

**BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY**

**HEARINGS: DAY 1**  
(TUESDAY 4 MAY 2021)

International Arbitration Centre  
3<sup>rd</sup> floor Ritter House  
Wickhams Cay II  
Road Town, Tortola

**Before:**

**Commissioner Rt Hon Sir Gary Hickinbottom**

Hon Attorney General Ms Dawn J Smith and Solicitor General Mrs Jo-Ann Williams-Roberts appeared for various BVI Government Ministers and public officials

Solicitor General Mrs Jo-Ann Williams-Roberts and Ms Sara-Jane Knock of Withers LLP (instructed by the AG) appeared for the Cabinet Secretary Ms Sandra Ward

Counsel to the Commission Mr Bilal Rawat also appeared

Court Reporter:

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Those present:

First session

Ms Dawn J Smith, Hon Attorney General  
Mrs Jo-Ann Williams-Roberts, Solicitor General

Mr Bilal Rawat (attending remotely)

Sir Geoffrey Cox QC, Withers LLP ]  
Mr Hussein Haeri, Withers LLP ] attending remotely  
Mr Niki Olympitis, Withers LLP ]

Mr Steven Chandler, Secretary to the Commission  
Mr Andrew King, Senior Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police  
Force

Mr Dame Peters, Audio-Visual Technician

Second session

Ms Sandra Ward, Cabinet Secretary  
Mrs Jo-Ann Williams-Roberts, Solicitor General

Mr Bilal Rawat (attending remotely)

Mr Steven Chandler, Secretary to the Commission  
Mr Andrew King, Senior Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

P R O C E E D I N G S

SESSION 1

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3 COMMISSIONER HICKINBOTTOM: Welcome to the first  
4 hearing of the Commission of Inquiry.

5 Because it is the first hearing, I propose to make a  
6 short Opening Statement before we get down to the business of  
7 the day.

8 As you are all aware, considering that it would be in  
9 the public welfare--that is, in the public interest--on the 19th  
10 January of this year, the then-Governor issued a Commission of  
11 Inquiry to establish whether there is information that  
12 corruption, abuse of office or other serious dishonesty in  
13 relation to officials, whether statutory, elected or public that  
14 may have taken place in recent years; to consider the conditions  
15 which may have allowed any such serious dishonesty to take place  
16 and whether they still exist; and, if appropriate, to make  
17 independent recommendations with a view to improving the  
18 standards of governance and the operation of the agencies of law  
19 enforcement and justice in the British Virgin Islands.

20 I was appointed the sole Commissioner; and, since  
21 January, with the COI team, quietly but with purpose and  
22 determination, I have been fulfilling those Terms of Reference.  
23 They require me to report to the Governor with my findings and  
24 recommendations by July, but, if necessary, the Governor is able  
25 to extend that time to October. Whether an extension may be

1 required is a matter I will consider over the next few weeks.

2 To date, many have come forward with information,  
3 through the COI website portal or other means, and by  
4 face-to-face and remote meetings. I am grateful to all those  
5 who have come forward. I should emphasise that, if anyone has  
6 information which they have not yet sent to us, which they  
7 consider falls within the scope of the COI and may be useful,  
8 that they should contact the COI through the website portal or  
9 by any of the other ways set out on our website page which can  
10 be found at [www.bvi-public-inquiry.uk](http://www.bvi-public-inquiry.uk). Any such information  
11 received by the COI will remain strictly confidential.

12 As well as information volunteered in that way, the  
13 COI team have made requests for voluntary production of  
14 information, mainly from Ministers and other public officials  
15 who have provided a substantial number of documents. I  
16 understand this has involved public servants putting in a  
17 considerable amount of work to respond to the requests. Whilst  
18 some have asked for additional time, none has suggested that he  
19 or she has been unable to comply fully with the COI requests as  
20 a result of lack of resources. I sincerely thank them for their  
21 efforts, which I very much appreciate.

22 Much information has been gathered, and much progress  
23 made. However, we have now reached a stage where oral hearings  
24 are required to ensure further progress can be made, and at the  
25 required rate.

1           One of the focuses of the initial hearings will be  
2 production of information. As I have said, in response to COI  
3 requests for voluntary production, in most instances, the  
4 recipient of the request has provided information and documents,  
5 with an indication that he or she has fully complied with the  
6 request. It is vital that I do have all the information and  
7 documents relevant to the Inquiry, and some of these initial  
8 hearings will be to give me appropriate comfort that that is,  
9 indeed, the case. However, as I indicated at the outset of the  
10 COI, I intend to be flexible with regard to the conduct of the  
11 Inquiry, including the Hearings, so that we may make progress in  
12 an efficient way--and whilst, of course, always ensuring that  
13 all are treated fairly.

14           In respect of documents which have been produced,  
15 various Ministers through the Attorney General have reserved  
16 their position on whether information and documents they have  
17 produced--and are continuing to produce--may be made available  
18 to the public. Consequently, some of these initial hearings  
19 will be held in private; so that, if there is a reference to  
20 information or documents in respect of which privilege or  
21 confidentiality is maintained, that such issues can be  
22 considered before the relevant material is made public.  
23 However, at each hearing, having heard any submissions on the  
24 point, I will determine whether the Hearing (or part of it)  
25 needs to be kept private, or whether it can properly be made

1 public and, if so, how. I have well in mind both the  
2 understandable interest that the public has in the COI, and the  
3 importance of the principles of transparency and openness.

4           However, in respect of a private hearing such as this,  
5 until I make a declaration that the hearing (or part of it) can  
6 be made public in some way, everything that occurs at the  
7 Hearing will remain strictly confidential. Everyone involved in  
8 the Hearing is subject to the obligation of confidentiality.

9 Unless and until I declare otherwise, no one is allowed to  
10 publicise any part of it, in any way. If there is any such  
11 publicity, then I can--and usually will--investigate the cause  
12 of the leak and take appropriate action against anyone who has  
13 caused or facilitated the breach of confidence.

14           Further, it is important that I emphasise that no  
15 recordings can be made of any hearing--public or private--save  
16 for the authorised recording that I am causing to be made. A  
17 Transcript will be made of each hearing. If the hearing is  
18 private, then a Transcript may be provided to participants on  
19 the basis of a confidentiality undertaking. If a hearing is  
20 public--or if I direct that a private hearing be made  
21 public--then the default position will be that the relevant  
22 transcript will be posted on the COI website.

23           In commencing this next stage of the Inquiry, may I  
24 again stress that, although I have many of the powers of a High  
25 Court Judge, the COI is not a court of law. I am simply

1 conducting an investigation, as required by my Terms of  
2 Reference; and the Hearings are not to be adversarial but  
3 inquisitorial. I would ask all of those who may be involved in  
4 the Hearings to bear that in mind. Counsel to the Inquiry,  
5 Mr. Bilal Rawat, is not here to promote any cause: he has been  
6 appointed, by the Attorney General on my recommendation, to  
7 promote the public interest and to ensure, so far as he can,  
8 that the COI complies with its Terms of Reference and for the  
9 benefit of all who live in this territory. That, too, is my  
10 overarching and primary consideration. I hope, and expect, all  
11 witnesses and those who might represent them to share those  
12 aims.

13 Thank you. As I said, this is a private hearing, at  
14 least at the moment. However, subject to any objections, I  
15 propose making my Opening Statement.

16 I will deal the rest of the Hearing where parts can be  
17 adopted at the appropriate time.

18 If I may--and I know this is quite tedious, if could I  
19 deal with a few housekeeping points. I know some of these have  
20 been reviewed already, and I apologise if there is any overlap.

21 Might I stress no recordings can be made. As I have  
22 said, audio has been taken and will be transcribed. So long as  
23 the Hearing remains private, the obligation of confidentiality  
24 will have access to the Transcript, too. Participants will be  
25 sent a Transcript subject to any undertaking or confidentiality.

1 And if anybody else not present remotely in this hearing room  
2 which should have a transcript, then they should apply to the  
3 Secretary with a confidentiality undertaking, and reasons why  
4 they wish to have a copy of the Transcript.

5 Next, if I confirm, we're adhering to strict COVID-19  
6 measures, the hearing room is COVID-sanitized at the end of each  
7 day, and I ask everyone to wear masks when in public parts of  
8 this building and when entering and leaving or moving around  
9 this room. Whilst seated in the room, you may remove your mask  
10 if that that is more comfortable. Each person is properly  
11 socially distanced.

12 Next, could I ask all of those who are linked in  
13 remotely from outside the hearing room, please to mute their  
14 microphones when not speaking. That's simply to avoid noises.  
15 But those in the room, I understand on a loop, and they are  
16 asked to leave their microphones on. That's the green at the  
17 bottom of their microphone. The AV technician again in the back  
18 of the room is able to mute anyone if there is a sound problem,  
19 but there should not be any of that as a result of the  
20 microphones in this room.

21 We are, of course, reliant on technology, as this  
22 morning has already shown. Glitches are inevitable. If anyone  
23 sees that someone is no longer connected, could you please make  
24 that known. The AV technician is keeping a particular eye open  
25 for that, and we will stop and connect with those individuals.



1 Further, although this is not a complaint or criticism  
2 of anyone about this morning, I think in the future it will be  
3 helpful if the Zoom connection were made 15 minutes before the  
4 Hearing is due to start. That's simply because, particularly  
5 with the number of people we have today linked in, technical  
6 problems are not unknown and that will help us keep to the  
7 starting time.

8 Could the people please turn their microphones off or  
9 at least to silent in this room.

10 And, finally, I have been asked (unclear). Was there  
11 anything else before we come to the substantive business?

12 Good. Attorney General, we'll deal with your  
13 Application first. I have seen your letter of last night, which  
14 says that following your submissions, you wish to give Sir  
15 Geoffrey Cox QC, who is linked in, the opportunity to make  
16 further submissions. You say that as I understand it on two  
17 bases. Firstly, because of your other duties it will be  
18 impossible for you to attend every hearing of the COI and,  
19 therefore, you need other advocates who are able to appear on  
20 your behalf. That's something I fully understand as a general  
21 proposition but you are here today and I'm very grateful for  
22 your attendance.

23 But the second reason put forward is that you say it's  
24 conventional in this jurisdiction for the Attorney General to be  
25 represented in these Hearings by counsel of her choice, her

1 designation, and you've designated Sir Geoffrey to represent you  
2 at this Hearing. That convention is, as I understand it, the  
3 same in England and Wales. But whilst aspects of your  
4 application are uncontroversial, subject to anything Mr. Rawat  
5 has to say about them, you're pushing an open door. For some  
6 aspects of your Application I find clarification would help.  
7 And although Sir Geoffrey may be able to assist on some of those  
8 points, you are uniquely well-placed to deal with some of the  
9 concerns that I have. Indeed, Sir Geoffrey may not be able to  
10 deal with all the concerns, and that's why, Attorney, I asked  
11 you to attend today, and I'm very grateful for your doing so.

12           If after you've made your submissions anything remains  
13 unclear, and it may not because it may all become clear during  
14 your submissions, then we can of course consider the best way of  
15 dealing with that, one possible way is for Sir Geoffrey to make  
16 submissions the other way.

17           I assume that if you consider that the Application is  
18 quite clear--and as I said, with your help, that may be the  
19 case--it seems the best way going forward is for you to respond  
20 to my specific concerns. I don't see any point in making  
21 submissions on matters I'm not concerned about. What I want is  
22 some help on matters which I do not find clear. But, certainly,  
23 you can deal with everything in one go, rather than me raising  
24 my concerns, it seems to me that the most efficient way of  
25 proceeding would be for Mr. Rawat, which under the COI Rules,

1 subject to my permission in the way that they do, and he can  
2 raise any issues that he has with the Application, then we can  
3 deal with all of the concerns. Seems to me the most efficient  
4 way of going forward.

5 Is that a sensible way of dealing with that?

6 ATTORNEY GENERAL SMITH: Thank you very much (drop in  
7 audio).

8 COMMISSIONER HICKINBOTTOM: Let me make sure that is  
9 recorded.

10 MR. RAWAT: Sir, I'm sorry to interrupt, and I hope  
11 you can hear me. We were unable--I think I wasn't the only one  
12 who was linking in remotely. We were all unable to hear the  
13 Attorney General's remarks at all.

14 COMMISSIONER HICKINBOTTOM: That may result  
15 with--(drop in audio).

16 (Pause.)

17 ATTORNEY GENERAL SMITH: Can you hear me? Testing?

18 COMMISSIONER HICKINBOTTOM: Mr. Rawat, can you hear  
19 that?

20 MR. RAWAT: I did--I think I heard the Attorney saying  
21 "testing, testing."

22 COMMISSIONER HICKINBOTTOM: Anyone else can't hear the  
23 Attorney? Good.

24 Attorney General, sorry about that. But when things  
25 come in, it's my fault, and when it comes in, it's not your

1 fault.

2 ATTORNEY GENERAL SMITH: Thank you, Commissioner. My  
3 understanding is that you would like me to respond to questions  
4 put forward by Mr. Rawat. Is that my understanding?

5 COMMISSIONER HICKINBOTTOM: It will be helpful--if he  
6 set out his submissions and you can deal with any points of  
7 clarification within the Application. I have some thoughts, but  
8 we can then deal with them altogether.

9 ATTORNEY GENERAL SMITH: Right. So, then I would make  
10 my submissions and address the points raised by Mr. Rawat?

11 COMMISSIONER HICKINBOTTOM: Yes.

12 And during the course of that, if I have any other  
13 thoughts, we could work those into it. Thank you very much.

14 ATTORNEY GENERAL SMITH: Thank you.

15 COMMISSIONER HICKINBOTTOM: Mr. Rawat?

16 MR. RAWAT: Thank you, Commissioner, and good morning.

17 Just for the record, if I just indicate that today at  
18 this first hearing there will be two matters before you. The  
19 first, as you've just indicated, is the Attorney General of  
20 British Virgin Islands' Application for a direction she be  
21 permitted to participate in the Commission of Inquiry, both in  
22 her own right and on behalf of a number of identified  
23 Ministries, Departments and other bodies of the Government of  
24 the Virgin Islands. For ease, I will refer to these as  
25 "government bodies." But again, for the record, we are

1 scheduled to take evidence from Ms. Sandra Ward, the Cabinet  
2 Secretary, who appears in response to a summons issued on the  
3 23rd of April 2021.

4 Can I just turn to the Attorney's Application. You  
5 will have a copy of that Application. It is dated 28 of April  
6 2021 and signed by the Attorney. You had, in earlier  
7 correspondence, indicated to the Attorney that you wished to  
8 hear from her before considering the scope of Sir Geoffrey Cox  
9 QC and his involvement with the COI.

10 And so, for the Transcript, can I just explain that,  
11 as we understand it--and by "we" I mean the Commission team--Sir  
12 Geoffrey has a role of leading the Inquiry Response Unit, also  
13 known as the IRU, a unit which is staffed by Withers personnel,  
14 led by two partners, one based here in the Virgin Islands and  
15 another based in London, but together also with members of the  
16 Attorney's Chambers.

17 What I would like to do as a start is just to outline  
18 the basis of the Application. The Preamble to the Application  
19 explains that the Attorney applies in her own right and on  
20 behalf of certain government bodies. And at Paragraph 4, the  
21 Application states that the Attorney has a particular role under  
22 the Virgin Islands Constitution Order of 2007. And perhaps, for  
23 the record, I'll put in the wording of the Constitution, the  
24 Attorney's role is be the principal Legal Adviser to the  
25 Government of the Virgin Islands.

1           The point is made in the Application that the  
2 Attorney's obliged to act in the public interest, and it then  
3 follows at Paragraphs 5 to 15 submissions as to why  
4 representation for various government bodies, through the  
5 Attorney or through the counsel instructed by her, should be  
6 permitted.

7           The bodies for whom representation is currently  
8 shown--is currently sought--are shown on an organogram which is  
9 annexed to the Application. However, Paragraph 6 of the  
10 Application explains that other government bodies may be added.

11           The Application is not entirely clear as to the basis  
12 on which the Attorney applies in her own right. There is the  
13 reference to the public interest, but the detail seems to be at  
14 Paragraph 16 of the Application, which reads: "It is likely  
15 that the Attorney General, both as the senior law officer and on  
16 behalf of the relevant ministries and departments will be in a  
17 position to assist the Commissioner; for example, in fulfilling  
18 his responsibility of making recommendation for improving the  
19 standards of governance, the operation of law-enforcement  
20 agencies, and the administration of justice."

21           With that introduction, can I set out four matters  
22 that arise from the Application, and on which, in my submission,  
23 you would benefit from the further assistance of the Attorney  
24 today.

25           Those four matters are:

1           One, the basis upon which the Attorney applies for  
2 participation in her own right;

3           Two, what other individual or bodies could the  
4 Attorney come to represent in due course;

5           Three, the basis on which the Attorney has sanctioned  
6 disclosure to the Commission of Inquiry; and

7           Four, the role or roles to be undertaken by Sir  
8 Geoffrey Cox QC and Withers.

9           With your leave, Mr. Commissioner, what I propose to  
10 do is take these matters in turn, set out more detail, but then  
11 pause to allow the Attorney to address you on each matter. In  
12 that way, we won't lose sight of the issues that I would like to  
13 raise.

14           COMMISSIONER HICKINBOTTOM: That makes sense;  
15 otherwise, it might get us lost. We will take it in relatively  
16 small pieces.

17           ATTORNEY GENERAL SMITH: We can, but I did indicate  
18 that I had submissions to make in respect of the Application,  
19 and I understood that I would have been given the opportunity to  
20 make those submissions, and at the same time address the  
21 questions raised by Mr. Rawat.

22           COMMISSIONER HICKINBOTTOM: So, you propose that  
23 Mr. Rawat set out all his questions and you deal with them all  
24 in one go?

25           ATTORNEY GENERAL SMITH: I think those questions will

1 actually be answered in my submissions which I would like to  
2 give comprehensively, and I can--of course, if they have not  
3 been adequately addressed, then I come back to those.

4 COMMISSIONER HICKINBOTTOM: You don't know what the  
5 questions are though?

6 ATTORNEY GENERAL SMITH: Well, he indicated there were  
7 four matters. I'm happy to hear the questions, I was just  
8 saying that I understood I would be able to make my submissions  
9 and respond. He just said that he would want me to respond  
10 after he had gone through each question.

11 COMMISSIONER HICKINBOTTOM: So you are not going to  
12 take the questions in turn? Whenever you've made your  
13 submissions, you're not going to respond to the questions in  
14 turn?

15 Mr. Rawat is going to fill out these four areas of  
16 concern.

17 ATTORNEY GENERAL SMITH: Yes.

18 COMMISSIONER HICKINBOTTOM: When you give your  
19 submissions, are you going to say, "Well, I'm now going to deal  
20 with the basis on which I apply in my own right, or are you just  
21 going to make submissions out of which the answer to that  
22 question will appear?

23 ATTORNEY GENERAL SMITH: That is what I was proposing,  
24 but I was asking you, as Commissioner, what you were comfortable  
25 with.



1           COMMISSIONER HICKINBOTTOM: Well, firstly, I don't  
2 want to stop you from saying anything you want to say in support  
3 of the Application, but what would be most helpful for me is  
4 that we hear Mr. Rawat's concerns under these four heads, and  
5 then having heard these concerns on the basis on which you apply  
6 in your own right, I can either raise concerns or questions or  
7 request for clarifications that I have, and then you can simply  
8 deal with that. That would be the most helpful at the moment.  
9 But if, after he's dealt with all of these questions, there are  
10 other submissions you want to make, I won't stop you.

11           ATTORNEY GENERAL SMITH: Thank you, sir.

12           COMMISSIONER HICKINBOTTOM: But hopefully all of the  
13 areas in which I feel that clarification will be helpful will be  
14 covered under these heads.

15           ATTORNEY GENERAL SMITH: Thank you.

16           COMMISSIONER HICKINBOTTOM: Thank you very much.

17           Yes, Mr. Rawat.

18           MR. RAWAT: Thank you, sir.

19           If I then turn to the first matter that I set out,  
20 which was the basis on which the Attorney applies for  
21 participation in her own right, there are, in my submission, two  
22 aspects to this matter. The most straightforward point and the  
23 first one that I would put forward arises from the content of  
24 Paragraph 16, which I just read out.

25           In my submission, in the event that you were, as

1 Commissioner, to consider it necessary to seek information from  
2 the Attorney on an issue such as the administration of justice,  
3 that should not come in the form of submissions from instructed  
4 counsel, but rather in the form of evidence directly from the  
5 Attorney as the Legal Adviser to Government. And, accordingly,  
6 I invite her to address you on this question:

7           Why does the Attorney need to be a represented  
8 participant in this Commission of Inquiry in order to provide  
9 that kind of information?

10           The second aspect under this head arises from the  
11 reference in the Application to the public interest.

12           (Freeze in audio and video.)

13           SIR GEOFFREY COX: I fear that counsel has been  
14 frozen, sir.

15           COMMISSIONER HICKINBOTTOM: Sir Geoffrey, I think he  
16 has.

17           SIR GEOFFREY COX: Yeah.

18           COMMISSIONER HICKINBOTTOM: Let's wait to try and get  
19 him back.

20           SIR GEOFFREY COX: Yes.

21           COMMISSIONER HICKINBOTTOM: Given that Mr. Rawat is  
22 frozen, it's on his end, so we may not be able to do much on  
23 this end.

24           Right. I suspect he's going and trying to come back  
25 in.

1 (Pause.)

2 COMMISSIONER HICKINBOTTOM: We're going to telephone  
3 Mr. Rawat to see what the problem is and what he can do about  
4 it.

5 (Pause.)

6 MR. RAWAT: Sir, I hope you can see and hear me.

7 COMMISSIONER HICKINBOTTOM: Yes. It's probably your  
8 end, Mr. Rawat, because you've come back in.

9 MR. RAWAT: Yes. I have no explanation for why it  
10 happened, but--

11 COMMISSIONER HICKINBOTTOM: We are back and we can see  
12 and hear you.

13 MR. RAWAT: I apologise to you, sir, and the Attorney  
14 for that interruption. Perhaps if I could--

15 COMMISSIONER HICKINBOTTOM: These things are going to  
16 happen, I'm afraid.

17 But you just mentioned public interest.

18 MR. RAWAT: Yes.

19 If I pick it up at that point, then, I just had  
20 referred to a government press release that referred to the  
21 IRU's role in ensuring the public interest is upheld, and the  
22 point that I want to make by way of submission is that, in a  
23 Commission of Inquiry, the role of representing the public  
24 interest falls not to the Attorney General by virtue of her  
25 position or indeed to any other participant but rather to

1 counsel to the Commission. So, what special responsibility the  
2 Attorney General has to the public interest places her under the  
3 obligation simply to ensure that the Commission of Inquiry has  
4 all relevant material before it, given that it is, as is plain  
5 from its Terms of Reference, a matter of public importance.

6 I can assist with the law on this, if necessary, but  
7 for now what I would invite the Attorney to do is to address you  
8 on two questions that arise from the reference to public  
9 interest in the Application, and the first of these is:

10 Does the Attorney accept the principle that counsel to  
11 the Commission represents the public interest? And if not, how  
12 does the Attorney reconcile the potential conflict of interest  
13 that arises between her representing the public interest and  
14 representing ministerial colleagues with whom she sits in  
15 Cabinet, who may become the subject of criticism in due course?

16 So, under that head, sir, I have set out three  
17 questions, and perhaps the better thing for me to do is to allow  
18 the Attorney to address you on those matters.

19 COMMISSIONER HICKINBOTTOM: Yes. Thank you,  
20 Mr. Rawat.

21 So, Attorney, the first question is, to paraphrase it,  
22 why do you need to be a represented participant because the  
23 reason you give for it, which is that you may wish to provide  
24 information, evidence, in relation to say recommendations,  
25 that's the role you want to ensure that you maintain. That you

1 can do in any event. The Commission of Inquiry have already  
2 written to you asking for input in relation to that. You've  
3 reserved your position at this stage, but not being a  
4 participant doesn't constrain you in any way on that score. It  
5 seems to me there is some strength in that.

6 But I can't get excited about the issue because if you  
7 consider that you are concerned with the Terms of Reference and  
8 indicate in what way you are concerned, then I would certainly  
9 be minded to allow you to participate to address those concerns  
10 and Mr. Rawat. The concern that you raise, which is  
11 recommendations, is not a legitimate concern.

12 So, why do you want to be a participant?

13 ATTORNEY GENERAL SMITH: Thank you, Commissioner.  
14 Thank you, Mr. Rawat.

15 What I should say on that is that I am making this  
16 Application so that I am in a position as Attorney General to  
17 play a constructive and helpful role in the interest of the  
18 Virgin Islands, and I will address the issue of public interest  
19 a little later on. In fact, in the context of the current  
20 political and constitutional realities, I believe that the  
21 participation of the Attorney General will add to public  
22 confidence in the fairness, impartiality, and independence of  
23 the Inquiry.

24 I understand the position that Mr. Rawat is taking,  
25 but I cannot see the future. I do not know and understand what

1 is the nature of the assistance that I may be able to provide.  
2 As a participant, I understand I would be able, for example, to  
3 examine or cross-examine witnesses. I believe in appropriate  
4 cases, I may be able to be informed of the particular matters  
5 that are happening in advance of any question being posed or  
6 witnesses coming before the Commission. That is how I  
7 understand it.

8 I also recognize and understand that participants play  
9 a very important role in helping the Commission to establish the  
10 facts that are relevant to any particular Terms of Reference.  
11 So, I think it is important to have the participant status so  
12 that I can assist in that way.

13 Now, there is another issue--and I'm not just making  
14 this Application on my behalf, but I'm also making it on behalf  
15 of a number of named ministries and offices that are in the  
16 Application. What I also say there is that I'm very mindful of  
17 the Commission of Inquiry Rule 13.6 , which indicates that where  
18 participants may have a joint or similar interest, they are  
19 encouraged to be represented by a single counsel. And that is  
20 why--and not knowing the future, not frankly knowing the full  
21 extent of the Inquiry because the Terms of Reference are very  
22 wide, being in the position as I am as Attorney General, I think  
23 it would be of great assistance to the Commission if I were a  
24 participant in my own right.

25 COMMISSIONER HICKINBOTTOM: I'm still not sure

1 why--let's say for the time being that the Ministers, say, and  
2 because Section 56 of the Departments for which they are  
3 responsible--areas of Government they are responsible--are made  
4 participant. And you, then, of course, your law offices,  
5 represent the Ministers and, as I say, all below them within the  
6 Department.

7           Leaving aside all that for the moment, I understand  
8 that, and so you will appear on behalf of the Ministers. They  
9 will be participants, and you can ask questions that are  
10 relevant and make submissions, if relevant, on behalf of the  
11 Ministers. But the point is in the first question: Why do you  
12 want to be a participant as the Attorney General? You're not  
13 taking instructions from anyone. You say that you are, as  
14 Attorney General, concerned. What is your concern? I don't  
15 understand it.

16           It may well not make a great deal of difference, but I  
17 think when you are there, or when someone appears on your  
18 behalf, I just want to be absolutely clear who they are  
19 representing. If it's the Ministers, that's fine. We know that  
20 because they'll be scheduled, and we will almost certainly know  
21 why you're taking an active interest, for example, because a  
22 Minister is giving evidence. But I'm still struggling to see  
23 why you want to be a participant. I'm not saying that you  
24 shouldn't be, but I just want to understand why you want to be.

25           ATTORNEY GENERAL SMITH: And I don't want to sound by

1 any means cheeky, but I struggle why I would not want to be a  
2 participant given that my mission as Attorney General is to  
3 uphold good governance within the public service and all arms of  
4 the Government, so far as I'm aware of any issue and am able to  
5 do so. So, I...

6 COMMISSIONER HICKINBOTTOM: You're talking about good  
7 governance generally or good governance in your Chambers?

8 ATTORNEY GENERAL SMITH: It is good governance  
9 generally. That is the nature of legal advice.

10 Now, you allude to possible conflict, and it comes up  
11 in a later question, and I might as well take it now. The role  
12 of Attorney General is an important one. The issue of conflict  
13 is inherent in the responsibilities given to her under the  
14 Constitution. She advises the Government, and there are three  
15 arms of government, and all of those arms of government are  
16 represented by the Attorney General. That is why the  
17 Constitution builds in safeguards to protect her independence  
18 and to protect her ability to be independent. So, I see no  
19 conflict, as Mr. Rawat puts it, because I sit with the Ministers  
20 in Cabinet. I sit there ex officio, not having the same type of  
21 portfolio. My origins is not as theirs is. And as long as  
22 they're acting as Ministers, as long as they are acting in  
23 accordance with the law, as long they're not acting in their  
24 individual capacities and on a frolic of their own, it is my  
25 responsibility, as a matter of the Constitution, to represent



1 them. As it is to represent public officers acting in  
2 performance of their duties and other constitutional actions.

3 COMMISSIONER HICKINBOTTOM: Again, I understand that,  
4 that's perhaps--that's probably again to be raised on  
5 Mr. Rawat's--

6 (Overlapping speakers.)

7 ATTORNEY GENERAL SMITH: I should also say--and  
8 perhaps I need to put this also in context, and I hear what  
9 Mr. Rawat says about it being his responsibility to protect the  
10 public interest. But with no disrespect at all to him, I  
11 daresay I believe that, as Attorney General, as a person who  
12 knows quite a lot about this jurisdiction that I may be in a  
13 position to assist even him to understand what, in fact, is the  
14 public interest in the Virgin Islands.

15 And I would feel, frankly, that it would be very  
16 remiss of me in those circumstances knowing that Mr. Rawat, who  
17 I understand has not even been admitted to practice in the  
18 Virgin Islands, I would feel that I was remiss in my duties to  
19 sit back and assume and presume and be settled and satisfied  
20 that Mr. Rawat could not be assisted by me--that the Commission  
21 could not be assisted by me--in terms of the public interest.

22 Indeed, I would say that, as a participant, having the  
23 type of access and what I would anticipate would be a very  
24 cooperative and helpful relationship with counsel to the  
25 Inquiry, that I would be able, along with him, to assist in

1 safeguarding the public interest and to make sure that it was  
2 identified at every critical point. So, that is how I respond  
3 to that. I believe that the interest of the Commission would be  
4 very well served by my participation in my own right.

5           And I say to my colleagues all the time, I say to my  
6 colleagues and say to the Governor, and I make it clear to them:  
7 I am independent of both of you. I sit between the chairs. I  
8 have a constitutional responsibility, and there are times when  
9 it is a difficult role, but it is a role that is put into the  
10 Constitution, and I am the one to execute it, and I daresay that  
11 persons selected to the role of Attorney General are selected  
12 because they are expected to have the ability to make the  
13 relevant distinctions, indeed to speak truth to power, whoever  
14 the power may be. And I am very comfortable with that. It's  
15 not, you know, some days I'm not the best friend of any  
16 particular person, but that is why the Constitution is set up as  
17 it is. That is why it puts certain constitutional safeguards,  
18 around recruitment, under the tenure of the Attorney General.

19           And I want to emphasise and reemphasise--and I don't  
20 know if I could say this enough, Commissioner, but my whole  
21 purpose of being here is simply to be of assistance. I cannot  
22 be Attorney General of the Virgin Islands given the Virgin  
23 Islands, that I know the Virgin Islands to be; given the  
24 constitutional position, the political realities, the  
25 aspirations and expectations of people of this country. I

1 cannot do anything more than to make every effort not merely to  
2 sit on the sidelines of the Commission of Inquiry of this  
3 magnitude, and that has the potential to a very significant  
4 impact of these islands. It would be very remiss of me not to  
5 make every effort. I would be a great disappointment to the  
6 Constitution. I would be a great disappointment to this  
7 jurisdiction if I did not make every effort. I intend to be  
8 very helpful.

9           And indeed, I say that, from the very outset of this  
10 Commission, I have been very helpful. I have dire resource  
11 constraint. I have given every cooperation and assistance that  
12 I can, I must say at considerable expense in terms of resources  
13 because I do have very dire resource constraints to make sure  
14 that the timetable of this Commission keeps on track to ensure  
15 that public officers understand what their responsibilities are  
16 actually, and ensure that Ministers understand what their  
17 responsibilities are; and to try to make them understand that  
18 this is a process that the law provides for, and these are  
19 responsibilities.

20           So, my purpose of wanting to be here--I know what  
21 counsel says about Section 16, but I would hope that to date  
22 that my actions in respect of the Commission, notwithstanding  
23 what's quite tense political and constitutional reality, should  
24 demonstrate that I would be of benefit, that I would assist,  
25 that I have quite a wealth of knowledge and understanding of the

1 law of this jurisdiction, of the people of this jurisdiction, of  
2 the culture of this jurisdiction, that I daresay again with no  
3 disrespect whatsoever that Mr. Rawat would not have, and I say  
4 it would be most remiss of me to not to make every effort to  
5 make sure that I'm in a position to ensure that you, as  
6 Commissioner, are fully and properly informed both in context  
7 and in facts of any matters which may be before you.

8 COMMISSIONER HICKINBOTTOM: That's helpful. Thank  
9 you, Attorney.

10 Just to go back to the questions, the first question  
11 was why do you need to be a participant? I think the  
12 answer--correct me if this is wrong--is that you don't need to  
13 be a participant to provide information because you could  
14 provide information in any event. But you say that, in respect  
15 of governance generally, you're responsible for governance?  
16 What's your role in governance? My understanding is that, in  
17 terms of executives, the Governor is responsible for governance,  
18 the good governance.

19 And I appreciate that you are the Legal Adviser to the  
20 Governor because you're the Legal Adviser to all the limbs of  
21 government, but why are you responsible for governance  
22 generally?

23 ATTORNEY GENERAL SMITH: Well, what I would say to  
24 that, I see the distinction that you're trying to make with  
25 respect to the Governor, but the mission of the Chambers is

1 written there, is to uphold good governance in the public  
2 service. That is stated as the mission.

3 COMMISSIONER HICKINBOTTOM: The mission, as I  
4 understand it, the Legislature, is to make good laws, but  
5 that's--

6 ATTORNEY GENERAL SMITH: Right, but if I dare say so,  
7 sir, again, I don't understand when I say it's their  
8 responsibility, the law is good governance. That is my  
9 responsibility; right? Matters which may contribute to poor  
10 governance which may, in turn, lead to breach of laws and  
11 matters of that kind. I find it difficult to divorce it from my  
12 responsibility. I'm not saying that my responsibility overtakes  
13 governance. I'm saying that issues of governance has to be  
14 important to the principal Legal Adviser to the Government  
15 because, in any legal advice by the essence of law is good  
16 governance. It is being able to follow the rules, is being able  
17 to understand what is best practice.

18 I say that so I don't know if I'm asked questions on  
19 this point.

20 COMMISSIONER HICKINBOTTOM: What you have said is of  
21 assistance as to where you see your role. I'm just trying to  
22 see why you're a participant. Again, let me try again and  
23 reformulate it. I don't want to put words into your mouth. I  
24 just want to see why you are concerned with the issues in the  
25 Terms of Reference. You focus on governance, perfectly

1 understandable given your position, but

2           Are you saying--and this is not even a vague  
3 suggestion of what might be found; it's simply a hypothesis--but  
4 if I were to find the governance in the territory was poor, was  
5 inadequate, are you saying that you, as the Attorney, would bear  
6 some responsibility for that? Others might or the Governor  
7 might or the Ministry or Ministries or whatever. You're saying  
8 you, simply as Attorney General, you may be criticised for that.  
9 Because if that's what you are saying, you may well be a  
10 participant. I just want to make sure that's what you're  
11 saying.

12           ATTORNEY GENERAL SMITH: Right.

13           I think two things: Number one, I believe I would be  
14 responsible for ensuring and for assisting and for participating  
15 to make sure that any part of any poor governance in government  
16 is rectified, whether it is in assisting in determining what are  
17 the relevant standards, what is the law, how it may best be  
18 effected, ensuring that laws are passed, ensuring that any  
19 protocols or standards of whatever actually exists within the  
20 Government. This is something that I do every day.

21           Depending on what you find, it may well be that some  
22 of those matters may be under my area of direct responsibility,  
23 in which case I would have to answer, I would believe, and give  
24 an explanation as to why that was the case.

25           So, while I don't say that--I do not purport to take

1 over the Governor's responsibilities, I respect those, and I'm  
2 very much aware and supportive of what those are, but the  
3 principal Legal Adviser to the Government of the Virgin Islands  
4 is inextricably linked to matters of governance, any issue for  
5 governance is going to be addressed to me. It might be a breach  
6 of the law. It may be that we need to ensure how the Government  
7 operates. See, my role is not only to step up when things go  
8 wrong. It's also to step up to ensure as far as possible.

9 COMMISSIONER HICKINBOTTOM: If I might say, that's  
10 really, really helpful. It's very clear.

11 It's broken down into two parts. I think you  
12 mentioned firstly that there may be areas for which you are  
13 directly responsible, governance possibly, but also law  
14 enforcement and justice system, so there may be areas where it's  
15 possible you could be, depending on what the information is,  
16 criticised directly, but also you could be criticised if the  
17 governance was poor and not rectified. It also depends on the  
18 circumstances. There may be lots of circumstances where there  
19 is poor governance, and that has nothing to do with you. That  
20 is at least a potential area of potential criticism. That's  
21 very clear and very helpful.

22 Just moving on, then, to the second question--and you  
23 dealt with this to a certain extent, and that is the public  
24 interest.

25 I mean, you've appointed Mr. Rawat to his statutory

1 role. Just take it in stages: Do you accept that it is his  
2 role to act in the public interest? I mean, just while you're  
3 thinking about it, I have to say that seems to me apparent his  
4 role.

5 ATTORNEY GENERAL SMITH: I think, Commissioner, to be  
6 quite frank, that would be my answer. In fact, I was going to  
7 say that I couldn't envisage that part of his role would not be  
8 the public interest, given the nature of what an inquiry is,  
9 given that the legislation expressly makes provision for him to  
10 be appointed, and also that the appointment would be given to me  
11 because--and I would say this, because a recommendation was made  
12 for Mr. Rawat to be appointed, but I addressed my mind to that  
13 appointment to satisfy myself that I thought that he would be  
14 jurisprudential, quite impressive, and I thought it was fitting  
15 that somebody of his stature would be here.

16 COMMISSIONER HICKINBOTTOM: That's very fair and, with  
17 respect, I think, correct.

18 Now, what you say, though, is that the public interest  
19 is also an integral part of your role when you do participate in  
20 the COI or, alternatively--well, when you would participate in  
21 COI since they alternatively ultimately represent Ministers who  
22 participate. How does that work? You're representing  
23 Ministers. How does the public interest and representing the  
24 Ministers, how does that work together, and how is that not in  
25 conflict?



1           ATTORNEY GENERAL SMITH: Yes. I think that's a very  
2 good question, Commissioner, and I'm happy to address you on it.

3           Ministers are part of the Government structure.  
4 Unfortunately, they're also politicians. As a result, it is  
5 often difficult, I found, certainly in the context of Virgin  
6 Islands law, people to understand that they're not merely  
7 politicians. They are Ministers, and the responsibilities  
8 attached to a Minister comes from the Constitution. It's a very  
9 serious role that they may must play.

10           And I can put it like this: Sometimes I'm  
11 disappointed that people dismiss Ministers as politicians as if  
12 it is an excuse for them not to be able to or not to have to  
13 work for us in all consciousness to dismiss them from a  
14 particular standard or expectation of the behavior. And I think  
15 it's very important to make that distinction. Ministers are an  
16 important part of the Government established. When you sit with  
17 a ministerial title, when you sit in the ministerial office, you  
18 are carrying out constitutional responsibilities, and I think it  
19 is important--and I'm not saying it as if, I think,  
20 Commissioner, you didn't understand it, but I think it's a very  
21 important point to make because, in my responsibility--in my job  
22 every day, I see people not being able to make that distinction  
23 between the politician and the person who has been entrusted for  
24 the particular period of time with a very high level of  
25 confidence under the Constitution and a high level of

1 responsibility over and above any other elected representatives  
2 who do have specific portfolios to the people of this country.

3 COMMISSIONER HICKINBOTTOM: But why is there not a  
4 conflict when you're acting in the public interest and--

5 ATTORNEY GENERAL SMITH: Let me put it this way, sir.  
6 I think I see where you are going. There may well be a  
7 conflict, but it is a conflict that the Constitution enshrines,  
8 and I go back again to say that is why the Attorney General is  
9 the Attorney General because you have to be able to step back  
10 from everything. You have to be able to hold your own head.  
11 You have to be able to not be anybody's friend because there are  
12 times like that.

13 And for me, this is a great honor, and I wouldn't say  
14 there is a conflict because the conflict that the Constitution  
15 itself prescribes. It is a conflict that a person holding the  
16 Office of the Attorney General must be able to navigate.

17 And it is inherently a conflict, but it is one  
18 that--that is what the rules say so.

19 COMMISSIONER HICKINBOTTOM: If I may, that's very,  
20 very helpful.

21 Now, I think, Attorney, that is clear with all of the  
22 points that Mr. Rawat made.

23 Let me check with Mr. Rawat, if that's the case, and  
24 he could move on to his second head.

25 MR. RAWAT: Yes. I think I will--I heard what the

1 Attorney has said, and if I could just respond briefly on a  
2 couple of points.

3           Firstly that, of course, the Commission will welcome  
4 her assistance in every aspect. I recognise that she has a  
5 degree of knowledge about the Virgin Islands that neither myself  
6 nor Sir Geoffrey have. My point in relation to the public  
7 interest was not about myself as counsel to the Commission but  
8 simply about the role that any counsel to the Commission must,  
9 as a matter of law and convention, play. But I don't think  
10 there is much difference now between myself and the Attorney on  
11 that point.

12           The conflict point, without belaboring, is much more  
13 prosaic. The Attorney explained in eloquent terms her position  
14 in terms of good governance, and ultimately it may be a matter  
15 for the Attorney, but it comes down to this: If you have a  
16 Minister in the course of this Commission who is subject to a  
17 criticism, turn around and say to you, "Don't blame me. The  
18 Attorney told me to do it or advised me or did not advise me."  
19 It puts the Attorney who is at that point instructed on behalf  
20 of that Minister in a difficult position, but I say no more than  
21 that. I'll leave it there and, if I may, just move on to the  
22 second head.

23           COMMISSIONER HICKINBOTTOM: Yes, yes, thank you very  
24 much, Mr. Rawat.

25           MR. RAWAT: I hope I can take that a little bit more

1 shortly because, in fact, some of this has been touched upon in  
2 the exchanges that have occurred between yourself and the  
3 Attorney.

4 I put the second, it comes down to, who is the  
5 Attorney General acting for in this Commission of Inquiry? And  
6 it goes to the second basis on which such representation is  
7 sought in the Application. And with great respect to the  
8 Attorney, I must observe that it has not always been entirely  
9 clear what role the IRU is playing and on whose behalf. I  
10 appreciate from the Application that a number of government  
11 bodies are identified, but nonetheless, given the importance of  
12 ensuring the progress of this Inquiry, clarifications from the  
13 Attorney as to who she and, therefore, Sir Geoffrey and the IRU  
14 represents as well as who she does not will be welcome.

15 And I link back to a point that the Attorney made  
16 earlier, which is that she has the responsibility as the Legal  
17 Adviser to the three elements of governance in these Islands.  
18 And it is perhaps that's where the most clarification would be  
19 helpful, and that is, what is the Attorney's position in terms  
20 of representing individual Ministers, Members of the House of  
21 Assembly as opposed to the House of Assembly itself, and the  
22 Governor in this Commission of Inquiry?

23 The last point I would invite the Attorney to assist  
24 you on is this: We have--the Attorney has shared with the  
25 Commission the guidance that has been issued under her name from

1 the IRU, and it may be helpful for you to know what the position  
2 would be for a public official who does not wish to be  
3 represented by the IRU but who does want to be legally  
4 represented to the Commission.

5 Thank you, that's all I have to say. I hand back to  
6 the Attorney, I think.

7 COMMISSIONER HICKINBOTTOM: Thank you very much,  
8 Mr. Rawat.

9 Attorney, if you could break this down a bit--some  
10 bits are easier than others--the first category of people that  
11 Mr. Rawat mentioned was Ministers. And subject, I don't find  
12 this difficult because a fundamental element of your job is to  
13 represent Ministers, and under Section 56 that means Ministers  
14 and the area of government which they--to which they have been  
15 assigned which includes the departments and Ministers and really  
16 the things on the organogram, so it's something that you say.  
17 It seems to me that you do wish to represent Ministers under  
18 Section 56 and everything under them. That's the basis of the  
19 whole Application. Am I right, or have I misunderstood it?

20 ATTORNEY GENERAL SMITH: The question is whether do I  
21 intend to represent Ministers?

22 COMMISSIONER HICKINBOTTOM: Yes.

23 I'm sorry to interrupt quite so soon, and why it's  
24 sort of very pointed, very important that in terms of the  
25 question of information of summonses, summonses aren't issued to

1 Ministries. They issued often to Ministers or other  
2 individuals, so it's important that we know the people you say  
3 you represent, we got the full scope, so yes.

4 ATTORNEY GENERAL SMITH: Right.

5 I'm actually hoping that Mr. Rawat can give me a bit  
6 more explanation as to what he means when he says "who does the  
7 IRU represent and not represent?"

8 COMMISSIONER HICKINBOTTOM: Certainly we could ask  
9 Mr. Rawat that, but as I understand it, his questions, his  
10 initial questions, who do you represent? Because we know, I  
11 think, the IRU doesn't represent anybody that you don't, which  
12 makes sense, because the IRU actually is through you. So,  
13 perhaps we'll come on to the IRU.

14 But in respect of your position, am I right in the  
15 assumption that you do act for Ministers? Consequently,  
16 they're Ministers in the part.

17 ATTORNEY GENERAL SMITH: Yes, that is correct, but I'm  
18 not sure that I understand the difficulty.

19 COMMISSIONER HICKINBOTTOM: The difficulty is  
20 that--sorry, may not be a difficulty. I may be making up  
21 difficulty, and I apologise if I am, but generally speaking,  
22 constitutionally and under the BVI Constitution, areas of  
23 Government are assigned to Ministers as they are in your  
24 Constitution Section 56, and they are responsible for that area  
25 of Government. As I understand it--and tell me if it's

1 controversial; we don't have to raise it today, but something  
2 that is uncontroversial--that the Minister of any department,  
3 Department X, is responsible for his department under  
4 Section 56. Now, that doesn't make it say that he is  
5 responsible for somebody going off on a frolic on their  
6 own--we've covered that point--but he is responsible for the  
7 workings of his department.

8           And, consequently, in terms of the list of people--we  
9 call them "entities" in Application, but in terms of what the  
10 person who you wish to represent, my own view is Ministers are  
11 probably number one, is Ministers and consequently their  
12 ministries and departments.

13           ATTORNEY GENERAL SMITH: Right. So, I represent the  
14 Government, and there may be an inherent ambiguity in the term  
15 "Government" for the purposes of this Commission of Inquiry  
16 because it is extensive. It covers areas that I'm not aware of  
17 the way it starts, the way it stops. Only you, Commissioner and  
18 Mr. Rawat, would have more insight at this point in time.

19           COMMISSIONER HICKINBOTTOM: But in the Application, in  
20 the diagram, you list the "entities" that you will represent,  
21 and they're in blue, and some are not in blue, and yet you're  
22 not--

23           ATTORNEY GENERAL SMITH: Let me take a look at that.

24           (Pause.)

25           ATTORNEY GENERAL SMITH: I am not sure--well, I can

1 tell you why they are in blue. The ones that are in blue at the  
2 moment are the ones that I know have received communication from  
3 the Commission. Those ones are currently the subject of this  
4 Application.

5 COMMISSIONER HICKINBOTTOM: That's what we see. Thank  
6 you.

7 ATTORNEY GENERAL SMITH: Yes.

8 COMMISSIONER HICKINBOTTOM: You're applying on behalf  
9 of all of these entities that are in blue (drop in audio). In  
10 the Application you find your own whites and for the ministries'  
11 offices and departments and other entities of the Government a  
12 schedule (drop in audio)--

13 ATTORNEY GENERAL SMITH: At moment, yes, sir.

14 COMMISSIONER HICKINBOTTOM: There may be others in the  
15 future.

16 ATTORNEY GENERAL SMITH: There may be others.

17 COMMISSIONER HICKINBOTTOM: You say that, but the  
18 other point with regard to Ministers is that take any Minister,  
19 the Minister of Social Development, constitutionally, Honorable  
20 Carvin Malone, he's the Minister. The Constitution is  
21 responsible for that Minister.

22 ATTORNEY GENERAL SMITH: Yes.

23 COMMISSIONER HICKINBOTTOM: Leaving aside people going  
24 off on their own because that's the constitutional position.

25 ATTORNEY GENERAL SMITH: Yes.



1           COMMISSIONER HICKINBOTTOM: As I understand it, you  
2 will be representing the Ministers and, consequently, their  
3 ministries and departments and all these other--

4           ATTORNEY GENERAL SMITH: Insofar as they are acting in  
5 their official capacity, yes.

6           COMMISSIONER HICKINBOTTOM: Correct.

7           ATTORNEY GENERAL SMITH: So, it may well be, sir--I  
8 mean, the Terms of Reference are very wide. The potential for  
9 this to get messy is there, but we can handle it, I believe,  
10 because it may be that persons in various sections of  
11 Government, whether in the House of Assembly or the Judiciary,  
12 might well say, "The A.G.'s basis going forward. I think we  
13 might get more attention given particular constraints of this  
14 particular inquiry to identify and select and ask a particular  
15 counsel to represent my Ministry or represent my Office in the  
16 Commission". I don't think that's necessarily the conflict. It  
17 may well be what needs to be done to ensure that the Commission  
18 is properly assisted, and that they are, in their own right,  
19 properly represented.

20           So, I don't know at this stage, certainly given my  
21 level of knowledge, that we can say this never happened or that  
22 would never happen. All I know is, on an ordinary day, I  
23 represent all the people in this room. They may very well come  
24 to me and say, "Well, Attorney General, given my role perhaps in  
25 the institution of the Commission of Inquiry, given that you

1 representing the Ministers and I know what I know when I listen  
2 to the Commission of Inquiry, I would prefer not to be  
3 represented by the Attorney General and her team in this  
4 matter," and I don't think that's a problem. And I respect  
5 different persons, which is why I did not, as a blanket, without  
6 asking, say that I'm coming here to represent any and every  
7 Ministry. I've had interaction with all these Ministers, with  
8 Department Secretaries, and with the Cabinet Officers as well to  
9 ensure that we identify and transmit the documents and answer  
10 any queries that come before.

11 COMMISSIONER HICKINBOTTOM: So, in relation to the  
12 blue boxes, as I understand it, you are acting for the Minister  
13 and you're acting for the area of Government which they're  
14 responsible, and that is, of course, individuals, Permanent  
15 Secretary but all sorts of individuals that know them.

16 ATTORNEY GENERAL SMITH: If I understand what you're  
17 saying, I guess I believe that's the case, yeah.

18 COMMISSIONER HICKINBOTTOM: I don't think that you  
19 wish to act for--and I don't think that's particularly difficult  
20 and that the Ministers in different areas of Government that  
21 they represent, not the ones in white--

22 ATTORNEY GENERAL SMITH: No, not the ones in white.

23 COMMISSIONER HICKINBOTTOM: The ones in blue?

24 ATTORNEY GENERAL SMITH: Yes, the ones in blue.

25 COMMISSIONER HICKINBOTTOM: In respect of House of

1 Assembly members, you do you represent them? Individual  
2 Assembly members?

3 ATTORNEY GENERAL SMITH: I'm not making that  
4 Application here today. And, to be quite frank with you, I am  
5 aware that these things on my plate is too full, and that making  
6 steps to secure their own representation as members of the House  
7 of Assembly in their official capacity, so I could be very  
8 candid that I understand that, and I understand that.

9 COMMISSIONER HICKINBOTTOM: That's fine. It's not  
10 part of the Application.

11 ATTORNEY GENERAL SMITH: No, it's not.

12 COMMISSIONER HICKINBOTTOM: You're going to represent  
13 them?

14 ATTORNEY GENERAL SMITH: Yes.

15 COMMISSIONER HICKINBOTTOM: That's coming further down  
16 the line?

17 ATTORNEY GENERAL SMITH: Yes.

18 So that is why I am comfortable saying that I know  
19 there may be different permutations when it comes to  
20 representation, and that happens when you have a very big  
21 client.

22 COMMISSIONER HICKINBOTTOM: That's fine.

23 Mr. Rawat is, I think, that individual has Assembly  
24 members as opposed to acting for the House--advising the House  
25 of Assembly, advising individual Assembly members on those

1 specific issues may not fall within your reach.

2 ATTORNEY GENERAL SMITH: May not fall within my reach.

3 COMMISSIONER HICKINBOTTOM: We don't have to decide  
4 that today?

5 ATTORNEY GENERAL SMITH: We don't have to decide that  
6 today, and I should be clear about that because you will have  
7 seen in the Guidance Notes that have been disclosed that I have  
8 been very clear to the members of the House of Assembly of the  
9 limits to which I can assist them. If you have personal concern  
10 account acting in their personal capacity, that is not for the  
11 Attorney General but to secure their own legal representation.

12 COMMISSIONER HICKINBOTTOM: I see.

13 ATTORNEY GENERAL SMITH: And I believe the  
14 Commissioner will recall that I have taken in some cases that  
15 certain matters were matters of an official nature as opposed to  
16 matters of a personal nature, and I have corresponded to the  
17 Commission accordingly.

18 COMMISSIONER HICKINBOTTOM: That's good.

19 And what about the Government?

20 ATTORNEY GENERAL SMITH: If I may speak candidly,  
21 Commissioner, I know that the Government was supposed to  
22 institute the Commission of Inquiry, and I saw, as would have  
23 been expected, I assisted them in preparing the instrument of  
24 appointment, appointing counsel to the Inquiry and so on.

25 Naturally, I believe that the--Commissioner, the

1 reality, as I said before, that this is speaking for the  
2 background of political and constitutional tensions that  
3 manifest themselves sometimes in conflicts between the Governor  
4 and the elected government. And I think it is fair to say that,  
5 in this particular case, I understand not to be represented by  
6 Sir Geoffrey and the Withers team. He hasn't gone so far as to  
7 say, "I do not want to be represented by you," but I understand  
8 the reservation that he will have. So, if it is, he's welcome  
9 to be represented by the team that I have constituted for the  
10 purposes of this Inquiry, but I do know he has some  
11 reservations.

12 COMMISSIONER HICKINBOTTOM: Because it seems to me  
13 that it's likely that we'll be asking the Governor questions  
14 (drop in audio) of the Constitution. Do you see any conflict  
15 between that and representing the Minister?

16 ATTORNEY GENERAL SMITH: Absolutely, absolutely no  
17 conflict, sir. It anything to be called a conflict, it's an  
18 inherent conflict because I believe--this is not an adversarial  
19 matter. It is a matter of an inquiry. You would be asking him,  
20 I believe, particular types of questions. I would be seeking to  
21 ensure that the proper context around any answers that he gives  
22 is provided, that any relevant facts that he may have omitted to  
23 mention that I'm aware of and see are relevant to what the  
24 Commission has to do I brought to your attention. It is not  
25 something that is difficult for me. It is a role that I play

1 every day.

2           But, you know, he may well feel because those tensions  
3 are very real, and those tensions again is one of the reasons  
4 why I think it's so important for the Attorney General to be  
5 seen, to be involved, and from that for me that is for the  
6 Attorney General to be involved. Because those conflict exists  
7 and create certain perceptions around the Inquiry that I would  
8 myself hope to be in a position to assure members of the public  
9 that they don't need to be so concerned about, but, you know, if  
10 I'm not myself giving that assurance and it is not a message I  
11 can easily give.

12           But I don't see that there is a conflict between the  
13 Ministers carrying out their responsibilities under the  
14 Constitution and the Governor carrying out his responsibility  
15 under the Constitution and as to how he does it, because every  
16 day I advise both of them what these responsibilities are.

17           And we cannot ignore the tensions, but at the same  
18 time we did not allow it to break down what the Constitution  
19 envisages, that they would be able to work together. The  
20 Governor has his responsibilities being the elected  
21 representatives as Ministers have their responsibilities, but  
22 ultimately it is one Government inasmuch as there is that  
23 conflict in ambiguity and how it would operate in a jurisdiction  
24 such as the Virgin Islands because of the nature of the  
25 relationship to the United Kingdom.

1 COMMISSIONER HICKINBOTTOM: The Government.

2 ATTORNEY GENERAL SMITH: Yes.

3 COMMISSIONER HICKINBOTTOM: Because you've reserved  
4 your position and you may well want to make recommendations, but  
5 how am I going to know whether the recommendations are yours--if  
6 you may be a participant, whether they're the Ministers--if  
7 you're representing Ministers in the COI, or the Governors--who  
8 you may or may not be representing in the COI. And the  
9 recommendations may not be the same.

10 ATTORNEY GENERAL SMITH: They may not be the same, but  
11 I would say to you that they're not mine. If these are  
12 recommendations being made as Attorney General, they're being  
13 made as recommendations for COI. If they're being made by the  
14 Governor, they're being made for the Agency. If they're being  
15 made by the Minister, then may have already been said, and  
16 certainly I would not purport that any recommendations which  
17 were not mine that they were, as good as they will be.

18 COMMISSIONER HICKINBOTTOM: You said sort of inherent  
19 conflict.

20 ATTORNEY GENERAL SMITH: Yes.

21 COMMISSIONER HICKINBOTTOM: And there may be different  
22 views, let's put it that way, but in putting them forward, you  
23 or they will make it clear whose views they were?

24 ATTORNEY GENERAL SMITH: Yes. Oh, absolutely, yes.

25 COMMISSIONER HICKINBOTTOM: Okay. I think that covers

1 the second.

2 Mr. Rawat, does that cover the second head adequately?

3 MR. RAWAT: Yes, sir. I hope you can hear me, still.

4 I think what I understand from the Attorney's position  
5 is that--and she asked earlier for some clarification as to the  
6 point about the IRU and Sir Geoffrey--what we understand the  
7 position to be is that, for purposes of this Commission, the  
8 Attorney General, on behalf of Government, has instructed IRU  
9 and Sir Geoffrey, so all the correspondence and, indeed, public  
10 statements have been that the IRU and Sir Geoffrey act on behalf  
11 of Government.

12 The position at the moment is that they are instructed  
13 to act on those government bodies that are named and shaded in  
14 blue in the Application. The one observation I would make is  
15 that a Letter of Request from the Commission of Inquiry is not  
16 what triggers or should trigger an Application. It's to be  
17 represented. It should be that you come within Section 12 of  
18 the Act, and follow the protocol that you have issued, sir.

19 The point is where I'm perhaps struggling in  
20 understanding the Attorney's position is that if I take the  
21 starting point she's the Legal Adviser of Government, and she  
22 has instructed the IRU and Sir Geoffrey to act on behalf of  
23 Government, then every element of Government is covered. The  
24 position I think we are left in at the moment is there may be  
25 elements of Government who decide because the Attorney, to



1 borrow her phrase, has too much on her plate to be represented  
2 by others.

3 But the Attorney, herself as Attorney, does not see  
4 any conflict with her representing and, therefore, Sir Geoffrey  
5 representing and the IRU representing the members of the House  
6 of Assembly in their official capacity and the Governor in his  
7 official capacity. I think that's the point we have reached on  
8 that thing, and I think there is nothing further we could do  
9 with it today.

10 COMMISSIONER HICKINBOTTOM: Subject to what the  
11 Attorney says, I think that's right. From what the Attorney has  
12 said, the position of her being instructed is reactionary, and  
13 she has--she is instructed by those Ministers on the organogram  
14 in blue because they have been served with summonses, she does  
15 not represent in the COI anybody else, any of the boxes in  
16 white, so she does not represent the whole of the BVI  
17 Government. She simply represents the Ministers and not all of  
18 them. That's the current position.

19 ATTORNEY GENERAL SMITH: At the moment, sir.

20 COMMISSIONER HICKINBOTTOM: The Attorney General has  
21 confirmed that.

22 So, it's wrong to portray the IRU as representing the  
23 Government. It represents--because you can't represent anything  
24 more than the Attorney represents, and that is--

25 ATTORNEY GENERAL SMITH: But let me be--let me confirm

1 that I understand what you're saying, sir.

2 This is an Application in respect of the boxes in  
3 blue.

4 COMMISSIONER HICKINBOTTOM: Yes.

5 ATTORNEY GENERAL SMITH: Right.

6 Because we asked of you that the acts  
7 concerned--because we have been receiving requests. I heard  
8 Mr. Rawat say that, because they received requests, that doesn't  
9 mean that they are concerned.

10 COMMISSIONER HICKINBOTTOM: Sorry, just to stop you,  
11 what he said was they can't be concerned because they received  
12 the requests.

13 ATTORNEY GENERAL SMITH: Right.

14 COMMISSIONER HICKINBOTTOM: They must be concerned or  
15 not, irrespective of whether they received a summons.

16 ATTORNEY GENERAL SMITH: Right, but why I can assist  
17 you with why they are concerned. I don't know if he was  
18 saying--by making that statement that he was saying that they  
19 ought not to be represented, and I wanted to be careful about  
20 that.

21 COMMISSIONER HICKINBOTTOM: When you say "they," who  
22 do you mean?

23 ATTORNEY GENERAL SMITH: The persons listed in blue.

24 COMMISSIONER HICKINBOTTOM: Not saying they shouldn't  
25 be represented, but at the moment you represent those in blue?

1           ATTORNEY GENERAL SMITH: Yes, as purposes of making  
2 Application on behalf of those in blue.

3           The Inquiry Response Unit is at the disposal of the  
4 entire government, and any statutory body who they feel that  
5 they need assistance. In most cases, statutory bodies have  
6 said, "Well, you have your own representation," and so on and so  
7 forth.

8           COMMISSIONER HICKINBOTTOM: I'm sorry, you represent  
9 those in blue--as the Attorney General, you represent those in  
10 blue. You do not represent, for the purposes of the COI, those  
11 in white.

12          ATTORNEY GENERAL SMITH: For the purpose of being a  
13 participant. I'm not asking for that status on behalf of those  
14 in white. I don't know if we're on the same page.

15          COMMISSIONER HICKINBOTTOM: I'm not sure we are.

16          ATTORNEY GENERAL SMITH: Yeah.

17          COMMISSIONER HICKINBOTTOM: You represent those in  
18 blue.

19          ATTORNEY GENERAL SMITH: Yes.

20          COMMISSIONER HICKINBOTTOM: In the COI, you don't  
21 apply to represent those in white.

22          ATTORNEY GENERAL SMITH: That is correct.

23          COMMISSIONER HICKINBOTTOM: You represent those in  
24 blue?

25          ATTORNEY GENERAL SMITH: Yes.

1           COMMISSIONER HICKINBOTTOM: For the purpose of the  
2 COI, the IRU, which can't represent more than you represent,  
3 represent those in blue?

4           ATTORNEY GENERAL SMITH: At the moment, yes.

5           COMMISSIONER HICKINBOTTOM: In the future.

6           ATTORNEY GENERAL SMITH: But it may well be that those  
7 other ministries at some point may have to make the Application.

8           COMMISSIONER HICKINBOTTOM: That's fine. And then you  
9 will make an Application more straightforward with this.

10          ATTORNEY GENERAL SMITH: I do, sir, yes.

11          COMMISSIONER HICKINBOTTOM: But you'll make an  
12 Application and they will probably add it, but at the moment--at  
13 the moment--you act for those in blue and you act for those in  
14 blue. You don't act for those in white, and the IRU doesn't  
15 represent those in white. The IRU can't represent anyone that  
16 you don't represent.

17          ATTORNEY GENERAL SMITH: Yes, but outside--this is why  
18 I want to be careful about this point because I don't want to  
19 miss it because if somebody from one of those Ministries pose  
20 questions of the IRU, that will be answered.

21          COMMISSIONER HICKINBOTTOM: And then--

22          ATTORNEY GENERAL SMITH: So, at the moment I do  
23 represent them, but I'm not speaking--I'm not seeking that they  
24 be made participants on this Application.

25          COMMISSIONER HICKINBOTTOM: But you don't represent

1 them because they haven't asked you to represent them. You  
2 can't represent them willy-nilly. If the Minister of Education,  
3 for example, wants you to represent him as a participant in the  
4 COI, they will ask you, and you will say "yes, but," and then  
5 the IRU will represent it. But at the moment he hasn't.

6 ATTORNEY GENERAL SMITH: So, what is the way in which  
7 you're using the term "IRU"?

8 COMMISSIONER HICKINBOTTOM: It's a tool that you set  
9 up.

10 ATTORNEY GENERAL SMITH: Okay.

11 COMMISSIONER HICKINBOTTOM: The IRU is a team you set  
12 up and we know very little about it, but you've set it up, and  
13 you've described it as a team of members of Withers and the  
14 Attorney General's Chambers led by Sir Geoffrey Cox.

15 ATTORNEY GENERAL SMITH: Right.

16 COMMISSIONER HICKINBOTTOM: So the work could  
17 continue.

18 I mean, it's not a very startling proposition. All  
19 I'm saying is that the IRU cannot represent anyone that you  
20 don't represent because the representations through you, and at  
21 the moment things may change in the future. But at the moment,  
22 it's the blue Ministers you represent and the ones that are not  
23 in blue that you don't represent at the moment.

24 ATTORNEY GENERAL SMITH: Not in the Inquiry.

25 COMMISSIONER HICKINBOTTOM: Not for this Inquiry.

1 ATTORNEY GENERAL SMITH: But I hope you--

2 COMMISSIONER HICKINBOTTOM: No, I think we are. When  
3 anyone says that in the Inquiry you act for the BVI  
4 Government--I mean, I know it's a shorthand. It's not a  
5 criticism.

6 ATTORNEY GENERAL SMITH: Yes.

7 COMMISSIONER HICKINBOTTOM: But it's a shorthand.

8 ATTORNEY GENERAL SMITH: Yes.

9 COMMISSIONER HICKINBOTTOM: It's in blue, and then--

10 ATTORNEY GENERAL SMITH: Yes.

11 COMMISSIONER HICKINBOTTOM: Okay. Again, sorry that  
12 was a lengthy but again helpful answer. Thank you.

13 Mr. Rawat. Moving on the third head.

14 MR. RAWAT: But I have noticed the time.

15 COMMISSIONER HICKINBOTTOM: So have I. It's certainly  
16 hasn't been an interrupted morning. Subject to everybody else,  
17 we should have a break at some point, but the next head is, I  
18 think, quite a short one.

19 MR. RAWAT: Well, yes, if you're happy to continue,  
20 sir, I am, and I will try to finish shortly.

21 COMMISSIONER HICKINBOTTOM: Yes we will see where we  
22 are at half past 1:00, but we should have a break certainly for  
23 those who are Linked-In remotely. These hearings are very  
24 tiring, I know from experience, so we will give everybody a  
25 break, but do you want to set out three?

1 MR. RAWAT: Yes.

2 Just to remind the Attorney, it was the basis on which  
3 she authorises disclosure to the COI because, to give it some  
4 context, very recently, on the 20th of April 2021, the Premier  
5 of the Virgin Islands gave the House of Assembly an outline of  
6 the extent of the response of Government to requests from the  
7 COI. You will remember, sir, that the COI has in place a  
8 two-stage process in relation to disclosure, which means that,  
9 in the first instance, it is made to the Commission alone.

10 Now, hitherto, our understanding had been, and you  
11 referred to this in your opening remarks, that the Attorney  
12 General has instructed the IRU to disclose on the basis of a  
13 provisional waiver of legal professional privilege and of public  
14 interest immunity. The Premier's statement to the House of  
15 Assembly has given rise to the impression that this may no  
16 longer be the case. And, in fact, the Government, no doubt with  
17 the hope of promoting a transparent inquiry, will no longer be  
18 asserting privilege or public interest immunity.

19 And can I just, I think, take the point--the point I  
20 want to raise to ask the Attorney today to clarify the position.  
21 Is it that legal professional privilege and public interest  
22 immunity have been waived permanently, or is it that there is  
23 still a provisional waiver in place?

24 COMMISSIONER HICKINBOTTOM: If you might.

25 ATTORNEY GENERAL SMITH: If I may, Commissioner, can

1 Mr. Rawat please direct me to that portion of the Premier's  
2 statement, please?

3 MR. RAWAT: Well, you wouldn't have it in your bundle  
4 or have it you with. It was on YouTube, and it has been  
5 reported in, for example, the BVI Beacon. It's not--if it may  
6 help the Attorney, it's not a big point. It's really seeing  
7 clarification as to her position at the moment on disclosure.  
8 We had understood to be that, in terms of professional privilege  
9 and public interest immunity, this was a provisional waiver.  
10 The impression has been given that this may be now a permanent  
11 waiver, and she's the best-placed person to assist us whether  
12 that position has changed or is, in fact, still the same.

13 ATTORNEY GENERAL SMITH: Thank you, Commissioner. If  
14 I understand correctly, there is no absolute waiver.

15 COMMISSIONER HICKINBOTTOM: Right.

16 ATTORNEY GENERAL SMITH: There is no absolute waiver.  
17 It's still me making disclosures on a provisional basis. And  
18 I'm unclear as to which portion of the Premier's statement that  
19 impression would not come from.

20 COMMISSIONER HICKINBOTTOM: Let's leave whatever  
21 Premier said aside at the moment, and we can probably find it--I  
22 think Mr. Rawat is asking for what the actual position is, if  
23 it's been misunderstood or even misrepresented, that doesn't  
24 matter for the moment. So, the position with legal professional  
25 privilege or any sort of privilege or confidentiality is



1 documents will be disclosed so the Commission, as it were,  
2 confidential in the sense that the Commission will not publish  
3 any of the documents without reference back to you, and then  
4 there will be a second stage in which any issues of privilege  
5 which need to be dealt with will be dealt with.

6 Is that generally the position?

7 ATTORNEY GENERAL SMITH: Yes.

8 COMMISSIONER HICKINBOTTOM: There might be exceptions,  
9 but is that the default position?

10 ATTORNEY GENERAL SMITH: Yes. The default position  
11 still exists, and I believe that every disclosure that was made  
12 to the Commission, those restrictions as set out, so no  
13 restriction that has been indicated in correspondence to the  
14 Commission has been changed or modified or waived absolutely so.

15 COMMISSIONER HICKINBOTTOM: That's clear.

16 In relation to a recent e-mail, the commercial  
17 contract with Withers.

18 ATTORNEY GENERAL SMITH: Yes.

19 COMMISSIONER HICKINBOTTOM: Legal professional  
20 privilege has been raised as, I think, a reason rather than the  
21 reason for not disposing those documents. I think that's the  
22 only--in the documents in which the points have been raised.

23 Why has it been raised in respect of that commercial  
24 contract?

25 ATTORNEY GENERAL SMITH: Yeah, so that's a contract

1 that arose after the Commission of Inquiry was established.

2 COMMISSIONER HICKINBOTTOM: Yes.

3 ATTORNEY GENERAL SMITH: And it arose as a direct  
4 consequence of the establishment of the Commission of Inquiry,  
5 and it just seemed inappropriate at the time. I believe that  
6 issues of privilege--legal professional privilege, yes--I am--

7 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,  
8 but what privilege is it, it's not your privilege, but whose  
9 privilege is it? Who holds legal privilege?

10 ATTORNEY GENERAL SMITH: To--

11 COMMISSIONER HICKINBOTTOM: You say that there are  
12 issues of privilege in respect to these contracts, who holds the  
13 privilege and asked to waive it?

14 ATTORNEY GENERAL SMITH: Has the Government been  
15 asked--

16 COMMISSIONER HICKINBOTTOM: Whichever the Government  
17 may be.

18 ATTORNEY GENERAL SMITH: Well, there are contracts  
19 with the Government.

20 COMMISSIONER HICKINBOTTOM: When you say "the  
21 Government," be a little more precise. Who do you say holds the  
22 privilege? Who have you gone to and said, "Can I waive the  
23 privilege?", and they said "no"?

24 ATTORNEY GENERAL SMITH: Well, I don't know that I  
25 have gone to anybody and said will you waive the privilege.

1 COMMISSIONER HICKINBOTTOM: Okay.

2 ATTORNEY GENERAL SMITH: But I have been asked to  
3 consider on their own behalf the circumstances in which  
4 privilege could be waived provisionally because generally my  
5 advice to them would be that we are--their privilege is their  
6 privilege, so what I go back and I say is we are not disclosing  
7 this for this reason or for that reason. That is my--the way we  
8 normally operate.

9 So, when I say it's privileged--and, frankly,  
10 privilege is not the only reason--I just thought it was  
11 inappropriate at this particular point in time given that the  
12 situation arose after the Commission had been established and  
13 directly as a consequence of the establishment of the Commission  
14 of Inquiry. I didn't think that it would have any bearing on  
15 the matters in the Commission because at the time the Commission  
16 came into being, it was not there.

17 If you would--I did not think that it was appropriate.  
18 I really did not.

19 COMMISSIONER HICKINBOTTOM: Right.

20 But, I mean, when you say "appropriate," I think you  
21 mean "relevant"? But relevance, of course, is a matter of  
22 course for me.

23 ATTORNEY GENERAL SMITH: I meant appropriate.

24 But what I'm say is, at the time the Commission of  
25 Inquiry was established to inquire into particular events that

1 existed; right? Naturally, this issue will be sensitive of the  
2 retention of counsel, their terms and conditions, et cetera, et  
3 cetera, et cetera.

4 COMMISSIONER HICKINBOTTOM: What do you mean by  
5 "sensitive"?

6 ATTORNEY GENERAL SMITH: "Sensitive" in the context of  
7 the Virgin Islands, sensitive-sensitive.

8 COMMISSIONER HICKINBOTTOM: With respect, there are  
9 lots of things that are disclosed to the Commission are  
10 sensitive in that sense. Lots of contracts have been disclosed  
11 to the Commission of Inquiry, and some of them--

12 ATTORNEY GENERAL SMITH: Yes, so is the Commission  
13 saying they would like to have these documents on a provisional  
14 basis?

15 COMMISSIONER HICKINBOTTOM: I was just asking why they  
16 have not been disclosed.

17 ATTORNEY GENERAL SMITH: I thought it was  
18 inappropriate, and that is the answer to that question. I  
19 thought it was inappropriate.

20 COMMISSIONER HICKINBOTTOM: We don't have to waste  
21 time--

22 ATTORNEY GENERAL SMITH: And I can assure you those  
23 are the only documents like that because this is really about  
24 the Inquiry.

25 COMMISSIONER HICKINBOTTOM: Because we've got so

1 little time, I don't want to spend too much time on this, but  
2 perhaps you could write to us setting out precisely why these  
3 documents have not been disclosed or disclosing them.

4 (Overlapping speakers.)

5 COMMISSIONER HICKINBOTTOM: Or (drop in audio). That  
6 would be helpful. That will deal with that point.

7 Mr. Rawat wanted to know whether the person whose  
8 privilege it was has been passed in respect of waiver, but I  
9 think possibly not. I'm not--again, no criticism at the moment  
10 because you are going to take instructions on that, which is  
11 fine.

12 Mr. Rawat, in respect of that head, is that all on  
13 that head?

14 MR. RAWAT: Yes. May I move to the last one that I  
15 wish to raise?

16 COMMISSIONER HICKINBOTTOM: Because the last one may  
17 take longer than 10 minutes. Should we have a 10-minute break  
18 now--I think that's probably a good idea--and come back at about  
19 half past 1:00?

20 MR. RAWAT: Thank you, sir.

21 COMMISSIONER HICKINBOTTOM: I think that would be  
22 helpful. And I think the technician here can mute everybody and  
23 then come back, and hopefully we will all still be here.

24 ATTORNEY GENERAL SMITH: Okay.

25 COMMISSIONER HICKINBOTTOM: We stand adjourned until

1 half past 1:00. Thank you very much.

2 (Recess.)

3 COMMISSIONER HICKINBOTTOM: Good. I think we're all  
4 back and hopefully all connected.

5 Mr. Rawat, do you want to present your fourth head?

6 MR. RAWAT: Thank you, sir.

7 I think the fourth head was headed the role to be  
8 undertaken by Sir Geoffrey and by Withers. And if I could begin  
9 by just giving some background, on the 21st of April 2021, a  
10 tweet appeared on the official Twitter account of the Government  
11 of the Virgin Islands, and I would like to read that tweet into  
12 the record in its entirety.

13 It says as follows: "The Attorney General has asked  
14 Sir Geoffrey Cox QC to carry out an independent and objective  
15 review of the matters that are the subject of the COI in order  
16 to assist the COI in due course." And it then had the following  
17 hashtags: "Working together," "BVI," "COI," "collaboration,"  
18 and "HOA."

19 This was followed on the 26th of April with a press  
20 release from the Government which reads as follows: "The  
21 Attorney General, on behalf of the Virgin Islands Government,  
22 has asked Sir Geoffrey Cox QC to carry out an objective internal  
23 review of all aspects"--sorry, "of all aspects of the governance  
24 of the Virgin Islands, including areas of Government activity to  
25 which the COI's requests have in the main been addressed, and to

1 advise the Government of his conclusions. This work will, among  
2 other things, enable the Attorney General to better assist the  
3 Commission of Inquiry in the coming months and draw relevant  
4 matters to its attention. Sir Geoffrey will also, where  
5 appropriate, represent the Attorney General and the Government  
6 at the forthcoming oral hearings before the Commissioner. Sir  
7 Geoffrey Cox QC, who is currently in quarantine, intends to hold  
8 a series of meetings with Government Ministers in the next few  
9 weeks initially virtually and then on completion of quarantine  
10 in person, and will visit ministries and departments to explore  
11 relevant issues in detail with policy and decision-makers."

12 I will stop reading there from the press statement.

13 Sir, you will also have noted in Paragraph 5 of the  
14 Attorney's Application that it was not until the 28th of April  
15 that Cabinet resolved that Sir Geoffrey should represent  
16 Government entities. In any event, the two public statements  
17 that I have just read out will, in my submission, give the BVI  
18 public the unequivocal impression that the Attorney General has  
19 instructed Sir Geoffrey to undertake the review in parallel to  
20 your own investigation. Indeed, the work of this review may  
21 have already begun.

22 It prompts a series of questions which, in my  
23 submission, are fundamental:

24 The first is the review is described as "independent."  
25 Who is it independent of?

1           The second is on whose behalf is Sir Geoffrey  
2 instructed to undertake this review? The Attorney General, as  
3 she eloquently explained, is the law officer for the whole of  
4 Government, and that under the Virgin Islands Constitution  
5 includes the Governor. The BVI public may consider it a strange  
6 turn of events for the Governor to seek an internal review,  
7 having established this Commission of Inquiry.

8           The third question is: What are the Terms of  
9 Reference of this review, and when will it be completed? The  
10 public statements contemplate that its product will be fed into  
11 the COI.

12           The fourth is that while it is said in these public  
13 statements that a review will enable the Attorney to draw  
14 relevant matters to the COI's attention, why does the Attorney  
15 consider that it falls to her to determine relevance for the  
16 COI?

17           My next question is to ask whether the Attorney will  
18 be giving the COI access to documents on the same basis that Sir  
19 Geoffrey will see them, which presumably is wholly unredacted.

20           Next, will the conclusions of Sir Geoffrey's review be  
21 published or otherwise put into the public domain? The public  
22 statements are that the conclusions will be presented to  
23 Government. And I think it might assist us to know in what form  
24 they will be presented to Government. If they're presented to  
25 Cabinet, then the results of the outcomes of Cabinet meetings



1 are published in summary.

2           My next question is, I think, the most important one  
3 here and the one most deeply concerning. If Sir Geoffrey's  
4 review is going to go over ground that falls within the scope of  
5 your Terms of Reference, and it appears from the public  
6 statements that that is the very intention behind this review,  
7 if he's going to speak to witnesses from whom you wish to hear,  
8 then why should the product of that review, and even the  
9 evidence that it is based on, not be provided to you? That is  
10 the normal convention in England and Wales. It's routine where  
11 you have an internal review or a review by a regulatory body,  
12 then the product of that gets fed into any inquisitorial process  
13 that has been set up.

14           I said that it's a particularly important question,  
15 and the reason is that what is mentioned is that Sir Geoffrey  
16 will be interviewing Ministers, and that goes to the question  
17 again of whether he will have access to information or documents  
18 that will not be provided to the COI or, if provided, will be in  
19 a very different form.

20           If I conclude in this way, sir, the culmination of  
21 these questions is that now Sir Geoffrey is instructed to  
22 undertake a review and to reach conclusions on the governance of  
23 the Virgin Islands, then he becomes someone--and I need to make  
24 as plain as possible, but he becomes someone from whom you may  
25 wish to hear. And it follows now that having announced this

1 review, or having been said publicly to have announced the  
2 review, the Attorney needs to explain to you why there is no  
3 potential conflict of interest here, not just in relation to Sir  
4 Geoffrey, but also in relation to any other lawyer who may be  
5 assisting in this review.

6 I'll stop there, if I may, and hand over to the  
7 Attorney to respond.

8 COMMISSIONER HICKINBOTTOM: Thank you, Mr. Rawat.

9 There are a number of questions there, Attorney.  
10 Possibly the place to start is on whose behalf is the review has  
11 been conducted? I think the statement says you had called for  
12 the review. I assume you haven't done that entirely on your own  
13 behalf.

14 SIR GEOFFREY COX: Mr. Commissioner, I'm afraid we  
15 can't hear you. I wonder if there is a problem with your  
16 microphone.

17 COMMISSIONER HICKINBOTTOM: Thanks, Sir Geoffrey.

18 (Pause.)

19 COMMISSIONER HICKINBOTTOM: Is that better?

20 SIR GEOFFREY COX: Still quite faint, sir, but I think  
21 we probably can hear you, but it's quite faint.

22 COMMISSIONER HICKINBOTTOM: Okay. Is that better, Sir  
23 Geoffrey? The microphone.

24 (Sound interference.)

25 SIR GEOFFREY COX: Thank you.

1           COMMISSIONER HICKINBOTTOM: Do let me know if you  
2 can't hear me.

3           I was just saying to the Attorney a number of  
4 questions there, but perhaps the starting point was, I think,  
5 the second question Mr. Rawat made, on whose behalf is the  
6 review to be conducted. It's said to be by the Attorney  
7 General, but I assume, that it's not entirely off her own bat.  
8 She will tell us.

9           ATTORNEY GENERAL SMITH: Thank you, Commissioner,  
10 thank you, Mr. Rawat.

11           I think there is about ten questions.

12           COMMISSIONER HICKINBOTTOM: I've got seven but there's  
13 quite a few there.

14           ATTORNEY GENERAL SMITH: I wonder, Commissioner, I  
15 have not had--I didn't have advance notice of the questions. Of  
16 course, I'm very happy to answer to the best of my ability, but  
17 I wouldn't want to answer in a way where I have not fully  
18 considered the precise question. From my point of view, as I  
19 said before--I would and I hope that by nodding you're  
20 agreeing--that I may have an opportunity to complete my  
21 submissions to be in writing, so that right might be because I  
22 think it would be of great assistance. I am very keen that we  
23 are very clear on these points because my sole objective is to  
24 be helpful.

25           I agree with Mr. Rawat that relevance is for you, and

1 I don't want that word to be misconstrued. I think in my mind I  
2 think you may find it relevant, but you may choose not to  
3 consider it, but it is absolutely important to me, as Attorney  
4 General and representing my client or my clients as we see it,  
5 that I do take full and proper instruction, and that's in any  
6 case with which I'm involved. That doesn't mean that there is  
7 some in-depth discussion and consideration of the matter that in  
8 any particular case I am trying to wrap my head around for  
9 whatever purposes.

10 So, I would be very grateful, sir, if you would permit  
11 me to have the opportunity to properly consider these questions  
12 and bring them back to you with some answers.

13 COMMISSIONER HICKINBOTTOM: I think that's very fair  
14 and very proper. If I say so, your submissions today have been  
15 very helpful, and I think--I think--in respect of all of the  
16 other matters, you're going to write on that one privilege  
17 question, but we dealt with the matters to a conclusion, I  
18 think. But these issues are very important. There are at least  
19 two broad issues which concern me:

20 One is the conflict-of-interest point, which Mr. Rawat  
21 is made. That is a concern, or that's primarily a concern for  
22 you and Sir Geoffrey, but it is a concern of mine.

23 And, secondly, the integrity and timing of the  
24 Commission of Inquiry, which is vital to me, it is potentially  
25 adversely affected by some of these issues, and that is a great

1 concern. If a report--and this is just one of many hypotheses  
2 that could be drawn, but if a report was to be produced the day  
3 before I was due to report on the COI, that would be very  
4 unhelpful indeed, or indeed the day after I produced the Report.

5 So, these go to some fundamental issues, I think, of  
6 the Commission of Inquiry, and I think it's absolutely right  
7 that you have time to consider them before making your final  
8 submissions, which can certainly be made in writing.

9 And this is intended to be an open question, not a  
10 leading one. There are some of these matters, such as on whose  
11 behalf is the review to be conducted, which we might make a  
12 start on today, or would you prefer to put that in writing?

13 ATTORNEY GENERAL SMITH: I would prefer to put it in  
14 writing. I have an answer in my head, but I think I should be  
15 careful in responding to you so as not to mislead you in any  
16 way.

17 COMMISSIONER HICKINBOTTOM: Yeah. As I say, your  
18 submissions have been very helpful, and no doubt these  
19 submissions in writing would be equally helpful.

20 ATTORNEY GENERAL SMITH: I don't know if it would be  
21 helpful for another matter, but I would like to clarify that my  
22 understanding is that, in terms of the scope of the Government's  
23 involvement in the Commission that once concerned in any way the  
24 matter under inquiry which we say that the person should be  
25 entitled to be represented at the whole of the Inquiry, and I

1 would like to indicate to you that we accept that that phrase  
2 implies a right to representation to the extent and of the  
3 nature that it is proportionate and fair. In reflection of  
4 these interests or any specific part of proceedings.

5           So what we would anticipate is a flexible case-by-case  
6 judgment by yourself as to the Government's involvement in  
7 issues of fact that may arise at the hearing. And, in our  
8 thinking, it's in the interest of the Government we are required  
9 at the appropriate time when the Government would have access to  
10 the evidence and material before the Inquiry, which can be  
11 relied on and which might be considered by you in influencing  
12 the findings and conclusions in your report.

13           COMMISSIONER HICKINBOTTOM: Yes.

14           ATTORNEY GENERAL SMITH: And that we are permitted to  
15 make submissions or submit evidence; right? It may not  
16 require--and I think it's important for me to say--that the  
17 Government be present at every oral examination. I can  
18 appreciate that. Sometimes this might not always be practical,  
19 might not be convenient or efficient.

20           COMMISSIONER HICKINBOTTOM: Or necessary.

21           ATTORNEY GENERAL SMITH: Or necessary. But if it  
22 would be fair that Government should be present, then we would  
23 say that the government should be present.

24           COMMISSIONER HICKINBOTTOM: I will deal with some of  
25 these points now.

1           In relation to this final topic, you would like to put  
2 in written submissions; I understand that. How long would you  
3 like, Ms. Attorney, to do that?

4           ATTORNEY GENERAL SMITH: I'm looking at the Solicitor  
5 General. I think by Friday we should be--

6           COMMISSIONER HICKINBOTTOM: Friday?

7           ATTORNEY GENERAL SMITH: Yes, sir.

8           COMMISSIONER HICKINBOTTOM: That would be fine, and I  
9 couldn't expect more. That's very helpful.

10           Let me just make sure that Mr. Rawat doesn't have  
11 anything else to say before I deal with the other point you've  
12 got.

13           Mr. Rawat, anything else--any other submissions to  
14 make?

15           MR. RAWAT: No, sir. I mean, I think the last issue--

16           COMMISSIONER HICKINBOTTOM: You now have gone very  
17 weak.

18           MR. RAWAT: All right. I hope you can hear me now.

19           COMMISSIONER HICKINBOTTOM: Yes.

20           MR. RAWAT: All right.

21           In relation to the last matter that I raised, it is  
22 obviously complicated, and I would endorse your view that the  
23 Attorney thus make her submissions in writing, so I have no  
24 further submissions to make, save to thank the Attorney for the  
25 open and helpful way in which she made her submissions today.

1           COMMISSIONER HICKINBOTTOM: I certainly adopt that.  
2 You've been really, very, very helpful.

3           So, if those submissions could come in by Friday.

4           ATTORNEY GENERAL SMITH: Yes, sir.

5           And if you don't mind, I would like to resolve the  
6 right facts to clarify anything under the other topics, not to  
7 unduly burden you, but I would like also--

8           COMMISSIONER HICKINBOTTOM: I was going to determine  
9 the other matters but not obviously if you don't want me to.

10          ATTORNEY GENERAL SMITH: Well, if you are going to  
11 determine them in my favor, then I'm considering what I want to.

12          COMMISSIONER HICKINBOTTOM: But I was considering it,  
13 but if you're going to try to persuade me that I shouldn't, then  
14 I'll give you time.

15          ATTORNEY GENERAL SMITH: I believe you should, sir, if  
16 you are inclined to decide in my favor then I would have nothing  
17 more to say.

18          COMMISSIONER HICKINBOTTOM: Can I say what I'm minded  
19 to do, and you can let me know.

20                 I'm minded to make a direction now because the  
21 Commission of Inquiry needs to press on, and you need to know  
22 where you stand. I propose to make a direction that--and this  
23 is not drafting--I will come on to drafting in a moment--that  
24 you as Attorney General, I think under the rules under the Act  
25 it's actually a declaration that you're entitled to those



1 things, but I declare that you are concerned for the purposes of  
2 Section 12 for the matters in the Inquiry, and consequently are  
3 entitled to participate in the whole of the Inquiry, and  
4 that--and then we will need to draft this--but Government  
5 Ministers and the areas of Government which have been assigned  
6 to them, which will include ministries, offices, departments,  
7 other government entities, and other individuals within all of  
8 those shall also be similarly entitled, and that they be  
9 represented by or through you as the Attorney General. I can't  
10 go further than that because I think we need to see your  
11 submissions in relation to the IRU, Sir Geoffrey's role and with  
12 his role before we go further than that. But I think it's right  
13 that I make that direction.

14           What I propose to do is I can give reasons for that  
15 later, once we've got two things. The Transcript and hopefully  
16 the Transcript of this part of the hearing will be available by  
17 Friday, possibly Saturday or Sunday, but hopefully Friday, and  
18 also your other submissions in relation to the fourth topic  
19 which I can then cover too, and I will do that ruling as quickly  
20 as I can, but the direction we made for you appear for Ministers  
21 and other Government persons as identified in blue on your chart  
22 in the forthcoming hearings.

23           Now, that will give you the right to participate in  
24 the whole of the Inquiry. That, as I understand it, will give  
25 you the right to appear in hearings unless for any reason--I

1 can't think of a reason at the moment, but unless for any reason  
2 I make a direction you can't appear for any particular reason,  
3 you'll have the right to appear in any hearing, not necessarily  
4 ask questions but the right to attend.

5           And in relation to--that will obviously mean that you  
6 will have the right to represent Ms. Ward this afternoon. No  
7 problem at all. And I know there is an associate from Withers  
8 to attend. Irrespective of my decision after I've seen your  
9 submissions, I have no problem with her being present  
10 (overlapping speakers) that's fine because the Solicitor General  
11 may ask questions that need to be asked. So I don't have any  
12 problem with that, and that will simply hold the, not the status  
13 quo, simply will hold matters until I've seen your submissions.

14           In terms of the way in which you proposed to approach  
15 representation at a particular hearing, can I very much endorse  
16 your comments? You said that you would adopt a flexible  
17 approach to representation. You will, in the most part, be  
18 representing witnesses. You may have very few questions for us,  
19 some or any of the Witnesses. I think it's very important that  
20 investigation is scaled and proportionate to that role because  
21 it's important that we all approach all of these issues in a  
22 proportionate way. At the moment, I will simply rely upon your  
23 intent to make sure that the representation is proportionate.

24           Now, is there anything that I have forgotten to ask?

25           ATTORNEY GENERAL SMITH: Commissioner, I don't believe

1 that I'm missing anything, and I'm looking at Sir Geoffrey and  
2 (inaudible) to see if I'm missing something, but what I would  
3 like to conclude by saying is really to reassure you,  
4 Commissioner, that my objective and the objective of the  
5 Government albeit these are difficult circumstances is to be  
6 supportive to the Commission, to respect your timeline, and to  
7 do all that we can do to ensure that you are afforded the  
8 greatest possible assistance in carrying out this Commission.

9 COMMISSIONER HICKINBOTTOM: Good. As I said, thank  
10 you again for your submissions today.

11 I will come on to drafting the direction, but  
12 Mr. Rawat, have you got anything else in response to this part  
13 of the hearing?

14 MR. RAWAT: Nothing. Thank you, sir.

15 COMMISSIONER HICKINBOTTOM: Okay. Just two points.

16 Firstly, in terms of drafting, I think it would be  
17 easier if I produced the first draft of the direction, I will  
18 send it to you and send it to Mr. Rawat and we can make sure  
19 that the direction is an appropriate direction.

20 And lastly, I think lastly, in terms of this part of  
21 the hearing, is there any reason why this part of the hearing  
22 should not be made public?

23 Before you answer, let me say what I would propose to  
24 do, if it were made public, and that is to make the Transcript,  
25 once it's available, available on the website.

1 ATTORNEY GENERAL SMITH: Yes.

2 Could I also submit on that?

3 COMMISSIONER HICKINBOTTOM: Yes, absolutely.

4 ATTORNEY GENERAL SMITH: Thank you, sir.

5 COMMISSIONER HICKINBOTTOM: Yes.

6 ATTORNEY GENERAL SMITH: Yes.

7 COMMISSIONER HICKINBOTTOM: You're going to make  
8 submissions on that?

9 ATTORNEY GENERAL SMITH: Yes.

10 COMMISSIONER HICKINBOTTOM: Do you want to submit them  
11 now or make them in writing?

12 ATTORNEY GENERAL SMITH: I will submit them in  
13 writing.

14 COMMISSIONER HICKINBOTTOM: That's fine. I tell you  
15 why that's fine because I don't think we're going to get the  
16 Transcript before Friday. That's fine.

17 And this is not a pre-judgment--I won't say anything.  
18 Let's see your submissions, and make any submissions, Mr. Rawat,  
19 and I'll make a ruling.

20 SIR GEOFFREY COX: I wonder if I--given that my name  
21 has been taken frequently in vain in the submissions of Mr.  
22 Rawat and your observations, if I might make one very brief  
23 observation in connection with his latter point without  
24 preempting the submissions.

25 May I assure you, Mr. Commissioner, that anything I

1 undertake in this jurisdiction will not be designed to impede,  
2 frustrate, obfuscate or obstruct your fulfillment with complete  
3 impartiality and independence of your mission here. And so, no  
4 such review, if it's correctly to be called such a thing, has  
5 yet been commenced, nor would it be if you had any concerns,  
6 qualms, or other reservations because it's absolutely clear that  
7 my presence here in this island, together with those whom I have  
8 the privilege to lead, their sole focus is on ensuring that you  
9 can discharge your functions as you would expect to do.

10 COMMISSIONER HICKINBOTTOM: Thank you, Sir Geoffrey.

11 I've got the submissions, and we will see where we go,  
12 but thank you for that final submission. I don't think that  
13 there is anything else, then, in respect of this part of the  
14 hearing. What I propose to do simply, so everybody can  
15 reconstitute the room, is we will simply stop now.

16 Ms. Ward, I think, has been put off, at my direction,  
17 until 2:30, so we will start at 2:30. If Ms. Ward is here  
18 before then, we will start before then.

19 Good. Thank you all very much.

20 ATTORNEY GENERAL SMITH: Thank you.

21 COMMISSIONER HICKINBOTTOM: Thank you, Ms. Attorney.

22 (End of Session 1.)

SESSION 2

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MR RAWAT: Thank you, sir.

BY MR RAWAT:

Q. Good afternoon, Miss Ward.

A. Good afternoon.

Q. Hopefully you can hear me. The screen might be frozen, so you might not be able to see me but I hope you can still hear me.

Can I start by just asking you to give the Commissioner your full name, please?

(Audio dropped.)

MR RAWAT: I'm afraid I'm having difficulty hearing Miss Ward.

THE WITNESS: Sandra (unclear) Ward.

BY MR RAWAT:

Q. Thank you. And your professional address?

COMMISSIONER HICKINBOTTOM: Hold on, Mr Rawat. The gentleman at the back is our AV technician, so he will resolve any problem.

THE WITNESS: Sandra (unclear) Ward.

You asked for the professional address? It would be the Cabinet Office, Fleming Street, Third Floor, Elliott Koch (phonetic) Building, Road Town, Tortola.

BY MR RAWAT:

Q. Thank you. It's much easier to hear you now.

1           First of all, can I say "thank you" to you for coming  
2 to give evidence to the Commission today. Your willingness to  
3 assist the Commission is much appreciated. My questions today  
4 are intended to be short and simple, but if you have difficulty  
5 understanding a question or you would like me to repeat it or  
6 rephrase it, then please do ask.

7           A.     Very well.

8           COMMISSIONER HICKINBOTTOM: Could you just hold on a  
9 minute, Mr Rawat. We can see and we can hear you on the big  
10 screen.

11           I suspect, Miss Ward, can you see Mr Rawat on the  
12 small screen?

13           THE WITNESS: I can still see him now. It's still  
14 frozen. It's when I look that way--

15           COMMISSIONER HICKINBOTTOM: And with me. We've got  
16 the same picture. Don't worry about me, but it would help  
17 Miss Ward if she could see Mr Rawat on her screen.

18           (Pause.)

19           COMMISSIONER HICKINBOTTOM: Good.

20           I'm sorry. Carry on, Mr Rawat. I think--

21           MR RAWAT: Thank you.

22           COMMISSIONER HICKINBOTTOM: We can see you and hear  
23 you, albeit in a very small form.

24           MR RAWAT: I'm grateful, sir.

25           BY MR RAWAT:

1 Q. Miss Ward, what I should also say is, I hope you have  
2 in front of you a bundle of documents. Do you have those?

3 A. The black binder?

4 Q. Yes.

5 I don't need you to open it now, but it may become  
6 necessary in due course for us to look at some documents in  
7 there. All right?

8 A. Certainly.

9 Q. Can I ask you--perhaps I'm stating the obvious here,  
10 but can you just try and keep your voice up and speak slowly so  
11 that your answers can be accurately and clearly recorded on the  
12 transcript of this hearing?

13 A. Yes, sir.

14 Q. Thank you.

15 Before we continue, I would like to explain why we  
16 have asked you to attend today. There are a number of matters  
17 on which we believe you may be able to help, given your position  
18 as Cabinet Secretary. You are attending as a witness; and, as  
19 with any witness--and, indeed, every lawyer--you're under an  
20 obligation to assist the Commission and the Commissioner in his  
21 investigation. While the Commissioner has allowed you to have  
22 legal representation this afternoon, it is not my intention  
23 through my question today to put to you any criticisms or  
24 allegations that you have to answer for my questions are  
25 intended to elicit further information from you.



1           Can we just begin with some professional background,  
2 please? Could you give the Commissioner a brief outline of your  
3 civil service career?

4           A. All right. I joined the public service in 1988, first  
5 in the Government Information Service as an Information Officer,  
6 and then went up the ranks from Information Officer to become  
7 Chief Information Officer.

8           In--but that would have taken me up until the  
9 Year 2000, when I left for university. And upon return in 2004,  
10 I was appointed to the post of Director of Communications. I  
11 was Director of Communications from 2004 to 2010, when I assumed  
12 the position of Deputy Permanent Secretary.

13           2011, I served as the acting Permanent Secretary in  
14 the Premier's Office, and the Deputy PS position is also in the  
15 Premier's office.

16           And in 2012--January, to be exact--I was then  
17 appointed as the Cabinet Secretary to present.

18           Q. And as--would a fair description of the role of  
19 Cabinet Secretary be that you are, in effect, the head of the  
20 civil service in the British--in the Virgin Islands?

21           A. No. We do not--it is not the same as it is in the UK.  
22 The Deputy Governors have had--the Governor is actually the head  
23 of the public service here, so responsibilities are delegated to  
24 the Deputy Governor. But the role of the Cabinet Secretary  
25 would really be more so to do with the Cabinet. We have the

1 National Security Council, Virgin Islands (unclear) Council, so  
2 really I manage the policy--agenda-policy process for the  
3 Government of the Virgin Islands.

4 Q. Thank you for that.

5 Given your experience as a civil servant, are there  
6 any protocols or directives that have been issued that govern  
7 how civil servants in the Virgin Islands go about their work?

8 A. Are there any protocols, yes, that govern--  
9 (Overlapping speakers.)

10 Q. Set out, for example, terms and conditions.

11 A. There are--yes, there are a number of documents. We  
12 do have the General Orders. We would have had various updates.  
13 We have a public service--Public Services Act, I think it is, or  
14 Commissions Act, and there are a number of circulars that would  
15 have been issued from time to time as developments have taken  
16 place.

17 Q. The Government website, you mentioned General Orders.  
18 The Government website includes the document headed "General  
19 Orders for the Public Service," and that version is said to have  
20 been revised last in 1982. Is that what you are referring to  
21 when you say "General Orders"?

22 A. Yes. That is the last version that we have, but there  
23 have been maybe subsets of information that would have been  
24 issued in circulars.

25 Q. I follow. Thank you.

1           Now, if a civil servant in the Virgin Islands has a  
2 concern over the conduct of a Minister--so, for example, the  
3 Minister is not following guidance or policy--this is not about  
4 the personal conduct of the Minister but the conduct of the  
5 Minister in his or her office--if they have such a concern, how  
6 can a civil servant raise that concern?

7           A.    Taking into consideration that no Cabinet Office or  
8 the Cabinet Secretary is not in charge or has a direct  
9 responsibility for the public service, I would imagine or at  
10 least of what I know is that you can speak to your head of your  
11 department or you can speak to the Permanent Secretary.  If  
12 those two persons you don't feel comfortable with, you can  
13 always speak with the Deputy Governor.  You can also speak with  
14 the Governor.

15           Q.    Now, you preface that explanation with "from what I  
16 know."  So, does it follow that this isn't actually written down  
17 anywhere?  Is there somewhere, some guidance to a civil servant  
18 that says, "If you've got a concern, go to this person,  if  
19 you're not comfortable, you can go to this person," and so  
20 forth?

21           A.    I would not be able to tell you a specific name at  
22 this time for a name of a document, and I am--with the way the  
23 public service has been evolving, I'm sure that we would have  
24 something that would cover us in terms of maybe, you know, it  
25 became a legal concern.  But I know certainly from meetings that

1 I have attended, whether heads-of-departments meetings or  
2 senior-managers meeting, that would have been the information  
3 that's shared.

4 Q. But again--I mean, the benefit of having you here is  
5 you are someone who has had a number of years at different  
6 levels within public service in the Virgin Islands. You haven't  
7 come across in your time a document issued to civil servants, at  
8 whatever level, saying, "If you have a concern, this is the way  
9 to raise it"?

10 A. I actually cannot remember that.

11 And I don't want to say that does not exist, but  
12 again, yes, having served for so long--I mean, you know, certain  
13 things become as a matter--I would say as a matter of course,  
14 but you hear it so many times from persons in position who would  
15 be the ones to instruct or advise you on conduct.

16 So--and I guess I never had a reason to, you know,  
17 verify something in print, but at least--no, I have not seen a  
18 document as such, but I'm sure there would be something that can  
19 reference the intended actions to take if one were to find him  
20 or herself in that situation.

21 Q. Thank you.

22 During your time in the civil service, did you ever  
23 become aware of other civil servants who had legitimate concerns  
24 about politicians or ministers but did not feel able to raise  
25 them?

1 A. No. I can't say that, no.

2 Q. Can I just ask you a little more about the role of the  
3 Cabinet Secretary, please?

4 We know that the Constitution provides for a Cabinet  
5 Secretary; but, in your own words, can you explain to the  
6 Commissioner what your role involves?

7 A. So, in summary, as set out in the Constitution, I  
8 would say I have an oversight of the Cabinet Office and the  
9 staff; having oversight of the policy papers, the policy  
10 process; having oversight of the administrative and the  
11 technical functions required for the Cabinet and the other  
12 bodies, as I said, the National Security Council, Virgin Islands  
13 Cadet Corp Council; certainly maintaining accurate records of  
14 the meetings; ensuring that the decisions are dispatched or  
15 disseminated to the respective Ministries.

16 And certainly, I have responsibility also for  
17 monitoring the implementation of those Cabinet positions across  
18 the Government.

19 Q. Thank you.

20 I think one of your constitutional roles is the  
21 provision of policy advice. What does that, in fact, mean?

22 A. The policy advice that I do provide would be, of  
23 course, when I receive papers from the various Ministries. And  
24 if the papers do not fit the right format or template because  
25 they're various components of a policy, of course, so the policy

1 advice I could be providing to, say, the Financial Secretary or  
2 the Permanent Secretary, maybe it's the reason why we can't  
3 accept a policy paper and, you know, that it needs to meet a  
4 certain standard.

5           So, that would be the policy advice I would say I  
6 provide. They are--I wouldn't say I provide policy advice--

7           (Phone rings.)

8           A. I'm sorry, just one moment.

9           (Pause.)

10          A. Yes, sir, I'm sorry.

11                 Yes, so providing policy advice to the Ministries on  
12 the papers that are submitted to the Cabinet Office. And yeah,  
13 I think that generally would be it.

14          Q. So, it's more about the presentation of policy to  
15 Cabinet Office rather than giving advice on policy?

16          A. Presentation but the content. It will be the content  
17 because--not presentation so much in terms of how the paper  
18 looks but the content of the policy. We think that certain  
19 aspects or components are missing. We certainly do provide  
20 advice on that.

21          Q. I see. But one shouldn't see your role as having to  
22 an extent actually sort of providing stand-alone advice to  
23 Ministers?

24          A. I'm sorry? Can you repeat that, please?

25          Q. Does your role encompass providing stand-alone advice

1 to Ministers?

2 A. That does happen at times, yes.

3 Q. Are there limits to the matters on which you're  
4 permitted to give that kind of advice?

5 A. I would not say that there are.

6 Q. And if you gave advice to a Minister and it were  
7 rejected, would that be recorded?

8 A. It would--no, I wouldn't say it would be recorded,  
9 no--no, because I probably would have called them on the  
10 telephone or--yeah, that would have been it. I don't  
11 necessarily e-mail a Minister to tell him or her something. I  
12 would have telephoned the Ministry if I had a concern about a  
13 particular policy matter.

14 Q. And it's not routine for you or civil servants who are  
15 giving that kind of advice over the telephone to record it in  
16 some way?

17 A. No. I may bring it up in the Cabinet Steering Group  
18 meeting, which--that's the body that decides on the Agenda for  
19 the upcoming meetings, so there are times that I would have  
20 brought--raised the matter within that body.

21 Q. As Cabinet Secretary, do you have any ability to bring  
22 proposals to Cabinet for discussion?

23 A. There is provision for that, yes.

24 Q. In what sort of circumstances would you do that?

25 A. I have done so in the cases where I'm responsible for

1 providing the Cabinet with Quarterly Reports on how decisions  
2 have been implemented across Government, so I have done that in  
3 that case.

4 And there have been other things, we've introduced  
5 technology and whether they're Annual Reports or some other  
6 matter.

7 Q. Sorry, could you, whilst we're on it, but could you  
8 elaborate a little further about your Annual Reports?

9 A. No--Annual Report would be from the operations of the  
10 Cabinet Office, so it could anything from your staffing, funding  
11 that we received, how we expend it--our expenditure performance  
12 maybe just a total of how many decisions were taken in Cabinet  
13 for a particular year. That seems to be a very general report.

14 Q. I follow.

15 One of the things that--and we'll come to the request  
16 that the Commission has made of you as Cabinet Secretary, but  
17 you were asked about declarations of interest at Cabinet  
18 meetings, and I just wanted to try to explore that with you.

19 A. Sure.

20 Q. First of all, are members of Cabinet--and others  
21 invited to attend Cabinet--obliged to declare an interest or an  
22 interest of a family member in a matter which is before Cabinet?

23 A. Yes, they are.

24 Q. How are they told of that obligation?

25 A. It is listed in our Cabinet Handbook, which is quite



1 public, but all Ministers know this; they know to recuse  
2 themselves. And one of the advantages, too, is that, you know,  
3 this is a small place, so you tend to know, you know, who may  
4 have been involved.

5 But I did not have a challenge, at least so far I can  
6 recall, where someone has not declared his or her interest  
7 before the Cabinet.

8 Q. When you say you have not had a challenge, who would  
9 make a challenge?

10 A. Sorry? What did you say, sir?

11 Q. I'm sorry. I thought your answer to me was that  
12 you--we've not had a challenge to a Minister failing to make a  
13 declaration, and my question was who would bring such a  
14 challenge?

15 A. I actually used the word--that's what I said,  
16 "challenge"? Well, we have not had an occasion that I can  
17 recall where someone has not declared his or her interest.

18 Q. You mentioned a Cabinet Handbook, and we may come back  
19 to that in a moment, but when Ministers are asked to consider  
20 whether the interest of a family member may be engaged, what are  
21 they told--what is meant by "family member"?

22 A. I would imagine you ask--are you asking like how far  
23 we talking about, immediate--

24 (Overlapping speakers.)

25 Q. Yeah, yeah. What should they consider to be the

1 family member that could be engaged, if a conflict arises?

2 A. That, of course, espouses siblings, but we have done  
3 it to cousins as well.

4 Q. And is that detail recorded in the Cabinet Handbook?

5 A. Not detail. You would just find--as I would have  
6 submitted, you would have seen it said that a particular  
7 Minister recused him or herself due to maybe familial relations  
8 or, you know, Minister declared interest on a critical matter,  
9 but it would not identify the specific relation.

10 Q. So, are Ministers given any guidance as to what is  
11 meant by "family member"? Any written guidance?

12 A. Written? Well, they have their Cabinet Handbook, and  
13 we give an orientation when they assume--when they took office.

14 Q. I thought you told me that that sort of information is  
15 not in the Cabinet Handbook, the definition of "family member"  
16 is not in the Cabinet Handbook.

17 A. No.

18 Q. So, my question is: are they given any other guidance  
19 as to what is meant by "family member"?

20 A. Right. What I'm saying to you is that, when we dealt  
21 with that section in the Cabinet Handbook, no, it is not  
22 specific in respect to the actual relation, but during  
23 orientation, which we held for Ministers upon assuming office,  
24 we then had discussions as how far those relations do go.

25 (Overlapping speakers.)

1           A.    Okay.  You might have a cousin--I'm not sure what you  
2 are familiar with when we say "first cousin," but again, no,  
3 those things are explained.

4                    And then as you go on, not only the orientation, but  
5 as you go on, you know, there is occasion to remind the Cabinet  
6 of certain things, of certain procedures.

7                    (Overlapping speakers.)

8           Q.    I'm sorry to interrupt you.  Please finish your  
9 answer.

10          A.    No, I'm just saying, we do remind them from time to  
11 time of the procedures they should adhere to.

12          Q.    Picking up on your last answer, though, Miss Ward,  
13 have you ever been asked yourself, as Cabinet Secretary, to give  
14 guidance as to whether a declaration should be made?

15          A.    I have been, but then I would consult with the AG, who  
16 is always present.

17          Q.    But it's ultimately down to the individual person  
18 attending Cabinet to declare that interest, isn't it?

19          A.    At the Cabinet Steering Group level, we have sight of  
20 all of the papers that would be placed on the Agenda.  In most  
21 cases, we would have discussed that at the CSG level.  And if we  
22 need to--but I really don't recall that we have to remind the  
23 Minister as such, but we raise that there that, you know, this  
24 paper--this Minister would have to recuse himself.

25                    COMMISSIONER HICKINBOTTOM:  Could we stop there for a

1 moment, Mr Rawat. I think the technician wants to make an  
2 alteration to the equipment. I hope it will make things better  
3 than it is at the moment.

4 MR RAWAT: Certainly, sir.

5 (Pause.)

6 COMMISSIONER HICKINBOTTOM: Before we resume,  
7 Mr Rawat, can I just make--can I just ask a clarification on  
8 your previous answers.

9 It's obviously a small jurisdiction, which means  
10 firstly that quite a lot of people are related to one another.

11 THE WITNESS: Correct.

12 COMMISSIONER HICKINBOTTOM: And secondly, as I  
13 understand your circumstances, a lot of or perhaps all of these  
14 relationships and a lot of relationships are known, but does  
15 the--does the recusal system rely upon somebody--perhaps you or  
16 another Cabinet member--reminding the Cabinet member that he has  
17 got a relationship with somebody in respect to a particular  
18 decision?

19 THE WITNESS: As I have said, Commissioner, most  
20 Ministers, they have done that voluntarily, so--

21 COMMISSIONER HICKINBOTTOM: But my question is: how  
22 do you know? As I understand your answer, Ministers do declare  
23 interest. They say "my cousin's interested in this decision,"  
24 or whatever and recuse themselves, or, I guess, that may be  
25 waived. But in any event, it's disclosed. How do you know

1 about the relationships which are not disclosed?

2 THE WITNESS: I wouldn't be able to speak to that.  
3 But again, I mean, there are matters where if you have  
4 Directors, you can see the names of the persons who are the  
5 Directors. I'm not sure that I can answer that. But at least  
6 from what I know, Ministers have been declaring. If there was  
7 something that was a surprise to everyone in the room, I don't  
8 know about that.

9 COMMISSIONER HICKINBOTTOM: Yeah, okay. Thank you.  
10 Yes, Mr Rawat.

11 BY MR RAWAT:

12 Q. Picking up on that, Miss Ward, it's identifying these  
13 potential conflicts and warning Ministers of them is just the  
14 fortuitous result of the fact that you know--you have  
15 information within your own head as to the nature of  
16 relationships within the jurisdiction; that's right, isn't it?  
17 It's on your local knowledge, in effect, isn't it?

18 A. I don't know that I want to take that responsibility.  
19 That is all on me.

20 Q. Well, not just you, but others within the Cabinet  
21 Steering Group. It's all dependent upon--identifying potential  
22 conflicts is dependent upon the knowledge of the people in the  
23 room?

24 A. That's not the sole, no. And like I said,  
25 Ministers--the Ministers--the members of Cabinet see all papers

1 before the start of a Cabinet meeting on a Wednesday. They have  
2 the opportunity to go through the papers, and again it's  
3 usually--I don't even want to say--"collaborative" would be the  
4 word, it's not solely left to me. But the Ministers themselves,  
5 as I told you, would raise the matter and say that, "You know, I  
6 have interest, I would like to declare an interest," and the  
7 Attorney General advice whether or not, indeed, the person--it  
8 could be like a third or fourth cousin in relation. And when we  
9 look at it, there is no need, but we have not had a problem with  
10 Ministers recusing themselves. At least one has come before us  
11 that I know, or we know of.

12 Q. From the position or the perspective of ensuring and  
13 maintaining public confidence, would not the easiest solution be  
14 for Ministers, when they come into office, to be required to  
15 provide you as Cabinet Secretary with a list of their interests?

16 A. That--that I know that declared--I mean, that could be  
17 a suggestion as well.

18 Q. Well, I'm putting it more as a suggestion. I'm  
19 putting to you it's a good idea that would foster public  
20 confidence, wouldn't it?

21 A. I--well, I know they have done--I know they would have  
22 declared their interest before contesting a seat which is made  
23 public in the Gazette. I believe they also put that under the  
24 Register of Interests, List of Interests Act, but I don't think  
25 it would hurt that if the Cabinet Office Secretary would also

1 benefit from a list as such.

2 Q. I mean, it's right to say, there is no negative to  
3 providing that information, is there? And it gives you--if it's  
4 regularly updated, it gives you, as Cabinet Secretary, a way of  
5 checking perhaps what you already know, but it is a way of  
6 checking it, isn't it?

7 A. It certainly wouldn't.

8 COMMISSIONER HICKINBOTTOM: I think I'm right in  
9 saying you don't have access to the Register of Interests?

10 THE WITNESS: No, I don't think so, but we would have  
11 access to what's gazetted... we would have access to what's  
12 gazetted because that's public. And the newspapers as well.

13 COMMISSIONER HICKINBOTTOM: So, you would have access  
14 to what was disclosed prior to the election but not what was  
15 disclosed after the election? I think you have to do it  
16 annually under the Registration of Interests? It's not a test--  
17 if you don't know, don't answer.

18 THE WITNESS: I know there is a process of the House  
19 of Assembly where they have to declare their interests. Once  
20 they're in office, well, I'm not too sure about that.

21 COMMISSIONER HICKINBOTTOM: Yes, that is fine. Thank  
22 you.

23 BY MR RAWAT:

24 Q. Just moving on a little bit, please, Miss Ward, again  
25 presumably as Cabinet Secretary, part of your job is retaining

1 and storing all Cabinet papers; is that right?

2 A. Yes, it is.

3 Q. Now, what happens if two Ministers discuss a Cabinet  
4 matter outside Cabinet? Would you be made aware of that  
5 conversation?

6 A. Discuss the matter outside of Cabinet how, meaning...

7 Q. I'm trying to be as general as I can, but if there is  
8 a matter that relates to Cabinet and the conversation continued  
9 outside the Cabinet room, are you made aware of that  
10 conversation?

11 A. What I wanted to know--I mean, discussion like on a  
12 talk show or if they--

13 Q. No, no. I meant more if they had a  
14 Minister-to-Minister discussion within the confines of the civil  
15 service.

16 What I'm interested in, if I make it plain, is the  
17 extent to which Ministers discuss policy matters, there is a  
18 convention that public servants should either be present or  
19 informed of the discussion?

20 A. If two Ministers decided to discuss a Cabinet matter  
21 outside the Cabinet room, there is a convention you said that  
22 public officers should be present when they're discussing the  
23 matter?

24 Q. Is there a convention?

25 A. Not that I--I don't think there is, but I'm trying to



1 figure when you say "discussion," I'm not sure if two Ministers  
2 are not able to discuss a matter. I'm trying to figure out if  
3 they're all in the Cabinet.

4 Q. We could put it in a different way.

5 A. Okay.

6 Q. Let's imagine a Prime Minister of an entirely  
7 different jurisdiction is communicated by WhatsApp by a major  
8 businessman. Now, in some jurisdictions, that conversation has  
9 to be disclosed to civil servants who will then record it if  
10 it's a discussion about government policy. What I suppose I'm  
11 getting to is, if there are discussions either between Ministers  
12 or between Ministers and third parties about government policy,  
13 public servants or public officers like yourself, is there a  
14 convention that you should be present or informed about that  
15 discussion?

16 A. I do not know about any current convention because  
17 that is something that should not happen in terms of a Minister  
18 communicating with the third party, and the third party... I think  
19 you mean outside a non-Cabinet member.

20 Q. Or outside Government entirely.

21 A. Okay. There wouldn't be anything wrong with a  
22 Minister discussing with a piece of policy with Cabinet  
23 Secretary, but with the Government.

24 Q. Yes.

25 A. No, there is no convention because that's not supposed

1 to happen.

2 Q. You mean they're not supposed to talk about government  
3 policy with third parties?

4 A. Well, it depends on published Cabinet decisions, so I  
5 don't know what time the Minister may be discussing with  
6 someone. It could be after a decision has been made public, a  
7 statement could have been made in the House of Assembly by the  
8 Premier, one of the Ministers. A statement could have been made  
9 on radio after a decision was made, but the point is somebody  
10 could have spoken to a third party.

11 Q. I accept that if information is put into the public  
12 domain, that changes the situation. What I'm directing--my  
13 questions are directed to, if you like, are sort of private  
14 conversations. If your job, as Cabinet Secretary, and public  
15 officers' jobs are, in part, to make sure that there are  
16 accurate records of the mechanisms by which Government decisions  
17 are made, surely, if there are discussions where on government  
18 policy that are private discussions, do you think it's a good  
19 idea if civil servants are told about those discussions so that  
20 they can keep an accurate record?

21 A. I'm trying to think and to make sure I answer it  
22 correctly because a Minister could have a meeting with someone  
23 and his PA or Permanent Secretary could be in the meeting, and  
24 they would take notes. Yeah, I would have to think that through  
25 some more.

1 Q. Well, I will move on a bit, but can you think about  
2 that? Because my questions are about, you have just given the  
3 example of the Permanent Secretary being present and, therefore  
4 available to take notes. My questions are directed to a  
5 situation where there is no civil servant available or the  
6 conversations occurs in a different form--for example, like  
7 WhatsApp. In those circumstances where should there be, should  
8 the Minister or should there be an obligation on the Minister to  
9 ensure that civil servants are updated about those  
10 conversations? I'll leave it there because you said it's  
11 something you need to think about, so maybe it's something we  
12 could come back to.

13 Can I move on and talk a little bit about how your  
14 role as Cabinet Secretary.

15 You have to, without diminishing your role, presumably  
16 you oversee the collation of papers for a Cabinet meeting?

17 A. Yes, I do.

18 Q. How do those papers come to you?

19 A. We have an electronic platform called ExcoTrack. The  
20 meetings of Cabinet are now digitised/electronic, so they come  
21 to me over that platform.

22 Q. And in terms of delivering the papers to you by  
23 ExcoTrack, who prepares the documents? For example, if you've  
24 got a particular contract that's going to be discussed at  
25 Cabinet, would it be down to the particular Ministry responsible

1 for that Contract to prepare the papers and submit them to you?

2 A. Yes, it would be.

3 Q. We've seen in the material that has been provided to  
4 the Commission of Inquiry documents which refer to "Cabinet  
5 paper" or a "Cabinet memo," do you know what those terms are  
6 referring to?

7 A. The memo would be the number assigned to the paper  
8 once it is finalised to go on to the Meeting Agenda.

9 Yeah, I saw two different things, you said?

10 Q. Yes.

11 A. Cabinet--

12 Q. With reference to--well, there are references to  
13 document which are sometimes described as a "Cabinet paper," and  
14 I wondered whether that was a term of art or whether that was  
15 maybe just a general term?

16 A. Yeah, because that's what most people would say,  
17 "Cabinet paper." They wouldn't really say "I have memo number  
18 whatever." Yes, Cabinet papers are loaded up on to the  
19 platform, and they each assigned a sequential number.

20 Q. So, calling something a "Cabinet paper" doesn't mean  
21 it emanated from your office?

22 A. Cabinet papers do not emanate from our office. They  
23 come from all Ministries.

24 Q. Right.

25 Now, how soon before Cabinet meetings are papers

1 circulated?

2 A. Circulated to members?

3 Q. Yes, to those who attend Cabinet or could attend  
4 Cabinet?

5 A. As a rule right now, it would be two days  
6 because--yes, about two days.

7 Q. And how long--how long has that two-day rule been in  
8 place?

9 A. It has been in place since, I would say--I'm sure  
10 since inception... and we have the Cabinet Handbook that was  
11 first--well, it was produced in 2010, where it was documented  
12 that that's what it would be, but I would say, though, right now  
13 we have our Cabinet general meetings on a Monday. There are  
14 times, because of conflicts, the Governor or the Premier cannot  
15 make a meeting. The meeting might be on a Tuesday, so then  
16 members would have only one day to review the Agenda.

17 COMMISSIONER HICKINBOTTOM: Sorry, again, just to make  
18 sure, Cabinet meetings are normally on a Wednesday?

19 THE WITNESS: They are.

20 COMMISSIONER HICKINBOTTOM: And so on a Monday, you  
21 have a meeting to determine finally what goes into the Agenda?

22 THE WITNESS: The Cabinet Steering Group's meeting.

23 COMMISSIONER HICKINBOTTOM: So, in practice, now, the  
24 Cabinet papers go to the Cabinet on Tuesday, after the Monday  
25 meeting?

1 THE WITNESS: Once--yes, once the Agenda--yes, once  
2 that's signed. Yes.

3 COMMISSIONER HICKINBOTTOM: So, normally on Tuesday?

4 THE WITNESS: No. It's on a Monday afternoon.

5 COMMISSIONER HICKINBOTTOM: So, the meetings are on  
6 Monday, but the documents go on Cabinet Monday afternoon,  
7 meeting Wednesday?

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: Thank you.

10 BY MR RAWAT:

11 Q. If I continue, sir, obviously, Miss Ward, one of the  
12 most important parts of your role is ensuring the production of  
13 accurate minutes of Cabinet meetings.

14 A. Right.

15 Can I say something, sorry, before? There are, of  
16 course, provisions for late papers. So, while there is the  
17 standard that once the Agenda is signed off to on a Monday and  
18 the Agenda becomes--is generated for the meeting, there might  
19 have been a discussion that a certain paper, which is necessary,  
20 maybe come into the Cabinet, and it will be considered as a late  
21 paper, okay? So...

22 Q. That will obviously come in in less than two days?

23 A. Yes, it would.

24 Q. But that's an exception to the rule. The majority of  
25 papers should be circulated within two days?

1 A. Within two days.

2 Q. And, in fact, is that what usually happens, the papers  
3 are circulated within two days?

4 A. Yes. Like we have the electronic platform now, so  
5 really what happens once the Governor and Premier sign off on  
6 the draft Agenda, an Agenda for the meeting is automatically  
7 generated, and members can have access to the Agenda at that  
8 time.

9 Q. I was going to ask you just to explain the process by  
10 which Cabinet meeting minutes are produced.

11 A. The process by which Cabinet meetings minutes are  
12 produced would be capturing the essence of the discussions and  
13 the decisions, and the next week the minutes are reviewed; and,  
14 once confirmed, then they would become--then they would be the  
15 minutes were the previous week's meeting.

16 Q. What happens to the original notes?

17 A. The original notes? Again, we're using an electronic  
18 format, so at times if I have to take the minutes, I am typing  
19 right there on the system, so--

20 (Overlapping speakers.)

21 Q. Go on, please.

22 A. It's a matter of me when I'm finalising the minute, I  
23 go and edit.

24 Q. So, essentially, it's an electronic process?

25 A. Yes, it is.

1 Q. And how long has it been like that?

2 A. 2018.

3 Q. And you--you've explained, so basically they've got to  
4 be ready, the final version of the minutes have got to be ready  
5 within a week; is that right?

6 A. They should be, yes.

7 Q. Yes. And are they dated as of that date when--are  
8 they dated a week after the meeting that they referred to?

9 A. Right. So, if on the Agenda for tomorrow we have the  
10 5th of May, on the Agenda you would see review of minutes for...  
11 what would be the week before, I forget.

12 (Overlapping speakers.)

13 A. Maybe the 29th or the 28th, so the week before.

14 Q. But are those minutes dated at the time they are  
15 finalised, if we take an example of the 5th of May --and I'm  
16 going to struggle with my maths now, but if we take it that the  
17 minutes of the 5th of May, when they're produced in a week's  
18 time, are they going to be dated a week after the 5th of May?

19 A. No--

20 Q. --or are they changed to the 5th of May?

21 A. No. On the Agenda you will see the 5th of May. You  
22 will just see the confirmation date would then be the week, one  
23 week later or whenever the Cabinet reviewed those minutes.

24 Q. Right. So, there is a later sign-off date, if you  
25 like, once the Cabinet has reviewed the minutes?



1 A. Yes, there is.

2 Q. I follow.

3 What's the longest period that's elapsed between a  
4 Cabinet meeting and producing the minutes?

5 A. We have--we have that lapse right now.

6 Q. Well, can you help us with "right now" How big is the  
7 lapse?

8 A. Okay, so we experienced the lockdown last year. And,  
9 of course, everywhere changed things. And if you were to look  
10 at our records, we have 52 weeks in a year, so maybe on average  
11 we would have, say, about maybe 48, 45, 48 meetings per year.  
12 Last year was the first we had about 94 meetings. And again, it  
13 was the minutes we want to be able to keep pace with it because  
14 special meetings were held almost daily in trying to determine  
15 how the BVI was going to approach this matter. So--and the  
16 meetings had been very long. We had meetings as long as 12  
17 hours.

18 So, that has been a little challenge in trying to keep  
19 up with those. And we did put out a public statement to that  
20 effect because that affected us publicising the decision, so we  
21 did make a public statement on it, to give an explanation.

22 Q. And so, because of--well, the pandemic, what has  
23 happened is there has been an increase in meetings and,  
24 therefore, a delay in your producing minutes?

25 A. A delay, yes.

1           And then I would also say under-resourcing of the  
2 Cabinet Office.

3           Q.    But if a Commissioner were to ask for a minute, he  
4 would be able to understand the gap by looking at the difference  
5 between the date of the meeting and the date on which the minute  
6 is signed off, and that will give us the sense of how long it  
7 took to produce the minute, wouldn't it?

8           A.    That would--that would probably be it because that's  
9 electronic, so it would show up, yes.

10          Q.    You just mentioned the under-resourcing of the Cabinet  
11 Office. Can you tell the Commissioner a little more about that  
12 difficulty?

13          A.    I say "under-resourcing" because the office--the  
14 Recording Secretary maybe should be the one who is capturing the  
15 minutes or the records of the meeting, and we have been trying  
16 to bring on someone like that, but it has been a bit of a  
17 challenge in trying to identify someone. So, in the meantime,  
18 I've had to do some interim duties.

19                And, of course, you know, performing the role of  
20 Recording Secretary and having to do everything else, I think  
21 takes--but that's what they're lacking right now for Recording  
22 Secretary.

23          Q.    Is that the only example of under-resourcing that you  
24 suffer from, Miss Ward, as the Cabinet Secretary?

25          A.    In nature--at least right now, yes.

1 Q. And how long--

2 A. Pardon?

3 Q. How long has that situation been persisting?

4 A. It has been a while since 2012, but I don't think it  
5 became as apparent as it did until last year.

6 Q. Tell me if you can't answer this, but do you think  
7 that under-resourcing is a problem across the civil service?

8 A. You hear that from time to time. I hear that from  
9 time to time. I mean, it depends on how you speak with it. And  
10 then you may hear also there are some offices that--or maybe  
11 previous to us.

12 Q. Is there a sort of meeting forum for senior civil  
13 servants like yourself where you can exchange views in a frank  
14 way and discuss difficulties within your departments?

15 A. Yes, there is.

16 Q. And, at those meetings, have others complained about  
17 under-resourcing issues?

18 A. From time to time.

19 Q. Obviously, you have a particular resource issue, but  
20 as a group of senior civil servants, have you been able to point  
21 towards general factors that has meant the civil service is  
22 under-resourced?

23 A. I mean, the factors can be many. Times are changing  
24 and skills need to be updated, skill sets, and sometimes certain  
25 Ministries are given different roles because, even with this

1 administration, you had a change in portfolio subjects. So,  
2 maybe once a Ministry might have been able to produce their team  
3 at the time, it's not always the skill set where the particular  
4 department was previously housed may be transferred to the--the  
5 Ministry that now has the portfolio subject.

6 I don't know. It could be a number of things, and I  
7 think really a PS level, Permanent Secretary, who has  
8 responsibilities for different Ministries, departments under  
9 their Ministry, might be better able to address that because  
10 right now my focus is just on the Cabinet Office. But, yeah.

11 Q. I recognise that, but forgive me for pressing the  
12 point a little bit. You are an experienced civil servant and a  
13 senior civil servant, and you've seen more than one  
14 administration come through the doors and leave as well.

15 Going back to the under-resourcing points, do you have  
16 any personal view about what factors have led to  
17 under-resourcing of the civil service?

18 A. I will probably put it to--hmm. I was going to say  
19 "training," but I know recently there has been an upsurge in  
20 on-line training.

21 I think maybe personal professional development,  
22 making sure that that's maintained because I do believe that  
23 training can help with one's development and having the right  
24 skill set, and again that would be a human-resource matter for  
25 you to find the right fit for offices.

1           So, I think I would probably leave it generally and  
2 say training, training opportunities, formal training  
3 opportunities, because maybe what's being offered right now is  
4 one-day workshops, but maybe certification programs, different  
5 courses and things like that.

6           Q.    And tell me if you can't answer this, but do you have  
7 any sense that public service or working in the civil service is  
8 no longer seen as a valuable job?

9           A.    Hmm. I wouldn't say that at all. No, I don't think  
10 so.

11          Q.    Thank you.

12                  Just to return to how you keep Cabinet records, you  
13 have spoken about this online system. Are all Cabinet records  
14 now kept online, then?

15          A.    Yes.

16                  (Overlapping speakers.)

17          Q.    I'm sorry, please go ahead.

18          A.    With the introduction of the electronic platform.

19          Q.    So, since the introduction of that platform,  
20 everything has gone electronic, in effect, so all appendices,  
21 all documents that go before Cabinet, the minutes themselves are  
22 just held on that platform?

23          A.    Yes, a secure platform.

24          Q.    And what about before the platform came into being?  
25 What has happened to those records?

1           A.    Well, the--we have those records, and we started a  
2 digitisation program, so we have been digitising the hard  
3 copies.

4           Q.    Going back to the electronic platform, on that, do you  
5 keep minutes and appendices together?

6           A.    We--I mean, they're on the same platform, but we have  
7 different paths so we can access them separately.

8           Q.    Do you see any practical difficulty in the COI team  
9 attending the Cabinet Office to inspect Cabinet minutes?

10          A.    What time are we talking about?  What period?

11          Q.    Well, you're obviously not free on a Wednesday, but--

12          A.    I mean--

13                (Overlapping speakers.)

14          Q.    As a general point--no, just being the minutes in  
15 principle.

16                You hold them on an electronic platform.  If the  
17 Commissioner felt it necessary for his team to come and inspect  
18 records held on that platform, would that be possible?

19          A.    I would have to seek advice on that.

20          Q.    And who would you seek your advice from?

21                COMMISSIONER HICKINBOTTOM:  Sorry, can we break this  
22 down into at least two parts.  You may want to seek advice as to  
23 whether legally you can do it, but would it be practically  
24 possible?  There is nothing to stop somebody going and looking  
25 at the Cabinet minutes on the platform; I mean, physically.

1 THE WITNESS: Other than those who are authorised to  
2 do it. Yes.

3 COMMISSIONER HICKINBOTTOM: I know that.

4 THE WITNESS: Oh, okay.

5 COMMISSIONER HICKINBOTTOM: Forget about  
6 authorisation.

7 THE WITNESS: Sure, sure.

8 COMMISSIONER HICKINBOTTOM: As a physical thing,  
9 someone can go and look at the minutes on the platform?

10 THE WITNESS: Someone--I mean, yes, once you're a user  
11 because--

12 COMMISSIONER HICKINBOTTOM: Sorry, I understand that.  
13 But given that you authorised your user, can you just go and  
14 look at it?

15 THE WITNESS: No, no, no. Only the Ministers--only  
16 the Ministers and the Cabinet Secretary.

17 COMMISSIONER HICKINBOTTOM: At least is that--I mean,  
18 because they're authorised?

19 THE WITNESS: Well, yes. Only they are authorised to  
20 see minutes.

21 COMMISSIONER HICKINBOTTOM: As I said, forget about  
22 authorisation--just what's physically possible--but somebody who  
23 is authorised can go and look at the Cabinet--

24 THE WITNESS: Right.

25 COMMISSIONER HICKINBOTTOM: But there are

1 authorisation issues?

2 THE WITNESS: There are different levels of access on  
3 the platform.

4 COMMISSIONER HICKINBOTTOM: And so Ministers are  
5 allowed access?

6 THE WITNESS: They have access.

7 COMMISSIONER HICKINBOTTOM: Yeah. And does anybody  
8 else have access?

9 THE WITNESS: The Chairman does, certainly I do.

10 COMMISSIONER HICKINBOTTOM: Right.

11 Without being precise, a limited number of people have  
12 access to the platform?

13 THE WITNESS: The members of Cabinet.

14 COMMISSIONER HICKINBOTTOM: Yeah.

15 THE WITNESS: The Chairman and the Cabinet Secretary.

16 COMMISSIONER HICKINBOTTOM: Thank you very much.

17 MR RAWAT: Thank you, sir.

18 BY MR RAWAT:

19 Q. Before we leave, you mentioned the Cabinet Handbook,  
20 Miss Ward.

21 A. Yes.

22 Q. Now, I think you said it was produced in 2010. Has it  
23 been updated since?

24 A. No, but we actually do have a directive from Cabinet  
25 to update it.



1 Q. Would you be able to provide a copy of that Cabinet  
2 Handbook to the Commission, please?

3 A. I can do so now, and I can e-mail it, but I do have  
4 copies here.

5 Q. That's very kind. Thank you very much.

6 One of the other things that we come across--

7 COMMISSIONER HICKINBOTTOM: Sorry to interrupt.

8 That's quite old, 2009-2010.

9 THE WITNESS: Yes.

10 COMMISSIONER HICKINBOTTOM: And thank you for sending  
11 us a copy of that; that would be appreciated.

12 And so the Cabinet has decided to update it?

13 THE WITNESS: They're going to because it's time.

14 COMMISSIONER HICKINBOTTOM: And when they decide to  
15 update it, how will it be updated? Will it be updated by you  
16 or--

17 THE WITNESS: It will be done by my team and reviewed  
18 by the Cabinet.

19 COMMISSIONER HICKINBOTTOM: All right. When will the  
20 Cabinet determine it should be done?

21 THE WITNESS: Sometime last year.

22 COMMISSIONER HICKINBOTTOM: Yeah. Thank you very  
23 much.

24 Yes, Mr Rawat.

25 MR RAWAT: Thank you, sir.

1 BY MR RAWAT:

2 Q. Just to move on to another question, please, Ms Ward,  
3 one of the things that has been disclosed to us are what's  
4 called "expedited minutes of Cabinet meetings." Can you explain  
5 to the Commissioner what those are, please.

6 A. I think--it would be expedited extracts?

7 Q. Yes.

8 A. Okay. So, that would be a decision taken, and there  
9 are cases when a matter has to be dealt with urgently, and you  
10 would find contained in the decision before the Cabinet that the  
11 Minister has asked for a decision to be expedited before the  
12 confirmation of the minutes.

13 Q. And the effect is that that circumvents the lag  
14 between meeting and production and sign-off of minutes, doesn't  
15 it?

16 A. I wouldn't want to say "circumvent," but again it  
17 might be a matter that needs to be addressed before the next  
18 Cabinet meeting is held.

19 Q. Right. But there is still a requirement to produce  
20 the full minutes, even if you have an expedited extract; is that  
21 right?

22 A. Right, because the next week that would be confirmed,  
23 reviewed and confirmed. And at that time, another extract is  
24 issued, which we can refer to as a "regular extract."

25 Q. At the what--in what circumstances--you explained that

1 the expedited extract is necessary if a decision has to be taken  
2 before the next Cabinet meeting. In what circumstances do you  
3 produce a regular extract?

4 A. The regular extracts are produced once the minutes are  
5 confirmed.

6 Q. And I can see the purpose of the expedited extract.  
7 What's the purpose of the regular extract?

8 A. Well, the regular extract you would realise too that,  
9 during the review of the minutes, maybe they could be an  
10 amendment to a decision--when I say "amendment," anything could  
11 have happened during that week. A name could have been spelled  
12 incorrectly, a reference to something could have been incorrect;  
13 and, at that point, you know, the amendment can be made, and the  
14 regular extract is usually the final of what decision was taken.

15 COMMISSIONER HICKINBOTTOM: Again, could you just  
16 clarify this for me. Just on a general agenda item, so in a  
17 Contract you don't know what it's about, there is a paper that  
18 sets out the rationale for the decision and probably  
19 recommendation from the Ministry as to what the decision should  
20 be, so that would then go to the Cabinet as a Cabinet paper. It  
21 would then presumably be a discussion in Cabinet, a decision  
22 would be made.

23 So, do the Cabinet minutes contain any details of the  
24 discussion?

25 THE WITNESS: The Cabinet handbook is clear that the

1 discussion should not be captured in the minutes. It's really  
2 only the decision.

3 COMMISSIONER HICKINBOTTOM: Okay.

4 THE WITNESS: But there are times when--

5 COMMISSIONER HICKINBOTTOM: Particular aspect of  
6 discussions--I understand.

7 As well as the paper which sets out the rationale, the  
8 minute will normally be the decision to accept the  
9 recommendation or whatever the decision is.

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: And that's the minute?  
12 Normally.

13 THE WITNESS: Who presented the paper, which Minister  
14 or the Governor, and then the decision.

15 COMMISSIONER HICKINBOTTOM: Okay. Okay. That's  
16 helpful. Thank you.

17 BY MR RAWAT:

18 Q. And is it Cabinet that decide whether to issue an  
19 expedited extract or a regular extract?

20 A. Cabinet decides whether an expedited extract will be  
21 issued, but issuing of a regular extract is not left to Cabinet.  
22 Once the Minister confirmed, then an extract--a regular extract  
23 is produced.

24 Q. And is that just a function of your office that will  
25 do that?

1 A. Yes. Yes, it is.

2 Q. The use of expedited and regular extracts, is that  
3 something that is in the current version of the Cabinet  
4 Handbook?

5 A. Yes, yes. The expedited is, I know, for sure.

6 Q. Now, I know you have gone electronic, but is there  
7 still a requirement on you or anyone to formally sign a copy of  
8 the minutes?

9 A. Yeah, I do that--well, yes. I do that--  
10 (Overlapping speakers.)

11 Q. You do that electronically, did you say?

12 A. Yes, I do.

13 Q. So, since you had your database, what's happened is  
14 that when the minutes go on there, they will carry with them an  
15 electronic signature of yourself?

16 A. (unclear)

17 Q. Sorry, I didn't quite hear your answer.

18 A. The Ministry--the respective Ministry or the  
19 Governor's Office gets a signed copy of the expedited extract or  
20 the regular extract. But if, say--well, information that you  
21 would have received, you would not have seen it signed because  
22 they're producing a copy of the extract.

23 Q. I see.

24 A. You just see my name, actually.

25 Q. Okay. I understand.

1           Does--and does the Ministers also receive a signed  
2 copy of the minutes as well?

3           A.    Yes.  The Ministers see it, yes.

4           Q.    I see.

5           So, the way the system works is that it can retain  
6 signed copies which carry your electronic signature, but then  
7 when it's producing documents for disclosure, that electronic  
8 signature is not there?

9           A.    No, it's not.

10          Q.    I follow.  Okay.

11          Could I go on now, please, Miss Ward, just to ask how  
12 you, as Cabinet Secretary, have dealt with the Commission's  
13 requests for information and documents.  I may take you to a  
14 request as an example, but can we just begin with the general  
15 approach that you had to adopt as Cabinet Secretary.

16          Is there anyone you need to notify when you receive a  
17 request?

18          A.    Well, when I receive a request, usually the Attorney  
19 General is usually copied but then contact the IRU, the Inquiry  
20 Response Unit.

21          Q.    When you contact the IRU, what information do you have  
22 to provide to them at that point?

23          A.    Well, actually, I don't provide them with the  
24 information.  They would send to me a form--a questionnaire,  
25 sorry, that I would then complete, and then I would submit that

1 information.

2 Q. And you submit that to the IRU?

3 A. Yes, I do.

4 Q. And on that questionnaire, we've only recently seen a  
5 copy of it, but you are required to fill out all the documents  
6 you think comply with that request?

7 A. Not all the documents. The amount.

8 Q. I see.

9 A. An estimated amount of how many documents, I think, I  
10 would be providing in Response to the Request.

11 Q. And then is it just down to you to pull together the  
12 documents and send them to the IRU?

13 A. Well, I have my team, my team who are the Cabinet sort  
14 of desk officers within my office. Those are the ones. Not  
15 everybody.

16 Q. Does the IRU get involved in how you compile these  
17 documents?

18 A. No, they don't.

19 Q. During the--if you want any assistance on  
20 understanding the request, who do you go to?

21 A. The request of the Commission?

22 Q. Yes.

23 If we make it a hypothetical, if the Commissioner has  
24 sent you a request asking for a number of documents or documents  
25 on an issue and you want some guidance as to the ambit of the

1 request, who do you go to?

2 A. I--actually, I don't think I had to even--because the  
3 request I have received from the Commission have been quite  
4 detailed, and it would give me the time period and it gave me  
5 exactly what was being asked.

6 COMMISSIONER HICKINBOTTOM: So, you did not seek  
7 advice?

8 THE WITNESS: Not I recall that. It was very  
9 specific, so then we went to that particular document.

10 COMMISSIONER HICKINBOTTOM: Yes, thank you.

11 BY MR RAWAT:

12 Q. And do you--when you send documents to the IRU, do you  
13 provide them in as near their original form as possible?

14 A. Yes.

15 Q. The--

16 (Overlapping speakers.)

17 Q. On the database, the platform you have, is that where  
18 you essentially keep all of the documents that we have been  
19 asking for?

20 A. Most of them because--but you asked--there was some  
21 that you asked from early in 2018, so those would not have been  
22 on the platform because the platform--when did that come  
23 in?--around November 2018. So, if anything you asked for early,  
24 like January or February, we did all the search. We did have  
25 them electronically, yes, so we just did a search on them.



1 Q. So, how do you--pre the platform, how do you store  
2 your documents electronically?

3 A. They're in electronic and in a folder. Is that what  
4 you mean?

5 Q. Yes. Are they just held in normal computer systems?

6 A. Right, but it's--it's the tried--again, it's not  
7 accessible to everybody on in the office, but yeah.

8 Q. I see. So, before November 2018, whenever this date  
9 this platform came into play, you were still holding documents  
10 electronically on a secure drive?

11 A. Yes.

12 Q. Thank you.

13 And do you--do you give them to the IRU in their  
14 native form? So, if you--to give you an example, if you wanted  
15 to provide an Excel spreadsheet to the Commission, do you  
16 provide it in that form, or do you change the format in any way?

17 A. Whatever--no, we don't change the format. Whatever  
18 because--and again, I am seeing the IRU as a sort of, I'm no  
19 sure, clearinghouse or medium by which we should be submitting  
20 our information to the Commission of Inquiry. So, whatever  
21 we've researched, we would then alert the IRU that information  
22 is there. So whatever you would have received from us would be  
23 the same format as we present and provided to the IRU.

24 Q. I see.

25 So, could I summarise it like this: If you get a

1 request, you will go through your records.

2 A. Yes.

3 Q. You will then hand the documents in as near original  
4 form as you can to the IRU, and they are then responsible for  
5 passing it on to the Commission?

6 A. Correct.

7 So, they're original, as it is--how it is saved on our  
8 document, on our platform, and then yes, we would submit it.

9 Q. But you don't--you don't change the format of that?  
10 You don't change the metadata, you don't do anything to the  
11 documents. You try and give it as near as possible as you can  
12 as it was on the platform?

13 A. Right. I don't think there would be a note to tamper  
14 with anything, to change anything, correct.

15 COMMISSIONER HICKINBOTTOM: You just give the IRU what  
16 you got in the form that it is?

17 THE WITNESS: Yes.

18 BY MR RAWAT:

19 Q. Did the IRU ever tell you how many documents they have  
20 supplied in response to a request?

21 A. Yes, they have.

22 Q. So, is that how the circle is completed? Do they say,  
23 "Miss Ward, thank you for the 50 documents. We've passed on to  
24 the COI"?

25 A. Right. I received an assessment report on each

1 request.

2 Q. Can we just look at an example request, please. If  
3 you pick up the bundle in front of you, please. You go to  
4 Page 2.

5 A. Page 2? Okay.

6 Q. You should have there a letter--a Letter of Request  
7 from the Commissioner dated 16 of March 2021.

8 A. Yes.

9 Q. And it's Request for Information and Documents No. 16.  
10 If you go to the last paragraph on that page, I will  
11 let you read it for yourself, Miss Ward, but it relates to  
12 Contact Tracing Applications for COVID-19. If you just take a  
13 moment to just read it to yourself, let me know when you've done  
14 that.

15 (Pause.)

16 A. Yes, I've finished.

17 Q. Thank you.

18 So, you've said that so far the requests that you've  
19 had from the Commission have been clear, and you have been able  
20 to follow them. Now, this one, put simply, is looking for  
21 Cabinet papers, including minutes that concern the  
22 track-and-trace system, isn't it?

23 A. Yes, it is.

24 Q. Now, the response to this is at Page 9, if you go to  
25 that in the bundle. If you want to just turn up Page 8, you

1 will see the context.

2           So, Page 8, on the 19th of March, the IRU e-mailed the  
3 Commission with the letter that we see at Page 9 and what you  
4 said in response to this request, so I think--have you got  
5 Page 9 there?

6           A.    I do.

7           Q.    Thank you.

8           If you again just read it, but in effect what you said  
9 was that, in response to Request No. 16, you had no documents?

10          A.    Yes, I did.

11          Q.    So, the position must follow, then, that this issue  
12 was not discussed at Cabinet?

13          A.    No, that was not a matter that came before the  
14 Cabinet, at least for a decision like this.

15          Q.    And no documents were put before Cabinet?

16          A.    No, and I think I gave my reason why--I gave the  
17 reason why that wouldn't happen.    Yes.

18          Q.    And all we have to go on is the information in that  
19 letter.  So, if you gave the IRU another reason, it didn't come  
20 through in this letter.

21          A.    No, I don't think I did, actually.  I had my view on  
22 what happened, but no, this is what I told them.

23          Q.    Thank you.

24          A.    In a responses to the questionnaire that was sent.

25          Q.    So, you have no documents relevant to the scope of the

1 request, when it comes down it, so never discussed at Cabinet,  
2 no documents put before Cabinet, no documents sent to you as  
3 Cabinet Secretary?

4 A. No. No, not for the tracking device.

5 Q. I see. Okay.

6 Could ask you to turn up Page 108 in this bundle.

7 I think, actually before I do that, just in fairness  
8 to you, could I just ask you to just go to Page 5 briefly.

9 What you ought to see there is a letter dated the 16th  
10 of March to the Minister of Finance, so it's not a request to  
11 you and, therefore, it's not a request that you would have  
12 received. The reason I wanted to show you this is because the  
13 majority of the documents in this bundle were provided in  
14 response to that request.

15 A. Okay.

16 Q. The documents that I'm going to show you now come in  
17 response to that request.

18 If we go to Page 108, please. 107, first, please.

19 Do you see that?

20 A. I do.

21 107, you said?

22 Q. Yes. It should be a letter dated the 29th of  
23 October 2020 from the Governor.

24 A. Right. Yes, okay.

25 Q. And it's headed "COVID-19 Health Monitoring and

1 Contact Tracing App." And if you go to the next page, the  
2 letter concludes with the Governor saying: "I look forward to  
3 discussing the response to the above at our Cabinet meeting this  
4 Friday."

5 Now, you will see from the cc list, Ms Ward, that you  
6 are not on the circulation list, are you?

7 A. No, I'm not.

8 Q. But if you go--keep your finger there, if you want,  
9 but if you go, please, to Page 357 in the bundle--I'm sorry to  
10 make you jump around.

11 A. 357?

12 Q. Do you have it?

13 A. Yes, I do.

14 Q. This is the e-mail by which that letter that we'd just  
15 looked at was sent, so it's headed "COVID-19 Health Monitoring  
16 and Contact Tracing App."

17 A. Yes.

18 Q. And if you look on the cc list, Carolyn O'Neal-Morton  
19 on the cc list.

20 A. Right.

21 Q. You are included in that?

22 A. I am.

23 Q. Just after Dawn Smith.

24 Do you see that?

25 A. Yes I do.

1 Q. So, it appears that the letter--although you're not  
2 cc'd on it, on its face--was circulated to you.

3 Now, before I leave that e-mail, can you just help me  
4 with who else is on that circulation list? Is it being sent to  
5 members of the Cabinet, or is it being sent more widely than  
6 that?

7 A. On the e-mail?

8 Q. On the e-mail, please.

9 A. It was sent to the Cabinet members, AG, my name, the  
10 Deputy Governor, the PS of Health, the Director of Information  
11 Technology and FS at the time.

12 Q. So, it's wider than Cabinet?

13 A. Yes.

14 Q. Given that this letter came from the Governor--

15 A. Right.

16 Q. --and his last line refers to wanting to discuss this  
17 at a Cabinet meeting, would you have flagged this letter up as  
18 something that needed to be included in Cabinet papers?

19 A. I don't--well, no, because you asked for Cabinet--you  
20 asked for the decision; no?

21 Q. If we go back to Page 2--

22 A. Right, the request was to provide papers on upon which  
23 Cabinet considered such arrangements, and any alternative  
24 arrangements, so that was my search.

25 Q. And also, just so we've got it, Cabinet minutes of the

1 discussion and decision considering.

2           When you say "that was my search," does that mean you  
3 put specified search items into your on-line platform?

4           A. I did that, and we checked, and we rechecked and  
5 rechecked.

6           Q. Leaving aside whether your searches brought this up,  
7 is this--given the Governor is wanting this issue raised at a  
8 Cabinet meeting, is it the sort of thing that would have been  
9 put amongst the papers before Cabinet?

10          A. It would have been. I mean, yeah, it would have been.

11          Q. Right.

12                 So, automatically, you know, what you would have done  
13 is said, "I'm going to include that--although it's come in quite  
14 late, I'm going to include that in the Cabinet papers"?

15          A. No. Once--you are asking me if, based on the  
16 Governor's request, as he said he wanted it by Friday, had--once  
17 I received a paper, then I will include it, but I searched and  
18 searched, and there was no Cabinet paper to support that.

19          Q. Yes. I'm trying to sort of move you away slightly  
20 from the request with this question.

21          A. Okay, okay.

22          Q. It's not--it's not--I accept what you're saying to the  
23 Commissioner is that you--you did a diligent search of your  
24 on-line platform to try and respond to the request, but my  
25 question is this, is that this letter, which ends with, "I look



1 forward to discussing the response to the above at the Cabinet  
2 meeting on Friday," would you, as a matter of routine, included  
3 it in the Cabinet papers for that Friday meeting?

4 A. No. No, no, I wouldn't have. And again, I don't  
5 generate papers, so the paper would have--he wrote to the  
6 Premier's Office. If that paper came from the Premier's Office,  
7 I think it was on the 9th we would have included that as an  
8 appendix.

9 Q. But it was also copied to you?

10 A. Yes, but--you would have to go back and see what  
11 happened after that, but they could have--you're asking me if I  
12 would have then--because I was copied on that paper, if I would  
13 then have had that paper, that correspondence in the Cabinet for  
14 whichever day, because maybe the meeting was not even held on a  
15 Friday. If I would have had that to say this is what the  
16 Cabinet required.

17 Now, if I received the paper, I could then use the  
18 letter as a guideline, but then again it was written to the  
19 Premier's Office.

20 Q. So, if it's not sent directly to you, you don't put it  
21 into the Cabinet papers?

22 A. No. That can come up--no, because that's an action  
23 for the Ministry to take, if being copied on the correspondence,  
24 I'm aware of what is expected. So, with this letter, I could  
25 then look to see if the Ministry complied with what was

1 required.

2 Q. All right. Thank you.

3 A. What I'm saying is I did not receive such a paper.

4 Q. So, the Premier's Office didn't generate a paper?

5 A. That--not that specific; you asked about the tracking  
6 device.

7 Q. Um-hmm.

8 A. Right.

9 Q. Well, you've taken us back to the request. What it  
10 asks about is in the supply and provision of (a) the Contact  
11 Tracing Application for COVID-19, and (b) tracking devices for  
12 use on entering the BVI territory. So, there are two things  
13 that it has asked for, and it has asked for papers upon which  
14 the Cabinet considered arrangements and Cabinet meetings  
15 recording discussion and decisions.

16 I think perhaps we ought to move on. Can I just take  
17 you to-

18 A. I just want to make it clear that, on each Point 1 and  
19 2, we did not have documents in support of what was asked.

20 Q. Yes.

21 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt.  
22 On Page 107, which is the letter that we've been looking at,  
23 that was triggered by you because it says "further to the  
24 Cabinet Secretary's request, to the Healthcare Act information  
25 in relation to the (unclear) app," so assuming you wouldn't have

1 written that in a vacuum.

2 THE WITNESS: Yes.

3 COMMISSIONER HICKINBOTTOM: So, presumably, there was  
4 something going on in Cabinet about this app, and the Governor  
5 then write this letter and said, "Let's discuss this at the  
6 Cabinet meeting on Friday," but as far as you're aware, you've  
7 made a proper search, there are no Cabinet papers in respect of  
8 this app?

9 THE WITNESS: No.

10 COMMISSIONER HICKINBOTTOM: Okay.

11 THE WITNESS: And the Cabinet Secretary's request  
12 would have been an action item I would have issued from the  
13 meeting.

14 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

15 BY MR RAWAT:

16 Q. Sorry, Miss Ward, could I just pick up on your last  
17 answer--

18 (Witness conferring with counsel.)

19 THE WITNESS: Can I?

20 COMMISSIONER HICKINBOTTOM: Yes, of course.

21 THE WITNESS: Sorry, sir. Thank you.

22 (Inaudible.)

23 THE WITNESS: Thank you very much. Sorry.

24 COMMISSIONER HICKINBOTTOM: So, at the moment, this  
25 seems to have been, as it were, a live issue for Cabinet because

1 you asked them to help you for information about the app?

2 THE WITNESS: Yes, Premier's Office.

3 COMMISSIONER HICKINBOTTOM: Yes. You know--what the  
4 letter says is, "First the Cabinet Secretary's request to  
5 Permanent Secretary of Health."

6 THE WITNESS: Health, okay.

7 COMMISSIONER HICKINBOTTOM: You wrote this  
8 information?

9 THE WITNESS: Yes.

10 COMMISSIONER HICKINBOTTOM: So, you wrote PS Health  
11 for information, but that must have been triggered by something  
12 active in Cabinet, wasn't it? You wouldn't have written to the  
13 PS without something being active in Cabinet? And then all the  
14 Governor is doing, he's writing to the Premier's Office saying,  
15 "Well, I've got these concerns, these issues. Let's discuss  
16 them Friday."

17 But what seems to be slightly mysterious to me is why  
18 there are no Cabinet documents at all about this issue, which  
19 clearly--(inaudible) appears to have been before Cabinet?

20 You may not be able to answer it, but it just seems  
21 rather mysterious, doesn't it?

22 THE WITNESS: Again, you know, as you say this  
23 COVID-19--the whole, you know, is fluid. So, you know, as you  
24 move along, you recognize that certain things need to be in  
25 place. So, when he said "live" or "active," I mean--so, this

1 was decided or agreed upon that this needed to be in place. I  
2 followed what the Cabinet said, but then (drop in audio).

3 COMMISSIONER HICKINBOTTOM: Thank you very much.

4 Yes, Mr Rawat.

5 BY MR RAWAT:

6 Q. When you say, Miss Ward, that you followed what the  
7 Cabinet put in place--and going back to, I think, what  
8 Commission drew to your attention to that first line--you said  
9 that was--I think your words were sort of executive action for  
10 you following a Cabinet meeting.

11 A. Yes. Right. That would have been the premise on  
12 which I would have written the PS.

13 Q. Yeah. But the point is that, if you took that action  
14 in relation to the contact tracing app as a result of a Cabinet  
15 meeting, then it must have been discussed at Cabinet meeting?

16 A. It would have had, then, to have been.

17 Q. And there must, therefore, be minutes within your  
18 possession relating to the COVID tracing app on your platform?

19 A. It would be--I would have to check that.

20 Q. I mean, I accept that you have given evidence already  
21 to the Commissioner about the issue of under-resourcing and the  
22 impact of the pandemic, but as a matter of practice, you would  
23 have produced a minute, wouldn't you? Because you took action,  
24 so you would have produced a minute, couldn't you?

25 COMMISSIONER HICKINBOTTOM: And certainly from this,

1 it looks as though this was a draft agreement for Cabinet  
2 because the Governor said it's important for the Governor to be  
3 briefed more fully on the arrangements, so that suggests Cabinet  
4 had been briefed with the draft agreement, but the Governor  
5 wasn't content with the particulars of the Cabinet (unclear)?

6 THE WITNESS: I--I would have to look into this some  
7 more, but I--maybe the app could have been embedded, you know,  
8 in something else, but again I looked at what was asked for  
9 decisions on the Contract tracing application or the devices, so  
10 that is how I proceeded to respond to the Commission.

11 COMMISSIONER HICKINBOTTOM: Okay. I mean, Mr Rawat,  
12 is the best way of proceeding, it seems to us, to ask Miss Ward  
13 to go back and look for these particular documents?

14 MR RAWAT: Yes, sir.

15 Can I quickly--I think we will need to ask Miss Ward  
16 to do that because it seems to have been a function of the  
17 search terms she chose to use, but can I quickly draw her  
18 attention to other documents, then, that may assist her in her  
19 search?

20 COMMISSIONER HICKINBOTTOM: Yes.

21 BY MR RAWAT:

22 Q. Can I take you, Miss Ward, to 157 in the bundle.

23 Do you have it?

24 A. 157?

25 Q. Yes.

1 A. Yes.

2 Q. It's called "COVID-19 Re-opening of the Territory's  
3 Borders-Visitors." Where it says "signed" on it, can you help  
4 us with it. What does that mean "signed" at the top there?

5 A. It means the respective Minister signed the paper that  
6 is ready to be advanced to Cabinet.

7 (Overlapping speakers.)

8 Q. I follow. We see a reference there, PO file,  
9 PO/HI/013. What does that reference mean?

10 A. That would be a file number in the Premier's Office.

11 Q. And if it is Dr Lavon Chalwell-Brewley, a civil  
12 servant that works in the Premier's Office?

13 A. She is.

14 Q. Now, before we leave the document, you see in the  
15 bottom right-hand corner you can see ExcoTrack.gov?

16 A. Yes.

17 Q. Is that the on-line platform that you were referring  
18 to?

19 A. Yes, I am.

20 Q. And where there seems to be a sort of folder that's  
21 headed "Memorandums," is that on-line platform available just to  
22 you and to the Ministers?

23 A. To the Ministers and the respective Ministry,  
24 authorised officers in that Ministry, so this is Premier's  
25 Office. The Ministry of Health does not have access to this

1 paper.

2 Q. So, to take this example--but is ExcoTrack used as a  
3 way of gathering the papers for Cabinet meetings, or is it used  
4 for other purposes as well?

5 A. No. It's just for Cabinet--the Cabinet process.

6 Q. And so, it's a way of Ministries putting onto the  
7 database papers that are relevant to an agenda item, and you are  
8 then--your job comes to collate all of that together; yeah?

9 A. Right. To get it, yes, to prepare for PS.

10 Q. And you would need log-in details to get onto  
11 ExcoTrack and authority to do it?

12 A. Yes, that's right.

13 Q. If you just to Page 158, please, you see at the bottom  
14 there the last line, "The policy recommends Amber Group COVID-19  
15 Technology Solution Application."

16 A. Yes.

17 Q. If we go to 166--this is still part of the same  
18 paper--at 24), you see a reference to a draft Cabinet paper. At  
19 28, you see reference there to Cabinet paper inclusive of all  
20 appendices.

21 So, at the very least, what it means is that, in  
22 relation to perhaps not just but certainly including the  
23 Application, the Amber Application, there must be papers  
24 generated that were put on ExcoTrack, mustn't there?

25 A. It was--yeah, that would indicate that.



1           Can I be allowed--I have my surface (phonetic). Can I  
2 be allowed to even try to access it, if I can, or is that not--

3           COMMISSIONER HICKINBOTTOM: I think you could perhaps  
4 do that after the hearing when you've got more time, Ms Ward,  
5 yeah.

6           THE WITNESS: Where does it say that in Appendix?

7           Okay. Yes, sir.

8           BY MR RAWAT:

9           Q. I suppose I won't--I won't--if I could just have a  
10 moment, sir.

11           Sorry, Miss Ward. I'm sorry, I just got a minor  
12 distraction.

13           MR RAWAT: Sir, what I propose to do is not take  
14 Miss Ward through the rest--there are a number of other  
15 documents that refer to that, but I think she has the point.

16           BY MR RAWAT:

17           Q. Miss Ward, I stress I'm not suggesting that you  
18 behaved improperly, but do you agree that it's possible that  
19 whatever searches you did you may have missed documents that are  
20 relevant to Request 16?

21           A. I--I would like to see the decision that came out of  
22 this paper because it doesn't mean that because you have a paper  
23 that the final decision accepted or included everything that  
24 was--that accompanied the paper. I'm thinking of the fact that  
25 the Governor wrote a subsequent correspondence, it would have

1 meant that--and I will have to maybe just check the days. It  
2 would have meant that this paper was either approved in part  
3 because the fact that again the Governor is asking for  
4 additional information to consider the decision would mean that  
5 this would not have been approved as is, so this is just a  
6 paper.

7 Q. But I don't think I want to get into specifics,  
8 Miss Ward. What I tried to do is to show you some examples of  
9 documents that we have received from other Ministries which  
10 appear to bear on a request made to you where you said there  
11 were no relevant papers, and all I'm asking you to do is,  
12 just--do you accept that it's possible the ExcoTrack system  
13 might contain papers that are relevant to Request No. 16?

14 A. No. I'm not going to accept that. And then again, we  
15 have backup because one of the very first responses--one of the  
16 first set of information that I provided to the Inquiry was to  
17 give the Agenda. I gave the Agenda for the past three years,  
18 from 2018 to 2021, so we can even do a check on that and see if  
19 that was on there because that would have come up.

20 Q. If you go, please, to Page 172--can you go to  
21 Page 172?

22 A. 172?

23 Q. Yeah.

24 A. Uh-huh.

25 Q. That is from you. It's an expedited extract.

1 Do you have that?

2 A. Yes, I see that.

3 Q. Now, if you go to--the memo that I showed you, which  
4 is dated the 22nd of July, is actually wrongly dated on its  
5 head. The actual date is at Page 171.

6 A. Which one is wrongly dated?

7 Q. Do you remember I showed you a memo about re-opening  
8 borders, Dr Lavon Chalwell-Brewley's memo?

9 A. Right, but the date--the date on the Cabinet papers  
10 are usually the date when they started the draft.

11 Q. I see. Okay.

12 Well, if you go to Page 171, that's the actual last  
13 date on that memo, so the 19th of October?

14 A. 171?

15 Q. I'm just trying to give you context before I take you  
16 to 172.

17 A. Right. Okay.

18 Q. If you look at 172, it's an expedited extract from the  
19 Cabinet Secretary, isn't it?

20 A. That's what I'm seeing, yes.

21 Q. And it relates--it refers to the memo that we've just  
22 been looking.

23 And if you go to Page 174--

24 A. Yes.

25 Q. --it refers to the use of the Amber Group COVID-19

1 Technology Solution Connect System.

2 A. I have to check this again, please.

3 (Pause.)

4 A. Okay. Yes, sir.

5 Q. The documents that I have tried to show you,  
6 Miss Ward--

7 A. Yes.

8 Q. --would tend to suggest that there was discussion at  
9 Cabinet about the COVID-19 tracing app, and so what I just  
10 repeat again is: Is it possible that, in your search for  
11 Request No. 16, you have overlooked relevant documents?

12 A. I don't want--you asked me that question, and now  
13 seeing what you showed me, but I wrote--it wasn't just one  
14 individual who did searches. I even went over a number of--I  
15 think this is--

16 COMMISSIONER HICKINBOTTOM: Miss Ward, it's a fairly  
17 modest question.

18 THE WITNESS: Yes.

19 COMMISSIONER HICKINBOTTOM: My understanding of  
20 Page 174 is that is an expedited extract--

21 THE WITNESS: Yes, I see it.

22 COMMISSIONER HICKINBOTTOM: --of a Cabinet decision to  
23 approve the track-and-trace system.

24 THE WITNESS: Yes.

25 COMMISSIONER HICKINBOTTOM: And Mr Rawat isn't

1 suggesting that you've done anything deliberately wrong.

2 THE WITNESS: No, no, I'm not suggesting that.

3 COMMISSIONER HICKINBOTTOM: There may be documents in  
4 the system which your searches, for one reason or another,  
5 didn't identify. That seems to me to be, on the basis of 174,  
6 right because that refers to a Cabinet decision.

7 THE WITNESS: Yeah, I see that, but I--

8 COMMISSIONER HICKINBOTTOM: I don't know what  
9 Mr Rawat's next question is going to be, but it seems to me the  
10 answer is for you to go away and look at the system again,  
11 perhaps using different searches, and some of these documents  
12 which have been disclosed by another part of the Government to  
13 see what documents there are in response to Request No. 16.

14 THE WITNESS: I would have to--I would have to do  
15 that, if that's the case, but, of course, I don't think that he  
16 would think that we're trying to hide anything.

17 COMMISSIONER HICKINBOTTOM: No, no, no.

18 (Overlapping speakers.)

19 COMMISSIONER HICKINBOTTOM: He's not suggesting that  
20 you are deliberately trying to hide anything at all. He's just  
21 suggesting there may be documents in there which you haven't yet  
22 found which we would very much like to see if they're there.

23 THE WITNESS: Okay.

24 COMMISSIONER HICKINBOTTOM: And then we can discuss  
25 that, and that's going to be done. But that's where he's going,

1 isn't it, Mr Rawat?

2 MR RAWAT: Exactly, sir.

3 The point is, of course, it's a wider concern because  
4 there have been other requests to the Cabinet Secretary; and,  
5 depending on the searches undertaken, that may have also  
6 overlooked relevant documents.

7 But, you know, the key point here is that we want to  
8 progress the Inquiry, and what I would suggest is that the next  
9 step is for the Cabinet Secretary to agree that she will go back  
10 and look again at Request No. 16. That seems to be the most  
11 pragmatic way forward.

12 COMMISSIONER HICKINBOTTOM: That's right. I think she  
13 will. We simply have to give her the appropriate time and  
14 direction.

15 But that's Request No. 16, Mr Rawat, and we can deal  
16 with that. We can--Ms Ward will agree to a timetable in which  
17 she's going to have another look.

18 But are your questions going beyond Request No. 16?

19 MR RAWAT: No. I mean, we thought--they, in part,  
20 illustrate the concern that I've just raised about the extent of  
21 searches, and I want to do this in just with one final matter,  
22 please.

23 BY MR RAWAT:

24 Q. And that is that we've seen the expedited extract  
25 there, Miss Ward, so presumably there is a form in it with

1 appendices that links to the expedited extracted, isn't there?

2 A. This is October 2020, no, there wouldn't be. It would  
3 have been draft.

4 Q. So, is it the position that there are--for Cabinet  
5 meetings that were happening in October 2020, the minutes are  
6 still in draft?

7 A. Yes, they are.

8 Q. In terms of draft minutes, how far back do they go?  
9 You said October 2020. September or August 2020?

10 A. No. I think--because this started in March, so maybe  
11 ending of June.

12 Q. Right. So, since then, you have been just having  
13 draft minutes; is that right?

14 A. Right.

15 Q. Is there any reason you decided not to disclose draft  
16 minutes to the Commission?

17 A. Because they weren't confirmed.

18 Q. But they are still, at the moment, the record of a  
19 decision that was taken? They're still available and can be  
20 produced, can't they?

21 A. I again would have to ask--I would have to ask for  
22 advice on that.

23 Q. And is the reason that these minutes only exist in  
24 draft, why you have not been disclosing minutes to the  
25 Commission?

1           A.    And I did send an e-mail to say that there was no  
2 information that we didn't have, and I did get a response...

3           Q.    All right.

4           A.    What I would have to--I would have to go back and look  
5 at this.

6           COMMISSIONER HICKINBOTTOM:  It seems to me to be two  
7 things, then, that we would like you to look at again.  One is  
8 this particular request, given the documents that are here; and  
9 secondly, the issue of the draft Cabinet minutes, and I  
10 understand they're not approved, but they are over a period of  
11 about a year, and they're the best record that there is--in  
12 fact, they're the only record that there is.

13           Mr Rawat, is the best way to proceed--and we can talk  
14 to Miss Ward about timing, but for us to write to her asking  
15 precisely what we want?

16           MR RAWAT:  Yes, sir.  I think we should.

17           COMMISSIONER HICKINBOTTOM:  I mean, I just want to be  
18 clear as to exactly what we're asking for.

19           MR RAWAT:  Yes.

20           COMMISSIONER HICKINBOTTOM:  Miss Ward made it very,  
21 very clear that she's willing to do whatever we would like to do  
22 to--so she cooperates with the Inquiry.

23           I'm sorry, Miss Ward.  Go ahead.

24           THE WITNESS:  You said minutes in draft over a year.  
25 This is just from June to December.  We have minutes in January-



1 -

2 COMMISSIONER HICKINBOTTOM: Thank you. Thank you very  
3 much.

4 THE WITNESS: --to present.

5 COMMISSIONER HICKINBOTTOM: Fine. Yes. A very fair  
6 point. So, whatever it is, five or six months.

7 MR RAWAT: Sorry, I'm happy with that course, and  
8 those are all the questions that I propose to ask of Miss Ward  
9 today.

10 COMMISSIONER HICKINBOTTOM: That's very good. Thank  
11 you.

12 Miss Ward, so the Commission will write to you so you  
13 know exactly what there is to do, but given that we will ask for  
14 really another search to see whether there were any documents in  
15 respect of Request 16, and also any documents which fall within  
16 any requests which are draft minutes, how long do you think it  
17 would take you to respond to those requests?

18 THE WITNESS: I would have to see the request.

19 COMMISSIONER HICKINBOTTOM: You have to--

20 THE WITNESS: Review the request. When I see it, then  
21 I would be able--

22 COMMISSIONER HICKINBOTTOM: The Request 16 you've got.

23 THE WITNESS: I thought about the minutes.

24 COMMISSIONER HICKINBOTTOM: No, the minutes. What  
25 about Request 16?

1 THE WITNESS: No--16, I can go back now and look at--

2 COMMISSIONER HICKINBOTTOM: That's quite a quick  
3 thing?

4 THE WITNESS: Yes.

5 COMMISSIONER HICKINBOTTOM: So, how long do you think  
6 you will need to do that?

7 THE WITNESS: 16?

8 COMMISSIONER HICKINBOTTOM: Yes.

9 SOLICITOR GENERAL: (Inaudible.)

10 COMMISSIONER HICKINBOTTOM: No, we'll come onto the  
11 draft minutes, I think that does raise different issues, but  
12 in respect of 16, which we believe is a new search. Is that  
13 something that could be done by the end of this week?

14 THE WITNESS: Yes, most definitely.

15 COMMISSIONER HICKINBOTTOM: That would help. As it  
16 were, the quicker the better, at the end of this week is fine.

17 And now what about in respect of the draft minutes.

18 Solicitor General,, do you want to say anything in  
19 respect to those?

20 SOLICITOR GENERAL: Yes, I understand the evidence of  
21 Miss Ward is that the minutes of drafts--although all the best  
22 records she has, I'm not sure she's authorised in the sense they  
23 are not confirmed, so that is something she needs to clarify  
24 before she--

25 COMMISSIONER HICKINBOTTOM: They may never be

1 confirmed. We just don't know.

2 SOLICITOR GENERAL: They may be inaccurate.

3 COMMISSIONER HICKINBOTTOM: They may be inaccurate,  
4 but we just don't know. How is anybody--well, how is anybody  
5 going to look at the minutes now and say they are accurate?  
6 They're going to be looking--they're going to be thinking about  
7 a year ago, what's happening last year.

8 But anyway, you as the law officers will need to  
9 consider the issue--I understand that--and you will give  
10 whatever advice you're going to give.

11 SOLICITOR GENERAL: Yes. So they would probably need  
12 longer than Friday (unclear)?

13 THE WITNESS: Is this going to be all or specific to  
14 ones you want to ask?

15 COMMISSIONER HICKINBOTTOM: Mr Rawat, are you looking  
16 for the draft Cabinet minutes that relate to the requests that  
17 have already been made?

18 MR RAWAT: Yes. I mean, if there are--I mean, I know  
19 I appreciate Miss Ward has been sent a number of requests, but  
20 if there are draft minutes that bear on those requests, then we  
21 need to see them.

22 SOLICITOR GENERAL: It would be at least 14 days to  
23 advise whether or not that is legal.

24 COMMISSIONER HICKINBOTTOM: So, that's the end of next  
25 week, really.

1 SOLICITOR GENERAL: That would be the 14 (unclear).

2 MR RAWAT: I think with respect to Miss Roberts, it's  
3 not a question whether it is legal or not. The Commission has  
4 powers to compel the production of documents. Those are  
5 documents that exist. The Attorney General has issued a  
6 guidance to officials about the preservation of documents.

7 The question of whether or not a minute can be  
8 finalised months later is secondary. Allowing two weeks to  
9 consider the legal position followed by however, you know,  
10 however much longer it might take to produce the documents or  
11 not, I'm afraid, is just too slow. What we have to remember is  
12 that disclosure can be made to the Inquiry alone as the first  
13 step, and that means that if we are told these are draft  
14 minutes, we will treat them as draft minutes, and instead can  
15 approach them with the necessary caution, if required.

16 SOLICITOR GENERAL: I understand, but I believe what  
17 Miss Ward is saying is that she would like to be advised -that  
18 is the right she has, and we are saying to advise her before  
19 Friday (unclear). So, what we're saying is, in 14 days, she  
20 will be able to comply with your request one after the other,  
21 but she's asking to be advised.

22 COMMISSIONER HICKINBOTTOM: What possible basis--what  
23 possible basis is for not disclosing them?

24 SOLICITOR GENERAL: We're not saying we're not  
25 disclosing them.

1 COMMISSIONER HICKINBOTTOM: No, no, no.

2 SOLICITOR GENERAL: She's not saying she's not  
3 disclosing them.

4 COMMISSIONER HICKINBOTTOM: What possible basis could  
5 there be for not producing them?

6 SOLICITOR GENERAL: Well, that's the thing. She is  
7 saying that she has a concern because of the state that they're  
8 in. But we covered--she would like to reach out for advice, but  
9 what we're saying is that we are not saying it's not going to be  
10 given but time frame cannot be this Friday because what she's  
11 saying is she has a difficulty that she needs advice upon. I'm  
12 just saying we could have more time, it cannot be done by  
13 Friday.

14 COMMISSIONER HICKINBOTTOM: I think the best approach  
15 to this is to take it in two stages. At the moment I don't  
16 think of any basis on which these can properly not be produced,  
17 and none has been suggested.

18 So could you, Miss Ward, having taken the advice that  
19 you want to seek, respond by the end of Friday as to whether  
20 these documents are going to be produced and then we can give  
21 you some further time after that to produce them because you're  
22 going to have to do further searches going back to each of the  
23 previous requests?

24 THE WITNESS: We're talking about in addition to 16?

25 COMMISSIONER HICKINBOTTOM: Yes.

1 Two steps.

2 THE WITNESS: Yes.

3 COMMISSIONER HICKINBOTTOM: By the close of Friday,  
4 you're going to have another look for the Request 16 documents.

5 THE WITNESS: Yes.

6 COMMISSIONER HICKINBOTTOM: And secondly, you're going  
7 to respond to the list that we will send you tomorrow--

8 THE WITNESS: Okay.

9 COMMISSIONER HICKINBOTTOM: --indicating whether or  
10 not you're going to produce the draft minutes that we request.

11 THE WITNESS: Draft minutes, that's in a request in  
12 addition to 16?

13 COMMISSIONER HICKINBOTTOM: Yes.

14 And those will be the draft minutes that fall within  
15 the requests we've already made. We will set this out in a  
16 letter so that you know precisely which documents they are.

17 Once you have--once you have the green light to  
18 produce the documents, I presume it won't take very long to  
19 produce them because you will just to have to do a search of the  
20 draft minutes.

21 THE WITNESS: I really don't want to answer that, sir,  
22 because if they're in draft, they're talking about--like I said,  
23 there are meetings, even some that went to three days. I will  
24 review the letter and respond accordingly.

25 SOLICITOR GENERAL: If I may, Commissioner, I do not

1 think that the issue is whether or not she is going to produce  
2 them. I think she would like to have some advice, given the  
3 form they're in because they're in drafts, and the time frame of  
4 producing those documents having consulted--at this point we do  
5 not know what does she want to see? We're saying yes, we would  
6 produce them, but would we for a time because in producing them  
7 she would need to take advice because obviously there is  
8 something she wants to see in terms of how the minutes are, what  
9 format they are in at the moment. So, it's not a matter of if  
10 she's going to produce them, but time stretching because she  
11 would like to consult based on the format, and at the moment I'm  
12 sitting here I don't know what it is exactly she's saying but  
13 she's asking for a time to consult. So, she would produce them  
14 here, if asked, but Friday is not practical. That is what she's  
15 saying. Friday is too soon a time to produce that, given the  
16 format that she's apparently saying they are in.

17 COMMISSIONER HICKINBOTTOM: I understand these minutes  
18 are held on the same system. Why can't a search be done on that  
19 system to find what draft minutes fall within each of the  
20 searches, with each of the requests?

21 THE WITNESS: Well, if we talk about drafts and I'm  
22 typing as people--as members are speaking, so when I say that  
23 they're not in a form, they're as raw as could be. I may have  
24 started one word. Of course, some words have been misspelled,  
25 but then I can identify it and go back to it with you, so

1 they're draft, as the drafts--

2 SOLICITOR GENERAL: They're not all formatted.

3 COMMISSIONER HICKINBOTTOM: But they're searchable  
4 documents?

5 THE WITNESS: No, I know where to find the draft  
6 minutes. It's not that we can't find them, but whether or not  
7 keeping them in draft form would be sensible, and even for the  
8 reader to understand--

9 COMMISSIONER HICKINBOTTOM: You don't have to worry  
10 about that. I accept that we may not be able to understand them  
11 because they're in draft, and I accept they're in draft and,  
12 therefore, not approved. We aren't suggesting that. All we  
13 want to is to see what you got. We can't ask for anything more  
14 than you've got. So how long would it take for you to search  
15 what you got?

16 THE WITNESS: It wouldn't take me long to search, but  
17 in terms of--I would like very much to give you some specifics  
18 as to what you're looking for.

19 COMMISSIONER HICKINBOTTOM: We can do that, but it  
20 will be the draft minutes that fall within each of the requests  
21 that we've made of you.

22 THE WITNESS: Okay.

23 COMMISSIONER HICKINBOTTOM: And how long will that  
24 search take? Not long?

25 THE WITNESS: No.



1 COMMISSIONER HICKINBOTTOM: So, if we say--

2 THE WITNESS: I don't have the search. I go on, and  
3 the minutes--the Agenda is right there.

4 COMMISSIONER HICKINBOTTOM: So, it wouldn't take you  
5 very long at all.

6 So, is there any reason why those can't be produced by  
7 Friday?

8 THE WITNESS: Yes. I have Cabinet tomorrow.

9 COMMISSIONER HICKINBOTTOM: Sorry.

10 THE WITNESS: And again, to be as open as I can be, I  
11 have to contend with the minutes for that.

12 (Overlapping speakers.)

13 COMMISSIONER HICKINBOTTOM: But seven days should be  
14 enough to do that search.

15 THE WITNESS: The search I don't think is the problem.

16 COMMISSIONER HICKINBOTTOM: Then what is the problem?

17 THE WITNESS: I would like to see what condition those  
18 are in.

19 COMMISSIONER HICKINBOTTOM: We accept that they'll be  
20 in not the condition that you would want proper minutes to be  
21 seen in, but this is what we've got, and we will have to make of  
22 it what we can, but that's not--that's not your problem.

23 THE WITNESS: Okay.

24 COMMISSIONER HICKINBOTTOM: That's something that we  
25 would have to deal with once we've seen them. But that's the

1 best we've got.

2           Okay. We will write to you tomorrow with the  
3 requests, but close of day, close of day of Friday Request 16.

4           THE WITNESS: 16.

5           COMMISSIONER HICKINBOTTOM: And certain dates for  
6 that. And if you're in genuine difficulty, you will tell us.

7           THE WITNESS: That's what I said, when I see the  
8 letter, I will respond.

9           COMMISSIONER HICKINBOTTOM: Because I know you have  
10 gone to great effort to satisfy the previous requests.

11           Okay. Anything else, Mr Rawat?

12           MR RAWAT: No.

13           Miss Ward, the summons she received can require her to  
14 attend at other hearings of the Commission. I think perhaps if  
15 you can make clear, sir, that she's, in effect, giving evidence,  
16 still giving evidence, but I think you may need to direct that  
17 she can take legal advice if she needs it, even though she's  
18 part heard, in effect.

19           COMMISSIONER HICKINBOTTOM: That's a fair point.

20           The summons with which you have been issued, Miss  
21 Ward, carries on, so we can call you back without another  
22 summons.

23           Secondly, as Mr Rawat says, while you're giving  
24 evidence--and technically your evidence is now being adjourned  
25 to another unspecified day, it's at least arguable that you

1 can't take leave in advance, well, you can because I'm saying  
2 you can on these issues, so that's not an issue. What we will  
3 do is we will adjourn your evidence to a date not specified. We  
4 will write to you tomorrow. Hopefully, we will get those  
5 documents, but we may call you back if there are other issues we  
6 would like to ask you.

7 THE WITNESS: Okay.

8 COMMISSIONER HICKINBOTTOM: Thank you very much for  
9 time, both in producing the documents you have produced and also  
10 your time today. Thank you very much.

11 THE WITNESS: Pleasure.

12 COMMISSIONER HICKINBOTTOM: I will deal with one other  
13 thing, but Mr Rawat, anything else other than the publicity of  
14 this hearing?

15 MR RAWAT: Nothing, sir.

16 COMMISSIONER HICKINBOTTOM: Solicitor General, as you  
17 know, because you were here this morning, I'm going to deal with  
18 the publicity, the making public hearings at the end of each  
19 hearing. Is there anything in this hearing that either you  
20 think is confidential or that you want to look at in the  
21 Transcript?

22 SOLICITOR GENERAL: Generally, my concern would be the  
23 detail in which the public would know about the--the way in  
24 which the Cabinet minutes are kept. We live in an electronic  
25 era. It may be an invitation for hackers. I know the system is

1 not secured, so we would want to review the minutes to ensure  
2 that there was nothing that would in particular limit to the  
3 details of the ExcoTrack system to ensure persons are not--those  
4 who are savvy in technology would now be aware that this is what  
5 happened.

6 COMMISSIONER HICKINBOTTOM: Fair point.

7 SOLICITOR GENERAL: I would have to review the  
8 minutes.

9 COMMISSIONER HICKINBOTTOM: What I suggest is that we  
10 give you time after the Transcript has been made available,  
11 which may be at the weekend, how many days would you want to  
12 look at the Transcript?

13 SOLICITOR GENERAL: Three days.

14 COMMISSIONER HICKINBOTTOM: Things like Web addresses  
15 and things like that.

16 SOLICITOR GENERAL:

17 (Overlapping speakers.)

18 COMMISSIONER HICKINBOTTOM: I understand that.

19 SOLICITOR GENERAL: Things about how the Ministers  
20 would--I think they were talking about evidence who  
21 keeps--who--how the papers are kept, which is primarily by the  
22 person holding off a device, things like that perhaps would be  
23 tracked in. The Minister's security, for example, would not be  
24 undermined.

25 COMMISSIONER HICKINBOTTOM: What I'll do is I'll say

1 that once the Transcript becomes available, three days for you  
2 to identify anything that you want redacted? But otherwise, as  
3 a matter of principle, the Transcript will be made public?

4 SOLICITOR GENERAL: That is right. Except for  
5 anything that would be a threat to national security.

6 COMMISSIONER HICKINBOTTOM: No, no, we will let you  
7 look at it and you can make submissions you would like.

8 SOLICITOR GENERAL: I'm grateful.

9 COMMISSIONER HICKINBOTTOM: Yes.

10 THE WITNESS: Making public what?

11 COMMISSIONER HICKINBOTTOM: The Transcript of this  
12 hearing.

13 THE WITNESS: Oh, really?

14 COMMISSIONER HICKINBOTTOM: That's what the Ministers  
15 have asked us to do.

16 THE WITNESS: Oh, my goodness.

17 SOLICITOR GENERAL: I believe what Miss Ward will want  
18 to look at the Transcript. I believe everything in Cabinet was  
19 governed by the Cabinet Handbook, and the proceeding and the  
20 papers, the persons who have access to those papers, all of that  
21 is not public. Again for the safety of the officers who view  
22 the Cabinet matter, the persons would not--person would  
23 generally be the Ministers, it would not be the persons who  
24 would have Cabinet access. Some of these papers would be  
25 identified in person, and identifying the position--

1           COMMISSIONER HICKINBOTTOM: No, I answered all of  
2 that, and any submissions you have to make on that, particularly  
3 personal security, but also security of the systems we will look  
4 at, not publish anything which we think--which I think is going  
5 to jeopardise that sort of security.

6           SOLICITOR GENERAL: Grateful.

7           THE WITNESS: Also, it will not be verbatim?

8           COMMISSIONER HICKINBOTTOM: It will be verbatim.

9           THE WITNESS: Oh.

10          SOLICITOR GENERAL: We will review.

11          COMMISSIONER HICKINBOTTOM: I'm afraid the verbatim  
12 transcripts are not happy because they include the "ums" and  
13 "uhs" of all of us. Thank you very much.

14          (Overlapping speakers.)

15          COMMISSIONER HICKINBOTTOM: Anything else, Mr Rawat?

16          MR RAWAT: Nothing, sir.

17          COMMISSIONER HICKINBOTTOM: Very good.

18          MR RAWAT: Thank you, Ms Ward.

19          THE WITNESS: Thank you, sir.

20          (End of Session 2.)

## CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", is written above a solid horizontal line.

DAVID A. KASDAN