assistance Centre (CARTAC). The NHC and four others were included in a pilot project. An objective is determining how to reorganise these entities so that they can be placed on a reasonable financial footing without the need for Government support going forward.

136. Mr Cox was asked how could the Ministry of Finance agree to the NHC, in its insolvent state, incurring more expenditure and increasing liabilities to Government by pursuing the various development projects, given the tight financial situation Government was also facing. Mr Cox said when the high rise apartment projects were first presented in a Cabinet paper, the Ministry of Finance did not give its support because they involved an estimated expenditure of \$65 million. Mr Cox said this position predated his appointment as PS but it was clear that the Ministry would have only supported the projects if the arrangements required the developer to

assume full responsibility for providing the financing with the NHC's only contribution being the land for construction.

137. Mr Cox suggested the Valerie project could not be considered feasible as the income from rent at current levels was insufficient to allow the NHC to recoup its investment. He revealed that under the arrangement, the NHC had to fully pay Preconco Ltd, the contractor, within 14 days after the company had submitted a Certificate of Practical Completion. Since Government did not have the resources at the time, he added, the Minister of Finance, Hon. Christopher Sinckler, determined that the bill should be settled using proceeds from the sale of Government's remaining shares in Republic Bank, the former Barbados National Bank. Mr Cox said the decision taken by the Minister was different from the advice which he was given.

138. During his testimony, Mr Cox read from Ministry of Finance minutes which revealed that its Debt Management Unit was not made aware of the terms of payment for the Valerie project. This new Unit was set up to provide advice on all borrowing proposals, terms and conditions of loans, and guarantees of loans. The minutes described the NHC as remaining errant in the submission of relevant documentation to the Unit. However, recognising that there was a signed, legally binding contract, the Unit accepted that the liability had to be met.

139. Under the agreement with Preconco, if Government had failed to pay the demanded sum in full within the stipulated 14 days, then it had five months to put in place a guarantee for Preconco and Royal Bank of Canada which provided the financing for the project. The guarantee provided for the monthly payment by Government of principal and interest over three years until the liability was liquidated.

140. Mr Cox said correspondence was sent to the Minister of Finance advising of three options that could be pursued to settle the debt. However, the Minister took a different view and responded with instructions that Government's shares in Republic Bank should be offered for

sale and applied towards full settlement. Mr Cox said he and other technocrats in the Ministry had not seen the Valerie project contract before it was signed and did not recommend it for signature. He said the first time they saw it was six months following the date it was signed.

The signatories were Preconco, the chairman of the NHC, the Minister of Finance, and Royal Bank. Mr Cox said the Ministry would normally see contracts which commit the Government to liability prior to any being signed by the Minister. Responding to a question, Mr Cox said he thought a better process, before a contract is finalised for signature, would be to allow comments by the Ministry of Finance first and the Solicitor-General to ensure the incorporation of any recommended amendments to protect the public's legal and financial interests.

141. Mr Cox also spoke on the Grotto project, the only other high rise which got off the ground, after concern was raised that it fell outside of the NHC's mandate of providing low income housing as persons so categorized would not qualify to purchase any of the units. Mr Cox said his first position would be to sell the building and recover the expenditure. The Committee heard that when this \$27.8 million project was completed, the NHC was unable to pay and again turned to the Ministry of Finance in May 2015 to secure the financing as had happened in the case with Valerie three years earlier.

142. In this instance, the money was sourced from the Housing Credit Fund which, for the first time, had approved a dividend for distribution. It was the first time that the Housing Credit Fund had had a dividend distribution. The matter generated a number of questions as to whether this was indeed possible given that the Fund was set up as a trust. The money was approved by the Minister of Finance in the amount of \$30 million and Preconco Ltd, the contractor, was paid from the proceeds.

143. A legal opinion was sought by Mr. Cox from the Solicitor General, who opined that no dividend could be declared by the Housing Credit Fund, and that such an action was not sustainable in law. Accordingly, the declaration of the dividend was improperly made.

Evidence - Ms Alies Jordan – Acting Deputy Permanent Secretary, Ministry of Housing & Lands

144. Ms. Alies Jordan, deputy permanent secretary in the Ministry of Housing and Lands, began her testimony by stating that her assignment to this position was effective February 2012. Asked to comment about missing files related to the Grotto and Valerie projects as stated by former acting Permanent Secretary, Mr Edison Alleyne, in his evidence, Ms. Jordan said there was only one missing file as far as she was aware. She said it was 0641 file Volume 12.

145. It was the first time, Ms. Jordan said, that she was hearing about missing temporary files. Further, she added, she was unaware of the existence of these files. Ms. Jordan said the Ministry's Registry staff had been searching for the particular closed volume for some time and, in the process, had been able to locate two other closed volumes, 11 and 13. However, Volume 12 remained missing and the search was continuing. She said the search had been going on for over eight months.

146. She revealed Ministry staff had discovered Volume 12 was missing when former Permanent Secretary, Mr Ronald Bascombe, was summoned to appear before the PAC and had asked for him to have all the files at his disposal. In response to a question, Ms. Jordan said she was unable to state the contents of the missing file as the matter predated her arrival at the Ministry.

147. At her next appearance before the Committee, Ms. Jordan reported that the missing file had been found. The PAC chairman noted that on going through the file, it was found that three sets of minutes -- numbers 37, 38 and 85 -- were missing and there was an unnumbered piece of electronic correspondence between items 65 and 66 but otherwise everything else was intact.

Among other things, the file contained correspondence from the Cabinet Secretary that the Cabinet had approved the high rise apartment projects for Valerie, the Grotto, Exmouth and Mason Hall Street. The file also contained a minute from then Cabinet Secretary, Mrs Avril Gollop, indicating that Cabinet had approved a variation in the estimated construction cost from Preconco related to the construction of 72 high rise units at Valerie.

148. Ms. Jordan was asked about her understanding of the rules governing either the absence or destruction of Government documents from files. She said as far as she was aware, the destruction of Government documents can only be done if it is in accordance with the Archives Act and the related regulations. Hence, she added, destruction was not a matter for any mere officer in the Ministry or the Public Service. Ms Jordan also said she believed there were penalties for any person found engaging in such acts. She said in her 22 years' experience in the Public Service, files going missing was a highly unusual occurrence.

149. Ms. Jordan said as she did not know the intent behind the missing documents, she considered what had happened to be a form of tampering. She said the matter had been brought to the attention of the Permanent Secretary and measures to improve the security of files were under consideration by the Permanent Secretary. One measure was the introduction of an access pass for entry into the area where closed volumes were stored. It means only persons who been issued with a Ministry of Housing and Lands electronic badge will be able to enter the room where these particular documents are kept.

Evidence - Mr. Garvey Alleyne - Deputy General Manager, NHC

150. Mr. Alleyne identified himself as the Deputy General Manager of the NHC, a post in which he initially acted from 2009 before his subsequent appointment in October 2012. However, he

was in the employ of the NHC since 1979. Mr Alleyne also told the Committee that he occasionally acted as General Manager.

151. He said the genesis of the urban High Rise apartments project occurred in the context of a loan which the NHC had negotiated with the Caribbean Development Bank. He said a number of sites was identified and it was envisaged that 300 units would be constructed. He said the switch to the joint partnership approach came after the then Minister and Cabinet realised that it would take some time for the CDB loan to come through and a faster fruition of the project was required. As a result, two or three sites earmarked for the CDB project were taken out to be used for construction under the proposed joint partnership arrangement.

152. Mr Alleyne could not recall who made this decision but said he believed a Cabinet paper was prepared outlining the new approach and there was subsequent correspondence from the Permanent Secretary in the Ministry of Housing and Lands informing that the sites in question as well as contractors had been approved for development and construction. He agreed customary practice was for the NHC Board to make such a determination.

153. Using the Country Park Towers high rise project as an example, he also said the normal procedure would be to tender for submissions on which the NHC Board would make a decision that would then be forwarded to the Ministry of Housing. The Ministry would then prepare a Cabinet paper for consideration of Cabinet.

154. Asked who chose the contractors, Mr Alleyne said he believed the determination was done at the Ministry of Housing. He said this approach was not consistent with normal procedure which involved a tendering process and the consideration of submitted proposals by the Technical Department of the NHC which would then send its recommendations to the Board for consideration and approval. The decision would be then forwarded to the Ministry and, on this basis, a Cabinet paper would be prepared to go before Cabinet.

155. Mr Alleyne was asked if the management team at the NHC had specifically discussed the high rise apartments project at any of its meetings. He said he could not recall any, noting the project had originated within the Ministry. Mr Alleyne also said he was not involved in any meetings where project-related costings were discussed. He also said the issue of cost recovery in relation to the project was not discussed at the management level.

156. Asked about the change of contractor for the Exmouth project, Mr Alleyne said from what he could recall, the development came to his attention via a call from the then Permanent Secretary in Housing, Mr Bascombe, who indicated that it was his understanding that a contract was in place with B.J. Investments. Mr Alleyne said subsequent to this conversation, the chairman on the NHC gave him a document indicating that he had signed a contract with B.J. Investments to execute the project.

157. He said the document was given to him on March 15, 2013 at 4:50p.m. by the Chairman of the NHC addressed to the chairman of the NHC and signed by the then Minister, Hon. Michael Lashley. It informed that since Rotherley Construction was “financially incapable” of executing the project, Cabinet had instructed the NHC to enter an agreement with another contractor and he (Mr Lashley) was instructing the Chairman to enter into a contract with B.J. Investments, “in keeping with the directive from Cabinet”.

Evidence - Edison Alleyne – Former Permanent Secretary in the Ministry of Housing & Lands

158. In his testimony, Mr Alleyne, who acted as Permanent Secretary in the Ministry of Housing and Lands from November 2008 until September 30, 2011, had difficulty stating the mandate of the Ministry. He initially said, when asked, that he did not have that information at his disposal before saying he could not remember. He then said it would be the construction of

houses. He said as acting PS, he had a supervisory role in relation to the NHC and also sat on its Board.

159. Mr Alleyne was asked about the High Rise apartments project. In the case of the Grotto, he was asked about two small contractors who were supposed to be engaged by the main contractor, Preconco, in keeping with the Cabinet decision, as he had stated earlier. He said it did not apply in this particular decision. Mr Alleyne was asked if he had written any construction companies informing them they were awarded subcontracts to build any of the Grotto units. He replied he had no recollection.

160. However, he was referred to a letter bearing his signature to Caribbean Consulting Ltd, stating they had been identified as a subcontractor to build a block of units at the Grotto. Mr Alleyne acknowledged doing so. He mentioned a cost of \$6 million was stated in the letter. He was asked why he had not written the NHC to inform them of the decision so they could write the subcontractor themselves. He said the communication went from him to the subcontractor.

161. Asked if the subcontractors were contracting with the Ministry of Housing, he replied no. Asked if it was with the NHC, he said yes. Mr Alleyne was then told that could not be correct because a subcontractor contracts with the main contractor. He agreed. Asked if he had written three companies in total -- the others being Preconco and Steve Building Works -- informing them that they would be subcontractors on the project, Mr Alleyne replied yes. Mr. Alleyne was asked who gave him the names of these companies. He said the instruction would be from the Minister. He said so three times. Mr Alleyne was asked if this instruction was in writing or by word of mouth. He said he would have to read the file.

162. Mr Alleyne was requested by the Committee to obtain the relevant files from the Ministry of Housing and Lands so that he could provide "coherent evidence" to the Committee. In subsequent testimony, he complained about the difficulty getting information from the

Ministry's files because relevant documents were not where they were supposed to be. He said he was unable, in the circumstances, to validate or corroborate information because the file he had dealt with when he was at the Ministry, had gone missing.

Evidence - Mr Grantley Smith – Former Director of Finance and Economic Affairs

163. Mr Smith served as Director of Finance and Economic Affairs until his official retirement in October 2013. However, he left office in July of that year when he proceeded on pre-retirement leave. Asked to describe his general duties in this post, Mr Smith said up front that he did not really recall them because, since he was retired, he had left all of those things behind.

164. He acknowledged awareness during his tenure of the financial difficulties which were facing the NHC, including the recurring monthly problems of meeting payroll and other obligations from 2010 onwards. He said requests for assistance from statutory corporations were allowed under the Financial Management and Audit Act but any transfers, as they are considered to be of a temporary nature, were expected to be brought to book by the end of the financial year in which they were made.

165. Mr Smith said based on all the evidence available, the NHC was apparently bankrupt and the monthly assistance it was seeking was to keep it operational and honour obligations in respect of a loan it had received from the former Barbados National Bank, for which he had signed a Letter of Comfort back in 2008. The loan of \$18.4 million was related to a project involving the construction of 134 houses by the NHC at Deanes Town, St James. The number was subsequently increased to 148.

166. It was revealed during Mr Smith's testimony that the BNB subsequently became concerned about an obvious deterioration in the financial position of the NHC. The Letter of Comfort was

reissued on a six-month basis from 2008 but, by 2012, the BNB had requested a legal mortgage in addition to the Letter of Comfort. In recognition of the worsened financial state of the NHC, it was revealed that the then Permanent Secretary, Mr Bascombe, was trying to get Government to change the repayable monthly transfers to a subsidy which would not have to be repaid. Mr Smith described the NHC as being “in its worst ever financial situation.”

167. Mr Smith said the decision to allow 20 year old tenants to acquire their units contributed to a reduction in income for the NHC. Mr Smith also suggested politicians may have indirectly contributed to the NHC’s woes. He recalled a tradition among low income Barbadians to repay their loans. However, as politicians increasingly sent persons to those funds, the less they felt an obligation to repay. Mr Smith said that was at the root of the NHC’s problem which has mushroomed over the years.

168. Mr Smith noted there was a practical shift in how the NHC was functioning in relation to its mandate to be a provider of low income housing. He said the NHC had not done a lot of projects catering to that market segment in recent times as the emphasis on low income projects had diminished over the years. He described the NHC as seeking to do what it could not do, with the result that it was not generating enough surplus to do more projects on its own, instead of having to rely on Government to provide financing. He suggested a need to restructure the NHC so that it can operate on a viable basis.

169. Mr Smith did not have recollection of quite a few things including whether the Valerie high rise project had got off the ground without going out to public tender and whether he had seen the building contract before it was signed. Mr Smith recalled, though, that the staff of the NHC had increased from 550 prior to 2008 to 652 by September 2011, even though the state entity was experiencing financial difficulty. Mr Smith said he did not recall that the Ministry of Finance would have been involved in the hiring of workers at statutory corporations but it

would expect that in a difficult financial situation, the only workers who would be hired were those to fill vacancies for critical positions. He said he was not aware of any request from the NHC to the Ministry of Finance to hire additional people but such a request would usually go to the Permanent Secretary.

170. Mr Smith was asked what recourses he thought were open to him as Director of Finance and Economic Affairs and Head of the Civil Service when rules were not followed, as happened in the case. He suggested the breaking of rules at the level of the bureaucracy pointed to a much larger issue where the rules of the country are made. He said what was required was to ensure that the makers of rules follow the rules. He said he thought this is where the idea of a Public Accounts Committee came in. "That is a decision I think you all will have to make," he said.

171. Looking to the future, Mr Smith said proper management needed to be put in place at the NHC which does not need to have a lot of staff because there are enough small contractors and business people in Barbados to do the job that NHC is required to do. Strong management of the NHC is critical, he said, to ensure that disciplined small contractors are used, who respond promptly to fix problems. Mr Smith expressed the view that many small business people lack discipline and tend to react too slowly to address problems. He called for a streamlining of government in other areas, with the outsourcing of many activities that can open up opportunities for small business, provided they are disciplined and business-like in their approach. He saw this direction as being necessary for Government to take going into the future.

Evidence - Mr Kevin Darling – Managing Director, RBC Royal Bank (Barbados) Ltd.

172. Mr. Darling, managing director of Royal Bank of Canada (Barbados) Ltd, gave evidence about the arrangements under which the bank extended financing for the Grotto and Valery projects undertaken by Preconco.

- 173.** In response to previously-made queries, the Committee learned via correspondence dated November 28, 2016, from Clarke, Gittens and Farmer, attorneys for RBC, that the bank was unable up to then to locate extensive documentation related to the Grotto project.
- 174.** Mr Darling confirmed the accuracy of the responses given by the Bank's lawyers to the Committee's queries and adopted them as his own in giving evidence. In relation to the Grotto project, he said RBC had no information on its files showing the date on it executed the financing agreement.
- 175.** Neither did it have information on file indicating the date in which it received the agreement. Mr Darling further stated that the bank had no information on file indicating whether the agreement was already signed by the other parties when it was received.
- 176.** Additionally, he said, the bank was unable to locate information showing that the NHC had requested that it sign the agreement. In response to questions as to whether there was any bridging for the Grotto project, whether funds were released by RBC prior to the dates of the agreement, Mr Darling said such information is privileged given RBC's duty to maintain privacy in its client relationships.
- 177.** In the case of the Valery project, he said the bank also did not have any information on file showing the dates on which it executed the agreement. As to when the agreement was received, he said an amended agreement was received by the bank under Cover of Letter dated January 16, 2012.
- 178.** As was the case with the Grotto project, Mr Darling said the RBC had no information on file indicating whether or not the agreement was already signed by the other parties when it was received and also that the bank could not locate information indicating that the NHC had requested that it sign the agreement.

179. Regarding if funds were released prior to the dates of the agreement, he again said such information was privileged to protect the privacy of the client. Mr Darling explained that the general procedure for any type of commercial loan would be to have collateral security documents in order prior to any funds being advanced.

180. A tripartite agreement involving RBC, the Government of Barbados, Preconco and NHC was used in this instance. Separate from the financing agreement, the agreement for the Grotto was dated April 16, 2013 and the one for Valery, March 9, 2012. Mr Darling said the obligation of the lenders, namely RBC, was to ensure that the tripartite agreement was signed by all the parties.

181. He said when the documents came to the bank, they had already been signed by the other two parties. He agreed that the circle would have been complete once he affixed his signature. He said the client in the tripartite agreement was Preconco Ltd.

182. Mr Darling said under the company's policy rules, any information to be revealed before the PAC would require the client's permission. He said the actual loan facility met the bank's policies and procedures.

183. The PAC then turned to examining specific relationships between Government, NHC and private entities. However, before this is commenced a comment about the NHC.

184. The NHC was established by section 4 of the Housing Act, Cap. 226 of the Laws of Barbados. That section states as follows:

4. (1) For the purposes of this act, there is hereby established a Corporation to be known as the National Housing Corporation to which the provisions of section 21 of the Interpretation Act, Cap. 1 shall apply.

(2) *The provision of the First Schedule shall have effect with respect to the constitution of the Corporation and otherwise in relation hereto.*

Reference will also be made to section 3, 9, and 23 of that Act,

Functions of the Minister

3. *The Minister shall be responsible for the formulation of*
- (a) *housing policies including*
 - (i) *the preparation of development plans for areas of land acquired by the Crown for housing development and for connected purposes; and*
 - (ii) *the preparation of slum clearance and redevelopment schemes; and*
 - (b) *policies relating to*
 - (i) *property development other than housing; and*
 - (ii) *building investment activities,*
- for the financing of its housing development and redevelopment schemes.*

Functions of Corporation

9. *The functions of the Corporation shall be*
- (a) *to acquire, hold and manage land and other property of any kind whatsoever and sell, let, lease or otherwise dispose of such land or other property on such terms and conditions as the Minister determines;*
 - (b) *to carry out development, building, maintenance, repair, improvement and other operations;*
 - (c) *to provide water, gas, electricity, sewage and other services;*
 - (d) *to carry on any business or undertaking in, or for the purposes of, any housing development;*
 - (e) *to make advances to persons on such conditions and securities as may be prescribed for any of the following purposes*
 - (i) *acquiring houses and land or constructing houses,*
 - (ii) *acquiring buildings to be converted into houses,*
 - (iii) *converting into houses buildings already acquired,*
 - (iv) *altering, enlarging, repairing or improving houses;*
 - (f) *to execute plans for slum clearance and redevelopment;*
 - (g) *generally, to carry out the provisions of this Act,*

together with such other functions as may be conferred upon it by the Minister for the purposes of this Act or by any other enactment.

Directions by Minister

23. *The Minister may give directions to the Corporation as to the exercise and performance of any of its functions under this Act, and the Corporation shall give effect to such directions.*

FINDINGS

185. The Committee came to the following conclusions based on the oral and documentary evidence placed before it:

I. The Ministry of Finance advanced the sum of approximately \$2.466 271 per month to cover the salaries and the 2 loan repayments of the NHC without clarity as to whether the sums were being advanced as a loan or provided as a grant. In either event, there was no Parliamentary approval that was sought nor was there any written agreement being entered into contrary to the provisions sections 31, 32 and 34 of the Financial Management and Audit Act 2007 and the Regulations thereunder. This practice continued from August 2010 until June 2013. This was confirmed in a Minute from the Acting Accountant General Mr. Dane Coppin. Indeed, Mr. Coppin informed the Ministry of Finance that the NHC as of September 2013 owed the Government of Barbados the sum of \$95 357 118.50.

Furthermore, the said advances occurred against the background of the policies approved and enunciated by the Cabinet and laid in Parliament in the Medium Term Fiscal Strategy of 2010 and the Revised Medium Term Fiscal Strategy to eliminate transfers to Government Statutory Corporations, *inter alia* the NHC.

- **See Carolyn Barton Young 4th Meeting, June 5th 2013**
- **Ingrid Blunt 4th Meeting, June 5th 2013**

- **Dane Coppin 4th Meeting June 5th 2013**
- **Ronald Bascombe 4th Meeting, June 5th 2013**
- **Memorandum from Budget analyst II to DPS September 3rd, 2013**
(Appendix J)
- **Margaret Sivers 35th and 38th Meetings 29th February 2016 and 18th October 2016**

II. The number of persons employed by the NHC increased by

- a. 200 persons in 2008;
- b. 50 persons between December 2012 and January 2013 on the eve of the 2013 General Elections.

In both circumstances, it was accepted by all that the Corporation was **insolvent**. There was no evidence to support how the recruiting was done or who did it. Further, there was no Board decision or Board Resolution authorising the hiring of these additional persons.

- **See Ronald Bascombe 8th Meeting June 2nd 2014**
- **Lynette Napoleon Young 4th Meeting June 5th 2013**
- **Carolyn Barton 4th Meeting June 5th 2013**

III. That there was no legal basis or authority to authorise the payment of \$30,000,000 as a dividend from the Housing Credit Fund (HCF) to the Treasury account for the purpose of satisfying the payment due by the NHC to the Royal Bank of Canada (RBC). This payment was due under the provisions of the contract executed sometime in December 2012 between the NHC, the Minister of Finance Hon. Christopher Sinckler, Preconco and RBC

as well as the Letter of Comfort signed by the Minister of Finance Chris Sinckler on May 29th, 2013. This was the opinion of the Solicitor General, August 5th 2015.

The recommendation to pay from the Housing Credit Fund was contained in a Memo from the Deputy Permanent Secretary, Ministry of Finance to the Minister of Finance dated March 24th, 2015 suggesting that the Government should advance the funds to the NHC out of the proceeds of the “dividend distribution” but the NHC should be required to repay the amount from the proceeds of the sale of the housing units. This arrangement would require a formal agreement between the NHC and the Government to satisfy the provisions of the Financial Administration and Management Act. The recommendation in this Memo was approved on March 26th 2015 by the Prime Minister Freundel Stuart acting as Minister of Finance.

In this connection, the Committee refers to the following:

- **Reference of Mr Martin Cox – Director of Finance and Economic Affairs (ag) July 28, 2015 (Appendix K)**
- **Opinion of Solicitor General, August 5, 2015 (Appendix L)**
- **Trust deed between the Central Bank of Barbados and the Crown, 11 March, 2010. (Appendix M.)**
- **Contract between the NHC, the Minister of Finance, Preconco and RBC (Appendix N)**
- **Letter of Comfort dated May 29th 2013, Minister of Finance to RBC (Appendix H) (ibid.)**
- **Memo dated 24th March 2015 from Deputy Permanent Secretary, Ministry of Finance to PS, Finance and Minister of Finance (Appendix O)**

- IV. The Cabinet usurped the powers of the Board of the NHC by purporting to award the contracts for the construction of the Urban High Rise Units at Valerie, the Grotto and Exmouth in the absence of a specific Board decision and Board Resolution of the NHC in accordance with its procurement process for contracts of this value.

See 14th Meeting of the PAC. September 15th 2014 *ibid*.

- V. The Minister of Finance executed the contract for the financing of the Grotto without the Solicitor General and/or the Attorney General certifying the said contract was fit for signature and without the prior consideration by, and approval of, the Cabinet for the increase in contract price by \$9.85 million, from \$18 million to \$27 850 000.

See memorandum of 27th November of Miss Alies Jordan together with Cabinet Note 2013 (379)/MHLR.12 M.P 25/106 Vol (2013-05-15) (Appendix P)

- VI. There has been a definite blurring of the lines between the functions of the NHC and the Ministry of Housing and Lands by successive Ministers of Housing since 2008. This occurred in the execution of the programmes of the NHC. The Minister is authorised under section 3 of the Housing Act CAP.226 to issue policy directions. The Minister overreached in being directly involved in the day to day administration of the NHC, including in the award and oversight of contracts. In so doing, he offended the precepts of good public administration. The Committee noted the following examples :-

- a. The letter of February 18th 2013 from Minister Michael Lashley to the Chairman of the NHC Mr. Anthony Wiltshire, stating inter alia, "I am

instructing you as Chairman of the Board to enter a contract on behalf of National Housing Corporation and B.J. Investments...”

- b.* A letter was written on behalf of Mr. Maloney (signed by J. Gooding) to the Minister of Housing on December 5th, 2012 in answer to queries regarding the reasons for the further significant variation in price in the construction of the Grotto. These queries had been repeatedly made by the Ministry of Housing but Ministry officials could get no response. The Contractor chose to respond only to the Minister.
- c.* An email dated July 31st 2012 from Mark Maloney to the Minister of Housing Michael Lashley regarding a request for the lease of Bushy Park to be provided to him before the Ground breaking ceremony at the Bushy Park Racing Circuit.
- d.* Minister of Housing, Dennis Kellman, also intruded into the day to day affairs of the NHC to the financial detriment of the Corporation. This is reflected in the Minutes of the 451st Board meeting of the NHC of 14th August 2013 in the matter of the land swap at Lancaster No. 2 with C.O. Williams Construction Ltd. The Directors of the NHC had recommended a price for the land in question owned by the NHC to be \$65 per square foot based on valuations received. The General Manager informed the Board that the Minister of Housing Dennis Kellman indicated that a price of \$35 per square foot was “feasible to erase the outstanding debt”. The debt owing by the NHC to C.O. Williams Construction Ltd was \$1 145 357.56 plus interest being claimed of \$500 000. The size of the land in question was 3 021 square meters or 32 291 square feet leading to value of \$2 098 915 as opposed to \$1 130 185. This meant that the NHC entered a land swap receiving \$30 per square foot less, a financial disadvantage. To be more precise, the NHC

received \$968 730 less given the lower valuation imposed in this transaction as a result of the directive of Minister Kellman.

The Ministers usurped the functions of the NHC Board and the management of the NHC by arrogating to themselves the management of matters that would properly fall within the purview of the management of the NHC. Ultimately the approach to the implementation of the NHC programmes showed a blatant disregard for the statutory independence of the NHC and the manner in which statutory corporations should function.

- *See Alies Jordan 32nd Meeting November 2nd 2015*
- *Ronald Bascombe 14th Meeting 15th September 2014*
- *Minutes of the 451st Board meeting of the NHC of 14th August 2013 (Appendix Q)*
- *Letter from Minister Michael Lashley February 18th 2013 to the Chairman of the NHC Mr. Anthony Wiltshire (Appendix R)*
- *Email of July 31st 2012 and Letter of 5th December 2012 from Mark Maloney to the Minister of Housing Michael Lashley (Appendix S)*

VII.The conduct of Minister Lashley in relation to his letter of 14th February, 2013 to the Chairman of the NHC, Mr. Anthony Wiltshire with respect to the termination of the contract with Rotherley Construction for the construction of the units at Exmouth, St Michael, fell way below the standard of proper conduct which is expected of a Cabinet Minister, in that:

- (a) The Minister misled the NHC by writing to its Chairman informing him that the Cabinet had decided to terminate the contract between the NHC and Rotherley Construction Inc. for the construction of the units at Exmouth. The Minister gave as the reason for Cabinet's decision the financial

incapacity of Rotherley to execute the project. The Minister further instructed the Chairman to award the contract to BJ Investments Ltd., whom he stated had “the financial capability to construct the said condominium buildings in keeping with the directive from Cabinet.” **This decision bore no resemblance to the formal confirmed decision taken by the Cabinet on February 14th, 2103.**

The Memorandum from the Cabinet Secretary to the Permanent Secretary of the Ministry of Housing in respect of the Exmouth Housing Project simply stated “The Minister of Housing and Lands updated the Cabinet on Exmouth Housing Project.”

There was absolutely no evidence that the Cabinet terminated any contract with Rotherley Construction Inc. for the construction of units at Exmouth or approved any award of contract with BJ Investments Ltd.

- (b) The communication took place on 18th February 2013, a mere 3 days before the General Election. The Committee notes that the letter was only received by the Deputy General Manager of the NHC, from the Chairman on the 15th March 2013 two weeks after the date of the General Election and three weeks after the said letter was written. The stamp on the letter and the signature of the Deputy General Manager confirms this date and the time received at 4:50 p.m.

The following should be noted:-

- A. Permanent Secretary, Ministry of Housing, Mr Ronald Bascombe, stated as follows :

“Madam Chair, I would be correct to say that on the records available to me I have seen neither an approval emanating from Cabinet to

enter to such a contract or from the minutes of the National Housing Corporation that there is any such approval either.”

- B. The NHC was negotiating with Rotherley in good faith up to the end of December, 2012 and that they could not have advised Rotherley there was “another player” for the contract as they (the Ministry and the NHC) had no such knowledge of “that other player”.
- C. A letter was sent to Minister Michael Lashley dated January 14th 2013 from Mr. Allan Evelyn, President and CEO of Rotherley Construction indicating that, *inter alia*, they “have all of the necessary financing...in place for Exmouth Towers” and that they were readying resources.

The Committee further noted that the Chairman of the NHC chaired the NHC board meeting on February 19, 2013 and was present when the Acting General Manager informed the board that Rotherley Construction had not submitted any further information on the development at Exmouth. There is no evidence in the minutes of that meeting that the Chairman shared with the Board and the management of the NHC the fact that he received a letter on the previous day (the 18th of February 2013) from the Minister of Housing, Minister Michael Lashley directing that Cabinet on the 14th February had instructed the termination of the contract with Rotherley Construction and the entering into a new contract for the same Exmouth with BJ investments Inc.

The Committee notes that this NHC Board meeting of February 19th 2013 was held two days before the date of the General Election of the 21st of February 2013.

- ***See Ronald Bascombe 18th Meeting October 7th 2014***

- *Letter from Minister of Housing Michael Lashley to Chairman, NHC, Mr. Anthony Wiltshire dated February 18th 2013 (ibid)*
- *Memorandum from the Cabinet Secretary to the Permanent Secretary of the Ministry of Housing, dated April 8th 2013 and Ref. No.: 0020/2 Vol. II (Appendix T)*
- *Memorandum from the Deputy General Manager, Mr. Garvey Alleyne to the Permanent Secretary, Ministry of Housing dated 14th March 2013 (Appendix U)*
- *448th Board Minute (03/2013) (Appendix V)*

VIII. That the procurement process, namely that of public tendering, was not observed as required by the Financial Administration and Audit Act, and its successor legislation for the construction of any Urban High Rise Units. The General Manager of the NHC clarified that the NHC follows the aforementioned procurement legislation that binds central Government; further that it was specifically followed in the award of the contract for the construction of Country Park Towers.

- *See Mr Garvey Alleyne's evidence during examination at the 31st Meeting of the PAC Wednesday October 14th, 2015.*

IX. That the cost of construction of the Urban High Rise Units at Valerie and the Grotto were way in excess of the reasonable cost for low income housing. The completed cost of the construction of the units at Valerie was stated by the Director of Finance Mr. Martin Cox to be \$538.44 per square foot. The construction costs per unit at Valerie were \$317 756 per unit while at the Grotto, the construction costs per unit rose to \$348 125.

- *See Martin Cox 26th Meeting July 20th, 2015*
- *Minuted conversation between Mr Garvey Alleyne and Mr K. D. Symmonds (PAC Members) at the 31st Meeting of the PAC, Wednesday 14th October, 2015.*

X. That in relation to the Villages at Coverley the following ought to be noted :

- (1) That in its dealings with the principals, namely Housing Concepts SRL, the NHC had no independent legal representation from that of Housing Concepts in relation to the offer of the 99 year lease at Coverley or in its conveyances to parties purchasing lots and houses.
- (2) That notwithstanding its dire and critical financial position, the NHC entered into a contract with the Coverley developer, Housing Concepts, where the developer benefited under contract for a 99 year lease at \$100.00 per year for 5 acres of commercial lands for development of the same, namely the Town Centre.
- (3) NHC also contracted with the developers of Coverley that they pay the NHC \$3.00 per square foot for land sold at Coverley, a sum noted by Permanent Secretary Bascombe to be at least \$10 below that for other middle income lots. There is no evidence that this sum was approved by the Board of the NHC.
- (4) Further, the NHC received a sum equal to 1.5% of that portion of the purchase price of each substantial unit sold minus the \$3.00 per square foot of the net square footage of the land. In other words, if a house and lot was sold for \$300 000 (without furnishings) the NHC would only receive the sum of \$ 8 800 (\$4 500 for the land and \$4 300 from the 1.5%).

XI. Contrary to the established and required practice, the MOU with respect to Bushy Park, was executed even though there was no Board Resolution authorising the same. Indeed, The Chairman of the NHC wrote to the Acting General Manager, NHC on the 12th February, 2013 informing him that he was instructed on 8th February by the Minister of Housing, Michael Lashley that the Memorandum of Understanding between the NHC and The Villages at Bushy Park SRL be prepared and executed “as expeditiously as possible”. The Committee notes that the Minister’s instruction in the letter from the Minister to the Chairman came less than 2 weeks before the date of the General Election; and further, the PS Housing, Mr. Bascombe stated that as a member of the NHC Board “no one gave (him) any notice that there was a Memorandum of Understanding for the consideration of the Board, or there was any meeting set up...”.

Further, that he had no “evidence that negotiations did in truth and in fact take place between the parties and there was no evidence of a Board Resolution.” However, Mr. Bascombe was informed by the Acting General Manager of the NHC, Mr. Alleyne that on March 15, 2013 an MOU related to Bushy Park had been delivered to the Corporation in a sealed envelope addressed to the Chairman with no cover letter.

The Committee noted that the said MOU was 2 pages and was signed and witnessed on the 19th February 2013 (2 days before the General Election and the same day as the 448th Board Meeting of the NHC) by the following parties:-

(1) Villages at Bushy Park SRL signed by Mark Maloney and witnessed by
Roger A. Edghill.

(2) National Housing Corporation signed by Anthony Wiltshire, Chairman of NHC and witnessed by Roger Ward.

The Committee notes that this correspondence from the Chairman to the General Manager (dated 12th February, 2013) related to the instructions from Cabinet to enter the MOU with the Villages at Bushy Park SRL and was delivered to Mr. Garvey Alleyne of the NHC on 4:50 p.m. on March 15th, 2013. This was minuted as being received at the same time and on the same date as the letter that the Chairman, Mr Wiltshire handed Mr. Alleyne from Minister Michael Lashley re: Exmouth (see Para vii.).

The Committee noted that Minister Michael Lashley on the 15th March 2013 was no longer the Minister of Housing but was the Minister of Transport and Works. This date was just about 3 weeks after the General Election.

- **Ronald Bascombe 15th Meeting September 16th 2014**

XII. The Committee noted the correspondence from the Ministry of Housing to the General Manager of the NHC dated 19th January 2011. That correspondence at page 2 paragraphs vii to ix all indicated that the Cabinet in considering NOTE (2011) 22/MHLUR.01 on 13th January 2011 had approved, *inter alia*, that the Urban High Rise apartments at Valerie and The Grotto were to be sold. In similar vein, the Committee also noted the Memorandum from the Cabinet Secretary to the Permanent Secretary, Ministry of Housing, dated 8th February 2011 under Reference No. 0020/6/4T5. That Memorandum submitted the relevant extract from the confirmed Cabinet decision to the attention of the Permanent Secretary. Paragraphs iv, vi and vii of the Memorandum from the

Cabinet Secretary reads *in pari materia* with the paragraphs cited above in the letter to the General Manager of the NHC dated 19th January 2011. Further, there was a meeting on December 19th, 2014 between the Minister of Finance, the Minister of Housing, their respective officials and the Financial Controller of the Central Bank of Barbados which agreed that the units would be sold and the proceeds should then be used to repay the Housing Credit Fund for the housing units at The Grotto. This was further confirmed by the Memo (referred to earlier) to the Minister of Finance dated March 24th, 2015 stating that the Government should advance the funds to the NHC out of the proceeds of the “dividend distribution” but the NHC should be required to repay from the proceeds of the sale of the housing units. This was approved by the Prime Minister acting as Minister of Finance on March 26th 2015.

The Committee notes that up to the time of the hearing of the evidence in 2017, there is no evidence of any of the units being sold or the sums being repaid to the Housing Credit Fund.

- **See Letter from PS, Ministry of Housing to the General Manager of the NHC dated 19th January 2011 (Appendix W)**
- **Note of Meeting of December 19th, 2014 chaired by Minister of Finance (ibid)**
- **Memo dated 24th March 2015 from Deputy Permanent Secretary, Ministry of Finance to PS, Finance and Minister of Finance (ibid)**

XIII. The Cabinet of Barbados ignored the comments of the Ministry of Finance in its decision of January 13th, 2011 with respect to the construction of the Urban High Rise Apartment Units. The Ministry of Finance stated that it was “not supportive of the Draft Discussion Paper that requires financing by way of \$65

million” It felt that “the NHC should prioritise its programmes and concentrate its projects for which funds had already been approved/identified...without compromising the Consolidated Fund”.

22/MHLUR.01 Cabinet Paper re High Rise Apartment Units

RECOMMENDATIONS

186. The Committee recommends that the House of Assembly take note of the findings with respect to the letter of February 18th 2013 from the Minister of Housing to the Chairman of the NHC purporting to communicate a decision of Cabinet allegedly made on 14th February 2013, but which, on the basis of the confirmed Minutes of the Cabinet, was not made by the Cabinet. The Committee strongly deprecates this conduct of the then Minister of Housing, Michael Lashley misrepresenting the decisions of Cabinet as it undermines the integrity of public administration in Barbados, and the integrity of Cabinet Governance itself.

187. The Committee recommends that further action be taken by the appropriate organs of the Government, by way of investigation, with a view to making further recommendations where appropriate, and if necessary, for the instituting of criminal and/or civil proceedings against any individual whose conduct has caused the Crown to suffer any loss. The Committee further recommends that where appropriate all necessary legal steps be taken against individuals whose conduct has constituted misconduct in public office in order to recover any compensation due and owing to the Crown and arising as a result of losses sustained from such misconduct.

- 188.** The Committee recommends that Ministers of Government must not sign contracts purporting to bind the Government and expose it to legal and/or financial liability in the absence of the review and approval of the Solicitor General and/or the Attorney General and in the absence of the approval of Cabinet.
- 189.** The Committee recommends that the Ministry of Finance complies at all times with the provisions of sections 31, 32 and 34 of the Financial Administration and Management Act CAP. 5 with respect to transfers of statutory corporations and corporate entities.
- 190.** The Committee recommends that the framework established for Government procurement and the award contracts laid down in the Financial Administration and Management Act CAP. 5 and Regulations thereunder be followed to the letter.
- 191.** The Committee recommends that, where statutory corporations are insolvent, that the Boards shall take no action to expand employment without the approval of the Ministry of Finance and the Ministry of Civil Service.
- 192.** The Committee recommends that the Cabinet of Barbados pays due regard to the comments of the Ministry of Finance with respect to its Cabinet decisions. This has implications of the capacity of the Government to honour its commitments and service its financial obligations.
- 193.** The Committee recommends that statutory corporations must follow proper corporate governance guidelines to ensure transparent decision-making by its Board of Directors and management. There must be clarity with respect to Board decisions and Board Resolutions. This would entail giving the fullest regard to the policy decisions

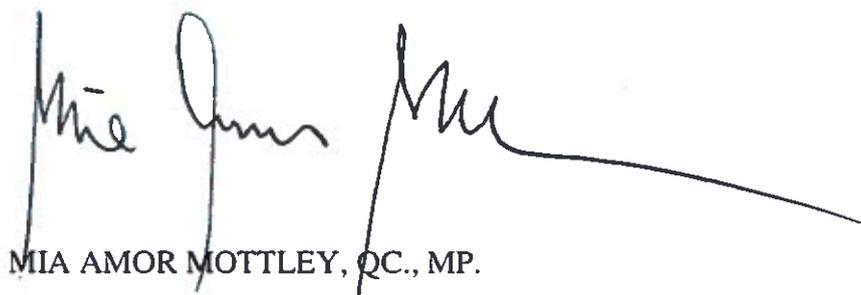
of central Government, while ensuring that the Board properly discharges the fiduciary duties which it owes to the body corporate.

- 194.** The Committee recommends that statutory corporations should, at all times, observe the highest standards of corporate governance and decision making with an aim of ensuring the sustainability of the entity.
- 195.** The Committee recommends that Board Chairmen must not act unilaterally in the exercise of their functions and/or powers and must at all times act pursuant to their duty to apprise all other members of the respective boards of any and all actions undertaken and/or statements made in the name of the Board.
- 196.** This Committee recommends that Ministers of the Crown be scrupulous and exacting in relation to their interaction with the statutory boards falling under their Ministerial purview, ensuring at all times that communication is conducted through appropriate channels, namely the Permanent Secretary and the officials of the Ministry. This extends to Ministerial communication with third parties in their interaction with Statutory Boards.
- 197.** This Committee recommends that Ministers of the Crown have due and precise regard to the statutory limitations on their powers in so far as the exercise of those powers relate to statutory corporations.
- 198.** The Committee recommends that the fullest coercive powers of the House be brought to bear upon those persons who refuse to appear on summonses issued by the Committee, in part to secure attendance, but also to reinforce the paramountcy of Parliament as the highest Court in the Land, and to engender respect for its organs.

199. The Committee recommends that measures be urgently put in place, with the appropriate penalties, to ensure that all Government files are properly maintained and stored, in order to ensure that they remain available for reference at all times.

The Committee recommends that Ministers must not interfere in the procurement and hiring processes of statutory corporations so as to usurp the functions of the Board, notwithstanding that the Ministers are responsible for setting policy for the corporations.

200. The Committee recommends that in the interest of transparency and accountability, proceedings before the Committee should be open to the public and also made available to the public by way of live broadcast or streaming and print and electronic media.



MIA AMOR MOTTLEY, QC., MP.
Chairman

Dated this 19th day of February, 2018