

1 jurisdiction...

2 A. That is right.

3 474. Q. ...and that is no longer...for
4 Barbados, no longer...you can no longer appeal to
5 the...

6 A. Privy Council, absolutely right.

7 475. Q. You were part of the body that set
8 up this Court, the Caribbean Court of Justice, were
9 you not?

10 A. Yes. In fact, I have been called
11 the architect of the Caribbean Court of Justice, and
12 I am not ashamed of the role I played in setting
13 that Court up. The heads of government of all the
14 Caribbean countries appointed me in 1999 to be
15 chairman of the committee that established that
16 Court, and in 2003, July, I think it was July, 2003,
17 when I was Chief Justice, they appointed me as
18 chairman to oversee the inauguration of that Court,
19 which I did in April, 2005.

20 And I was a member of the Regional Judicial
21 Legal Services Commission that appointed the seven
22 judges to that Court. And we advertised in all 54
23 countries of the Commonwealth for judges. We had an
24 applicant from Canada called Murphy who had sat in
25 the Cayman Islands. Are you aware?

1 476. Q. I am aware. There are no appointees
2 from Barbados?

3 A. No. I mean as judges, no.

4 477. Q. No, no, no, I understand, but I am
5 just saying that function that you have would
6 continue now. In other words, if one of them...

7 A. No, I am off the Commission. I
8 served as chairman of the Commission for a year.

9 478. Q. Right.

10 A. Until the President De La Bastide
11 was appointed, and I served for two further years
12 and my term ended in August, 2006. So I have
13 nothing to do with the Caribbean Court of Justice.
14 For 36 months I can tell you, between 2003 and 2006,
15 every month I went to Trinidad for meetings.

16 479. Q. Yes. In fact, you are trying to
17 have what I will call a branch office here in
18 Barbados?

19 A. Each island, when they sign
20 up...well, in fact, you don't even have to sign onto
21 the appellate jurisdiction to be a sub-registry.
22 Each island registration department is a
23 sub-registry of the Caribbean Court of Justice.

24 480. MR. MCKENZIE: Okay, this is a good
25 time. It is close enough to 1:00, and I

1 have completed that subject. Would it be
2 all right if we came back at 2:00?

3 MR. SCHABAS: Sure, that is fine. It is
4 five to one, so we will take 65 minutes.
5 Fine.

6

7 --- A LUNCHEON RECESS

8

9 DAVID ANTHONY CATHCART SIMMONS, resumed

10 CONTINUED CROSS-EXAMINATION BY MR. McKENZIE :

11 481. Q. Just for the record, we ordered
12 lunch to be brought to us at 1:00 and it hasn't
13 arrived, so we may have a five-minute break when it
14 comes, or something like that. Next time we will
15 maybe order...

16 MR. SCHABAS: Order in advance.

17 482. MR. McKENZIE: Yes, yes. Well, there
18 you go.

19 MR. SCHABAS: So we are back on the
20 record, and we have just passed to you some
21 document, Mr. McKenzie, that I gather I
22 have just got it, too, that my client
23 obtained over the lunch hour, which we have
24 given you a copy of, which is a report of
25 the Judicial Council 2005, which is a nice

1 glossy pamphlet. And I gather the Chief
2 Justice has also brought a copy of the
3 Rules, and...

4 THE DEPONENT: I can't give you these.
5 These are the Chief Justice's copy. So you
6 can see what our Rules are like, identical
7 with the English Rules of 1982.

8 MR. SCHABAS: So it is a red, bound,
9 hard-back book, and I think you have also
10 brought along...

11 THE DEPONENT: Also a copy of the
12 Official Gazette. This is what the
13 Official Gazette looks like. It is the
14 various notices, and then inside there,
15 some issues will have, as I said, Hansard
16 reports. This one seems to have a series
17 of things, patents or trademarks. There
18 are things under the Trade-Marks Act.

19 MR. SCHABAS: If you would like a copy
20 of that...

21 483. MR. MCKENZIE: Okay.

22 THE DEPONENT: You can keep those. You
23 can keep those.

24 484. MR. MCKENZIE: Is there anything you
25 wanted to give us?

1 THE DEPONENT: Yes.

2 485. MR. MCKENZIE: Okay. Let me just mark
3 the Judicial Council Report as the next
4 exhibit.

5 MR. SCHABAS: I will mark my copy.

6 486. MR. MCKENZIE: Sure.

7 MR. SCHABAS: You can keep that copy.
8 And we will mark a copy of the Gazette. So
9 the report of the Judicial Council will be
10 Exhibit 4, and the Official Gazette dated
11 18 September, 2008 will be Exhibit 5.

12

13 --- EXHIBIT NO. 4 : Report of the Judicial Council 2005

14

15 --- EXHIBIT NO. 5 : Official Gazette dated 18 September,
16 2008

17

18 BY MR. MCKENZIE:

19 487. Q. Just one question with the report of
20 the Judicial Council. When was this published, or
21 does it say?

22 A. At the beginning, I signed the
23 letter of transmittal to the Attorney General. That
24 is the...

25 488. Q. Okay, so October, 2006...

1 A. Yes.

2 489. Q. ...is when...

3 MR. SCHABAS: No, the letter of
4 transmittal is dated 18 October, 2005 on
5 the second page of the document. The
6 second piece of paper in the document, Mr.
7 McKenzie. I think you are looking at the
8 third, perhaps. It says 18 October, 2005.

9 490. MR. MCKENZIE: You are reading from the
10 same...

11 MR. SCHABAS: No, we are not. The
12 opening page is the cover page.

13 491. MR. MCKENZIE: Yes.

14 MR. SCHABAS: That is the first piece of
15 paper in the document. The second piece of
16 paper is entitled "Letter of Transmittal
17 Dated 18 October, 2005". Isn't that right?
18 Or are we looking at something different?
19 No, we are looking at the same thing.

20 492. MR. MCKENZIE: May I suggest to you it
21 should say 2006? Keep going.

22 THE DEPONENT: There is a probably a
23 typo somewhere.

24 493. MR. MCKENZIE: Well, I think so, because
25 it is impossible to have the report

1 after...

2 THE DEPONENT: That is right.

3 MR. SCHABAS: Quite right. It should
4 say 2006.

5 494. MR. McKENZIE: Take a look at page...

6 THE DEPONENT: It should be 2006, yes.

7

8 BY MR. McKENZIE:

9 495. Q. Okay. Anyway, no big deal, but
10 within 10 months you had statistics from the
11 previous year?

12 A. Yes.

13 496. Q. Okay, and is there a more current
14 one?

15 A. There is 2006.

16 497. Q. Yes?

17 A. But I can't make that public yet,
18 because it hasn't been laid in Parliament. And when
19 it is laid in Parliament, then it is made public.

20 498. Q. Is there a cause for the delay?

21 A. No, once I sent it on to the
22 Executive, I have no further contact with the
23 report. I mean, the Attorney General has to take it
24 to Cabinet. Then Cabinet has to approve it for lay,
25 and then they have to be set down to Parliament to

1 lay. So when it gets to Cabinet depends on when the
2 Attorney General carries it.

3 499. Q. I guess I didn't understand what
4 "laid in Parliament"...

5 MR. SCHABAS: Made in Parliament.

6 THE DEPONENT: Laid, l-a-i-d.

7

8 BY MR. MCKENZIE:

9 500. Q. The report is completed on a certain
10 date in 2006. For 2005, it looks like...

11 A. It covers the period January to
12 December.

13 501. Q. I understand, and in this case that
14 report for 2005 was completed in October and sent
15 along by you?

16 A. Yes.

17 502. Q. When it gets laid in Parliament is
18 out of your control?

19 A. No, no, no.

20 503. Q. Is that correct?

21 A. It is not...I transmit it to the
22 Attorney General, and then he, under the Act, the
23 Supreme Court Act, I think it is section 93, he has
24 the responsibility for seeing that it is laid in
25 Parliament. That is to say, laid in Parliament in

1 Barbados simply means that these things come down to
2 Parliament at the opening of a session. The
3 Attorney General will get up and say, "I beg to lay
4 the report of the Judicial Council for the year
5 2005". Then all of the members of the House and
6 Senate get copies.

7 504. Q. When was it completed?

8 A. It would have been completed
9 sometime in 2006.

10 505. Q. I was asking you about the 2006
11 issue of the report...

12 A. Two thousand and six report?

13 506. Q. ...which I think you said you cannot
14 give it to me because it has not...

15 A. Right.

16 507. Q. ...yet been laid in Parliament?

17 A. Yes, that is right.

18 508. Q. Okay, I understand...

19 A. Probably in 2007, usually, the year
20 after.

21 509. Q. I understand.

22 A. You have until the 31st of March in
23 the year after to have it ready, but there is often
24 a lag, because we are waiting for statistics to
25 come in or something.

1 510. Q. I just want to be clear. The 2006
2 report is complete.

3 A. It is complete, just like that.

4 511. Q. And you have sent it along to the...

5 A. To the Attorney General.

6 512. Q. ...politicians to do however they
7 wish.

8 A. Ninety copies.

9 513. Q. There is no report for 2007 yet?

10 A. No.

11 514. Q. And the Hansard that you delivered
12 to me is just...

13 A. That is not Hansard, that is the
14 Official Gazette.

15 515. Q. The Official Gazette, I am sorry,
16 is...

17 A. Hansard is the verbatim of the
18 speeches in Parliament.

19 516. Q. Okay. I just wanted to...sorry, may
20 I just have it for a moment

21 MR. SCHABAS: Yes. Is there not another
22 copy? I think there are two copies.

23 517. MR. MCKENZIE: I just want to get
24 the...okay.

25 THE DEPONENT: I am not sure what...I

1 just brought over the example...

2 MR. SCHABAS: Oh, this is a different
3 one, yes.

4 518. MR. McKENZIE: I am sorry, you just
5 brought this as a...

6 THE DEPONENT: Just to show you...

7 519. MR. McKENZIE: ...sample...

8 THE DEPONENT: ...what I am talking
9 about. Yes, so you could see what I meant
10 by the Official Gazette.

11

12 BY MR. McKENZIE:

13 520. Q. So we were talking this morning
14 about the S.B.G. Corporation, and I wanted to ask
15 you about...was S.B.G. known under another name as
16 Sunrise Development Corporation?

17 A. Not as far as I know, Mr. McKenzie.
18 no.

19 521. Q. All right, and if we can sort of go
20 after the S.B.G. Corporation was formed, and now we
21 are going to try to find out where there might be
22 other records, because there was a transaction that
23 engaged S.B.G. to potentially purchase the shares of
24 Kingsland. So I just want to go there and look for
25 those records. I mean, those documents are all

1 somewhere, and I just want to know where they are.

2 A. Right.

3 522. Q. So I know you have shut down your
4 law practice, but...

5 A. Nineteen-ninety-four.

6 523. Q. Yes, I understand. So let's try to
7 do this as efficiently as we can. So somebody drew
8 up a contract that was presented to the Kingsland
9 people, the shareholders and lawyers and things like
10 that; right? Was that you, or was that another
11 lawyer so we should go...

12 A. No, I believe Mr. Armstrong, Joey
13 Armstrong or Cottle, Catford would have prepared the
14 draft contract. It was a contract for the purchase
15 of shares, as I remember it. And he was acting for
16 the vendor, which would have been the shareholders
17 of Kingsland Estates Limited.

18 524. Q. So Mr. Armstrong would have...

19 A. He was at Cottle, Catford & Company.

20 525. Q. Okay, the two sides of the
21 transaction, first the shareholders that are
22 represented by Mr. Armstrong...

23 A. Yes.

24 526. Q. ...and there is you, as solicitor
25 for S.B.G.

1 A. Correct.

2 527. Q. So the documents go both ways, so
3 theoretically he would have a file...

4 A. Yes, Cottle, Catford would have a
5 file.

6 528. Q. Any other legal firms involved in
7 that transaction except the two that we have talked
8 about?

9 A. Oh, I don't remember. You see, I
10 don't know if...I think Joey Armstrong worked for
11 all of the shareholders of Kingsland.

12 529. Q. Okay.

13 A. I am not sure about Mrs. Knox, but I
14 think at that time he may have been working for Mrs.
15 Knox. I don't think she had fallen out with the
16 others yet.

17 530. Q. Okay, and now there would be, in the
18 transaction, there was a deposit. So I just want to
19 talk about where the files would be with the cash...

20 A. Yes.

21 531. Q. ...or the money or whatever was
22 done. Correct me if I am wrong, that there was a
23 deposit of \$200,000 paid?

24 A. U.S., that is, 200,000 U.S.?

25 532. Q. Well, I am not...

1 A. I am not...

2 533. Q. I wasn't there.

3 A. I don't think I had any...

4 MR. SCHABAS: You said "dollars", he is
5 just wondering which kind of dollars.

6

7 BY MR. MCKENZIE:

8 534. Q. I see. Whatever...

9 A. The denomination?

10 535. Q. Just forget about the denomination.

11 In other words, I don't want to get into the merits
12 of the case. There was a deposit of money; okay, is
13 that fair?

14 A. Yes, there was a deposit.

15 536. Q. So that would have...

16 A. It might have been U.S., but I
17 didn't take...I don't think I dealt with that. I
18 think Philip Greaves would have dealt with that.

19 537. Q. Yes, well, I am sure there is lots
20 of records we can probably show it down the line.
21 But I am just trying to find out where everything
22 is, because one of the tests in this specific
23 case...so a deposit, again, I am saying is usually
24 paid from one law firm to the other?

25 A. To the next, so it would have

1 been...

2 538. Q. Okay...

3 A. It would have been paid to Cottle,
4 Catford.

5 539. Q. Your law firm?

6 A. No, I don't think I dealt with that,
7 Mr. McKenzie.

8 540. Q. Okay.

9 A. I think all that happened after I
10 had left. I don't think I touched any money in this
11 transaction at all.

12 541. Q. After you left, resigned?

13 A. After I became Attorney General on
14 the 7th of...the last thing I wish to...please
15 understand me, the last thing that I would have
16 dealt with concerning S.B.G. would have been 1993,
17 perhaps. I can't...I don't think 1994, it may have
18 been 1994, before September.

19 But in June, 1994 I virtually shut my law
20 office because we were into an election period. The
21 then government had collapsed, and I was appointed
22 campaign manager for the Barbados Labour Party. I
23 couldn't be campaign manager and run my office. So
24 virtually from the middle of June, I didn't
25 practise, I have not practised since then.

1 If Philip Greaves wanted files, he could
2 probably have called my secretary at the time, and
3 she would have sent them over to him, but I am
4 pretty sure I never sent any money to Cottle,
5 Catford. A deposit was paid and a deposit was lost.
6 S.B.G. lost \$400,000. That was the end of it. They
7 paid a deposit.

8 When the time came for completion of the
9 contract for the purchase of shares, they could not
10 come up with the money. That was it. And every one
11 of us, I mean that I can speak for, Philip Greaves,
12 my brother and I, walked away from it, Mr. McKenzie.
13 I had nothing more to do with S.B.G., Kingsland or
14 any of these people in this lawsuit since 1994. And
15 you have joined me. I had nothing more to do with
16 it.

17 542. Q. Okay. I had been asking you just
18 because I want to make sure I got your answer, which
19 is you, your law firm...

20 A. No. I was a sole practitioner.

21 543. Q. I am speaking of you as a
22 solicitor...

23 A. Okay.

24 544. Q. ...acting for S.B.G., which you have
25 told us you were...

1 A. Yes.

2 545. Q. ...did not transfer or send money as
3 a deposit. That was...

4 A. Not as far as I can remember. I
5 don't think...I mean, if you have a document to show
6 me that I wrote a letter and said to Joey Armstrong,
7 "Here is the deposit", I will have to admit it, but
8 I don't think I did.

9 546. Q. Well, all I am trying to do is, sir,
10 I am trying to locate where all the records might
11 be, for instance...

12 A. I say Cottle, Catford would probably
13 be your...be one of your bets, because they worked
14 for all the years for the Deanes and Kingsland
15 Estates. I remember once, after I send Joey
16 Armstrong a letter, I remember him inviting me to
17 his office to discuss it, and said to me...he was
18 the expert, the doyen of legal practitioners in
19 this area, and he said, I will draft the stuff when
20 necessary and send to you, and you can check it,
21 peruse it and settle it".

22 547. Q. I am just trying to find out where
23 things are...

24 A. I can't answer you.

25 548. Q. Okay. Well, I am saying...

1 you". So I don't know, I think you are
2 going back over things that I think
3 are...and digging into things that are
4 really irrelevant, going beyond the scope
5 of this Motion. And I think if we are
6 going to get through this, you have got to
7 focus on the issues and not engage in
8 talking about, once again, when he stopped
9 practising law.

10 553. MR. MCKENZIE: Well, I am just trying
11 to...I think he has given...

12 THE DEPONENT: I never did.

13 554. MR. MCKENZIE: ...two answers, and I am
14 just trying to be fair to the witness, to
15 say I don't want to take the transcript
16 home and say he has given me what I thought
17 was June or later than June, and if...

18 MR. SCHABAS: But the fact, Mr.
19 McKenzie, of what month in 1994 he shut
20 down his office or not is of no moment to
21 the issue of where the documents are. He
22 has told you he doesn't know where any
23 documents are. He said, "I can't help
24 you", and so to debate...

25 555. MR. MCKENZIE: Actually, he didn't say