

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 2
(THURSDAY 6 MAY 2021)

International Arbitration Centre
3rd floor Ritter House
Wickhams Cay II
Road Town, Tortola

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Mr Terrance B. Neal of McW. Todman & Co appeared for Ms Patsy Lake

Ms Patsy Lake gave evidence to the Commission

Counsel to the Commission Mr Bilal Rawat also appeared

Court Reporter:

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Those present:

Mrs Jo-Ann Williams-Roberts, Solicitor General

Mr Bilal Rawat (attending remotely)

Mr Terrance B. Neal, McW. Todman & Co (attending remotely)

Ms Patsy Lake

Ms Suzanne Rymer

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

1
2 COMMISSIONER HICKINBOTTOM: Good morning, everyone.
3 I think the first thing to do is to make sure the technology is
4 working.

5 Mr Neale, can you see and hear me?

6 MR NEALE: Yes. Good morning, Commissioner. I
7 confirm I can see and hear you very well. Thank you.

8 COMMISSIONER HICKINBOTTOM: And we can see and hear
9 you as well, Mr Neale. That's good.

10 Mr Rawat, again, can you again see and hear us?

11 MR RAWAT: Good morning, Commissioner. I can see and
12 hear in the room.

13 COMMISSIONER HICKINBOTTOM: Thanks very much.

14 Just in terms of technology, we have an AV technician
15 here who will be keeping the technology going as it did
16 Tuesday. If anybody is disconnected, which can happen at the
17 best of the times, he, I hope, will notice, if anybody else
18 notices, if they would raise that, and we will simply stop and
19 wait for the reconnection.

20 I should also say, after Tuesday, if everybody can
21 speak up and speak clearly, it makes things very much easier
22 for the transcriber. And on Tuesday, as I understand it, those
23 who were linked in remotely--there were a number of them--could
24 actually be heard much better than those in the room,
25 particularly people here, me included. We will have to do our

1 best for the transcriber today.

2 I know that the Secretary has been through some of
3 the housekeeping matters involving--which--some of which result
4 from this being a private hearing. If I could just add two
5 things to that, both of which hopefully arise out of the
6 hearing being private at the moment.

7 Firstly, as with other hearings, I will hear
8 submissions at the end of the hearing as to whether there are
9 any reasons why the whole of the Transcript can't be made
10 public when it's done.

11 And secondly--this really, I suspect is for you, Mr
12 Neale--today the Solicitor General is here, and I welcome her.

13 On Tuesday, an Application was made by the Attorney
14 General and the Solicitor General on behalf of some BVI
15 Ministers and their Ministries and other public servants to be
16 participants in the Commission of Inquiry. I allowed that
17 Application; and, under the statute under the Commission of
18 Inquiry Rules, that entitles them to participate in the whole
19 of the Commission of Inquiry, which means that they have a
20 right to be present at all of the hearings unless there is good
21 reason why they shouldn't be here. The Solicitor General is
22 here today on their behalf.

23 Mr Neale, firstly, is there any good reason--I can't
24 think of any--why the Solicitor General should not be here on
25 behalf of those individuals? And also, is there any reason,

1 good reason, why she can't have the bundle which just, as you
2 know, contains the Application, submissions, and some
3 correspondence. It contains none of the substantive documents
4 because, at the moment, Ms Lake objects to producing those.

5 Any objections to any of that, Mr Neale?

6 MR NEALE: We have no objections, Commissioner.

7 Thank you.

8 COMMISSIONER HICKINBOTTOM: That's very kind.

9 So, if perhaps the Solicitor General can be provided
10 with a copy of the bundle. It will make things easier for her
11 to follow what's going on.

12 Now, is there anything I have missed before I come on
13 to the Applications?

14 Mr Neale, two Applications, firstly an
15 Application--really, I think it's an Application for
16 declaration that Ms Lake is a participant in the COI, and then
17 consequently under the Act, under the COI Rules, she's entitled
18 to be represented throughout the whole of the Inquiry. And
19 then, secondly, an Application concerning her objection to
20 producing the documents which are referred to in the summons.

21 Just dealing with the Application under Section 12,
22 first, Mr Neale, now under the Commission of Inquiry Rules, a
23 witness may have counsel present when he or she is giving
24 evidence. That, I think, is Rule 26, yes, subject to me giving
25 permission. But a witness is allowed to have counsel present

1 while giving evidence. And, at moment, subject to anything
2 Mr Rawat has to say, I would be minded if an Application were
3 to be made under that provision to grant it so that you could
4 attend, albeit remotely, when Ms Lake is giving her evidence.

5 But your Application is not made under that provision
6 but under Section 12, and I think it is Rule 13 of the
7 Commission of Inquiry Rules, which reflects Section 12 because
8 you say that--you submit that she falls within the scope of
9 Section 12 and, therefore, is a participant and entitled to
10 representation throughout the whole of the Commission of
11 Inquiry.

12 Now, is that an Application that you maintain?

13 MR NEALE: It is, Commissioner. It is.

14 COMMISSIONER HICKINBOTTOM: Okay. Good.

15 Now, if that's the case--and I understood that it was
16 the case--then what I need to be satisfied under, as I say,
17 both the Act and the Rules, is that Ms Lake's conduct forms
18 part of the subject matter of the Commission of Inquiry or that
19 she is implicated or concerned with the subject matter of the
20 Inquiry.

21 Now, the subject matter of the Inquiry is set out in
22 the terms of reference for the Inquiry, which are within the
23 instrument of my appointment.

24 And on the basis that Ms Lake is not concerned in any
25 way with governance or law enforcement or the justice system,

1 in respect of which it's open to me to make recommendations,
2 the scope of the Inquiry is set out in Paragraph 1 to establish
3 whether there is information that corruption, abuse of office
4 or other serious dishonesty in relation to officials, whether
5 statutory, elected or public, may have taken place in recent
6 years.

7 Now, what I would like to hear from you on, Mr Neale,
8 is, in what way do you say that Ms Lake has a direct and
9 substantial interest in an important aspect of the COI?
10 Because that is something under the Rules that I have to take
11 into account in assessing whether she should be a participant,
12 whether she should have the right, prima facie right, to attend
13 any hearing that we have.

14 MR NEALE: May I respond--may I respond,
15 Commissioner?

16 COMMISSIONER HICKINBOTTOM: Yes, please.

17 MR NEALE: Of course, the Rules of the Commission is,
18 in fact, derived from the Act, Section 12.

19 COMMISSIONER HICKINBOTTOM: Correct.

20 MR NEALE: And Section 12, in fact, it is very
21 specific and the broadest possible Rules. One cannot, in fact,
22 put a limited interpretation of Section 12. It says, any
23 persons whose conduct is subject of inquiry under this Act or
24 who is in any way implicated or concerned in the matter under
25 inquiry.

1 So, we have the Applicant being so served with a
2 summons, stating, "Look, you must come, you are directed to
3 appear before the Commission to give evidence, in fact, and
4 produce documents." By any objective interpretation, the
5 Applicant must be concerned with the Inquiry. It is not
6 possible to put a limited interpretation into it when, in fact,
7 you have--the Applicant has been served with a summons which
8 does not really define the role of the Applicant, the reason
9 why she is someone to appear before the Commission.

10 So, we say that, by any objective assessment of the
11 matter, the Applicant is, in fact, a person concerned with the
12 Inquiry. It does not--it does not have to be, as it's being
13 suggested, that the Applicant must show, in fact, that there is
14 a specific aspect of the Inquiry she is concerned with. The
15 fact that she is summoned, she's asked to produce certain
16 documents; and, in fact, she is required to produce evidence
17 before the Commission, she must be concerned with the Inquiry
18 of the Commission.

19 COMMISSIONER HICKINBOTTOM: So, on that basis, are
20 you saying that every witness--every witness--whom the
21 Commission summonses must inevitably be a participant in the
22 COI for the purpose of Section 12?

23 I mean, just before you answer that, that would have
24 very great practical consequences because it would mean that
25 all witnesses who are, on the face of it, entitled to play a

1 part in the whole Commission of Inquiry and, indeed, attend all
2 of the hearings. I appreciate that, under the COI Rules, it's
3 open to me to limit the participation of every participant.
4 But, on the face of it, your submission means that every
5 witness can attend every hearing, be it private or public.

6 MR NEALE: Both, with respect, Commissioner, is not,
7 in fact, our submission. If, in fact, the Witness was served
8 with a specific--served with a summons, you are required as a
9 witness to assist the Commission in respect of X, Y, and Z, and
10 our evidence will assist, then, of course, the witness is
11 coming to assist the Commission.

12 That's not what the summons says. The summons says
13 you are required to attend. It does not say what is the basis,
14 why she's required, and bring all these documents A, B, C.
15 There is a world of difference with a witness who is required
16 to attend for a particular purpose to assist the Commission;
17 and when, in this case, in fact, you compel the witness to come
18 forward in the broadest possible tools, with no indication as
19 to why the witness is being summoned.

20 So, we say that if there is not a situation with the
21 own witnesses are, in fact, Parties to the proceeding, but in
22 this particular case, an obvious inference which must be drawn
23 from the broadly drawn summons and document required to be
24 produced must be this particular witness is concerned with the
25 matter under Inquiry.

1 COMMISSIONER HICKINBOTTOM: Sorry--yeah, there are a
2 number of--there are a number of strands there. You say that
3 the terms of the summons--from the terms of the summons that
4 the witness--it can be inferred that the witness is concerned
5 with the Inquiry. But Ms Lake has only been summonsed, of
6 course, to assist the Commission of Inquiry. She wouldn't have
7 been summonsed otherwise, but the Commission of Inquiry at the
8 moment is in the process of gathering information; that's all.
9 Nothing has been suggested that Ms Lake has done anything
10 wrong. Nothing has been suggested in the summons that she's
11 done anything wrong. She's simply being invited to produce
12 documents voluntarily, which she has refused to do.

13 We have summonsed her so that she can assist the
14 Commission because, in my view, she has documents which may be
15 relevant to the terms of the Commission of Inquiry. Relevance,
16 of course, is a matter for me.

17 She's simply a witness. I don't understand the--I
18 don't understand the difficulty at the moment. She's simply a
19 witness, but you seem to suggest that she's something more than
20 just a witness.

21 MR NEALE: May I invite your attention, Commissioner,
22 to Paragraph 2 of the witness summons, and this is perhaps one
23 of the main issues with the summons. It states: "You're
24 summoned to appear before the Commission at the BVI
25 International Arbitration Centre, Third Floor, Ritter House,

1 Wickham's Cay II, Tortola, at 11:00 a.m. on Thursday,
2 6 May 2021, and thereafter on such days and at such times as
3 the Commission may direct until the conclusion of the Inquiry
4 for the purpose of being examined under oath or affirmation,
5 and you are requested," but examined on what? That is the
6 problem we are having. Examined on what? You want to say for
7 the purpose of being examined under oath or affirmation, and
8 you are required. Examined on what? The only obvious
9 inference must be that, in fact, you have not provided
10 specifics, so the--so it must be that the witness is entitled
11 to infer, in fact, that she is a person concerned with the
12 Inquiry.

13 If you had limited the scope of your summons and
14 said, "in relation to assist the Commission in relation to X,
15 Y, and Z," then the argument that, in fact, the witness was
16 just being summonsed as a witness may have some force, but no,
17 because you issue a general summons with no specifics
18 whatsoever, and the witness, in fact, is compelled to appear.
19 So, with respect, Commissioner, we suggest it is artificial to
20 say that the witness is not concerned with the inquiry, given
21 the general summons issued by the Commission.

22 COMMISSIONER HICKINBOTTOM: Just give me a moment.

23 As a schedule to the Commission of Inquiry Act, there
24 is--I think it's really sort of a suggested summons. I don't
25 think the summons is written in stone, but that is the form of

1 the summons suggested by the Act.

2 And this--as I understand it, this reflects the
3 practice in the Eastern Caribbean Supreme Court, but this
4 simply requires the individual to come and give evidence
5 respecting the Inquiry.

6 Now, of course, the witness has to be treated with
7 procedural fairness, so if we ask a question the answer to
8 which is privileged in some way, then that may be the response
9 to a particular question. Or if the questions suggest that a
10 witness--just leaving Ms Lake aside for a moment; a
11 hypothetical witness--has been guilty of some wrongdoing, then,
12 firstly, the self-incrimination provision may come in, and the
13 witness may then, in fairness to him or her, be entitled to
14 know precisely what has been put in respect of their conduct.
15 But there is none of that here. She's simply being asked in
16 accordance with the form of summons in the Act to come and
17 assist the Commission of Inquiry.

18 She's got you as her counsel as a witness, if I give
19 that permission which I said I'm minded to do, to protect her
20 from any improper questions. I think it would be incredible if
21 counsel to the Inquiry whose job is to maintain the public
22 interest would ask any improper questions, but if he does, you
23 can stop him; I will stop him. I don't see what--I find it
24 difficult to see what the issue is.

25 MR NEALE: We meant in our conversation--we meant in

1 our position to put a limited interpretation as the being
2 suggested in respect of the relevant section is, in fact,
3 contrary to the spirit and object of the Act. To suggest that
4 because the witness--this is a preliminary stage of the
5 hearing, and the Applicant is only summoned as a witness, and
6 because of that she does not or is not entitled to legal
7 representation. We find that very, very difficult to accept as
8 a general proposition of law and the entitlement of participant
9 witnesses to be represented.

10 COMMISSIONER HICKINBOTTOM: Thank you very much, Mr
11 Neale.

12 Let me hear from Mr Rawat to see if he's got anything
13 to add to this discussion.

14 Mr Rawat.

15 MR RAWAT: Sir, may I just pick up on Mr Neale's last
16 point, that requiring the attendance of a witness without then
17 giving them the benefit of legal representation is contrary to
18 the spirit of the Act.

19 With respect, in my submission, that is not what you
20 outlined to Mr Neale. The Rules which are made under Section 9
21 of the Act provide for participants, so those who come within
22 Section 12, but they also give you--and this power flows from
23 Section 9, which allows you to make rules that are necessary
24 for the conduct and management of proceedings before you, and
25 you've drawn Mr Neale's attention to Rule 26, which allows at

1 your discretion a witness to be represented.

2 So, in that sense, whether or not you have
3 participant status doesn't matter. The Rules still allow for
4 an opportunity to, if you submit to a Commissioner, that
5 procedural fairness requires representation, for you to have
6 it. I would just like to make a number of points that I think
7 to try and put Mr Neale's submission into context.

8 The first is that this is an investigation. It is
9 not a trial. It must go, if it is to be a truly independent
10 investigation you intended to be where the evidence takes you.
11 Part of the ability for a Commission of Inquiry to go where the
12 evidence takes it is found in Section 10, which gives you
13 powers of compulsion.

14 The nub of Mr Neale's submission comes down to that,
15 if you issue a summons that fails to give reasons either why
16 the witness is required to attend or why the witness is
17 required to produce (drop in audio) evidence, the consequences
18 that that witness then comes within Section 12. If you had
19 given reasons, then that person would fall outside Section 12.

20 That, to me, in my submission, is illogical, but it
21 also creates a rather perverse situation where someone who is
22 served with what, in Mr Neale's submission, is a defective
23 summons, would be entitled as of right to participant status
24 but would be someone that you would not be entitled to actually
25 ask questions of or ask to produce documents, and that, in my

1 submission, makes no real sense at all.

2 You've drawn Mr Neale's attention to Schedule to the
3 Act, which sets out what the requirement is--it's not
4 mandatory, but it provides a form of summons that could be
5 used. As you've noted that doesn't require the giving of
6 reasons.

7 I'm sure Mr Neale would be very familiar with this,
8 but you mentioned these Eastern Caribbean Supreme Court Rules,
9 and the section--the part that deals with witness or court
10 attendance by witnesses is Part 33. 33.2(1) defines a witness
11 summons as a document issued by the Court requiring a witness
12 to attend court (a) to produce evidence or (b) to produce
13 documents. By Rule 33.2(2) of the Eastern Caribbean CPR, what
14 that defines is that a witness summons must be in Form 12, so
15 the difference there it's mandatory, and Part 12 is phrased as
16 follows: "You're summoned to attend the High Court of Justice
17 at" date, time, and the time and date have been given, "the day
18 fixed for the hearing of this claim, and then from Day 1 to day
19 whatever until the end of the trial to give evidence, and to
20 bring with you and produce the following documents."

21 So, two points follow from that. Firstly, once
22 again, we do not find in the Rules of the Eastern Caribbean
23 Supreme Court (drop in audio) set in terms a summons would be
24 defective if reasons for attendance or production are not
25 given. And secondly, what it also allows is a court to do is

1 to tell a witness they must be available under one summons for
2 the entire duration of a trial. That is for obvious practical
3 purposes.

4 But, in my submission, if we look at the summons that
5 was issued by the Commission to Ms Lake, it does just that.
6 All it has done is ask her to attend today, and then leave it
7 open so that she can attend on other days.

8 The nub or the core of Mr Neale's submission comes
9 down to whether there is a requirement on the Commission to
10 give summonses, reasons when it issues the summons; and in my
11 submission, by reference to both the Act and the Eastern
12 Caribbean Supreme Court Rules, it does not need to do so.

13 It is important, I think, to include to stress, as
14 you explained, Commissioner, Ms Lake is being called as a
15 witness; and, even as a witness, she still retains the
16 procedural safeguards to safeguard her interests, and those
17 include, as you've indicated, the presence of Mr Neale, and
18 you'd be minded to give him a right to represent Ms Lake as a
19 witness, and that is not something I would make submissions
20 against, but it also includes the procedural safeguards that
21 are in the Act and which you will have well in mind.

22 So, unless I can assist on any of the other points, I
23 don't have anything to say at this point.

24 COMMISSIONER HICKINBOTTOM: Thank you very much,
25 Mr Rawat.

1 Anything in response, Mr Neale?

2 MR NEALE: Commissioner, just with respect to the
3 High Court Civil Procedure Rules and the witness summons when,
4 in fact, the witness is summoned to appear, it is in respect of
5 a particular High Court action and the witness, in fact, would
6 usually (1) either in fact witness statement would be extracted
7 from the witness or if the witness is unwilling, then, of
8 course, the witness comes before the Court and evidence is
9 given. But when the witness appears, the witness is fully
10 aware of what matter the witness is appearing before the Court
11 in. This is a very different situation. They are, in fact,
12 very broad, general summonses with absolutely no indication as
13 to what this Witness is appearing before the Commission.

14 So, with respect to my learned friend, it is a very,
15 very different situation. A High Court might be specific
16 matter dealing with a specific--specific issues, and the
17 witness is normally invited to give a witness statement. If
18 the witness refuses, then, of course, summoned before the Court
19 and, in fact, questions are then put to the witness, but the
20 witness is fully aware why he or she is appearing before the
21 Court.

22 COMMISSIONER HICKINBOTTOM: But, Mr Neale, isn't that
23 simply a result of court proceedings being adversarial and that
24 this Commission of Inquiry being inquisitorial, investigatory?
25 There isn't a lease here. There is no claim here. I'm

1 conducting a Commission of Inquiry, the scope of which is set
2 out in my Terms of Reference.

3 MR NEALE: While we accept that, Commissioner, our
4 contention is that the Commission of Inquiry Act is very
5 specific. And, in fact, it recognises the established
6 principle of self-incrimination. And if, in fact, you do not
7 provide the witness with information as to why she is required
8 to produce certain documents, why she is required to appear
9 before the Commission.

10 And if, of course, we accept the contention that the
11 witness is not entitled to legal representation, then the
12 question begs itself: How is the witness--how would the
13 witness be in a position to make an assessment whether she, in
14 fact, is incriminating herself without the benefit of legal
15 advice in the matter?

16 So--

17 COMMISSIONER HICKINBOTTOM: Sorry, Mr Neale, the
18 answer to that is twofold: Firstly, whether something is
19 self-incriminatory in court is a matter for the judge, and here
20 it would be ultimately a matter for me.

21 Secondly, I have the power to allow counsel to appear
22 with a witness when he or she is giving evidence.

23 And third--and I'm sure we will come on to this with
24 respect to your second Application, but in Paragraphs 15 and 16
25 of the Commission of Inquiry Act, which I don't find entirely

1 easy, and I will be asking for some assistance on, but the
2 self-incrimination provision, which is the second paragraph of
3 Section 15, was only inserted in 1963, according to the face of
4 the statute. So, from 1880 until 1963, nothing to do with
5 self-incrimination at all. But--and this makes perfect sense
6 as a scheme--although under Section 15 before 1963, a witness
7 was required to give evidence. Section 16 meant that nothing
8 he or she said could be used against that person in any
9 subsequent proceedings.

10 Now, as a scheme, that has been changed in 1963, but
11 that's a scheme that's perfectly--that's perfectly rational,
12 but here we're simply dealing with a witness, and based on your
13 proposition, every witness would be a participant for the
14 purpose of Section 12. That, I think, is a bold proposition.
15 But are there any other submissions you would like to make on
16 that?

17 MR NEALE: Those are my submissions, Commissioner.
18 Thank you.

19 COMMISSIONER HICKINBOTTOM: Thank you very much.

20 Now, Mr Neale, what I'm going to do at the end of
21 this hearing--which is what I normally do, and particularly
22 important in this case, as you've indicated that Ms Lake may
23 want to review any decision I make today--is I will set out my
24 four reasons in writing after the hearing. But I'm not
25 persuaded that Ms Lake falls within the scope of Section 12. I

1 don't regard her as a participant in the COI for the purposes
2 of that provision. However, that, it seems to me, does not
3 mean that Ms Lake will not have full "protection" during the
4 course of the hearing because I propose to grant you permission
5 to appear for her under Paragraph 26 of the COI Rules.

6 And, in my view, that includes not only, as it were,
7 sitting by her and, if necessary, advising her, when she's
8 giving evidence, but also making any submissions in respect of
9 that evidence, including the submissions you make in respect of
10 the second Application. Therefore, in respect of the hearing
11 today, she will, I think, have everything she wants by my
12 permission as opposed to entitlement, but she will have
13 everything she wants. But she will not be entitled to
14 participate in the whole of the Commission of Inquiry.

15 If circumstances change and you consider or she
16 considers that she has become a participant, then, of course,
17 you can renew the Application on the basis of different
18 circumstances. But for the purposes of today, that will be my
19 order, and I'll give, as I say, written reasons following the
20 hearing.

21 That, then--

22 MR NEALE: Very much obliged.

23 COMMISSIONER HICKINBOTTOM: Yes. Thank you very
24 much, Mr Neale, for your submissions, and you, Mr Rawat.

25 In relation, then, to your second Application, as I

1 said, I don't find Sections 15 and 16 straightforward, but let
2 me just find your--this is your Application in relation to the
3 summons, and I do want to hear your submissions on this, Mr
4 Neale.

5 MR NEALE: Thank you very much.

6 COMMISSIONER HICKINBOTTOM: Before I hear your
7 submissions and before I hear Mr Rawat's submissions, could I
8 just indicate one concern that I have, which then hopefully you
9 can deal with when you're making your submissions.

10 I appreciate that the law in relation to
11 self-incrimination may be different in the BVI from England and
12 Wales, and particularly because now, in England and Wales, it
13 is largely provided for by statute, and here you will need to
14 inform me whether there are any statutes other than the 1880
15 Act itself that affects the position at common law.

16 But the principle behind self-incrimination, as I
17 understand it, is that it means that someone who is giving
18 evidence is not obliged to answer a question--I will come on to
19 documents which raise different issue, but someone who is
20 giving evidence is not obliged to answer a question--which
21 might tend to incriminate that person. That's the sort of
22 principle that underlies self-incrimination. Documents that I
23 say may raise slightly different issues because, at the moment,
24 I'm not convinced--I simply do not know the position with
25 regard to self-incrimination at common law. And, in any event,

1 documents are dealt with in the 1880 Act, and there may be
2 other BVI law that you would want to refer me to.

3 But if that principle of self-incrimination principle
4 is right, then it doesn't undermine the summons. Someone who
5 may have--and it's a privilege--may have a privilege not to
6 answer questions otherwise properly put to him or her because
7 of risk of self-incrimination, still has to go into the witness
8 box. The questions can still be asked, a question to which the
9 answer is inevitably self-incriminatory can still be asked of
10 the witness, and the response to it is, "I'm not going to
11 answer that question because of the risk of
12 self-incrimination." If the judge, or in this instance the
13 Commissioner, accepts that that is a proper risk, then the
14 witness has the privilege of not answering that question, and
15 we move on to the next question.

16 But what the Application seeks to do is to strike
17 down the summons, and at the moment I simply don't understand
18 the basis for that. I do understand, if Ms Lake is giving
19 evidence and Mr Rawat or I ask her a question and she considers
20 that may tend to self-incriminate her, well, she's entitled to
21 make that clear on advice from you, if necessary. But I simply
22 don't understand how--I don't understand that the basis of the
23 submission that the summons in some way is a nullity or should
24 be set aside or should even be varied. This is just on
25 self-incrimination. Natural justice, procedural fairness is a

1 different issue.

2 So, in your submissions, could you deal with that
3 point in particular, please.

4 MR NEALE: With leave, Commissioner, we are--I
5 suppose Commissioner the issue we have on what has caused
6 the--what has resulted in problems for us. Appearing now
7 before the Commission, what is being contended is that it is
8 merely a request for certain information from Ms Lake to assist
9 the Commission, and all Ms Lake is being required to do is to
10 provide information to assist the Commission. And if that was,
11 in fact, our understanding of the matter, I believe Ms Lake
12 would not have had any issues with the summons. And, in fact,
13 I may not even have been here today.

14 But the impression being conveyed by the summons--and
15 once again, we must be objective--is that essentially the
16 summons appears to be a fishing expedition where Ms Lake is
17 required to produce information, which in fact--may, in fact,
18 be used against her to formulate some sort of case against her.
19 We contend that the proper approach for the Commission would,
20 in fact, have been to get those documents from the Government
21 as opposed to approaching a private individual. Of course, any
22 contract, any agreement there are two parties to the agreement,
23 presumably the Government and the private individual. And
24 certainly the Government, we have much less objection to
25 producing those documents.

1 But when individual is approached and you say bring
2 all the documents you have in the world relating to contracts
3 that you may have with the Government over the past three
4 years, and your reasons are saying why it is you are required
5 to produce those documents, and more reasons given why it is
6 you are required to appear before the Commission.

7 And we submit that any individual, the obvious
8 inference would be that information is being collected to try a
9 case against me, particularly when a request was made, and the
10 request was rejected. And rather than go to Government and get
11 the information, obtain the information, a summons was issued
12 to the Applicant to appear before the Commission and, in fact,
13 bring all the documents in the world. There were no specific
14 documents, all the documents in the world over a three-year
15 period dealing with whatever issue you have with the
16 Government. The Government really is (unclear).

17 So, we think it's disingenuous to suggest that all
18 that is being required is Ms Lake assisting the Commission by
19 providing information. You can get that information from the
20 Government. Every contract has two sides. The Government, in
21 fact, we submit, is the one who should provide those documents.

22 And the fact that there are no specific documents
23 requested, to us, is indicative that, in fact, it is a fishing
24 expedition, and that is improper. No court would permit even
25 if one-- you translate it into criminal situation; there, in

1 fact, you are requesting--you go before a judge because you
2 want to get a search warrant. You must provide--you must
3 provide grounds of belief, why it is you think that you can go
4 and get certain documents from an individual. And, of course,
5 the Act gives the Commissioner to some extent the same powers
6 of a judge, and we are saying even in a court situation, you
7 cannot just make big request for documents. You have to
8 provide some basis, some evidential basis, why it is you think
9 the witness has a particular document, why it is you are
10 entitled to require her to produce documents. That is not what
11 is provided.

12 What has been done is that because I refuse to
13 provide you with these documents voluntarily, people saying the
14 same documents to me over a three-year period without any basis
15 whatsoever as to why these documents are required. And
16 (unclear) it is a fishing expedition, and improper--an improper
17 use of the summons and, in fact, the authority of the
18 Commission to issue summons.

19 On the issue just coming back to the
20 self-incrimination issue, which, of course, is tied in to the
21 fishing expedition, I have--as the Commissioner pointed out, it
22 was not officially in the Act. And, in fact, it was
23 subsequently added in 1963. Two assumptions must be made
24 there:

25 One, it was included because it felt it was necessary

1 to protect witnesses, participants, and other persons involved.
2 It was a shortcoming which was seen, and it felt that that gap
3 had to be plugged.

4 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,
5 Mr Neale, but I understand these submissions, and these
6 submissions may be relevant to a different issue. But at
7 moment, the issue--well, let me stop there because I don't want
8 to interrupt your submissions when you're in proper flow.

9 Have you any other submissions to make on the issue
10 that I raised at the outset, that self-incrimination cannot
11 logically undermine the validity of the--give us one moment, Mr
12 Neale.

13 (Pause.)

14 COMMISSIONER HICKINBOTTOM: Mr Neale--

15 MR NEALE: Yes.

16 COMMISSIONER HICKINBOTTOM: You can't see her, but Ms
17 Lake is here. She's just asked for a break, and so we're going
18 to have a five-minute break to allow Ms Lake to have the break,
19 and we will come back in five minutes, if that's all right.

20 MR NEALE: We are much obliged to the kindness of the
21 Commissioner. Thank you.

22 COMMISSIONER HICKINBOTTOM: Two minutes. I'm not
23 going anywhere, Mr Neale. I will stay here.

24 (Pause.)

25 COMMISSIONER HICKINBOTTOM: Mr Neale, just make sure

1 you're still there and we can hear you.

2 MR NEALE: Yes, I'm still here, Commissioner. Thank
3 you.

4 COMMISSIONER HICKINBOTTOM: Thank you very much, Mr
5 Neale.

6 Just to pause in your submissions, had you completed
7 your submissions on the initial point I raised, which was how I
8 find it difficult to see how self-incrimination could undermine
9 a summons in any way, and you've moved on, quite
10 understandably--this is not a criticism--on to other issues as
11 to why the summons--why the summons, as drafted, I think, may
12 be unfair to the witness, either in terms of self-incrimination
13 or perhaps other reasons of procedural fairness.

14 Or do you think that really all this goes to the same
15 end?

16 MR NEALE: I was just making my submission,
17 Commissioner, and don't dispute the point raised for the
18 contention or perhaps the guidance of the Commission with
19 respect--with respect to incrimination as a general
20 proposition. We, of course, accept in a situation, a question
21 can be put to the witness, and the witness can refuse to
22 respond on the grounds of self-incrimination. But we wanted to
23 just briefly touch on the issue raised by the--raised by you in
24 respect to incrimination and also the production of documents
25 which you suggest may be governed by different rules.

1 And we submit that--we will also submit, of course,
2 Section 15, which ultimately dealt with the issue of both
3 documents and witnesses being summoned before the Commission,
4 and then you had the proviso--provided the proviso on
5 incrimination, which we have accepted, was, in fact, one which
6 was tacked on in 1963.

7 And we submit that the proviso, having--the proviso
8 come in after the substantive section must be deemed, in fact,
9 to--must be deemed later in time as a matter of statutory
10 interpretation, must be the one that governs and guides the
11 section.

12 So it is not, we submit, possible to limit to say
13 where you get documents out of this document. It is a broad
14 section giving of evidence, documents involving giving of
15 evidence. If one is to construe Section 15 properly, you
16 cannot separate documents from oral evidence, what the
17 Commissioner is suggesting. But we say "no."

18 COMMISSIONER HICKINBOTTOM: Again, sorry to
19 interrupt, can I say why that may be an interpretation? I'm
20 not saying the interpretation is right, but in Section 15 of
21 the Act--

22 MR NEALE: Yes.

23 COMMISSIONER HICKINBOTTOM: --"all persons summoned
24 to attend and give evidence, comma, or to produce books", et
25 cetera.

1 And similarly, in the specific summons to a witness,
2 it says: "to give evidence respecting such inquiry, comma, and
3 you're required to bring with you", and so on. But the proviso
4 says, "provided always that no person giving evidence." It
5 doesn't say anything about documents there. That's where there
6 may be a possible ambiguity because, giving evidence is in
7 Line 1. Giving evidence is in Line 1 of the proviso, but
8 production of books is not covered expressly in the proviso.

9 MR NEALE: I accept the--I don't agree, but I accept
10 that there is an alternative interpretation, and I see the
11 point that you are making, Commissioner, with respect to a
12 possible alternative interpretation.

13 But, surely, we are saying, if you look at the
14 mischief and the intent of the proviso is, in fact, to prevent
15 a witness from or participant who are a party from
16 incriminating himself. And surely producing a document must be
17 part of that process. You cannot separate and pull aside
18 documents and say, "Oral evidence is different from documentary
19 evidence." And at the end of the day, it falls in evidence.
20 And if the intention is to prevent self-incrimination,
21 surely--surely--it must be as well that I'm entitled to
22 withhold documents as well. But that would be our submission.

23 But we do take the point that it is a possible
24 alternative interpretation.

25 COMMISSIONER HICKINBOTTOM: Your submission is that

1 it would be a false distinction to draw between evidence and
2 documents in the proviso. It's simply a distinction?

3 MR NEALE: It is our submission, yes.

4 COMMISSIONER HICKINBOTTOM: Any other submissions in
5 relation to your second Application, Mr Neale?

6 MR NEALE: Just the point again we raise on the--we
7 raised the point with respect to the witness--the principle of
8 natural justice and somebody being summoned before not actually
9 being provided with any information as to why the summon. I
10 know that what is being suggested, of course, is that where you
11 are just being someone as a witness, and my learned friend, who
12 was quite astute, referred the Court to the Rule 33.3 of the
13 Civil Procedure Rules, and we do comment that is finally
14 referenced to that particular text.

15 But--but--Commissioner, the words are different
16 between the two, and this is where I take issue with my learned
17 friend. When you are summoned as a witness in a High Court
18 situation, civil or criminal, there is no possibility of your
19 being incriminated. You're just a witness to give evidence,
20 and this situation is very different. If my client produces
21 information and the Commission is of the view that this
22 information points to our client having acted in some way which
23 is not sanctioned by the law, then possibly a recommendation
24 later on will flow from that.

25 So it totally neutralises my friend's argument.

1 You're not in the same--you're not in the same ballpark.
2 You're not in the same game. It's a totally different
3 situation. If the Commission was to guarantee my client,
4 "Listen, just assist us, there is no possibility of any adverse
5 consequences against you," my client would have absolutely no
6 difficulty in producing the information.

7 So, it is a very different situation, a summons
8 before the Commission. This unusual situation where it is
9 deemed as a fact-finding aspect of the Commission and the
10 possibility later on that that same information you, in fact,
11 use against my client, in fact formulate some sort of, for want
12 of a better word, some sort of case against her that she is
13 misbehaving in some way.

14 It is the principle of self-incrimination, natural
15 justice are very, very relevant in this scenario, and our final
16 submission tied in with you cannot fish for information. It is
17 not permitted under any circumstances. If, in fact, it is that
18 you believe you have information to formulate a case, if it is
19 specific information you require before you believe it will
20 assist you, request that spectacular information, but you
21 cannot ask everything in the world, (unclear) in the document,
22 in fact, you know you will discover information which you
23 believe may be assist you in formulating a case against my
24 client.

25 And my client's assumption is not a farfetched one

1 because, as we've indicated, those documents can be obtained
2 from the Government. The fact that my client is being
3 requested to produce those documents is a clear indication that
4 my client somehow was--falls within the radar or scope of the
5 Commission and, in fact, she is required to produce it for a
6 particular purpose, which may have adverse consequences against
7 her.

8 So, to sum up, our three objections are: One, the
9 summons against self-incrimination; two, in terms of the
10 principles of natural justice that my client should be given an
11 opportunity, if there is, in fact, a possibility of some sort
12 of sanction down the road and opportunity, in fact, to be able
13 to take advice to properly respond. And three, in fact, the
14 summons is by way of a fishing expedition. It's improper; it's
15 an abuse of the Commission's power. I'm sorry.

16 And finally, we say the time period was too short.
17 Less than seven days' notice. And my friend refers to the
18 Civil Procedure Rules, and where you would know that summons
19 are usually as I indicate in correspondence at least 14 days.
20 And while the Commission is entitled to make rules for its
21 procedure, it is expected that the Commissioner having the
22 powers of a High Court Judge, would to some extent not issue
23 directions which are inconsistent with the normal court
24 procedure, so we're saying that the time period of less than
25 seven days is also inadequate.

1 So, those are our four submission on the issue of the
2 summons.

3 COMMISSIONER HICKINBOTTOM: Thank you very much, Mr
4 Neale.

5 Can I just make four points, I think--three points, I
6 think, before I hear from Mr Rawat. And Mr Rawat may cover
7 these, and I apologise if any thunder is stolen.

8 The first is you refer to this being a fishing
9 expedition in the Application and in your submissions, but this
10 is not a court of law with an adversarial lease in front of it.
11 It is a Commission of Inquiry which has a different function.
12 I'm sure that this--taking your analogy further will probably
13 fall apart in my hands, but it's not my function to catch fish.
14 It's my function to ascertain whether there is evidence that
15 there are any fish in the pond. It's a different function.
16 Inevitably, it's part of a Commission of Inquiry's task to
17 gather in information in this way.

18 Secondly, you say that the information that we've
19 asked for can be obtained from the Government, and it may be
20 that some of the information could be a obtained from the
21 Government, but just two points on it, and as I say, Mr Rawat
22 may make his own submissions on these, but firstly, under the
23 second paragraph of the documents that we're seeking, we're
24 seeking documents relating to contracts which have been entered
25 into with the Government by entities associated with Ms Lake,

1 such as companies and so on. And we can't ask the Government,
2 it seems to me, for those without knowing what those entities
3 are. We have to ask Ms Lake.

4 And secondly--and the Solicitor General is here, but
5 I would say this even if she weren't--despite the good efforts
6 of Government departments to provide us with documents, not all
7 of the documents covered by requests have been produced at
8 least if I could put it this way, first time round. It will
9 obviously be much more straightforward for Ms Lake to give us
10 documents in the restricted categories that we've asked for
11 than it will be to obtain all of the documents from the
12 Government.

13 Third, you say that we're in a different scenario
14 here, and we are because it's inquisitorial and not
15 adversarial, different from civil courts. But I'm not sure the
16 difference that you drew was a justifiable one because even in
17 civil courts, of course--I don't know--a civil claim about the
18 collapse of a building. That might result in questions being
19 asked of a particular witness, which may result in him being
20 prosecuted under some law in relation to systems of building;
21 and, therefore, I'm not sure of the difference between this
22 Commission of Inquiry and the civil courts that you drew in
23 self-incrimination being possible here but not possible in
24 other courts, it is necessarily a clear line.

25 And, fourth, just really to get a clarification from

1 you, you say that 14 days is normal in the High Court, the East
2 Caribbean High Court, but are you making any--are you making
3 any submission that you haven't, in fact, had enough
4 time--forget about what is normal in the East Caribbean Court,
5 but are you saying that, despite the length of time Ms Lake has
6 known this was coming, she hasn't had time to seek your advice
7 on, whatever, self-incrimination?

8 MR NEALE: If I may respond, Mr Commissioner.

9 COMMISSIONER HICKINBOTTOM: Yes.

10 MR NEALE: Of greater importance, the first point
11 made by you that the documents can be obtained from the
12 Government, and I think you may, with respect to Ms Lake's
13 summons, the only documents being requested are documents
14 dealing with the Government, has nothing to do with Ms Lake and
15 her relationship or contracts with companies. If such a
16 request was made by the Commission, it would be improper and
17 outside the remit of the Commission because it has to deal with
18 Government issues.

19 So, that is all documents can be obtained from the
20 Government, so that submission--sorry, well, that observation
21 by the Commission was not accurate, and it's reflected in A and
22 B.

23 COMMISSIONER HICKINBOTTOM: Sorry, Mr Neale, sorry to
24 interrupt. I think you misunderstood the observation. The
25 observation--and do come back to me if this observation is

1 wrong, but the second paragraph of the request asks for
2 contracts with the Government that had been entered into by
3 companies, et cetera, with which Ms Lake is associated.

4 Now, you're right in saying, "Well, the Government
5 must have those documents"--that may be right--but they can't
6 find them because we can't say, "Well, these are the
7 companies."

8 MR NEALE: I'm a bit confused in the sense that
9 surely the Government would know who entered in the contract
10 and whether, in fact, Ms Lake was connected to that contract.
11 I'm a little confused, Commissioner, but that was my first
12 point.

13 And second point with respect to the time period
14 which there is, but that, of course, was part of our
15 submissions--and it is there, and we didn't feel the need to
16 rehash what he said, of course, the time period was much too
17 short. I have to rush essentially on Monday was the first time
18 I was able to discuss the matter with my client, and I hastily
19 added submissions.

20 On the issue of the different situation with
21 witnesses being summoned in the adversarial process, we still
22 maintain that there is a difference because a witness--a
23 witness is someone to give evidence in a matter in the High
24 Court. And if, in fact, at some point in time a separate
25 proceedings are issued or the police decide to investigate the

1 matter based on information given.

2 But, in this situation, it's very different. The
3 information--you're gathering information for the specific
4 purpose of, in fact, of launching the Commission of Inquiry
5 which may implicate my client. It's not the same.

6 And other situation you are called as a witness,
7 there is no possibility at all of your being any sanction for
8 you, separate questions may be brought down the road, but
9 separate procedures.

10 This, as you pointed out is a preliminary step, so it
11 is--it is not unreasonable for individual to say, "Hold on, why
12 is it I must provide evidence which may incriminate myself in
13 the matter, or why it is I must provide evidence to you when I
14 have no knowledge of what is being required of me and whether I
15 can seek legal advice on the matter because I have no
16 opportunity of knowing what is requested of me.

17 So, those would be our response to the points raised
18 by you, Mr Commissioner.

19 COMMISSIONER HICKINBOTTOM: Thank you very much, Mr
20 Neale.

21 Mr Rawat.

22 MR RAWAT: Sir, may I address you on four issues:

23 The first is the question you first asked Mr Neale,
24 which was about how self-incrimination would undermine the
25 summons.

1 The second is Mr Neale's argument on the failure to
2 give reasons.

3 The third I would put as the width of the summons.

4 And the last is the question of how much time Ms Lake
5 has had to take legal advice and which goes to the wider issue
6 of the length of time which must be allowed between service and
7 attendance.

8 If I return to the first, whether self-incrimination
9 undermines the summons, in my submission, when one looks at the
10 Act, you are dealing with two entirely different mechanisms.
11 The use of summons is necessary, as I've previously submitted,
12 to allow the Commission to obtain the material necessary to do
13 its work and fulfill its Terms of Reference, and that just does
14 not include only documents, but also it includes evidence taken
15 on oath. In my submission, although you have not thought it
16 necessary to do so in the Rules that you have issued, but
17 within those Rules, and given the breadth of Section 9, you
18 could have issued a rule that I, as counsel to the Commission,
19 could interview people under oath. There is that sufficient
20 width in the Act.

21 Self-incrimination here arises differently. You've
22 made the point, and I accept what Mr Neale says when you put it
23 to him about the possibility of a false distinction between the
24 production of material and the giving of evidence, but
25 nonetheless, there are, I would submit on a clear reading of

1 Section 15, the privilege against self-incrimination is
2 intended to be engaged, particularly if one looks at the 1963
3 edition, when someone is actually giving evidence. So, it
4 starts--it arises when the individual steps into the witness
5 box, so to speak, and that's where it is.

6 Now, that addition does also refer to all the
7 privileges to which a witness giving evidence before the High
8 Court is entitled--in respect of evidence given by him before
9 such court. There--where you may wish to proceed with caution,
10 of course, is where you've indicated needing some clarity as to
11 the law in the BVI on self-incrimination, but I would make two
12 points about that:

13 Firstly, it starts off with it's a common-law
14 privilege, I would say, as in England and Wales; but, as in
15 England and Wales, it is a privilege that could be restricted
16 by statute. And in this case, there is the argument before you
17 that what has happened to Section 15 is that the privilege has
18 been restricted to the giving of evidence.

19 In line with the reference to all the privileges, I
20 have just taken a look. The only other statute that I'm aware
21 of in BVI law that may be relevant in terms of giving a witness
22 comfort is the Evidence Act of 2006, and there is Section 116
23 of that. Now, that again makes no reference to the production
24 of documents, but it provides that the witness can object to
25 the giving evidence on the ground that it may tend to prove

1 that that witness has either committed an offense or is
2 subject to a civil liability. Then the Court can, if there are
3 reasonable grounds for the objection, inform the witness of
4 certain matters, which includes they need not give that
5 evidence. But if they do give that evidence, the Court will
6 give a certificate which then effectively acts as an
7 undertaking, if you like, sir, which prevents that evidence
8 being used in other proceedings. So, that's in ways almost an
9 echo of Section 16 in terms of a principle.

10 So, that's all I would say on Section 15, but I would
11 add one more point, and that is, even if one assumes that we
12 are reading Section 15 too narrowly--and, actually, that giving
13 evidence encompasses the production of documents--what is
14 important to draw your attention to, sir, is the reference to
15 "sufficient cause" in the body of Section 15. So, a person
16 would be liable to summary conviction to a penalty not
17 exceeding \$144 if, without sufficient cause, they refuse to
18 respond to a summons or refuse to answer questions or refuse to
19 produce documents.

20 And so, even if we widen the meaning of giving
21 evidence, Mr Neale, on behalf of Ms Lake as the Applicant,
22 still has to set out a basis as to why production, not may
23 incriminate her, but would tend to incriminate her and
24 effectively expose her to either a civil liability or a
25 criminal liability. That, in my submission, is rather

1 difficult to understand, given that the requests that are being
2 made are in relation to governmental bodies.

3 And there is, if I may point it out, a sort of
4 inconsistency in the argument that Mr Neale is advancing, which
5 is that if--it's that Ms Neale (sic) should not be allowed or
6 should not be required to produce documents because they may
7 incriminate her, but the Commission is entitled to go to the
8 Government and get those documents. So, in effect, Ms Lake's
9 submission is that she is quite content that the Government
10 should produce those documents which she says would tend to
11 incriminate her. In my submission, that really doesn't add up.

12 If I move on--

13 COMMISSIONER HICKINBOTTOM: I'm sorry, I'm just sort
14 of thinking about that. That could have potentially adverse
15 consequences for Ms Lake, I think, because where the objection
16 to production of evidence (brackets) or documents, (brackets)
17 is made on the basis of self-incrimination, it means that that
18 individual has no obligation to answer a question or perhaps to
19 produce a document. But the information and/or document
20 cannot, of course, be obtained from elsewhere.

21 MR RAWAT: Yes.

22 COMMISSIONER HICKINBOTTOM: Mr Neale accepts that, in
23 fact that all of these documents can be obtained from the
24 Government.

25 But, in those circumstances, it may be arguable--I

1 don't put it any higher than that, and it's not something that
2 needs to be debated today--that having got the information from
3 the Government, if there is something which may incriminate
4 her, she has decided not to disclose those documents. And
5 having been given the opportunity to do so, it may then be
6 possible to draw--I'm not sure it's right to say to draw an
7 adverse inference, but certainly it may be open to me to take
8 into account that she's had an opportunity to deal with these
9 matters, and has not done so on the basis of the possibility of
10 self-incrimination.

11 It's not really going as far as relying on an
12 inference of silence because, again, without hearing any
13 submissions on this, which I may want to in due course, this is
14 a privilege. But it seems to me that, if someone wants to rely
15 on the privilege, and there is evidence elsewhere of
16 wrongdoing, then in those circumstances, I could certainly take
17 into account the fact that the opportunity had been given to
18 the individual to deal with this had not been taken. That's
19 not very eloquent but--it's not very well formulated, but it
20 seems to me there may be some adverse consequences for Ms Lake
21 taking this course.

22 MR NEALE: May I be permitted to respond briefly on
23 that, Commissioner?

24 COMMISSIONER HICKINBOTTOM: Mr Neale, I would like to
25 respond, I think, to certain--to all of these points later.

1 You will certainly be given an opportunity, but it would be
2 helpful, I think--let me just hear from Mr Rawat on this point,
3 Mr Neale, and perhaps I will come back to you.

4 Mr Rawat.

5 MR RAWAT: I would limit myself to this, sir.

6 If--the privilege, however widely one construes it, is the
7 witness's. It relates to what a witness decides to say or to
8 produce. So, to take a simple example, the fact that a witness
9 invokes the privilege doesn't mean that two other witnesses
10 might not come along and give evidence that is critical of that
11 witness. And if they do or if documents are obtained, then the
12 next step would be that it may become necessary to put those
13 allegations to the witness to allow them to answer them.

14 So, I would say that, in terms of drawing--and I
15 would hesitate to say because it is a privilege--an adverse
16 inference, but in sense of adverse consequences, the ultimate
17 outcome would depend on a number of factors: what the other
18 evidence obtained said, whether it was necessary to put it to
19 the witness, what response the witness then gave.

20 But what it illustrates, of course, is I think a
21 point that I will come back to, is that within the progress and
22 work of the COI, there are procedural mechanisms, if you like,
23 that are intended to safeguard people at every stage.

24 COMMISSIONER HICKINBOTTOM: Yes.

25 Mr Neale, he said it very nicely, but I think Mr

1 Rawat meant that my point, I don't think, was a very good one.
2 I was anxious that Ms Lake was--did not stumble into any
3 adverse consequences accidentally, and I think Mr Rawat says
4 that because of the various safeguards that are built into the
5 Commission's Rules, that that will not happen.

6 So, unless you wanted to make any submissions, I
7 think we can move on and draw--

8 MR NEALE: Commissioner, just to say that thus far we
9 are quite impressed by the Commission's approach to the matter
10 which, at times, I believe there are two lawyers and one for
11 the Applicant, when we are fighting for us. We don't think the
12 Commission's submission is necessary. So there is no further
13 point to make on the matter.

14 COMMISSIONER HICKINBOTTOM: Thank you very much,
15 Mr Neale.

16 MR RAWAT: May I just move to my next point, which is
17 the question of reasons. I've already addressed that, and I'd
18 made submissions on that, in my submission, there is no
19 requirement when issuing a summons to a witness to give
20 reasons.

21 You have picked up on the point that Mr Neale made
22 about a fishing expedition, and so I won't go on that, but I
23 think it is important to reiterate, Mr Neale made the
24 submission that, in effect, the Commission is going out there
25 gathering documents in order to build a case against Ms Lake.

1 That is not the work of the Commission. What we are
2 legitimately entitled to do is seek assistance. And if it is
3 not forthcoming voluntarily, to compel it from everyone who, in
4 the Commissioner's view, may have evidence that is relevant to
5 the Terms of Reference.

6 The one other observation I would make is that,
7 although Mr Neale compared this situation to the High Court, in
8 any action before any court, there are two parties, and there
9 are obligations of disclosures on both Parties. Here, there
10 is, unless somebody is issued with a summons and cannot show
11 sufficient cause, an obligation of disclosure doesn't arise.
12 There are no parties. It is for the Commissioner, having in
13 mind the Terms of Reference, to seek out that information
14 necessary to fulfill the Terms of Reference, and so the
15 obligation of disclosure is one way. People can voluntarily
16 provide the material or, if the Commissioner considers it
17 necessary, can do so on a summons if they don't have sufficient
18 cause to do otherwise.

19 Can I turn to the width of the summons, which both in
20 his written submissions and, I think, in his oral submissions
21 today, my learned friend Mr Neale has made the point that the
22 summons is too vague, too wide, too general. With respect to
23 him, that is not a submission I can accept, and I say that for
24 two reasons, firstly--or for these reasons.

25 Firstly, when someone looks at the summons, it's

1 clear on its face that it refers to a class of documents, and
2 that is contractual arrangements.

3 Secondly, it refers to documents generated within a
4 specific period, three years, which is not something that is
5 outside the Terms of Reference because your Terms of Reference
6 referred to recent years.

7 And finally, it identifies, as best as we are able,
8 the Contracting Parties: On one side government bodies, on the
9 other Ms Lake possibly operating in various guises either as
10 owner, investor, shareholder. But what you don't find in the
11 summons is, for example, "et cetera" or "so forth," the wording
12 insufficiently specific.

13 The point is made, "Well, you can go and get all of
14 this from Government, and you've explained to my learned friend
15 why that--it's not as easy as he says it could be, but in my
16 submission there is a wider point here, and that is about the
17 independence of this Commission of Inquiry. It is entitled to
18 take the view that, if it's necessary to examine a contract or
19 a series of contracts, then it is appropriate and proportionate
20 to see what documents both sides in that contract had.

21 It may be that, if Government, for example, is
22 contracting with a private company, that private company may
23 have generated internal memoranda about the process that they
24 need to follow. They may have generated all sorts of documents
25 which the Government doesn't have. So, I don't think it's as

1 simple as just saying, "If you can get it from one person, it's
2 wrong to seek it from another," not in the context of a
3 Commission of Inquiry.

4 I think my final point that I would like to address
5 is the question of time. Mr Neale has addressed you on the
6 convention and practice in the High Court with reference to at
7 least 14 days; and he very properly, in the first submission he
8 made to you on paper, in the first letter that he sent to the
9 Commission, pointed out that whilst that's the norm, it doesn't
10 bite in cases of urgency.

11 In my submission, there are two aspects of this
12 point. The first is the practical one, and that is not a
13 matter on which I wish to address you but from which you've
14 heard from Mr Neale, and that is whether he has had time to
15 properly advise his client.

16 But the second one is of principle, and what I would
17 just draw to your attention is that, whilst this is right under
18 the Eastern Caribbean Supreme Court Civil Procedure Rules, the
19 witness summons is binding if served at least 14 days before
20 the date on which the witness is required to attend, and that's
21 in Rule 33.5. The same rule makes clear that the courts may,
22 however, direct that the witness summons is to be binding
23 although it will be served less than 14 days before such date.

24 So, in my submission, mindful that you have the
25 powers of a High Court Judge, at least in respect to service of

1 the summons, there is, leaving aside perhaps practice, which,
2 in my submission, is not something you should give any weight
3 to. There is no rule of the Eastern Caribbean Supreme Court
4 that says that you must allow at least 14 days.

5 And there is a very good reason, in my submission,
6 why the COI cannot operate in that way, and that is that it is
7 a time-limited inquiry. That means it must carry out its work
8 with urgency, but also it is dealing with a matter of vital
9 public interest, and that reinforces the need for the COI to
10 carry out its work with urgency.

11 So, I have no further submissions to make on those
12 four points. Is there any other matter on which I could
13 address you at this time?

14 COMMISSIONER HICKINBOTTOM: That's very helpful.
15 Thank you, Mr Rawat.

16 Mr Neale, any response to those points?

17 MR NEALE: Just briefly, Commissioner. Briefly.

18 I do not--I do not believe that my learned friend's
19 point on the fact that it is--the summons is specific and
20 cannot be regarded as a fishing expedition is, with respect,
21 one of his strongest points. What my friend says, "But, you
22 look at the summons, and it says all documents concerning every
23 contractual arrangement that you as individual, entered into in
24 the last three years." And he said there is no word like et
25 cetera that would suggest that summons is, in fact, purely

1 specific. We must disagree.

2 The fact that what would have--what would be the norm
3 in a situation like this? The Commission of Inquiry would have
4 forced to get information from the general public, the
5 Government, issues which raise a red flag, and then you--in
6 fact, you seek that specific information on those red-flag
7 issues, but this is not what the summons has done. You just
8 said all the documents and that have been in the last three
9 years. Clearly, it is a fishing expedition, and it is
10 unacceptable and, we submit, is not the proper way that the
11 Commission of Inquiry functions.

12 Certainly, my friend is correct. You need to have
13 some information, and you get that information from the public
14 and the Government, and from that you are able to formulate,
15 then you issue spectacular requests for information or specific
16 witness summons, but you can't with a particular witness say
17 bring all the documents in the world that you have, all
18 companies you engage in, all companies you are connected with.
19 We say no. That is oppressive as a summons, and in fact cannot
20 be regarded as proper practice for Commission of Inquiry or in
21 the High Court.

22 And with respect to the fact that the Applicant did
23 not have sufficient time, my friend accepts the general
24 principle, but he contends, in fact, that exceptions are made
25 in the case of urgency, but no reasons have been advanced as to

1 why this situation was an urgent one. There is no--no reasons
2 have been tendered to suggest that the Applicant could not have
3 been given a reasonable time in which to prepare, organise,
4 gather documents if she so choose and, in fact, appear before
5 the Commission.

6 So we say, on the basis of prima facie, my friend's
7 argument is self-defeating because he has not advanced any
8 urgency of the matter.

9 Moving on quickly to the issue with respect obtaining
10 the documents from the Government. My friend is suggesting
11 that the Government may not have certain documents, but again,
12 the point we are trying to make is that the Government should
13 be your "summed-in" point. And if, in fact, having gotten
14 those documents from the Government, you think that, in fact,
15 need further documents, then you order the individual, "Can you
16 provide us with all of your documents with respect to contract
17 X, Y, and Z?"

18 But again, you can't ask the individual--you can't
19 seek from individuals all the documents in the world and then
20 use this as the basis to try to form your investigation. Of
21 course, it is a public inquiry in relation to government
22 officials. The proper person or entities to address and get
23 your starting point, so to speak, is (unclear). It must be the
24 Government and not the individual (unclear) to produce
25 documents. She has no idea why (unclear) these documents.

1 And on the point--and on the point, finally, with
2 again the difficulty of self-incrimination. Again, my client,
3 of course, is not a legal person, and the only way that she is
4 able--that she is able to, in fact, be guided would be based on
5 legal advice. In order to advise our clients, we must have
6 some idea of what exactly she is being summoned before the
7 Commission. What--what is the rationale, the purpose, the
8 reasons why you know she is compelled to appear as a witness.
9 We were not able--as we told our client--we cannot advise you
10 because you've shown us a summons which is broad in content,
11 and we can't tell you that you are incriminating yourself or
12 not unless we have further particulars on the matter.

13 So, those are our submissions in response.

14 COMMISSIONER HICKINBOTTOM: Thank you, Mr Neale.

15 Mr Neale, firstly, I would like to thank you very
16 much for your submissions which have been very clear and
17 helpful this morning, but you've set out the issues for my
18 determination in your submissions. This is obviously your
19 submissions objecting to the witness summons. And in response
20 to those issues, which are set out in Paragraph 4, firstly, is
21 whether the summons is in breach of Section 15 of the Act to
22 which my response is "no."

23 Secondly, whether the summons is in breach of the
24 principles of natural justice, to which my answer is "no."

25 Subject to the question that you raised in Subsection

1 (c), whether the Applicant was granted adequate time to respond
2 to the summons, I don't regard the summons as being in breach
3 of anything simply because Ms Lake did not have 14 days to
4 respond to it, but the strand of natural justice that you
5 really rely upon is procedural fairness.

6 And, of course, it's important that everyone, and
7 certainly every witness, is dealt with fairly. And if Ms Lake
8 wishes to consider whether in respect of any answer to any
9 question that might be put to her, that that may tend to
10 self-incriminate her--I will come back to documents in a
11 moment--is something upon which she's clearly entitled to
12 obtain legal advice.

13 Now, Mr Neale, a couple of things. Firstly, she's
14 had, I think, 10 days since she received the summons. That's
15 the first point.

16 The second point--

17 MR NEALE: Sorry, Commissioner. Six days, I believe.
18 It was served on April the 28th.

19 COMMISSIONER HICKINBOTTOM: It was served by e-mail
20 because she's accepted--she's acknowledged receipt of the
21 e-mail, so...

22 (Overlapping speakers.)

23 COMMISSIONER HICKINBOTTOM: She's known about that.
24 But, in any event, she's known about the summons for some time,
25 and she's known that I would want her to produce these

1 documents for somewhat longer.

2 The second point, though, a practical one, is that
3 you're obviously in--not in the BVI at the moment, that, of
4 course, should not, must not interfere with the progress of the
5 COI, and I'm sure with modern communication techniques it
6 won't.

7 The question is what to do. Firstly, with respect to
8 documents and whether self-incrimination in the BVI, as a
9 matter of BVI law, attaches to documents in this Commission of
10 Inquiry, I would like you to have an opportunity to make any
11 further submissions that you have on that point and perhaps by,
12 say, next Monday or Tuesday.

13 Now, in respect to questions that we have to put to
14 Ms Lake, do you want any further time to advise her in relation
15 to self-incrimination or, indeed, anything else, before she
16 gives that evidence?

17 MR NEALE: We'd be grateful to the Commission for
18 additional time. We would be even more grateful if some
19 indication of the questions which are to be put to Ms Lake so
20 we could advise her on it. That would be the most helpful for
21 the Applicant, actually.

22 COMMISSIONER HICKINBOTTOM: No, I see that, because,
23 obviously, we would like to make some progress with Ms Lake
24 today, if we possibly can.

25 Mr Rawat, you will probably have most questions for

1 Ms Lake on behalf of the COI. Is it fair to say that the
2 questions that you have for her will be primarily focused on
3 the areas identified in the production of documents part of the
4 summons?

5 MR RAWAT: Yes.

6 Can I make the point, in my submission, there is no
7 obligation on the Commission of Inquiry to tell any witness or
8 give advance notice of questions that may be asked of a
9 witness. Ms Lake is being asked to come as a witness.

10 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,
11 Mr Rawat. Mr Neale may or may not agree with that. I agree
12 with it for the moment, but what I'm thinking about are the
13 practicalities. If you ask Ms Lake a question and she may want
14 to take advice from Mr Neale on that question with regard to
15 self-incrimination, that's the point. So, insofar as any areas
16 can be identified, that may ease the process.

17 MR RAWAT: I take the practical point.

18 If I could assist this much, the questions I would
19 ask for--I will put to Ms Lake so she can assist your
20 Commission are focused on the matters that are set out in the
21 summons, which relate to contractual arrangements which she may
22 have entered into.

23 COMMISSIONER HICKINBOTTOM: Good.

24 Mr Neale, I hope that helps to an extent, but given
25 the proceedings this morning, do you want some time now to

1 speak to Ms Lake privately before we continue?

2 MR NEALE: Only issue, Commissioner, is that, based
3 on my discussions with Ms Lake prior to coming into the
4 proceeding, Ms Lake, in fact, may wish to apply for judicial
5 review of the decision of the Commission. In that case, of
6 course, I am not sure that it would be proper to expect Ms Lake
7 to respond to questions now because it would be self-defeating
8 if, in fact, she applies and is successful on her Application.

9 COMMISSIONER HICKINBOTTOM: Okay. I understand that,
10 Mr Neale. I think what will be sensible, then, is if I gave
11 you an opportunity to speak to Ms Lake now, I don't know how
12 long you will want to speak to her.

13 MR NEALE: Very short, Commissioner. Just five
14 minute, I believe. Very short.

15 COMMISSIONER HICKINBOTTOM: What I'll do, to give
16 everybody a break, too, is that we will come back at 1:00,
17 Mr Neale. I think it's just after quarter to one at the
18 moment, and we will hear any submissions, including any
19 submissions that she should not be asked any questions now
20 because you have instructions to commence a judicial review.

21 MR NEALE: We are much obliged, Commissioner.

22 COMMISSIONER HICKINBOTTOM: Thank you very much.

23 So, we will simply close down the technology for a
24 little while, and I'll come back at 1:00. Thank you, Mr Neale.
25 Thank you, Mr Rawat.

1 (Recess.)

2 COMMISSIONER HICKINBOTTOM: Yes, Mr Neale.

3 MR NEALE: Yes, Commissioner. I've had the
4 opportunity to speak with my client, and I thank you for the
5 indulgence.

6 My client--my understanding is that she reserves her
7 position with respect to an application for judicial review.

8 COMMISSIONER HICKINBOTTOM: That's fine. Of course,
9 she can.

10 Okay. So, that enables us to set out a bit of a
11 timetable. As I said before the very short adjournment, I
12 would like submissions, please, any submissions--any further
13 submissions you have to make in writing on the issue of whether
14 documents as opposed to evidence given in the form of answers
15 in the witness box is covered in the circumstances of the
16 Commission of Inquiry in the BVI, under BVI law, would be very
17 helpful. Thank you.

18 Could we have the submissions, say, by 4:00 on
19 Monday?

20 MR NEALE: Commissioner, I am, of course, guided for
21 you, even though for me the time period not being in the BVI is
22 a little difficult, but I'm guided by the Commission that is
23 the time.

24 COMMISSIONER HICKINBOTTOM: That's very good,
25 Mr Neale, and thank you for that. 4:00 on Monday.

1 And Mr Rawat, I think you've made your submissions on
2 the point, but certainly if you have any other submissions to
3 make by 4:00 on Monday.

4 And I just pause for a moment, the Solicitor
5 General's here. I know the Attorney General indicated on
6 Tuesday that there may be issues upon which the Attorney
7 General might assist, and so I don't think you need to answer
8 any question, Solicitor General, but if there are any
9 submissions that the attorney wants to make, 4:00 on Monday
10 would be very helpful.

11 Now, in respect to the rest of the timetable, I'd
12 propose that--well, the next question is, time, if any,
13 Mr Neale, that you want to give any advice to Ms Lake on
14 anything before we begin questioning her?

15 MR NEALE: My understanding, Commissioner, is that
16 Ms Lake is prepared to take the witness stand now. My
17 instructions are that she does not wish the process to be
18 prolonged, and she would like it concluded, from her
19 perspective, as quickly as possible. I'm sorry if I'm not able
20 to assist any further--

21 (Overlapping speakers.)

22 MR NEALE: It would have been easier.

23 COMMISSIONER HICKINBOTTOM: That's very helpful.

24 I think, Mr Neale, we simply need to have some
25 process, which I'm sure can be done mechanically, whereby you

1 can indicate if you want to give Ms Lake any advice, if there
2 comes that point. It's somewhat easier if you're there because
3 you can stand up or wave or something. It's slightly more
4 difficult because you're more remote, but is there any
5 means--is there any mechanical means--

6 MR NEALE: The usual protocol, Commissioner, and most
7 of the hearings, of course, are conducted now via video link,
8 but usual protocol would be to raise your finger and then the
9 Commission would see us, and then you, in fact, would permit us
10 an opportunity to speak.

11 COMMISSIONER HICKINBOTTOM: That's fine. And others
12 here will be keeping their eye open for you raising your hand.
13 But otherwise, Mr Rawat, are we ready to proceed with calling
14 Ms Lake as a witness?

15 MR RAWAT: Yes, we are, sir.

16 COMMISSIONER HICKINBOTTOM: Good.

17 Now, I will ask the Secretary, Ms Lake, to make sure
18 you're in the right place with the right equipment.

19 PATSY LAKE, CALLED AS A WITNESS

20 COMMISSION SECRETARY: Can you take that Bible in
21 your left hand and read the words on the sheet here.

22 THE WITNESS: I swear by Almighty God that the
23 evidence I shall give shall be the truth, the whole truth, and
24 nothing but the truth.

25 COMMISSION SECRETARY: Thank you very much, Ms Lake.

1 COMMISSIONER HICKINBOTTOM: Just a couple of
2 things--I mean, do have a seat.

3 THE WITNESS: Oh.

4 COMMISSIONER HICKINBOTTOM: First, you may be more
5 comfortable in a mask rather than without a mask, but take your
6 mask off, if you wish.

7 THE WITNESS: No problem.

8 COMMISSIONER HICKINBOTTOM: But it may make it easier
9 for the transcriber to pick up your voice because this will be
10 transcribed later.

11 And next, Ms Lake, if you want a break at any time,
12 just let us know.

13 THE WITNESS: Yes, have a break. Thank you.

14 COMMISSIONER HICKINBOTTOM: Good.

15 Mr Rawat.

16 MR RAWAT: Thank you very much, Commissioner.

17 BY MR RAWAT:

18 Q. Good afternoon, Ms Lake.

19 A. Good afternoon, sir.

20 Q. Could I ask you, please, to give the Commissioner
21 your full name.

22 A. My full name is Patsy Lake, initial C, Patsy C. Lake.

23 Q. Can I thank you for agreeing to give evidence today.

24 You're being called as a witness, and your willingness to
25 assist the Commission is much appreciated.

1 In asking my questions, I'm going to try to keep my
2 questions short and simple, but if you have any difficulty
3 understanding any question or you would like me to repeat it or
4 rephrase it, please just ask me.

5 Can I also ask you just to keep your voice up, speak
6 slowly because your answers can then be accurately and clearly
7 recorded on the Transcript of this hearing.

8 As I said, the reason we have asked you to come and
9 give evidence today is because there are a number of matters on
10 which the Commission believes you may be able to help. You are
11 attending as a witness; and, as any witness and indeed any
12 lawyer, you are under an obligation to assist the Commissioner
13 in his investigation. You do have legal representation through
14 Mr Neale, but I don't intend through my questions today to put
15 to you any criticisms or to allegations that you have to
16 answer.

17 Can I just ask you about your involvement with
18 statutory boards or Government bodies. Do you currently sit on
19 any statutory boards?

20 A. Yes, I do.

21 Q. Which boards are those?

22 A. BVI Airport Authority and Social Security Board.

23 Q. If I ask you about the BVI--are there any other
24 boards on which you sit?

25 A. No other Board.

1 Q. Are there any other Government bodies on which you
2 sit?

3 A. Cyril B. Romney Pier Park.

4 Q. So that's Pier Park.

5 Any others?

6 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,
7 it doesn't help my interrupting, but in what capacity are you
8 involved with the Pier Park, Ms Lake?

9 THE WITNESS: Director.

10 COMMISSIONER HICKINBOTTOM: Thank you.

11 Sorry, Mr Rawat.

12 MR RAWAT: Thank you, sir.

13 BY MR RAWAT:

14 Q. Are there any other Government bodies on which you
15 sit, Ms Lake?

16 A. No, sir.

17 Q. Thank you.

18 Now, if we start with the Airports Authority, when
19 were you appointed to the Airports Authority, and who by?

20 A. Hmm, I do not have that information with me. I don't
21 want to give you the wrong date, so I guess I should not say
22 anything more for fear of incrimination.

23 COMMISSIONER HICKINBOTTOM: Well--

24 THE WITNESS: I don't remember my appointment date.
25 I would have to look back at it.

1 COMMISSIONER HICKINBOTTOM: You could look back at it
2 and let us know, but when was it? One year ago? 10 years ago?

3 THE WITNESS: No, not 10 years ago. Perhaps a little
4 more than a year ago. Might be a year or a little more than a
5 year.

6 COMMISSIONER HICKINBOTTOM: Okay, okay.

7 BY MR RAWAT:

8 Q. Is that a piece of information you would be happy to
9 provide the Commission in due course?

10 A. If I knew, sir, that that's what you wanted, I could
11 have submitted that, but like my Legal Counsel say, you weren't
12 specific about what you wanted, so...

13 Q. But now that you know that we want it, is that
14 something you can give us in due course?

15 A. I'm happy to let you have a copy of the appointment.

16 Q. Thank you.

17 What about the Social Security Board? How long have
18 you been a member of the Social Security Board?

19 A. That might not be quite a year. It might not be
20 quite a year.

21 (Overlapping speakers.)

22 COMMISSIONER HICKINBOTTOM: You can let us know.

23 THE WITNESS: Yes, sir.

24 COMMISSIONER HICKINBOTTOM: Thank you very much.

25 BY MR RAWAT:

1 Q. How long have you been a director of Pier Park?

2 A. Over a year.

3 COMMISSIONER HICKINBOTTOM: And again, you could give
4 us the precise dates?

5 THE WITNESS: That would have to come from the
6 minutes of the Board when I was appointed.

7 COMMISSIONER HICKINBOTTOM: Yes.

8 BY MR RAWAT:

9 Q. In respect of all those three entities, who appointed
10 you to those bodies?

11 A. There again I need to look back at my appointment and
12 see.

13 Q. So, are there actual--is there a piece of paper that
14 you're given that is your appointment to each of these bodies?

15 A. Yes, sir.

16 Q. Did you have to apply--right. Sorry, I will break
17 that down.

18 At the BVI Airports Authority, what position do you
19 hold?

20 A. Deputy Chair.

21 Q. And what about at the Social Security Board?

22 A. The same, sir.

23 Q. Pier Park, you're a Director. Do you have any
24 position at Pier Park?

25 A. No, sir.

1 Q. In respect of any or all of these three bodies, did
2 you have to apply for these positions?

3 A. No, sir. They were by appointment except for the
4 Pier Park, I was nominated by either--the Board of the BVI
5 Ports Authority.

6 Q. Were you interviewed for the post, or was it just you
7 were nominated and appointed and that was it?

8 A. Which post are talking about, sir?

9 Q. I will take it in stages.

10 Were you interviewed for the BVI Airports Authority
11 post?

12 A. Was I interviewed?

13 Q. Yes.

14 A. No, sir.

15 Q. Were you interviewed for your post on the Social
16 Security Board?

17 A. No, sir.

18 Q. And you said you were nominated to Pier Park. Does
19 that mean you didn't have to be interviewed for that either?

20 A. Yes, I was not interviewed.

21 Q. So, it wasn't a competitive process, Ms Lake?

22 A. I beg your pardon, sir?

23 Q. It wasn't a competitive process, was it?

24 A. You asked if it was an appointment. I said yes, but
25 I couldn't remember by whom.

1 Q. I follow.

2 Of these three roles, are any of them paid?

3 A. They give a stipend for each of them, not only to me
4 but to every member of the Board.

5 Q. In the last three years, are there any other
6 Government bodies of which you were a member but no longer are?

7 A. No, sir.

8 Q. Now, have you, as an individual, entered into a
9 contract with the BVI Government in the last three years to
10 date?

11 A. I beg your pardon? Can you repeat?

12 Q. Of course.

13 Have you, as an individual, entered into a contract
14 with the BVI Government in the last three years to date?

15 A. As an individual. What do you mean by "an
16 individual"?

17 Q. As Patsy Lake. Has Patsy Lake contracted with the
18 BVI Government in the last three years?

19 A. I have done business with the Government from the
20 time I was in business, so I go back further than three years,
21 sir.

22 Q. Well, perhaps I could ask you a little bit about
23 that. How long have you been in business, Ms Lake?

24 A. Ah, let us see. I am 76, so that puts me in business
25 perhaps 50-something years. I grew up in a business.

1 Q. Well, if we could try and keep it to the last three
2 years, you say you have done business with the BVI Government.
3 What specific business have you, as an individual, done with
4 the BVI Government?

5 A. It varies. Perhaps you need to know what my
6 businesses are all about because I don't know if I can quite
7 answer the question the way you put it.

8 COMMISSIONER HICKINBOTTOM: That, I think, would
9 help, if you tell us what your business--

10 THE WITNESS: I am into rentals for events. I do do
11 events, and I have done quite a lot of work with many
12 Governments under those headings.

13 I am also into--really big into real estate in the
14 country; commercial, residential.

15 I do own a small hotel.

16 And from those businesses that I have listed there
17 are many others, but not giving service to any Governments.

18 Do you want to know the other businesses?

19 BY MR RAWAT:

20 Q. Yes, please.

21 A. Beauty salon, nail salon, barbershop, rental of
22 chairs, dishes, tables, tablecloths. What have I missed?
23 Tents. Did I say tents?

24 (Unclear voice speaking.)

25 A. Oh, restaurant, sorry. My daughter is reminding me.

1 COMMISSIONER HICKINBOTTOM: That's fine. We would
2 like your own answers, but that was helpful, thank you.

3 (Unclear voice speaking.)

4 THE WITNESS: Oh, health spa.

5 BY MR RAWAT:

6 Q. But, in terms of these businesses--and these are
7 businesses that you own yourself; is that right?

8 A. Yes, sir.

9 Q. So, it's the provision of rental for events, staging
10 events, your real estate interests in the small hotel where you
11 have had business with Government; is that right?

12 A. Yes, sir.

13 Q. If you take the small hotel for the start, what was
14 the business that you did concerning the small hotel in the
15 last three years?

16 A. When--when they were in search of somewhere for
17 COVID, they rented the hotel as a quarantine station, and a
18 former Governor turned it also into a prison station, which was
19 not the agreement I had with them, but they had the hotel, so
20 they did what they wanted with it.

21 Q. Now, when you say "they," who is the "they" that you
22 had a contract with?

23 A. Health Department of the Government.

24 Q. Do you have the record of that Contract?

25 A. I am not sure about that because, once I get my

1 money--my business is not computerised, it's a small business,
2 even though I do a lot of different things--once I get my
3 money, I destroy all paperwork, so I'm not sure if I may have
4 that agreement still. If you had said to me you wanted that, I
5 would have looked for it.

6 Q. Would you be willing to look for it now?

7 A. Not--not for Monday.

8 Q. No, but would you be willing to look for it now?

9 A. I can look but not for Monday, sir, because one of my
10 biggest business time is Mothers' Day, and you're infringing on
11 my private time right now.

12 COMMISSIONER HICKINBOTTOM: That sounds
13 understandable.

14 Leaving aside your commitments over the weekend--

15 THE WITNESS: I'm not going to find it by Monday,
16 that my business is not computerised but I would have to look
17 through the files to see if I could find it. If I can find it,
18 you're more than welcome to it. If not, there should be an
19 agreement written in the Health Ministry. They should have it.
20 It's not--it's not all that long, but as staff take it, I pay.
21 I don't really keep the records.

22 MR NEALE: We do apologise, I believe our client
23 meant to say that because of Mothers' Day it is a bit difficult
24 for Commission to include other time, but we do apologise to
25 the Commission.

1 THE WITNESS: For me, this is the crunch time.

2 COMMISSIONER HICKINBOTTOM: No, no, there is no
3 problem about Mothers' Day coming up--Ms Lake's commitment in
4 respect of Mothers' Day. She will look next week once Mothers'
5 Day is done.

6 THE WITNESS: I will do that, sir.

7 COMMISSIONER HICKINBOTTOM: Thank you.

8 THE WITNESS: I'm glad to offer you cooperation.

9 COMMISSIONER HICKINBOTTOM: Mr Rawat.

10 BY MR RAWAT:

11 Q. In relation to the COVID arrangement for the small
12 hotel, was there a tender process for that contract?

13 A. No, sir, but I would like to tell you it took me more
14 than six months to be paid for which I was very furious and
15 very annoyed because what they told me was that I should--what
16 the other hotels that came on stream after me, they got paid
17 way before me, and when I asked about that, I was told I should
18 have had a written agreement before. But when they approached
19 me, they never said that. And, of course, I'm not being into
20 that kind of business, I didn't know I should have insisted for
21 a contract to be written or an agreement to be written prior
22 going to give them my keys.

23 Q. So, you're saying, Ms Lake, that you handed over the
24 keys to your hotel to the Health Ministry without a written
25 agreement in place?

1 A. Yes, I did. That's when I was told, and then I
2 thought it was--it was being used for prisoners.

3 Q. Well, when you handed your keys over without a
4 written agreement, what did you understand to be the terms on
5 which the Government was taking over your hotel?

6 A. Well, I agreed to the terms. It was just not in
7 writing.

8 Q. Well, how were the terms recorded?

9 A. The PS told me--well, I can't remember exactly now
10 what was said, it appears--I would have to look at that--but
11 whatever she said at the time, they did put it in writing, but
12 I was told that I should have had that up front, and I said
13 that's fine. You can tell me that now after you've used by
14 premises, and now I want to get paid.

15 COMMISSIONER HICKINBOTTOM: Did you eventually have a
16 contract?

17 THE WITNESS: I eventually had some agreement, yeah.

18 BY MR RAWAT:

19 Q. How soon after the hotel was taken over did you get
20 that contract?

21 A. I beg your pardon?

22 Q. Well, how soon after the hotel--you handed your keys
23 without a written contract. How soon after handing over your
24 keys did you get the written contract?

25 A. I don't remember. I'm sorry. I don't remember.

1 Q. And when you say it was the "PS," what do you mean by
2 "PS"?

3 A. The Permanent Secretary of the Health Department.

4 Q. Can you remember the name of the Permanent Secretary
5 of the Health Department?

6 A. Petrona Davies.

7 Q. And was it Ms Davies who approached you about using
8 your hotel?

9 A. Who approached me? I don't remember.

10 Q. You say it's a small hotel. How big is the hotel?
11 How many rooms?

12 COMMISSIONER HICKINBOTTOM: How many rooms is the
13 hotel, Ms Lake, is the question.

14 THE WITNESS: (Witness conferring.)

15 Okay. We had 25 before the hurricane, and we have 18
16 now.

17 COMMISSIONER HICKINBOTTOM: And I'm sorry I missed
18 this, but the name of hotel is...

19 THE WITNESS: Paradise Suites Hotel.

20 COMMISSIONER HICKINBOTTOM: Thank you.

21 BY MR RAWAT:

22 Q. And, ultimately, what did you get paid for giving up
23 your hotel for six months?

24 A. Was it for six months?

25 Q. You mentioned the word six months. How long did the

1 Government take the hotel for?

2 A. Long after they stopped using the hotel is when I got
3 paid.

4 Q. I'm sorry, can I break that down for you. You handed
5 the Government your keys to your hotel. How long did they have
6 use of it for?

7 A. I don't remember. I would have to look at the
8 documents, but I know I did--it did take a long time for me to
9 get paid. And they were out of there, and I still was not
10 paid.

11 Q. And how long--how much were you eventually paid?

12 A. Beg your pardon?

13 Q. How much did the Government eventually pay you?

14 A. I don't remember, sir. I can give you copies of it,
15 if I could find it.

16 Q. You would retain information like that for tax
17 purposes, wouldn't you?

18 A. I would have the check stub. I'm sure I would have
19 the check stub. I probably wouldn't have the contract, but I
20 would have the check stub.

21 Q. So, is the position, Ms Lake, that you can't remember
22 who approached you from the Health Ministry about using your
23 hotel. You remember speaking to the Permanent Secretary about
24 getting paid. The hotel was used for longer than suggested,
25 and it took a long while for you to get paid but you can't

1 actually remember how much you got paid?

2 A. No, I don't remember.

3 Q. Even though you were quite annoyed, it seems, about
4 you delay in getting paid?

5 A. I remember I was annoyed, but I don't remember when I
6 got paid.

7 Is that unusual, sir?

8 COMMISSIONER HICKINBOTTOM: Mr Rawat, Ms Lake can
9 find out how much she was paid, I'm sure, because she will have
10 records of this--of the payments, but today she can't remember.

11 MR RAWAT: Right.

12 BY MR RAWAT:

13 Q. Can--can you tell us how you came to know that the
14 Government was looking for hotels to use for COVID purposes?

15 A. I can't remember that.

16 Q. You dealt with this small hotel: your rental for
17 events business, what sort of contracts have you entered into
18 Government with for that?

19 A. Various departments in Government would rent tents,
20 chairs, tables on different occasions, depending on what
21 function they were doing.

22 Q. And what were the contractual arrangements for that?

23 A. There was no contractual arrangement. I have a set
24 price listing which anyone can pick up, of how much a tent is
25 rented for, a chair, a table.

1 Q. But is it the case that you would get a phone call
2 from time to time from the Government and they would rent some
3 stuff from you?

4 A. Can you repeat that, please?

5 Q. Does it work like this, that if a Government
6 department needs chairs or a tent, they'll phone you, and
7 they'll book it from you?

8 A. Yes, that's possible.

9 Q. So, you don't have--is that when the contract is
10 formed? You don't have a standing contract with the
11 Government?

12 A. No, I don't.

13 Q. You also say you do events. What contracts have you
14 engaged with with the Government in doing events?

15 A. I wouldn't remember all those.

16 Q. Well, in the last three years, how many events have
17 you put on for the Government?

18 A. That's impossible for me to even remember.

19 Q. Why is it impossible to remember?

20 A. I just can't, and I'm not going to give you
21 information that is incorrect. Do you want me to say that?

22 Q. No. But is it impossible because there are so many
23 events?

24 A. Because there would be innumerable events in
25 different departments. I couldn't remember that. If you

1 wanted me to try to look, I could perhaps look, but I think as
2 my counsel said before, you can get that information, I can
3 tell you which departments rent, or likely to rent or have
4 rented, and you can ask them.

5 Q. So, if we break that down a little, when you say
6 "departments," do you rent to the various ministries and
7 departments of the Government?

8 A. Do I rent what?

9 Q. Do you rent--when you do your rental business and you
10 do your events business, do you deal with the various
11 ministries and departments of the Government?

12 A. Yes, I do, sir.

13 Q. Do you also deal with other bodies, other
14 Governmental bodies, like statutory boards?

15 A. Yes, sir.

16 Q. And in relation to either renting material like
17 chairs or a tent or putting on events, do you have a standing
18 contract with any Government body?

19 A. For what, sir?

20 Q. A standing contract.

21 A. For what, sir?

22 Q. For putting on events or bringing material to them.

23 A. No, sir.

24 Q. So, just when they need it, they come and see you?

25 A. Like everyone else in the market.

1 Q. Is there anybody else in the market?

2 A. I beg your pardon?

3 Q. Well, you said "like everyone else in the market."

4 Is there anyone else in the market?

5 A. Oh, yes, sir. I do a lot of weddings. I do a lot of
6 other events for the local market.

7 Q. Okay. Can we deal with your real estate interests.

8 (Overlapping speakers.)

9 Q. --commercial and residential.

10 COMMISSIONER HICKINBOTTOM: Sorry, Mr Rawat. Ms Lake
11 was speaking.

12 MR RAWAT: Sorry.

13 THE WITNESS: You asked about other events, if there
14 were any fundraisers, the Lions Club and Rotary Club, and you
15 can go on and on, and if the churches have anything going on,
16 they can come to me. If I do something for the Government, I
17 do something for many other organisations.

18 BY MR RAWAT:

19 Q. Thank you.

20 If I could move on to the real estate interests that
21 you have, you said they were commercial and residential. Do
22 you have any contracts with any Government bodies in relation
23 to your commercial premises?

24 A. I have leases.

25 Q. In relation to what?

1 A. Presently, the statutory board of the Ports Authority
2 and the Premier's Office--what is the other?

3 (Witness conferring.)

4 COMMISSIONER HICKINBOTTOM: Mr Rawat, there is a
5 conversation going on simply as to whether the International
6 Finance Centre is a Government body. So, Ms Lake rents to the
7 International Finance Centre.

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: And there some debate as
10 to whether it's a Government body.

11 THE WITNESS: Do you know?

12 (Witness conferring.)

13 COMMISSIONER HICKINBOTTOM: And we don't have to
14 guess, if that's your answer.

15 THE WITNESS: That's another tenant. My daughter is
16 saying International Finance Centre, but I don't think that
17 that is attached to the Government, and they have been there
18 much longer than the Premier's Office. They've just moved into
19 the property.

20 BY MR RAWAT:

21 Q. So, you have a contract to rent to the Premier's
22 Office, and you have a contract to rent to the Ports Authority?

23 A. Yes.

24 And I have a contract to rent to IFC, which I don't
25 think is attached to the Government. I think it's an

1 independent body, but...

2 COMMISSIONER HICKINBOTTOM: You said that the IFC
3 has--you've listed the IFC for some time.

4 THE WITNESS: Yes.

5 COMMISSIONER HICKINBOTTOM: What about the Ports
6 Authority building and Premier's Office?

7 THE WITNESS: Ports Authority might be two years ago,
8 and the Premier's Office--(witness conferring.)

9 COMMISSIONER HICKINBOTTOM: About a year.

10 THE WITNESS: I don't think it's quite a year.

11 COMMISSIONER HICKINBOTTOM: Not a year?

12 THE WITNESS: They just moved in there when they
13 started to repair the Government complex.

14 COMMISSIONER HICKINBOTTOM: Okay. And I assume that
15 you have those leases somewhere.

16 THE WITNESS: I have those leases.

17 COMMISSIONER HICKINBOTTOM: Thank you very much.

18 Sorry, Mr Rawat.

19 THE WITNESS: Leases I have, but rentals of stuff I
20 don't keep, but I will keep my leases.

21 COMMISSIONER HICKINBOTTOM: Yes. Mr Rawat.

22 MR RAWAT: Thank you, sir.

23 BY MR RAWAT:

24 Q. Leaving aside the International Financial Centre, but
25 in relation to either the Ports Authority building or the

1 Premier's Office, did you have to go through a tender process?

2 A. Did I have to go to a tender process?

3 Q. Yes.

4 A. No.

5 Q. So, how did you come to enter into a contract with
6 the Premier's Office to rent a building?

7 A. The Governor who is responsible for looking for space
8 for the Premier's Offices, they approached me because my
9 building was vacant at the time, and I guess where it was
10 situated was suitable for them.

11 Q. Sorry, who was the person that approached you?

12 COMMISSIONER HICKINBOTTOM: The Government.

13 THE WITNESS: The Deputy Governor's Office is
14 responsible for seeking space for the Governors for their--

15 COMMISSIONER HICKINBOTTOM: Premier?

16 THE WITNESS: Excuse me, Premier's Office.

17 BY MR RAWAT:

18 Q. And what about the statutory Board? Who approached
19 you there?

20 A. The Ports Authority.

21 Q. And again, you didn't have to go through a tender
22 process?

23 A. No, I didn't because I don't--to the best of my
24 knowledge, they look for space that is available, they try to
25 find out pricing and what they can negotiate, and they rent. A

1 tender process, as far as I am aware of, is when you're bidding
2 for a contract for Government.

3 Q. Have you ever in the last three years bid for a
4 contract with Government?

5 A. No, sir.

6 Q. And so, has it just been the case that people
7 approach you rather than the other way?

8 A. Rather than--which is the other way?

9 Q. Well, you approach them.

10 A. I would not know the businesses available there.
11 They approach me for my services.

12 Q. And so does anybody tell you what the Government
13 might need; an office building, for example?

14 A. I couldn't know if Government was seeking
15 availability of office space if I wasn't approached. I
16 wouldn't have that inside information in Government. You have
17 to be a civil servant to do that. I have never been a civil
18 servant. I have always been in private practice.

19 Q. So, you don't get, to use your phrase, Ms Lake,
20 "inside information" about what the Government is looking for?

21 A. I beg your pardon, sir? What did you say?

22 Q. You used the phrase "inside information." I just
23 wanted to confirm, it's your evidence that you don't get inside
24 information about what the Government is looking for?

25 A. No, sir. How can I get that?

1 Q. Now, the four sort of businesses that you have spoken
2 about, are you the sole owner of those businesses?

3 A. Yes, sir.

4 Q. And are they registered as companies, or are they
5 unincorporated businesses? How are they constituted?

6 A. Some are registered as companies, yes.

7 Q. But you're the majority shareholder in those
8 companies?

9 A. Yes, sir.

10 Q. Leaving those aside, do you hold shares in any other
11 companies or businesses operating in the Virgin Islands?

12 A. Do I hold shares?

13 Courtesy Car Rental; that is owned by my son. And
14 Western Union is an agency. I'm also attached to that trade
15 license.

16 Q. Any others?

17 A. No, sir.

18 Q. Of either may not apply in relation to Western Union,
19 but does any of these entities, have they entered into a
20 contract with the Government in the last three years?

21 A. They have never done any business with the
22 Government. The Government has no need for Western Union, and
23 the Government has no need to rent cars.

24 Q. And just so that we're clear, does that--by
25 "Government," what do you mean by "Government" there?

1 A. I guess the same Government that you're referring to,
2 sir.

3 Q. All right. Well, let's break it down, Ms Lake.

4 Does that--when you say no contracts entered into,
5 that is contract with Government ministries or departments or
6 bodies like statutory boards?

7 A. None.

8 Q. Aside from the businesses of which you are the owner,
9 which you've told us about and the businesses where you have
10 shares, are there any other companies or businesses operating
11 in the Virgin Islands of which you are a director?

12 A. No, sir.

13 Q. Again, aside from the businesses you've told us about
14 that you own and the ones in which you have shares, are there
15 any other companies or businesses operating in the Virgin
16 Islands in which you have invested in the last three years?

17 A. No, sir.

18 Q. Are there any other companies or businesses operating
19 in the Virgin Islands for whom you act as a consultant or
20 advisor?

21 A. No, sir.

22 Q. Are there any companies in which you were or are
23 involved in any way which have invested in a company that has
24 contracted directly with the BVI Government in the last three
25 years?

1 A. No, sir.

2 Q. Do you have any family connection to a current member
3 of the Cabinet?

4 A. Do I have any what?

5 Q. Family connection to a member of the current Cabinet?

6 A. Oh, yes, sir.

7 Q. Can you tell the Commissioner the nature of that
8 connection?

9 A. Yeah, I can tell you. The Premier's my cousin, and
10 the Minister for Works is my son-in-law.

11 Q. Does your husband have any family connection to a
12 member of the current Cabinet?

13 A. Unfortunately, sir, I do not have a husband.
14 Unfortunately.

15 Q. Could I ask you a little more, please, Ms Lake, about
16 your role with the BVIAA, the Airports Authority. You've told
17 us that you have been appointed as Deputy Chair, and that was
18 about a year ago. What does your role as Deputy Chair involve?

19 A. What does it involve? Is that what you're asking,
20 sir?

21 Q. Yes, please.

22 A. To sit on the Board, attend meetings, and we make
23 decisions as to the direction, I guess, of the airport or its
24 development.

25 Q. When you say the airport's development, what do you

1 mean by that, please?

2 A. What do you mean what I mean by that?

3 COMMISSIONER HICKINBOTTOM: This is paraphrasing what
4 you just said, Ms Lake, but you said you made strategic
5 decisions with regard to the airport, including airport
6 development.

7 THE WITNESS: Yeah, attend board meeting. Whatever
8 comes up at the meeting, you're with other Board members.

9 COMMISSIONER HICKINBOTTOM: I understand that, but
10 Mr Rawat asked what about airport development? What
11 development were you referring to?

12 THE WITNESS: Well, the development that is taking
13 place in the airport, and new development with a way forward to
14 improve services, so it's what you discuss at the Board
15 meeting. I can't give you the details of every Board meeting.
16 He's asking me about development. Of course the airport is
17 constantly under development.

18 BY MR RAWAT:

19 Q. How many people sit on the Board of the Airports
20 Authority?

21 A. Let me check now.

22 Eight or nine members. I couldn't be specific.

23 Q. Could you remind--I'm sorry to interrupt you. Please
24 finish.

25 COMMISSIONER HICKINBOTTOM: No, no. Ms Lake simply

1 said eight or nine members, is the best she can do, which is
2 understandable.

3 BY MR RAWAT:

4 Q. Now, could you remind me, Ms Lake, of the name of the
5 current chair?

6 A. Mr Bevis Sylvester.

7 Q. And how often does the Board meet?

8 A. We do not have a specific time for meeting. We meet
9 according to the demands or needs of whatever is going on at
10 the moment. I mean, we could have an impromptu meeting
11 tomorrow by Zoom or whatever the case is. Unlike the Social
12 Security Board, they meet once a month, except there is
13 something else on stream, then they meet, they call a meeting.

14 But the airport, I guess, because there is so much
15 happening all the time. They can meet at any time.

16 I would say too frequent sometimes for me.

17 COMMISSIONER HICKINBOTTOM: I mean, there may not be
18 a typical month, but how many times are they meeting a month?
19 I mean, is it once, or is it--

20 THE WITNESS: It's much more than that. Three or
21 four times.

22 COMMISSIONER HICKINBOTTOM: Three or four times would
23 be typical. Okay.

24 THE WITNESS: And that's not standard.

25 COMMISSIONER HICKINBOTTOM: Yes.

1 BY MR RAWAT:

2 Q. So, when was the last time that the Authority met?

3 A. Last night.

4 Q. And was the Chairman present?

5 COMMISSIONER HICKINBOTTOM: I'm sorry, I'm not sure--

6 THE WITNESS: I was just confirming with my daughter
7 if it was--Tuesday, Thursday, Wednesday--no, that's not
8 correct.

9 COMMISSIONER HICKINBOTTOM: Thursday is today.

10 THE WITNESS: Tuesday night, yeah.

11 COMMISSIONER HICKINBOTTOM: Ms Lake thinks it was
12 Tuesday evening.

13 THE WITNESS: It's not last night. It's Tuesday
14 night.

15 COMMISSIONER HICKINBOTTOM: Yes.

16 BY MR RAWAT:

17 Q. And was the Chairman present at that meeting?

18 A. Yes. It was a Zoom meeting.

19 Q. Do you happen to know where the Chairman is at the
20 moment?

21 A. I don't know exactly where the Chairman is because he
22 works for a company that has branches in the Caribbean. I
23 don't know his whereabouts.

24 Q. I mean, presumably, with the Board having to meet so
25 regularly and sometimes too much, I think you said, there are

1 obviously key decisions that you need to make as a Board. Do
2 you get the papers for the meeting in advance?

3 A. Most times, yes.

4 Q. And who's responsible for putting all those papers
5 together?

6 A. The Corporate Secretary.

7 Q. Do you still have copies of the papers that are sent
8 to you as Deputy Chair?

9 A. I might have some, yes.

10 Q. Are they sent to you electronically?

11 A. Most times.

12 (Overlapping speakers.)

13 Q. Go on, please.

14 COMMISSIONER HICKINBOTTOM: I'm sorry, I missed that,
15 Ms Lake.

16 THE WITNESS: Most times, and then I will print them
17 off.

18 COMMISSIONER HICKINBOTTOM: Ms Lake prints them off,
19 Mr Rawat.

20 MR RAWAT: Thank you.

21 BY MR RAWAT:

22 Q. You mentioned that your--as a Board, you would be
23 concerned with the development of the airport. In the time you
24 have sat as Deputy Chair, have you dealt with the arrangements
25 that the Airports Authority have made in relation to

1 construction or rehabilitation works at the airport?

2 A. Have I dealt with them?

3 Q. Yes. As a member of the Board.

4 A. Yes, sir.

5 Q. So, would you have seen contracts the Airports
6 Authority proposed to enter into?

7 A. Most times, sir.

8 Q. And would you have seen--if there was a tender
9 process, would you have seen the tender proposals?

10 A. Yes, sir.

11 Q. And are all of those documents held by the Corporate
12 Secretary?

13 A. Beg your pardon, sir?

14 Q. You said the Corporate Secretary puts the papers
15 together for the meeting and then sends them to you. Does the
16 Corporate Secretary keep all of these papers?

17 A. I would imagine so. She has gotten the records of
18 what takes place at all the meetings, so I would imagine she
19 would either have them electronically or she has the papers.

20 Q. Could you just remind me, what is the name of the
21 Corporate Secretary?

22 A. Drusilla Fahie.

23 Q. In the time that you sat as Deputy Chair of the
24 Airports Authority, do you remember the Board discussing
25 arrangements in relation to the provision of private security

1 services or a private airport police service at the airport?

2 A. Private security services?

3 Q. Yes.

4 A. If I remember discussing that?

5 Q. Yes, please.

6 A. I remember it being suggested several times, but it's
7 not a private security that is operating it now. It's being
8 operated under the Airport Board--under the Airport Authority.

9 Q. Well, can you help us a little bit more what you mean
10 by that. When it's being operated under the Airports
11 Authority, what does that mean?

12 A. Well, the security is part of the staff.

13 Q. You said that the use of a private security service
14 was discussed several times.

15 (Overlapping speakers.)

16 Q. How far did the discussions go?

17 A. I never said "discussed." I said "suggested." I'm
18 sorry--

19 Q. Fair enough. Thank you for the correction.

20 All right. I will put it, it was suggested several
21 times. Presumably it was suggested several times at Board
22 meetings?

23 A. Because we have endured a lot of problems with
24 security staff not showing up to work and ASI, who governs the
25 airport, complains that we need to have so much staff on board,

1 so many in attendance. And when someone calls in sick, you're
2 supposed to have someone in reserve, according to ASI--ASI's
3 rules by which we are governed.

4 So, the former Board apparently--because I have no
5 guarantee to this--gives some security members permission to
6 have a second job, and it is said--and again, we have no proof
7 of this--that when the security staff doesn't show up, that
8 they are attending their second job. So, that's when the
9 suggestion came up from several Board members, maybe we should
10 privatise the security portion of the staff because we don't
11 seem to be able to get them under control.

12 Q. And how far did that suggestion go?

13 A. Nowhere.

14 Q. Well, the suggestion was made. Did anybody start a
15 tender process or consider awarding a contract?

16 A. Nothing.

17 Q. Now, you said the "former Board." You have been on
18 the Board about a year. How many members of the current Board
19 have been--have been serving for longer than you?

20 A. I don't know that, sir. It's a new Board. I think
21 we are all appointed around about the same time.

22 Q. So--

23 A. The staff of the airport have been there for quite
24 some time, but members of the Board, that the Board is fairly
25 new, to my knowledge, with innumerable problems inherited.

1 Q. As the Board and as the Deputy Chair, do you recall
2 the Board discussing the arrangements, the contractual
3 arrangements, for the supply of fuel at the airport?

4 A. Yes, sir.

5 Q. Can you tell us a little bit how those discussions
6 went?

7 A. An RFP was sent out for that.

8 Q. Just tell me what an RFP is?

9 A. And to my best--to the best of my knowledge, West
10 Indies Oil in Antigua was awarded the contract for the oil,
11 but...

12 Q. Were you sitting on the Board at the time that
13 contract was awarded?

14 A. Yes, sir.

15 Q. Just so we can--was it a tender process?

16 A. It was, sir.

17 Q. And who ultimately decided to award the contract to
18 West Indies Oil?

19 A. What?

20 Q. Who decided to award the contract?

21 A. After opening the tenders, the West Indies Oil was
22 the best price that they gave, and the Board awarded them the
23 contract. It was an open contract, all who tendered was there.

24 Q. The--so, you were part of that decision to award West
25 Indies Oil the contract?

1 A. If I was a part of that decision?

2 Q. Well, were you on the Board at the time the Board
3 decided to do it?

4 A. Yes, sir.

5 Q. You said that they had the best price, so was the
6 basis on which the decision was made, who gave you the best
7 price?

8 A. Part of it, and part of it was, yes, pricing, and
9 part of it was whether you have the ability or the capability
10 of delivering the goods that would be needed. Sol is at the
11 airport and they tendered--their tender didn't come in well.

12 Q. When--

13 A. I was--

14 (Overlapping speakers.)

15 A. --of the tenders.

16 (Overlapping speakers.)

17 COMMISSIONER HICKINBOTTOM: I think Ms Lake said that
18 Sol were there at the opening of the tender.

19 THE WITNESS: Everybody who tendered there was.

20 COMMISSIONER HICKINBOTTOM: Everybody who tendered
21 there was at the opening of the tender bids, and it was very
22 transparent, Ms Lake said.

23 BY MR RAWAT:

24 Q. As a Board, is there a protocol by which you declare
25 interests in any item on the agenda?

1 A. As a Board what?

2 Q. As a Board, are you required to declare any interests
3 in an item that's on the meeting agenda?

4 A. Yes, sir.

5 Q. And in relation to the supply of fuel to the airport,
6 did any member of the Board declare an interest, to your
7 recollection?

8 A. I don't quite know how that question is going, but
9 what I would like to do is answer it this way: Mr Sylvester is
10 working for an oil company by the name of Delta, but Delta has
11 no interest in tendering or has tendered for any oil at the
12 airport.

13 Q. Has Delta tendered for anything at the airport?

14 A. No, sir.

15 Q. Does anybody else on the Board have any links to
16 Delta?

17 A. No, sir.

18 Q. So, it's only Mr Sylvester's connection?

19 A. Yes, sir.

20 Q. But just so that we can be clear, I mean, if an item
21 comes on an agenda and a Board member has an interest in it,
22 are they required to declare that interest?

23 A. Yes, sir.

24 Q. And how are you made aware that you need to declare
25 an interest?

1 A. How what, sir?

2 Q. How are you made aware of the need to declare an
3 interest?

4 A. Because--made aware?

5 Q. Let me put it a different way, Ms Lake.

6 When you joined the Board, did you get told about the
7 importance of declaring interests?

8 A. If anything came up that was concerning you or
9 anything that you do, yes, you had to declare that you did
10 have--you are involved in that particular whatever it is, if it
11 was something to be supplied to the airport or whatever; yes.
12 You would have to say that.

13 COMMISSIONER HICKINBOTTOM: Mr Rawat, I'm not sure
14 how many other questions you have, but we have been here for
15 some time, and Ms Lake has been giving evidence for some time,
16 but others here have been here for quite a long time. How long
17 do you think you'll be?

18 MR RAWAT: What I was going to say, if I could have
19 five minutes more, and then--or less, possibly, and then if we
20 then take a break, I could check if we covered everything with
21 members of the COI team.

22 COMMISSIONER HICKINBOTTOM: Is that all right?

23 MR RAWAT: Maybe I could do it even more shortly than
24 that.

25 BY MR RAWAT:

1 Q. Just one final question about how the Board operates,
2 Ms Lake.

3 In your time again as Deputy Chair, have you been
4 involved in arrangements for the supply of consultancy services
5 to the Board or to the Airports Authority?

6 A. Consultancy?

7 Q. Yes.

8 A. I don't have a consultancy for them.

9 Q. Not yourself. Have you, as a member of the Board,
10 dealt with arrangements being put in place for a company or
11 business to supply consultancy services to the Airports
12 Authority or to the airport?

13 A. No, sir.

14 Q. That isn't something that you remember being on an
15 agenda item at the Airports Authority Board?

16 A. That is not--could you repeat?

17 Q. You don't remember the question of consultancy
18 services ever being on the Agenda at a meeting that you
19 attended?

20 A. No. We have a consultant to the Board, but there is
21 not a member who is a consultant or is in consultancy. Is that
22 what you're trying to find out, sir?

23 Q. I'm trying to ask whether the Board has considered--

24 A. Beg your pardon?

25 Q. Contractual arrangements for companies to provide

1 consultancy services to the airport.

2 A. Are you--are you asking if those persons are members
3 of the Board?

4 Q. No. I'm not asking you if there are consultants on
5 the Board or if you are a consultant. I'm asking you whether,
6 as a Board, you have considered contracts for the awarding of a
7 contract to companies or businesses to provide consultancy
8 services to the airport.

9 A. Yes.

10 Q. You have considered that?

11 A. We don't have a consultant to the Board.

12 Q. But was there a tender process for those who would
13 provide consultancy services?

14 A. Was there a tender process?

15 Was there a tender process to employ a consultant?
16 Is that what you're asking?

17 COMMISSIONER HICKINBOTTOM: Yes. I think that's the
18 question, Ms Lake.

19 THE WITNESS: Not to my knowledge.

20 BY MR RAWAT:

21 Q. But the best person to ask or the person who is most
22 involved in keeping the papers of the Airports Authority Board
23 is the Corporate Secretary; is that right?

24 A. Yes.

25 MR RAWAT: Sir, I think I've covered all the

1 questions I need to cover, but as I said, if I could have five
2 minutes, I can speak to other members of the team to make sure
3 we can finish everything today.

4 COMMISSIONER HICKINBOTTOM: That's all right,
5 Mr Rawat.

6 What we will do is have a five-minute break.

7 THE WITNESS: I need lunch.

8 COMMISSIONER HICKINBOTTOM: We could go for lunch,
9 but all being well, if we come back in five minutes, we will be
10 able to leave--

11 THE WITNESS: Can you wrap it up in five minutes?
12 Because I need to take my medication and I need to have food to
13 take it.

14 COMMISSIONER HICKINBOTTOM: Yes.

15 Can you give us five minutes?

16 THE WITNESS: Can we just go on and finish?

17 COMMISSIONER HICKINBOTTOM: Yes, and then hopefully
18 we will finish very quickly.

19 THE WITNESS: Okay.

20 COMMISSIONER HICKINBOTTOM: Okay. Mr Rawat, I think
21 you heard that. If you're going to be more than five minutes
22 or so with Ms Lake, then we may have to have a longer break,
23 but we'll have a five-minute break and see where we are.

24 THE WITNESS: Are we going to have the five-minute
25 break?

1 COMMISSIONER HICKINBOTTOM: We're going to have the
2 five minute now.

3 THE WITNESS: Whew.

4 COMMISSIONER HICKINBOTTOM: But hopefully we'll tie
5 things up quickly, Ms Lake. And if we can't, we will have a
6 proper lunch break.

7 THE WITNESS: Take a bathroom break.

8 COMMISSIONER HICKINBOTTOM: Good. Thank you very
9 much.

10 (Brief recess.)

11 COMMISSIONER HICKINBOTTOM: Mr Neale is not
12 there--oh, he's there. Mr Neale, you've appeared. Good.

13 MR NEALE: With apologies, I'm here. Thank you.

14 THE WITNESS: You were at lunch.

15 COMMISSIONER HICKINBOTTOM: No, that was very quick,
16 Mr Neale.

17 Mr Rawat, how many minutes do you think you'll be?
18 Have you got any more questions for Ms Lake?

19 MR RAWAT: A couple more, so I hope, depending on the
20 answers, we can be very short, so I will just put them to
21 Ms Lake. If it's going to take longer, sir, we may need to
22 take a longer break, but hopefully I will get them done.

23 COMMISSIONER HICKINBOTTOM: Let me check Ms Lake.

24 Are you happy to carry on for a couple of questions,
25 Ms Lake? But say if you're not.

1 THE WITNESS: I want to get this over with, that's
2 for sure.

3 COMMISSIONER HICKINBOTTOM: Okay. Let's try,
4 Mr Rawat. Ms Lake must let us know if she would like a break
5 because we'll give it to her.

6 MR RAWAT: Or course, sir.

7 BY MR RAWAT:

8 Q. Ms Lake, one question that arises out of your role on
9 the Airports Authority Board.

10 At meetings, were there discussions about the
11 arrangements for the purchase of land for the runway extension
12 on Beef Island?

13 A. Purchase of land. Purchase of land. I don't know if
14 it is put in the form of a purchase of land, but I know that
15 what we discussed was how we can get some land that is adjacent
16 to the airport, and it's referred to as "homeland."

17 And an approach was made to the Government to pursue
18 whether or not the home persons had fulfilled their obligation
19 as an investor for the land or whether they didn't. Well, I
20 think it's common knowledge that they hadn't. That's why we
21 asked the Government because studies were made before this
22 Board to extend the runway by the way of filling in the sea and
23 incorporating a small land base that is east, I think, of the
24 airport. I hope I have my directions right.

25 And this Board felt that it would be a lot better for

1 the--for the airport and the country that we would be able to
2 get a much larger runway if we were able to get that land. And
3 as far as I know, they're trying to work it out now with the
4 owner.

5 Q. What mechanism or did the Airport Authority Board set
6 up any mechanism to buy that land?

7 A. To buy it?

8 Q. Yes.

9 A. I don't know if we've reached to the buying stage
10 yet, so I think it's a negotiation to see where we're going
11 with it, or where we can go with it to the benefit of the
12 country. I don't think there is an outright deal that the
13 airport can go to the owner and say, "We would like to buy the
14 land." I don't think it's in that direction, if that's what
15 you're asking.

16 Q. Can I break it down, please, because I'm conscious of
17 the time, but the Airports Authority could either buy the land
18 directly or it could set up, for example, a vehicle, a company
19 through which to buy the land. Do you know whether it's done
20 anything like that?

21 A. Neither.

22 Q. You don't.

23 A. Neither has been done, sir.

24 COMMISSIONER HICKINBOTTOM: Neither was the response.

25 THE WITNESS: Neither. The Government is in

1 negotiation with the owner of the land.

2 BY MR RAWAT:

3 Q. And do you know who owns the land?

4 A. Negotiating with the owner of the land, the airport
5 is--has not approached him to buy any land nor any agent of the
6 airport. This is misleading. There's not truth to that.

7 Q. So, it's just all in the hands of the Government, is
8 it?

9 A. Yes, sir.

10 Q. Which part of the Government is dealing with it?

11 A. I think the Attorney General Chambers.

12 Q. And do you have any involvement in it in any way
13 whatsoever?

14 A. Sir?

15 Q. Other than being a member of a Board, do you have any
16 involvement in the purchase of this land in any way whatsoever?

17 A. Sir, I just told you there is no purchasing going on
18 with the land. It's a negotiation with the Government. There
19 is no purchasing going on with the land. Nobody approached the
20 owner, the present owner, to purchase the land, no agency
21 hasn't done that, to the best of my knowledge.

22 Q. So the--

23 A. This is not good information.

24 Q. Is your only involvement in this process, then, is
25 just as a member of the Board? You have no other connection to

1 it?

2 A. No, sir. No other connection.

3 Q. Okay. Are you aware, as a member of the Board, that
4 the Commission has sent a Letter of Request to Mr Sylvester as
5 Chairman of the Board?

6 A. The Commission told me that. They asked me how to
7 get in touch with Mr Sylvester, and I passed the information on
8 to Mr Sylvester by e-mail, and he got in touch with the
9 Commissioner, as far as I know.

10 Q. Had that Letter of Request been discussed at a Board
11 meeting?

12 A. Has what letter been discussed?

13 Q. The letter from the Commission to Mr Sylvester. Has
14 that been discussed at a Board meeting?

15 A. No, sir.

16 Q. So, even though you had a recent Board meeting, that
17 hasn't come up?

18 A. No, sir.

19 Q. So, are you aware that Mr Sylvester hasn't responded
20 substantively to that Letter of Request?

21 A. If I am aware?

22 Q. No. Are you aware that Mr Sylvester has not
23 responded substantively to that request?

24 A. No, sir, I'm not aware of that. I understand that Mr
25 Sylvester has instructed the Corporate Secretary to get in

1 touch with the Commission of Inquiry. I don't know. I don't
2 know anything about it.

3 Q. Thank you.

4 There is only one final matter to ask you, Ms Lake.
5 During the course of your evidence, you indicated that you
6 would be willing to provide what documents you have in relation
7 to your various contracts with the Government; for example, in
8 relation to hotel, your commercial interests in particular. Is
9 that still the case? Are you happy to provide those documents
10 to the Commission?

11 A. Yes. I have nothing to hide.

12 Q. Thank you very much.

13 A. I would bring them today, but you did not say what
14 you were looking for. I could have save Mr Neale's fees. When
15 I read it, it was so vague, I said, "Well, maybe I need legal
16 counsel." I would have come with them today.

17 Q. Well, thank you for that indication.

18 MR RAWAT: Sir, I have no further questions. Thank
19 you.

20 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.

21 I have no questions, you will be pleased to hear, Ms
22 Lake.

23 THE WITNESS: Thank you, sir.

24 COMMISSIONER HICKINBOTTOM: Just two very short
25 things. I think I will check that nobody else has got any

1 points.

2 First of all, just to thank obviously Ms Lake but
3 also you, Mr Neale, for your submissions earlier.

4 Mr Neale, this is probably best put to you first, but
5 this is a private hearing, and as I said at the outset, the
6 default position is that the hearings are made open--made
7 public, unless there is anything discussed in them which cannot
8 properly be made public. I'm not sure if there is anything in
9 today's hearing in terms of submissions or Ms Lake's evidence
10 that can't be made public. But do you want to make any
11 submissions in relation to that?

12 MR NEALE: No submission, sir. We have no
13 objections.

14 COMMISSIONER HICKINBOTTOM: Okay. Thank you very
15 much.

16 Good. Mr Neale, is there anything else?

17 MR NEALE: Just with respect to the earlier
18 direction, I'm wondering now that Ms Lake has completed her
19 evidence and indicated her willingness to provide documents,
20 whether we still need to make submissions with respect to the
21 self-incrimination point as it relates to the production of
22 documents. It would seem to me that it is no longer a relevant
23 issue for this Witness.

24 COMMISSIONER HICKINBOTTOM: Thank you very much,
25 Mr Neale.

1 Mr Rawat, I think that's probably right, isn't it?
2 We will obviously see the documents that Ms Lake discloses, but
3 she's not suggested that any documents that you raised she
4 wants to raise any privilege in respect of.

5 MR RAWAT: Yes, I agree with you, sir, and I agree
6 with Mr Neale.

7 COMMISSIONER HICKINBOTTOM: Well, a perfectly good
8 point, Mr Neale.

9 Anything else from you, Mr Rawat?

10 MR RAWAT: Nothing, sir. Thank you.

11 COMMISSIONER HICKINBOTTOM: Again, thank you very
12 much, Ms Lake. I'm sorry it had taken so long, but you're
13 done. Thank you.

14 THE WITNESS: Next time you can have lunch ready.

15 COMMISSIONER HICKINBOTTOM: Thank you.

16 (End of session.)

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.



DAVID A. KASDAN