

1 defendant, actually, S.B.G. Development Corporation.
2 Now, it is dated August 23rd, 2007, signed
3 by...well...

4 MR. SCHABAS: Why don't you ask him, Mr.
5 McKenzie? He might be able to identify it
6 for you.

7

8 BY MR. MCKENZIE:

9 103. Q. I think it is your brother, Peter...

10 A. Peter Simmons signed that, yes.

11 104. Q. He is signing as chairman of the
12 board of this corporation.

13 A. Yes, I would have delivered that
14 document.

15 105. Q. Yes, in 2007...

16 A. That is right.

17 106. Q. ...it still exists.

18 A. Yes, the company is there, but it
19 has never traded. Do you see, those are all the
20 documents on the file?

21 107. Q. I am sorry, I misunderstood that.
22 You are saying all of the documents...

23 A. Those are the only documents that I
24 am advised are on the file of S.B.G., whatever it is
25 called, Development Corporation. It has not traded

1 since...or done any business whatsoever since the
2 early 1990s.

3 108. Q. While we are at it, maybe we could
4 mark this two-page document as Exhibit 1.

5 MR. SCHABAS: All right, well, let's
6 just properly identify them. You have only
7 referred to one page, and we would like
8 both pages identified, which we have no
9 objection to. So is that okay?

10 109. MR. MCKENZIE: Excuse me, Mr. Schabas.
11 I am presuming they came together from the
12 way they were handed to me, but if they are
13 two documents we could mark them
14 separately.

15 MR. SCHABAS: The Chief Justice can tell
16 you where and how he got these. As I said
17 to you before we came, these were things
18 that he has just said he has obtained them
19 from the relevant office of the government,
20 and he told us, as I told you before, he
21 obtained them from making an inquiry last
22 week.

23 110. MR. MCKENZIE: Okay, so...

24 MR. SCHABAS: And he has just said
25 these are all the documents he was able to

1 obtain.

2 111. MR. McKENZIE: Okay.

3 MR. SCHABAS: And there are three sets.
4 The two individual pages, which are
5 different documents, and then there is
6 another larger stapled set of several pages
7 of documents that he got. So if you want
8 to pause, I will mark them as exhibits.

9 112. MR. McKENZIE: Yes, well, I am just
10 saying let's just make sure I understand
11 them.

12 MR. SCHABAS: Okay, go ahead. Ask him
13 questions.

14

15 BY MR. McKENZIE:

16 113. Q. Sir, you requested somebody to get
17 you all the documents out of the file?

18 A. I asked them to give me a copy of
19 the file, by photocopying the documents on the file.

20 114. Q. All right.

21 A. And I sent and collected them, they
22 came in an envelope, and marked the envelope and
23 gave it to Mr. Schabas, those documents.

24 115. Q. I am just trying to understand,
25 because we may have a different way of doing it in

1 Canada. So there is a...

2 A. I paid \$14 to get them.

3 MR. SCHABAS: Actually, I have the
4 receipt here. I didn't show you that, I
5 apologize, but here is the receipt from
6 October 21st, 2008, 14 Barbadian dollars.

7

8 BY MR. MCKENZIE:

9 116. Q. My question is: In Barbados, then,
10 there is a file with a registrar, shall we...

11 A. It is called the Registrar of
12 Corporate Affairs and Intellectual Property. That
13 is the office, the Registry of Corporate Affairs.

14 117. Q. What I am getting at is, a file is
15 actually a file folder that has paper in it?

16 A. With all the company documents
17 relating to every company that is filed, and then
18 some years ago they dealt with these matters
19 electronically, and all these documents are also
20 scanned so that there is a permanent record in the
21 Corporate Affairs Registry of the documents relating
22 to, as I understand it, every company.

23 118. Q. Okay, back to these documents that I
24 am just trying to get my head around. So when
25 somebody was asked to go to this government

1 department, and say, "Get everything out of the
2 file", it was...

3 A. They just request a copy.

4 119. Q. They pulled paper out of a file
5 folder...

6 A. No, not the member of the public.
7 The member of the public should not do that. That
8 possibility is fraught with all kinds of, you
9 know...is fraught with all kinds of possibilities
10 that are unsavoury. You request a copy of the
11 documents on the file. They are copied, made
12 available to you, but the file is retained, as far
13 as I am aware, by the Department of Corporate
14 Affairs and Intellectual Property. They are
15 technically under the custody of the Registrar of
16 Corporate Affairs.

17 120. Q. Okay. Again, I am sorry for doing
18 this, but I am just trying to get it. So somebody
19 comes in and fills out a form and says to the
20 Registrar, or whoever works there, "Go and get me a
21 copy of everything that is in the file"?

22 A. If you want to put it like that,
23 but...

24 121. Q. Okay, but the member of the public
25 doesn't get their hands on the file?

1 A. Should not.

2 122. Q. Should not, okay.

3 A. It is not a department that I am
4 responsible for.

5 123. Q. No.

6 A. I can tell you, I know in our
7 Registry, in the Supreme Court Registry, you can pay
8 a few cents, 50 cents or something, and ask for
9 copies of the thing. Again, the member of the
10 public should not have physical possession of the
11 file. What you want, it should be copied by the
12 staff and given to you.

13 124. Q. Sure, it makes sense.

14 A. To preserve the integrity of the
15 file.

16 125. Q. Well, if for no other reason that
17 the file stay intact.

18 A. Yes.

19 126. Q. And as you say, then, there is no
20 things being taken out or put in. Okay, so in the
21 meantime, you said something that I had not
22 understood, which is there will also be...not only
23 in the file there will be paper, but there will also
24 be somewhere a scanned copy of all the paper that is
25 in the file?

1 A. So I understand, yes. That is my
2 understanding.

3 127. Q. All right. So now we are looking, I
4 think I have got this right, when I hold up...

5 A. Yes, we looked at this
6 document...this is what I said I sent to the
7 Registrar.

8 128. Q. Yes.

9 A. You see it dated the 7th...remember
10 I said the day I was appointed as Attorney
11 General...

12 129. Q. Yes.

13 A. ...I sent a notice.

14 130. Q. I didn't even...

15 MR. SCHABAS: Just for the record, the
16 witness is holding a copy of a letter that
17 is dated the 7th of September, 1994,
18 addressed to the Registrar of Corporate
19 Affairs and Intellectual Property Office,
20 signed by David A.C. Simmons, Q.C., that
21 says:

22 "...Take notice that I, the undersigned,
23 have this day resigned as a director of
24 S.B.G. Development Corporation..."

25 And there is a stamp on the left-hand side

1 that says "Registered", with somebody's
2 initials or signature, from the Corporate
3 Affairs Intellectual Property Office, and a
4 date of 1994/09/07. That is what he has
5 just been referring to.

6

7 BY MR. MCKENZIE:

8 131. Q. Okay, would it be appropriate, then,
9 to say that that is one document? In other words,
10 what this is...

11 A. Correct, yes.

12 132. Q. We are doing two things here. We
13 are saying it is your evidence that the letter that
14 Mr. Schabas just read to me was signed by you in
15 September of 1994?

16 A. That is a copy of the letter that I
17 sent to the Registrar.

18 133. Q. Okay.

19 A. It can't be the original, obviously,
20 but it is a copy.

21 134. Q. No, no, no, but I am saying and it
22 was sent to the Registrar...

23 MR. SCHABAS: Well, it is stamped as
24 having been received on that date by the
25 Registrar.

1 itself that you had resigned?

2 A. I told my brother and Philip, I told
3 my brother and Philip Greaves, because the fact that
4 I had resigned, I remember it was made public, and I
5 think it was carried in the...either live at the
6 time I said it, or in the evening news on the
7 television. And probably the...I think the Advocate
8 Newspaper the next day may have carried it.

9 140. Q. Yes. I believe somewhere in the
10 file I have seen something in the newspapers.

11 A. I don't know. I know people
12 complimented me for what I did, and thought it was
13 very proper conduct on my part.

14 141. Q. I am just trying to...again, you
15 will have to forgive my lack of knowledge, the
16 problem is when you are a lawyer someplace else you
17 think that way, and I am saying...now, a corporation
18 has a minute book, and a shareholder register and is
19 held by someone, somewhere. I am just trying to say
20 generically, where would the...am I correct that a
21 Barbados corporation would have a minute book?

22 A. Well, you should...of course,
23 meetings of shareholders should be recorded...

24 142. Q. Yes.

25 A. ...in a book relating to

1 delivered notice to the Registrar. The
2 second one is the formal, if you like, the
3 prescribed form that is used to inform the
4 Registrar and members of the public as to
5 various activities or information, change
6 of directors, for example. If you have
7 changed directors, you have to fill out one
8 of those forms.

9 148. MR. MCKENZIE: Okay, why don't we mark
10 the form, which is actually a photocopy,
11 that we can describe as a Notice of
12 Resignation as Exhibit 1.

13 MR. SCHABAS: Okay, that is the Notice
14 of Resignation dated September 7th, 1994,
15 will be Exhibit 1. If you want, I can mark
16 these.

17 149. MR. MCKENZIE: Thank you.

18
19 --- EXHIBIT NO. 1 : Notice of Resignation dated
20 September 7, 1994
21

22 150. MR. MCKENZIE: And while we are at it,
23 the Notice of Change of Director signed by
24 Peter Simmons will be Exhibit 2.
25

1 --- EXHIBIT NO. 2 : Notice of Change of Director signed
2 by Peter Simmons
3

4 MR. SCHABAS: Okay, and then there is
5 the other document we provided.

6 151. MR. McKENZIE: Yes, I have got to go
7 slow here.

8 MR. SCHABAS: Okay, take your time.

9 152. MR. McKENZIE: If I could just have
10 Exhibit 1 back, or just show it to the
11 witness, please?

12 MR. SCHABAS: Yes.
13

14 BY MR. McKENZIE:

15 153. Q. Now, that document is what you
16 received last week?

17 A. I received this last week, yes.

18 154. Q. Right. And did you have an
19 independent copy of it in your own files somewhere?

20 A. No, I tell you what, last year I had
21 a complete set of these documents and I seem to have
22 misplaced them. And that is why I got the other
23 set...another set this week.

24 155. Q. You mean that you had already
25 requisitioned these from the Registry...

1 A. Last year when I was doing one of
2 the affidavits in these proceedings, I sent and got
3 a copy of the documents that were in the file.

4 156. Q. Now, Exhibit 2 is, correct me if I
5 am wrong, the first time the company told the
6 Registrar that you had resigned?

7 A. Correct, in the formal way, you
8 know, according to the prescribed form.

9 157. Q. Yes. The question I would have,
10 then, is...maybe you don't know, but when did the
11 company actually do something about your resignation
12 in 1994? When I say "do something about"...I don't
13 know how the law works here, but I would presume
14 they would have a shareholders meeting and...

15 A. This is a private company. I think
16 you are aware that private companies tend to carry
17 on business more informally than public companies.
18 But I can tell you that I never attended any
19 meetings of the company after I ceased being a
20 director, and I can tell you more.

21 Early January...this was September, 1994.
22 Early January, 1995, my brother, Peter Simmons, who
23 was the chairman of this company, left Barbados and
24 went to England as Barbados' High Commissioner to
25 England. And, of course, there were no further

1 meetings of the company.

2 158. Q. But you said that companies tend to
3 carry on informally. You had...

4 A. I think I said "less formally than
5 public companies".

6 159. Q. Okay. In 1994, then, you had been,
7 from the beginning, the solicitor that was handling
8 the affairs of this corporation?

9 A. I was an attorney at law who, from
10 time to time, was given instructions by the
11 shareholders of the company...

12 160. Q. Right.

13 A. ...to do various things, including
14 form this company.

15 161. Q. And did you receive instructions in
16 1994 or thereafter, as the solicitor for the
17 corporation, to make whatever changes were necessary
18 by law to remove you from the public record?

19 A. No. Mr. McKenzie, once you become a
20 Minister of government in Barbados, you have to
21 cease all private practice, be you a doctor or a
22 lawyer or other professional person. Once you are a
23 Minister of government, you cannot work in any other
24 capacity. Ministerial office is full-time, and you
25 are expected to devote all of your attention to. So

1 I couldn't...in fact, you know, when I became
2 Attorney General I had a whole set of litigation
3 that I had been conducting. I had to farm that out
4 to a variety of lawyers to finish on my behalf.

5 162. Q. So what happens, you just basically
6 close your practice...

7 A. Yes. Yes.

8 163. Q. ...and give away your files to other
9 lawyers?

10 A. Other lawyers.

11 164. Q. Where did the S.B.G. file go?

12 A. To Philip Greaves.

13 165. Q. And you just said...I am not sure I
14 understood you, but when you become a Cabinet
15 Minister, your time is obviously taken up with these
16 important functions.

17 A. And you are issued with...it is not
18 a booklet. There are about five or six pages of
19 directions about the kinds of conduct expected of a
20 Minister. I wouldn't say exactly a code of conduct,
21 but guidelines of proper behaviour on the part of a
22 Cabinet Minister. And in there, you are reminded
23 that you can't conduct any private profitable work.

24 166. Q. Make me understand, though, sir, is
25 that actually the law of Barbados, or just...

1 A. No.

2 167. Q. ...politically wise...

3 A. It is the convention from the time,
4 I believe, the Cabinet Secretary told me when I
5 first went in 1985 as a Minister, that they
6 developed these guidelines of conventional behaviour
7 on the part of Ministers, and you are handed
8 them...in some countries when you become a judge,
9 you are given guidelines about judicial conduct.

10 168. Q. So you received a booklet...

11 A. It is not quite a booklet. It is
12 about six pages stapled together of the dos and
13 don'ts.

14 169. Q. You received that as being some kind
15 of a guideline...

16 A. Yes.

17 170. Q. ...of a hoped for code of conduct?

18 A. Well, as I say, guideline as to the
19 appropriate ethical conduct expected of a Cabinet
20 Minister.

21 171. Q. But, again, it is not a law that
22 could be enforced or censured by law?

23 A. No, but the penalty is that if you
24 breach those, the Prime Minister who appoints you
25 may fire you. You know how it works.

1 172. Q. And this booklet specifically says
2 that you should not carry on any other business
3 and...

4 A. As far as I recall.

5 173. Q. It is 1994, I guess. Is there still
6 a copy of this booklet around someplace?

7 A. Oh, the Cabinet Secretary should
8 have it. Every time there is a new Minister or a
9 change of government, and new Ministers are
10 appointed and constitute a Cabinet, they are given
11 this. Somebody tells me they are also given a pen.
12 I never got a pen.

13 174. Q. Well, you probably deserve one, but
14 they are waiting to give you a gold one at the end
15 of your...

16 A. Probably they have it.

17 175. Q. ...illustrious career. Is it...

18 A. As a matter of fact, they did, you
19 know. When I retired, they had a function for me at
20 the Savannah Hotel, and I was given a lovely
21 Montblanc pen set. I can't get them to work.

22 176. Q. Would it be possible to make
23 inquiries, if you don't have one, to find one, and
24 undertake to give me a copy?

25 A. Find what?

1 177. Q. This booklet.

2 MR. SCHABAS: This is a
3 cross-examination. I am not in a position,
4 or my client is not in a position, to
5 undertake to do things. He is being
6 cross-examined today, and perhaps into
7 tomorrow. We may make inquiries and
8 provide you with things, but I take the
9 position I am not under any obligation to
10 give you any undertakings.

11

12 BY MR. McKENZIE:

13 178. Q. Well, let's start with: Do you
14 still have a copy of it, sir?

15 A. Not that I can put my hand on.

16 179. MR. McKENZIE: So we will consider that
17 a refusal, Counsel.

18 MR. SCHABAS: Well, you can consider it
19 any way you like. I have just made my
20 position clear, that he is here for
21 cross-examination. He was asked to bring
22 things...

23 THE DEPONENT: And I am no longer...

24 MR. SCHABAS: Just a minute. He was
25 asked to bring things. He looked for them,