

REPORT OF THE INVESTIGATION INTO THE CIRCUMSTANCES
RELATING TO THE “HELENITES BUILDING” LOCATED AT 438
EAST 49TH STREET, BROOKLYN, NEW YORK

Honourable Dr. Kenny D. Anthony
Prime Minister of St. Lucia
Graham Louisy Administrative Building,
Castries,
St Lucia

1. By letter dated August 24, 2004, Dr James Fletcher, Cabinet Secretary, informed me that he was directed by you to invite me to conduct an investigation into the circumstances relating to the “Helenites Building” located at 438 East 49th Street, Brooklyn, New York.
2. The terms of reference given were:
 - a. Enquire into the circumstances surrounding:
 - i. The attempted transfer of title to the property situated at 438 East 49th Street, Brooklyn, New York; and
 - ii. The facilitation of a mortgage of U.S. \$150,000 on the said property.
(All other amounts to be read as US dollars)
 - b. Determine whether the behaviour of the parties involved in these matters constitutes criminal misconduct, acts of corruption, or other acts of impropriety, misfeasance or illegality.
 - c. Make recommendations as may be deemed appropriate, arising from the investigation.
3. I was instructed that the Cabinet had mandated that the report be submitted within the shortest possible time, but in any event, no later than 30 days.
4. I commenced the investigation in St Lucia from October 1, 2004 to Saturday October 9, 2004. During the period I interviewed persons from a list provided by the Cabinet Secretary. The list contained the senior members of the administration, both politicians and civil servants, who in some way were, or should be, concerned with the “Helenites Building” in New York.
5. I obtained previous written statements from some of the members I interviewed. I was given or referred to quite a bit of written material touching on the subject of the investigation.

6. On Sunday October 10, I traveled to New York and there, from Monday October 11, 2004 to Friday October 15, 2004 at the St Lucia Mission in Manhattan, I interviewed some of the staff members of the mission and other private citizens. I proceeded to Brooklyn to interview a lawyer from Grenada who practises in the United States. I interviewed the managing director of a Management Consulting firm by telephone and I received from him a telefax concerning the "Helenites Centre". I received lots of written material from the persons interviewed. I left New York on Saturday October 16, 2004.
7. The list of persons interviewed is in Schedule 1 and the telefax about which I spoke above is in Schedule 2.

**CIRCUMSTANCES SURROUNDING THE ATTEMPTED TRANSFER OF
TITLE TO THE PROPERTY AND FACILITATION
OF MORTGAGE OF \$ 150, 000**

8. On November 22, 1978, the Helenites Association of St Lucia Inc, which is one of five known associations of St Lucians in New York, was registered as a charitable trust or charitable corporation.
9. As per indenture dated September 24, 1982, the Association purchased what was a Jewish Synagogue from YOUNG ISRAEL OF RUBY INC, the portion of land in the Borough of Brooklyn, County of Kings, City and State of New York located at No. 438 East 49th Street for the price of \$54, 000 and on the same day entered into a mortgage with the vendor in the amount of \$34, 000. The transaction is referred to as a purchase money mortgage.
10. The records indicate that between March 24, 1983 to September 24, 1984, the Association raised various sums to pay off the mortgage. But there is a query about the Association's title to which I will refer later.
11. Between 1983 and 1989 the Centre served as the meeting place for many St Lucians and St Lucian organizations. The Association held a number of activities to raise funds and was able at first to pay its bills which included taxes on the property.
12. In 1990 the City of New York reassessed the building and the land. The class registration code of both was changed and that resulted in the payment of back taxes from 1982 to 1990. The assessed value of the building was changed to \$45, 000 and that of the land to \$67, 000.
13. The tax burden became too heavy and the members of the Association decided to place the property for sale on the market. They were offered \$275, 000 for the building to which they agreed, but because of a religious clause in the sale

agreement between the original vendor and the Association, the buyer withdrew his offer.

14. However the Association felt that the sale of the building would be detrimental to the St Lucian community in New York and their next option was to ask the Government of St Lucia to assist.
15. Thereafter the Association made the following proposals to the Government of St Lucia:
“
 - a. The Government purchases the property for a small fraction of the appraised value of \$300, 000 which would include the amount of taxes.
 - b. The Government assists in paying off the delinquent taxes and then purchases the building for \$1. Make use of the building as an extension of its Consulate.
 - c. Once the property was in the Government’s name, it would obtain a tax exemption and there would be no further taxes.
 - d. The Government would now own a sizeable bit of equity in a U.S. property which would serve the community. ”

It does not appear that any response was given to these proposals.

16. Things did not improve with the Association. On July 10, 1995, the President of the Association wrote to the Ambassador at the time, seeking the Government’s assistance and asking the Government to buy the property at 75 – 80 % of the market value of \$275, 000 for the St Lucian community in New York. In his letter, the President stated that the Centre had become a strain on the limited resources of the Association because of the high taxes that were assessed.
17. The Ambassador replied on July 19, 1995, stating that the proposal seemed quite feasible and that he would put the matter before the Foreign Minister in St Lucia. The Foreign Minister thought the proposal was certainly one the Government should pursue even as he observed that Government’s financial resources at the time were extremely limited.
18. In a further letter to the President of the Association dated August 11, 1995, the Ambassador told him that the Ministry of Foreign Affairs had given the green light for the Mission to proceed with the presentation of a firm proposal.
19. The Ambassador at the time left office suddenly and nothing further is heard of the idea of the purchase of the Centre by the Government of St Lucia.

20. In 1998 the situation became desperate. The Association owed taxes to the amount of \$59, 000 approximately. On April 24, 1998, the Department of Finance of the City of New York sent a “Delinquency Notice” to the Helenites Association indicating that the total remittance due was \$58, 461.02. On May 7, 1998, the City of New York sent a “Notice of Intention to sell Lien” to the Association in which they stated that to prevent the sale of the lien or the property, payment in full of the amount due would need to be received by the Department of Finance no later than June 12, 1998.
21. A telefax marked “URGENT” was addressed to the Honourable Prime Minister, Dr Kenny D Anthony, with a list of taxes and interest due, amounting to \$58,692.97.
22. By Cabinet Conclusion No. 401, Cabinet had already approved in principle the purchase of the Helenites Centre in New York. The Permanent Secretary in the Ministry of Finance, because of the time constraint, by correspondence dated June 11, 1998, made arrangements with the President of the St Lucia United Association to pay \$45, 000 to the Comptroller of New York City as part payment of the delinquency taxes. That was done. The balance was supplied by the St Lucia Mission in Washington. Thus the Centre was saved.
23. According to the Minister of External Affairs the Government in 1998 decided to purchase the Helenites Centre, declare it a trust and place it in the hands of trustees in New York who would manage the property.
24. The Accountant at the Mission was of the same view. He stated that the purpose of the Government of St Lucia acquiring the building was to ensure that the St Lucian community in New York and the surrounding areas would continue to have a place to meet and gather to maintain a St Lucian connection.
25. He said that upon official title of the building being registered in the name of the Government of St Lucia, tax exemption was to be acquired from the Authorities and a trust was to be established to handle the operation of the building, relieving the Government of the day-to-day running and financial obligations for maintenance of the building.
26. Whilst the Government was seeking to have the Centre properly registered in its name, two letters were written on the matter. One by the Prime Minister to Michael Bartlett dated July 23, 1998, stated among other things, that the Government urgently required the preparation of the deed of sale and transfer of the property from the Helenites Association to the Government of St Lucia as well as the preparation of a draft trust deed in accordance with the laws of the State of New York, setting up a Board of Trustees to be appointed by the Government of St Lucia to manage the property.

27. Another letter dated November 3, 1998 was written by the Attorney General to the Ambassador pertaining to the purchase of the building. In that letter the Attorney General sought the intervention of the Ambassador and asked him to contact Bartlett to secure agreement on the way forward.
28. In September 1998 the Ambassador contacted the executive members of the Association to discuss the transfer of ownership from the Helenites Association to the Government of St Lucia. An attorney was retained. He outlined the measures necessary, stating that it would take four to eight months to conclude the transaction. On February 15, 1999, the legal documents for the transfer of ownership were signed and filed with the Real Title Agency which was then responsible for filing the deed with the Registrar's Office. On April 12, 2000, the Mission received from the Office of the City Registrar the certified copy of the deed showing the new owner of the building as the Government of St Lucia.
29. On April 27, 2000 the Ambassador wrote to the Honourable Attorney General of St Lucia enclosing copies of legal documents from the City of New York, Department of Finance, for the transfer of ownership of the Helenites Centre to the Government of St Lucia. On May 12, 2000 the Attorney General wrote to the Permanent Secretary in the Ministry of Finance acknowledging receipt of a certified copy of a document registered in the office of the Registrar, Kings County, City of New York, which documents transfer to the Government of St Lucia from the Association the property described as 438 East 49th Street, Brooklyn, New York.
30. The Attorney General in conclusion wrote:
- “There being nothing on the face of the document to suggest otherwise, I wish to advise that the transfer has legal effect and the Government of St Lucia should proceed to fulfill its part of the arrangement.”
31. The arrangement referred to by the Attorney General in paragraph 13 of his letter is no doubt the agreement by the Government of St Lucia to pass over the property to an appropriate body representing the interests of all St Lucians in New York.
32. I heard evidence from one person that the agreement was that on condition that the Government paid the taxes in arrears, the building would be passed to the Government who would then arrange to place the building as a trust for all St Lucians and there would be a board of trustees to manage the trust.
33. Evidence from another source is slightly different. That source said that the Government decided to assist with the payment of the taxes on condition that it received title to the property so that the property could be turned over to a not-for-

profit organization which would be exempt from taxes and which would continue to make the property available for use by the St Lucian community in New York.

34. As indicated above, the Government of St Lucia paid the arrears of taxes and received title to the property from the Helenites Association. By whichever account, the transfer of the building from the Government to the trust or not-for-profit organization did not take place expeditiously and it is this default which is partly the cause of the present problem.
35. The indenture which transferred ownership from the Helenites Association of St Lucia Inc to the Government of St Lucia is dated December 3, 1999. Various reasons are given by the Ambassadors in New York at the relevant times why the transfer to the trust or the not-for-profit organization did not take place. One reason given is that the lawyers who were instructed to prepare the instruments were tardy in so doing. Another reason is that other complications arose, for in the period after the payment of the \$59, 000 and before the committee of management was set up to run the Centre, other taxes were owing.
36. The Ambassador at the time of the purchase of the building put in place a committee, initially for a period of six months, to manage the affairs of the Centre. That committee, which performed admirably according to the Ambassador, paid the current taxes on the property but it was unaware that before it took over the management of the Centre, taxes had been in arrears. The members of the committee carried on for two years but after that they resigned.
37. The Ambassador had instructed the lawyer from Grenada to look into the setting up of the trust, but he left office in 2001 before the trust or not-for-profit organization could be established.
38. The new Ambassador found the members of the management committee expressing their desire to relinquish office and so the committee was formally dissolved. On his meeting with the various St Lucian Associations there was a majority view to sell the building. The Helenites Association was adamant not to sell.
39. Overdue taxes came up again under the new Ambassador. These pertained to amounts owing after the purchase of the building by the Government of St Lucia but before the committee was set up to manage the Centre. It must be borne in mind that the acquisition of ownership by the Government does not automatically result in exemption from taxes. Application for exemption has to be made and granted.
40. The arrears of taxes in the amount of \$31, 000 approximately was paid by a debt collector and having acquired a lien on the property he threatened foreclosure. It is in these circumstances that the transfer of title, not an attempted transfer, was made to Bartlett and the facilitation of the mortgage over the property occurred.

41. I think it is best to copy part of the Ambassador's statement in this respect:

“A member of one of the Associations on the Council who had had a long association with the building, then offered to raise a loan to pay the lien and repair the building for rental, with the proceeds from the rental of the building going to repay the loan. This would involve transferring the title of the property to him so that the loan could be raised on the property. I agreed to do this on the clear understanding that it would be a temporary transfer and that the Government of St Lucia would continue to remain the legitimate owner of the property. There is therefore a signed agreement attesting that the transfer of title to the property is a temporary arrangement, that this arrangement was entered into to facilitate a mortgage on the property undertaken by and that the loan was to be used for the Centre in the manner I have already outlined, that the title would be transferred back to Government once the loan was repaid, and that the Centre was responsible for the loan repayments”.

42. The Ambassador stated further that, in the course of preparing the mortgage papers, it was discovered that the transfer of title from the Helenites Association to the St Lucia Government in 1999 had not been properly registered and the legal work for the sale of the property from the original Jewish owners to the Helenites Association had not been complete, so that according to New York City files the property was registered under the name of the original owner Young Israel of Ruby, a Jewish synagogue. To clear up the legal difficulties required more money than had been originally thought and so a loan of \$150, 000 was sought.

43. The Ambassador is in effect saying that the loan of \$150, 000 was for three matters:

- a. Payment of arrears of tax in the amount of \$31, 000 approximately;
- b. Repairs to the Centre; and
- c. Clearing up of titles to the Centre

44. I need only to observe that the Department of Finance of the City of New York had certified as true, a copy of the indenture between the Helenites Association of St Lucia Inc and the Government of St Lucia dated December 3, 1999.

45. I wish to say a brief word about the “Note” and the “Mortgage”, both of which seem to have legal effect and both of which are signed by the mortgagor, especially as so few of the persons that I interviewed have seen the documents. The Note and the Mortgage were duly executed before a Notary Public and registered. The Note determines the lending period as two years from April 29, 2003 to April 29, 2005. It requires the interest of \$2000 a month to be paid during that period. The annual interest rate is 16%. The mortgage names the borrower as Michael Bartlett and the lender as Farhad Bokhour. In his obligations the Mortgagor promises that he lawfully owns the property. The lawyer from Grenada

- is a witness. The compound effect of both documents is that the Mortgagor pays only interest during the two year period and what is known as a “balloon mortgage rider” requires the principal of \$150, 000 to be paid on the termination date.
46. The mortgage date is April 29, 2003. There is another document dated April 30, 2003 signed by Michael Bartlett and the Ambassador headed “Agreement on the transfer of title”. It states that on completion of the payment of the mortgage by the Government of St Lucia, Michael Bartlett will transfer the title to the property back to the Government of St Lucia. A copy of the Agreement is at Schedule 3.
 47. In a written report which he handed me, Michael Bartlett stated, “Mr. Huntley called on me. I agreed and that is where I came in. To the mortgage company I had to submit a copy of my proof of citizenship, my driver’s licence, my passport, my title to my property, 994 Dumont Avenue and a credit report.”
 48. One staff member of the Mission gave me another written report which stated, “In October 2002 a foreclosure notice was served on the St Lucia Consulate in reference to the property. In trying to obtain funds to deal with the mounting bills and foreclosure sale of the property, numerous banks and mortgage firms were contacted. None were willing to loan any monies since the Government of St Lucia has diplomatic immunity. It was then suggested by the attorney, Trevor Gairy, that the then Ambassador, Earl Huntley, should approach someone who would be willing to use his credit to obtain the loan as long as there was the understanding that Government was responsible for paying off that loan and not the person; after all, it was Government’s building. The members of the Association were approached. The answer from all was “No”, with the exception of Mr. Michael Bartlett.”
 49. I spoke with Mr. Gairy in his office in Brooklyn, New York. He told me he was a lawyer and real estate broker. He was a Grenadian living in the U.S.A. for 30 years. He admitted that he signed as a witness to the mortgage and was then attorney for Mr. Bartlett. He had also acted for the Consulate on other occasions.
 50. Mr. Gairy said that he did not draft or dictate the agreement between Huntley and Bartlett but, after looking at the document, he thought he had made some input. He said that the agreement is a side agreement although it cannot supersede the mortgage. He did not think in the light of the registered mortgage that the agreement was untidy.
 51. Mr. Gairy said that the situation was frantic and there was a great risk of the owner losing the property for when JER Revenue Services gets hold of a property, you can say goodbye to it. His view is that Mr. Bartlett stepped in to save the property.

52. I have obtained from the Accountant at the Mission a breakdown of the \$150, 000 received from the lender. The borrower got only about \$63, 000 in hand, which was given to the Accountant and placed in the building account. The lawyer's closing statement is similar. The figures are in Schedule 4. A large amount is set aside as escrow pending settlement of title issues. Mr. Gairy is in the process of dealing with this. The loan closing cost is also high.
53. At the moment, the Accountant is paying the monthly mortgage payments of \$2000 from the proceeds of the rental of the Centre for various social activities. The problem is that the rentals will not be able to pay the balloon payment of \$150, 000 which is due next April.
54. The Ambassador was instrumental in bringing together all the St Lucian Associations in New York and as a result the Council of St Lucian Associations was formed. The five known associations are:
- i. The St Lucia United Association. The president is Clinton Octave.
 - ii. The St Lucia Calypsonians Association. The president is Keran Deterville.
 - iii. The St Lucia Cultural Organisation. The president is Joseph Matty.
 - iv. The St Lucia Netball Association. The president is Matthias Wilkie.
 - v. The Iyanola Marathoners. The president is Gillian King.

It must be stated that the St Lucia United Association again came to the rescue of the Centre when there was \$12, 000 owing on the mortgage repayments in June of this year.

55. There is a Board of the Council of St Lucian Associations comprising:
- a. Mr. H. Emmanuel of the Saint Lucia Mission
 - b. Mr. Clinton Octave (St Lucia United Association)
 - c. Mr. Gillian King (Iyanola Marathoners)
 - d. Mr. Keran Deterville (St Lucia Calypsonians Association)
 - e. Mr. Matthias Wilkie (St Lucia Netball Association)
 - f. Mr. St Jules (prominent St Lucian citizen)
 - g. Mr. Ruthven Farrel (prominent St Lucian citizen).
56. I need to say something about the establishment of the not-for-profit corporation. An application was filed and the not-for-profit status was obtained in February 2004. Following this, an application for Federal Tax ID / EN was made and that was obtained in May 2004. Tax exemption status / 501 C3 is presently in progress.
57. I visited the Helenites Centre on Tuesday October 12, 2004 at Brooklyn, New York. The building is located on a flat piece of land with one side bounded by the

street and the three other sides are separated by fences from the other adjacent owners. The building lies close to the boundary on one side and does not occupy as much as one half of the ground area.

58. Unfortunately I saw the property before it could be cleaned up after the weekend's activities. Broken glass was scattered all over the grounds. From the yard, I saw the gutterings were falling apart and the roof did not appear sound. I was told by the caretaker, Edward Poyotte, that the roof leaks when rain falls.
59. It is a one-storey building and one gets to the floor by a few steps. There is a hall with no chairs or other furniture. The condition inside is not one where you would ask a Minister or other dignitary to address members of the St Lucian community. In the basement where the toilets are installed, it is not quite hygienic. I mention these to show that I agree with those who said that the building cannot remain in its present condition.
60. Most people I interviewed in New York were of the view that the way to deal with the payment of the \$150, 000 was by a method of refinancing which included the redevelopment of the Centre.
61. There is no doubt in my mind that the Ambassador had at heart the best interests of St Lucians living in New York. Before the loan was entered into, together with the Council, it was decided to sell the Centre and purchase an alternative property somewhere else in Brooklyn. This is still the view of the President of one association I spoke with about the future of the Centre.
62. I was told that an offer of \$350, 000 payable in cash was refused by the Ambassador and a later one of \$400, 000 did not materialize. He then thought the best course of action was not to sell, but to lease the Centre as a Day Care Centre. Then he began to entertain the thought of redeveloping the property. He embraced the recommendations of three real estate agents to this effect and it seems the decision was taken to engage Management Consulting and Controls Group Inc. of which the managing director is Jason Martin, a Trinidadian.
63. The project idea was explained to the Council of St Lucian Associations and they endorsed it. So the decision to repair the Centre was shelved in light of the proposed project. A team of consultants was retained to prepare the project. I understand the consultants were paid from that part of the loan which was set aside for repairs to the Centre.
64. On October 5, 2004, the Ambassador gave me a written statement in which he said that what is really meant in clauses (iii) and (iv) of the Agreement in Schedule 3, which state that the Government of St Lucia will repay the loan, is that the Helenites Centre would be repaying the loan. He said it was not expected that the Government of St Lucia would repay the loan as those payments were to

- come from the revenue generated from the Centre through leasing or renting of the Centre.
65. The present Ambassador told me that the Council of St Lucian Associations is looking at the development of the property and the refinancing of the mortgage debt of \$150, 000. They would take a loan once for all and redevelop the property. That was also the view of the Accountant and the Vice Consul.
66. The five representatives of the different associations told me they were never involved in the transfer of ownership of the property nor the facilitation of the mortgage. But they all would like to see the Council of St Lucian Associations own the Centre and most of them supported the project. As I said before, one held the view that the location was inappropriate.
67. The cost of the project is estimated at four million dollars including the amount to pay off the loan of \$150, 000. In existence are detailed drawings from Management Consultants and Controls Group Inc. The date of the costings is October 31, 2003.
68. I think I have given a sufficient background to the Helenites Centre, its transfer from Young Israel of Ruby Inc. to the Helenites Association Inc., then to the Government of St Lucia and finally to Michael Bartlett for the purpose of seeking a loan to pay mainly arrears of taxes on the property and for other additional purposes. It is now time to turn to my second term of reference.

BEHAVIOUR OF PARTIES INVOLVED IN THESE MATTERS

69. In the course of the investigation, both in St Lucia and in New York, I was shown and referred to various printed matter commenting on the matter under review. Some of these were scurrilous, biased, misinformed and cruel to some of the parties involved in these matters. I shall not allow them to influence my findings.
70. I find no evidence of any criminal intent by any of the parties, and consequently there cannot be any conduct which constitutes criminal intent. I shall define corruption for the purpose of the report as reprehensible conduct short of criminal misbehaviour. I would include underhand behaviour or conduct from which a party gains or expects to gain financial or other reward. It is my opinion that none of the parties involved in these matters can be said to be guilty of corruption. In Schedule 4 of the report, the Accountant of the Mission shows how the amount of \$150, 000 was expended.
71. Acts of impropriety would include incorrectness or improper conduct and misfeasance may be defined as the wrongful exercise of lawful authority. It

appears clear from the evidence that there are acts of impropriety and / or misfeasance.

72. The Ambassador most concerned in these matters has unsolicitedly sought to give reasons why the Government of St Lucia was not approached for the monies required for the Centre and why a loan was raised in New York by a private individual for the purpose. He admitted that he did not seek clearance from the Authorities in St Lucia because as Ambassador he has plenipotentiary powers and he acted under those powers. I am of the view that the Ambassador was misguided.
73. Another Ambassador also told me of his plenipotentiary powers and when I asked him for the source of these powers, he pointed to the letter of appointment by the Governor General. I had a look at the document which is a simple letter of appointment and mentions nothing about plenipotentiary powers. A letter from the Foreign Minister clearly gives him authority to represent the Minister at the United Nations.
74. The Ambassador is agent for his Government and as agent, he must act in accordance with instructions on all matters pertaining to the disposal of the property of the Government. One Permanent Secretary told me that in all his years in the public service he has never seen a civil servant enter into a one-to-one agreement in respect of Government property. It is an elementary principle of English law that a person cannot give away or dispose of what he has not got. This is illustrated by the Latin maxim *NEMO DAT QUOD NON HABET*.
75. Many years ago I was told that the norms of international law and municipal law do not always coincide. I believe this to be so. That is why for the CARICOM Treaty to have become law in the member states, each state had to pass appropriate legislation to give that effect. The same is happening now in respect of the Caribbean Court of Justice.
76. Customary international law cannot give an ambassador authority to do anything which infringes the law of the land. The recent case of Attorney General vs. Martinus Francois with respect to the Rochamel Hotel illustrates that not even the Minister of Finance can borrow money on behalf of the State without the approval of Parliament.
77. Part VIII of the Finance (Administrator) Act, No. 3 of 1997, deals with the public debt. To the extent that the agreement in Schedule 3 of this report signed by the Ambassador and Bartlett states that the Government of St Lucia will pay money owing on the mortgage, it imposes a debt on the State and there is no authority for that.
78. Section 39 of the Act provides for loans and the authority to sign such loans. Section 39 (2) states:

“The Minister may, in writing, authorize the Director of Finance or Head of a Foreign Mission to sign on his or her behalf any loan agreement or guarantee made under Section 38 or 39.”

In my opinion there can be no plausible reason why the Ambassador should cause a loan to be made without the authority of the Government of St. Lucia.

79. I am also of the view that the Ambassador should not lease, mortgage, sell or in any way deal with the property of the Government of St Lucia without specific approval. I cannot deny the Ambassador's powers to act on behalf of his Government in routine matters affecting the Mission but on the important issues it would be correct and wise to obtain instructions to protect himself. He should be able at this level to decide what decisions he can make and those for which he should obtain instructions.
80. The words “pleni” and “potentiary” are from Latin words meaning “full” and “power” ----- “plenus” and “potens”. They give one full powers of representation. As one ex-ambassador said, if an ambassador has the powers as claimed he can sell St Lucia and he will have nobody to report to, for the country will have been effectively and validly sold.
81. The Minister of External Affairs stated that he had never been informed of, or consulted on, the transactions and has never seen the mortgage agreement. The Honourable Prime Minister was in no better position. He only saw a copy of the agreement in Schedule 3 when the current Ambassador sent him a copy long after the Ambassador in question had left office at the Mission. There is no record of the transactions at the Ministry of External Affairs or even at the Mission when the current Ambassador took over. According to the Permanent Secretary of the Ministry of Finance there was no approval for the loan or authority to make payment from the Consolidated Fund.
82. None of the Presidents of the five St Lucian associations with whom I spoke knew anything about the transfer of title or the facilitation of the mortgage before they heard it via the media. The Accountant at the Mission only knew of the transactions when a cheque of \$63, 091 .38 was handed to him, presumably for the repairs to the Centre.
83. Full blame for the transfer of title to the Centre and the facilitation of the mortgage for \$150, 000 must be placed squarely and firmly on the shoulders of the Ambassador. He acted without authority in several respects. One employee at the Mission told me that the decision to transfer the property and to enter into the mortgage had to be made from the office of the Mission and only the Helenites Association had to be consulted. I reject that notion. The Government of St Lucia is the supreme authority in all of this and they had to be consulted and give their approval.

84. As I have indicated, the Ambassador no doubt had very good intentions. He was very enthusiastic about the idea of demolishing the existing building and constructing a multi-storey commercial building which would earn revenue and be a valuable asset for the future. He may well be right and there is no reason why the project should not be pursued. But how can one justify taking such a major step without the authority of the Government? He was of the view that when the project was further developed he would inform the Authorities in St Lucia. The Ambassador got it wrong. It is the other way round.
85. The acts of impropriety and / or misfeasance that I find include the transfer of title to the Centre from the Government of St Lucia to Michael Bartlett without the knowledge of the Government; the facilitation of a loan over the property without the approval of the Government; and the engagement of real estate agents in respect of the redevelopment of the Centre, again without the knowledge of the Government of St Lucia.
- I shall now turn to the third term of reference.

RECOMMENDATIONS

86. The main recommendation I wish to make consequent upon my investigation of the aforementioned matter relates to the issue of accountability by heads of mission and permanent secretaries to the Government of the country. These top officers of the administration who wield tremendous power and influence must realize that they are agents of the Government and must in all matters of policy and substance follow the instructions of their principal. Specifically, in all matters pertaining to the acquisition, dealing with, or disposal of property, they must inform the Government and act under instructions, preferably written instructions.
87. Another recommendation I would like to make touches on the regularization of the ownership of the Centre as well as the liability to pay off the existing mortgage of \$150, 000. The mortgage document and the agreement in Schedule 3 are not consistent with each other and do not represent the reality of the situation. What would be ideal is for the property to be transferred to the Council of St Lucian Associations and the Council would be responsible for the payments of the mortgage sums. But that of course would depend on agreement of all the parties concerned.
88. I was told by Mr. Gairy that any mortgage to a group such as the Council would need one or two persons to be responsible, as the lending institution would not be inclined to deal with a group.
89. I spoke to the lawyer about the possibility of an agreement as I described above. He agreed it is possible under United States law for Mr. Bartlett to effect a

- conveyance to the Government without advising the mortgagor, and people do that all the time. The mortgagee would not be the wiser as long as he is getting his money. As attractive as this may appear I would not recommend this course of action.
90. Mr. Gairy stated that Mr. Bartlett could also prepare a deed which he would sign and the Government would hold it as an escrow. This has the same effect as the agreement between Huntley and Bartlett for it would not be able to alter the fact that by virtue of the mortgage document Bartlett is the legal owner of the Centre.
91. Although the agreement in Schedule 3 would have little effect over the deed of mortgage it provides some evidence that Bartlett is under a legal obligation to Huntley and his successors in office to transfer the title back to the Government after the mortgage transaction has been rendered void or otiose. I would therefore recommend that the *status quo* be maintained and the Council of Associations of St Lucia begins promptly to act towards obtaining the loan for the refinancing of the mortgage sum, after which they would be vested with ownership of the Centre as originally envisaged.
92. The project for the new building is closely connected to the refinancing of the mortgage loan. As has been stated by so many including the present Ambassador, the redevelopment of the Centre for the use of the growing St Lucian community in New York is a well deserved goal. I understand that the Council received not-for-profit status on May 14, 2004 and it is in the process of obtaining tax exemption status which is known as a 501C3. According to an official at the Mission, when you get 501C3 you are entitled to funds for development and that involves making presentations to the City Council.
93. One President of one of the St Lucian associations who is employed with a not-for-profit organization had similar views on the 501C3 status. He stated that upon attaining that status you are allowed to raise funds by the Federal Government and exempt from the payment of taxes but you also come under close scrutiny and must file a Form 990 on an annual basis to the Federal Government. He supports the new project but emphasizes that there must be good and proper management by capable people.
94. I think the new project is worthy of immediate consideration by the Government of St Lucia which has a representative on the Board of the Council as described above.
95. One President of an Association told me that the Centre has been rented out from May of this year to the present time and he has never seen a statement of the accounts. I mentioned this to the Accountant and he admitted this to be the case. I recommend that the Accountant give to the Council of Saint Lucian Associations periodical accounts and statements on monies derived from rental of the Centre.

96. I trust that I have fulfilled my mandate. It remains for me to thank the Government of St Lucia for giving me the opportunity to serve in that way. I wish also to thank the many persons in the Prime Minister's office who assisted in making all the arrangements for the exercise in St Lucia. The Minister of External Affairs, the Ambassador in New York and the staff members of the Mission were most cordial and helpful. Special thanks also to Miss Rita Stanislaus who acted as my secretary in St Lucia and New York.
97. All the people I met and spoke to in St Lucia and New York were very co-operative. I was very much impressed with the representatives of the various St Lucian associations in New York who are eager to have a proper place as their own. I am confident that they will be able to take over and manage any new facility for the benefit of all their peers.

Albert N.J. Matthew
October 25, 2004

SCHEDULE 1 (para 7)

LIST OF PERSONS INTERVIEWED:

- | | |
|--|--|
| 1. The Hon. Dr Kenny D Anthony ----- | Prime Minister |
| 2. Senator Julian Hunte ----- | Minister of External Affairs |
| 3. Ambassador Earl Huntley ----- | Ambassador to CARICOM |
| 4. Ambassador Anthony Severin ----- | Ambassador to the U.N. |
| 5. Mr. Cosmos Richardson----- | Permanent Secretary,
Ministry of External Affairs |
| 6. Mr. Trevor Braithwaite ----- | Permanent Secretary,
Ministry of Finance |
| 7. Mr. Wilbert King ----- | Permanent Secretary,
Ministry of Public Service |
| 8. Mr. Isaac Anthony ----- | Director of Finance |
| 9. Mr. Hubert Emmanuel ----- | Accountant and
Deputy Consulate General |
| 10. Mrs. Christine Bartlett-Josie ---- | Vice Consul |
| 11. Mr. Clinton Octave ----- | President of St Lucia
United Association |
| 12. Mr. Keran Deterville ----- | President of the St Lucian
Calypsonians Association |
| 13. Mr. Michael Bartlett ---- | Founding Member of the
Helenites Association |
| 14. Mr. Joseph Matty ---- | President of St Lucia
Cultural Organization |
| 15. Mr. Matthias Wilkie ----- | President of the St Lucia
Netball Association |

- | | | |
|------------------------|-------|--|
| 16. Mr. Gillian King | ---- | President of the Iyanola
Marathoners |
| 17. Mr. Trevor Gairy | --- | Attorney at law and Real
Estate broker in the
United States of America |
| 18. Mr. Edward Poyotte | ----- | Caretaker of the Helenites
Centre |

SCHEDULE 2

(para 7)

October 14, 2004

Hon. Anthony B. Severin
Ambassador Extraordinary and Plenipotentiary
Mission of St Lucia to the United Nations
800 Second Avenue – 9th Floor
New York, NY 10017

Dear Ambassador Severin:

At the request of Justice Matthew, with whom I spoke briefly to confirm that I have no direct knowledge of the matters and transactions which he is charged to investigate, since they predated my firm's involvement with St Lucia, I am writing to give the Government of St. Lucia a very brief update and overview on the East 49 street project and to confirm our continued interest in working on its development, once your internal matters are settled. We continue to believe that it is a viable and necessary project for the St Lucian and Caribbean communities in the New York City and Metro area.

Once introduced to the project, we recommended that ownership be transferred to the Government of St Lucia or an independent not-for-profit organization for the benefit of the St Lucian community so that financial support could be assured for the endeavor. Towards this end we introduced Brooklyn Legal Services Corporation A, a leading not for profit law firm specializing in community and economic development projects. Brooklyn Legal, after consultation and engagement with the Ambassador and his staff, subsequently incorporated the Council of St Lucian Organizations and I believe is awaiting information from the Council in order to obtain tax exempt status for the organization and further proceed on various open issues.

Our work to date has included providing a program and plan for the proposed development, including architectural schemes, zoning and bulk analyses and financial estimates and projections of project costs. We have also introduced a project team of counsel, architects, and engineers and identified local Caribbean and St Lucian construction contractors, who may be interested in the construction phase of the project. In addition, we have introduced representatives of the project to New York elected officials who are willing to provide funding for this and similar projects sponsored by not for profit, tax exempt groups working for the public benefit.

The next steps for the project once resumed, would include deciding on how the project will be funded and financially structured and gaining community and financial support for it; doing a real estate market analysis on its highest and best use; formal site investigations including surveys, soil borings, civil and environmental reports; the commissioning of a formal design for the building; deciding on the model for the development of the property and planning an appropriate construction and post

occupancy schedule, including leasing and management; obtaining permits and approvals; and retaining qualified builders for the execution of the project.

I hope that this update is useful to your office and to those with whom you share it. MCCG is willing to continue work on the project once we are satisfied that there is a will and interest in proceeding from the Government and / or the Council of St Lucian Organizations. A lot of valuable time has been lost on the project including the opportunity to secure funding from New York City and we are somewhat embarrassed in explaining the failure to move forward to the other professionals we introduced to the project and to the elected officials who had promised support to it.

Sincerely,

Jason Martin CMC, CPCM
Managing Director

SCHEDULE 3

(para 46)

**AGREEMENT ON THE TRANSFER OF TITLE TO THE HELENITES CENTER,
438 E 49th STREET, BROOKLYN, NEW YORK.**

We, the undersigned, hereby agree that:

- i. The transfer of title to the real property at 438 E 49th street, Brooklyn, New York, 11203 known as the Helenites Center, from the Government of Saint Lucia represented by its Consulate General in New York, to Michael Bartlett of 994 Dermont Avenue, Brooklyn, New York, 11208, as evidenced in the Affidavit signed on April 29th 2003 by Michael Bartlett and Ambassador Earl Stephen Huntley, is a temporary arrangement that has been entered into for the sole purpose of facilitating a mortgage of \$150, 000 on the said property taken by Michael Bartlett in order for the Government of Saint Lucia, through its Consulate General in New York, to use that sum of \$150, 000 to undertake repairs to the property, clear municipal taxes owed on the property and to pursue the redevelopment of the property and the establishment of the Not for Profit Board to manage the property.
- ii. Notwithstanding the Affidavit referred to above transferring the title to the said real property to Michael Bartlett for the purpose outlined in (i) above, the Government of Saint Lucia remains the legitimate and sole owner of the real property at 438 E 49th Street, Brooklyn, New York 11203 known as the Helenites Center.
- iii. The monthly repayments of the said mortgage, undertaken by Michael Bartlett, will actually be made by the Government of Saint Lucia through its Consulate General in New York and not by Michael Bartlett.
- iv. That on completion of the payment of the said mortgage by the Government of Saint Lucia, Michael Bartlett will transfer the title to the real property at 438 E 49th Street, Brooklyn, New York 11203, known as the Helenites Center, back to the Government of Saint Lucia.

SIGNED this 30th April 2003 by:

Signature: E.S. Huntley

Ambassador Earl Stephen Huntley

Signature: Michael Bartlett

Michael Bartlett

SCHEDULE 4

(para 52)

BREAKDOWN OF LOAN TAKEN AGAINST THE HELENITES CENTER

		Income(\$)	Disbursement (\$)
	Loan amount	150, 000	
	Bankruptcy Search		25.00
	Escrow Service charge		45.00
1	Escrow held for prior Owners		20000.00
2	Escrow for City taxes for 2002/03		11650.00
	Title closer fees		175.00
	Escrow held for City water / sewer charges		1675.00
	Payment of outstanding tax lien		31799.37
3	Loan closing cost		20039.25
4	Attorney's fee		1500.00
	TOTALS	150000.00	86908.62
	Balance deposited in Building account		63091.38

1. Escrow for previous owners is an amount held by the title company due to the fact the transfer of title from the previous owners (Young Beth Israel) to the Helenites group was not recorded with the City as being completed. The process is ongoing at the moment and the full amount less the attorney fees will be refunded back to the Building fund Account.
2. Amount held by Title Company for payment of taxes for the 2002/03 period. The said amount was eventually paid to the City of New York.
3. Loan closing Cost includes cost to the lender for discounts points, application fees, appraisal fees, Lender's attorney fees, City, Title Company, and search company's fees.
4. Attorney's fees is for the attorney representing the Government of St Lucia.

Prepared by:

Hubert Emmanuel

Disbursement of Loan Funds deposited into Building Fund Account

	Income	Expenses	Balance
Loan funds deposited	63091.38		
1 Mortgage Payment		16000.00	
2 Carnival Band		14689.91	
3 Development of Property		12500.00	
4 Boiler Replacement		5600.00	
5 Independence Dinner		2000.00	
6 Tax Payment		5259.82	
7 Payment of credit card		5197.00	
8 Property Maintenance		<u>1890.00</u>	
		63136.73	

Notes on expenditures:

- 1.Monthly payment of Mortgage from June to January @ \$2000 per month
- 2.Expenditure incurred in fund raising activities, proceeds of which went to the Carnival Band.
- 3.Paid to Brooklyn Legal services \$5000.00 for legal fees and to MCCG Management Consultant \$7500 consultation fees.
- 4.Paid \$2000 deposit to secure venue for Independence dinner. The amount was taken as an advance but was never refunded.
- 5.Payment of Property taxes to City of New York.
- 6.Check by phone payment made to personal credit card of Christine Josie on 7/8/03 who indicated she had authorized the City to charge her credit card for tax payment on the property. She subsequently paid the taxes on October 2nd, 2004