

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 3
(FRIDAY 7 MAY 2021)

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

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Hon Attorney General Ms Dawn J Smith and Solicitor General Mrs Jo-Ann Williams-Roberts appeared for Minister Hon Vincent O Wheatley.

Mr Richard Rowe and Mr Daniel Fligelstone Davies of Silk Legal (instructed by Hon Vincent O Wheatley) appeared for Hon Vincent O Wheatley.

Solicitor General Mrs Jo-Ann Williams-Roberts appeared for the Minister Hon Vincent O Wheatley and Permanent Secretary Dr Marcia Potter.

Counsel to the Commission Mr Bilal Rawat also appeared.

Court Reporter:

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Those present:

Ms Dawn J Smith, Hon Attorney General
Mrs Jo-Ann Williams-Roberts, Solicitor General
Ms Sara-Jane Knock, Withers LLP (attending remotely)

Mr Richard Rowe, Silk Legal
Mr Daniel Fligelstone Davies, Silk Legal

Mr Bilal Rawat (attending remotely)

Mr Vincent O Wheatley, Hon Minister for Natural
Resources, Labour and Immigration

Dr Marcia Potter, Permanent Secretary, Ministry for
Natural Resources, Labour and Immigration

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, Attorney
3 General. Good morning, everyone.

4 I know that various housekeeping measures have already
5 been given. I don't want to repeat those unnecessarily, but
6 could I say two things about housekeeping:

7 First, we have some people who are joining remotely.
8 For the purposes of the hearing, perhaps most importantly,
9 counsel to the Inquiry is remote, but if the connection with
10 anyone is lost, then I will, if someone--and we have an AV
11 technician who will keep his eye open, but we'll simply stop and
12 wait for the reconnection. And touch wood, over the last week,
13 the connections have been quite good and not too much time has
14 been lost.

15 Similarly, because the proceedings are being recorded
16 and then transcribed, the AV technician will keep an eye on how
17 well the recording and the technology is going and if necessary
18 make adjustments, and he'll do that discreetly. Again, as the
19 work has worn on, that has become less necessary.

20 Secondly, at the Attorney General's request because of
21 the possibility of privileged or confidential documents being
22 raised during the course of the day, the hearing is in private,
23 but at the end of the hearing I'll hear submissions on were
24 there any reasons why the hearings should not be made public and
25 the Transcript then will be transcribed and made public on the

1 Commission's website.

2 Good. Now, is it Mr Rowe?

3 MR ROWE: Yes.

4 COMMISSIONER HICKINBOTTOM: Good. Keep your mask on
5 if you feel more comfortable, but take it off if you feel more
6 comfortable, and it does make the recording and transcription
7 easier, but do what you feel most comfortable doing, Mr Rowe.

8 Now, you've got two applications. The first
9 Application, the one of the 4th of May, is to appear in the
10 Commission of Inquiry for the Honourable Vincent Wheatley.

11 MR ROWE: I do.

12 COMMISSIONER HICKINBOTTOM: And I'm sure you know all
13 of this, but on Tuesday, Mr Rowe, I heard an Application on
14 behalf of Mr Wheatley for a declaration that he's a participant,
15 and also that the Attorney General represent him throughout the
16 Commission of Inquiry. At that hearing, the Minister wasn't
17 underrepresented. He was represented by the Attorney General,
18 the Solicitor General, the Rt. Hon. Geoffrey Cox, Queens
19 Counsel, and two partners from Withers, and they persuaded me
20 that he was a participant and that the Attorney General should
21 appear for him and other Ministers and other public officials
22 throughout the Commission of Inquiry.

23 Within hours of that, the Commission received an
24 Application from the Minister that your firm act for him.
25 That's the background.

1 MR ROWE: If I may, Commissioner.

2 COMMISSIONER HICKINBOTTOM: Yes.

3 MR ROWE: The Honourable Minister sits in the
4 enviable--in three chairs. He sit as Minister, he sits as a
5 private citizen, and he sits as a member of--a representative
6 District 9.

7 COMMISSIONER HICKINBOTTOM: Yes.

8 MR ROWE: We have, in consultation with the Attorney
9 General and on the instructions of the Assembly itself who has
10 retained us--

11 COMMISSIONER HICKINBOTTOM: I'm sorry to break in so
12 early. You're going to have to get used to me, I'm afraid,
13 Mr. Rowe, but no, no; I'm only interrupting you just to make it
14 absolutely clear who you are representing.

15 MR ROWE: Indeed.

16 COMMISSIONER HICKINBOTTOM: You're not representing
17 the House because you're not representing the Attorney General
18 who is part of the House.

19 MR ROWE: Right.

20 COMMISSIONER HICKINBOTTOM: As I understand it
21 you're--and I think this is clear from your letter; it's not a
22 lead point--you seek to represent all of the members of the
23 House--

24 MR ROWE: The members of the House except the Attorney
25 General, (unclear)--

1 (Overlapping speakers.)

2 MR ROWE: And so, we have agreed with the Attorney
3 General that they represent, because of his wide scope of his
4 responsibilities and the fact that we have not yet had our own
5 sight of what it is, what in particular the Commission might be
6 investigating, that it will be prudent to have a division of
7 labour amongst us. So, we would be simply representing in these
8 other capacities--that is, as representative as the host, and in
9 his personal capacity as citizen of the Virgin Islands.

10 Because let me think, the scope of the Commission is
11 sufficiently wide to cover all these areas. We will certainly
12 have--make--we have agreed with the Attorney General, and with
13 your leave, not to cross paths at all and to infringe upon any
14 others' areas of concern.

15 COMMISSIONER HICKINBOTTOM: Can I just take you back a
16 step, Mr Rowe.

17 MR ROWE: Certainly, certainly.

18 COMMISSIONER HICKINBOTTOM: In your Application of the
19 4th of May--and I'm sorry, it's yours in the sense that it's a
20 letter from--

21 MR ROWE: It's a letter from the firm.

22 COMMISSIONER HICKINBOTTOM: --from the Minister.

23 He says that he's been summoned to give evidence and
24 thus is implicated in the inquiry.

25 I don't want to hear submissions on this at the

1 moment; I think that's simply wrong. I don't think that simply
2 because one is a witness before the Commission of Inquiry,
3 you're necessarily a participant for the purpose of Section 12.
4 But don't answer that because I can see that there are other
5 ways in which a member of the past Assembly could be concerned
6 in the Inquiry.

7 MR ROWE: Indeed.

8 COMMISSIONER HICKINBOTTOM: Now, the Terms of
9 Reference--

10 MR ROWE: Could I look at the list?

11 COMMISSIONER HICKINBOTTOM: --are really under two
12 umbrellas, my Terms of Reference are under--(overlapping
13 speakers)

14 MR ROWE: (Unclear.)

15 COMMISSIONER HICKINBOTTOM: --under two broad heads.
16 Paragraph 1, which concerns whether there is any information
17 which may show that public officials of one sort or another may
18 be--may have been involved in corruption and abuse of office or
19 other serious dishonesty.

20 And then Paragraphs 3 and 4 concern, if it's
21 appropriate, whether I should give recommendations with regard
22 to the system of governance--

23 MR ROWE: Right.

24 COMMISSIONER HICKINBOTTOM: --and the system of law
25 enforcement and justice.

1 MR ROWE: Indeed.

2 COMMISSIONER HICKINBOTTOM: Now, as I understand your
3 position, you aren't, I don't think, suggesting that the
4 Minister is implicated in the first paragraph?

5 MR ROWE: The summons itself from what we have sight
6 of, Commissioner, was sufficiently vague as to occasion every
7 possibility.

8 (Overlapping speakers.)

9 MR ROWE: It's all together. It's all together?

10 COMMISSIONER HICKINBOTTOM: With respect, sir,
11 that's--again, I'm not sure that I accept that. The summons is
12 in a form very similar to the one attached to the Schedule to
13 the Act.

14 MR ROWE: Indeed.

15 COMMISSIONER HICKINBOTTOM: And so, it's in proper
16 form, and the form is an open form. I'm sorry, we have--may
17 have--

18 (Pause.)

19 VOICE: It seems we've lost him, sir.

20 COMMISSIONER HICKINBOTTOM: Oh, right.

21 VOICE: Oh his way.

22 COMMISSIONER HICKINBOTTOM: Let's make sure he is back
23 and...

24 Mr Rawat, we lost you for a moment. Are you fully
25 back with us? Can you hear and see us?

1 (Unclear.)

2 COMMISSIONER HICKINBOTTOM: I think the answer to that
3 is "no."

4 We will just wait for a moment, Mr Rowe, just to make
5 sure that--

6 MR ROWE: Um-hmm.

7 (Pause.)

8 COMMISSIONER HICKINBOTTOM: Mr Rawat, can you see and
9 hear us?

10 MR RAWAT: Sir, I hope you can hear me. I can hear
11 you. The sound occasionally breaks up. The problem I'm having
12 is that my screen has frozen. It may be that the best thing for
13 me to do is to try to log out and log in again quickly.

14 COMMISSIONER HICKINBOTTOM: Please do that, Mr Rawat,
15 and we will simply wait for a moment while you do that. That
16 may help.

17 (Pause.)

18 COMMISSIONER HICKINBOTTOM: Well, there we are.

19 VOICE: I spoke too soon. He (unclear)--

20 (Pause.)

21 MR RAWAT: Sir, I hope you can hear me now.

22 COMMISSIONER HICKINBOTTOM: We can hear and see,
23 Mr Rawat, and hopefully you can see and hear us, too.

24 MR RAWAT: Yes. I'm sorry for that interruption. I
25 think the internet at my end is a little unstable this morning.

1 COMMISSIONER HICKINBOTTOM: Well, we'll keep an eye on
2 it, and we'll stop if that happens again, Mr Rawat.

3 The summons is a general summons, that's the form of
4 the summons in the Act, and any questions within the scope of
5 the Inquiry can be asked. But at the moment, we're in an
6 information-collecting mode.

7 MR ROWE: Okay.

8 COMMISSIONER HICKINBOTTOM: No suggestions have been
9 made about the Ministers or Minister or as a member of the House
10 of Assembly or indeed as a private citizen. So, that is where
11 we are.

12 But the--that isn't really the issue. The issue is
13 why members of the House of Assembly are concerned with the
14 Inquiry.

15 MR ROWE: Why are the members of the whole Assembly..?

16 COMMISSIONER HICKINBOTTOM: Yes. Yes.

17 MR ROWE: I think precedent might speak well to that.
18 This Inquiry could, as in the instance of Turks and Caicos, lead
19 to a suspension of the Constitution as one possible outcome.

20 COMMISSIONER HICKINBOTTOM: So, really, your focus
21 is--and this is not a surprise--on Paragraph 3, that is
22 governance?

23 MR ROWE: Indeed.

24 COMMISSIONER HICKINBOTTOM: Yes.

25 MR ROWE: If I may, Commissioner--

1 (Sound interference.)

2 MR ROWE: By using the word "implicate" is, I think,
3 is (unclear) of counsel who drafted the letter. Their very
4 words--

5 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rowe.
6 It's--(unclear).

7 MR ROWE: They still have a problem. I (unclear)--

8 COMMISSIONER HICKINBOTTOM: It's absolutely not you,
9 Mr Rowe. It's some problem at Mr Rawat's end.

10 MR RAWAT: I've logged in on another device, and I
11 hope you can still see me.

12 COMMISSIONER HICKINBOTTOM: We can see and hear you,
13 Mr Rawat.

14 MR RAWAT: I may be a bit better. I'm not having the
15 same problems as I was on my laptop, so I apologize again, and
16 especially to Mr Rowe for interrupting his flow, so...

17 COMMISSIONER HICKINBOTTOM: No, it's not your fault,
18 and we'll carry on, but we'll again, we'll keep an eye on you
19 because it may be your Internet rather than your device.

20 Now, but whether it's implicated or concerned--

21 MR ROWE: Indeed.

22 COMMISSIONER HICKINBOTTOM: What you're saying, as I
23 understand it, is that any member of the House of Assembly must
24 be concerned with the question of governance and future
25 governance.

1 MR ROWE: Indeed.

2 COMMISSIONER HICKINBOTTOM: Okay.

3 MR ROWE: Indeed.

4 More succinctly put, I couldn't have done.

5 COMMISSIONER HICKINBOTTOM: Okay. So, just returning
6 to your Application, as I understand it, the application of the
7 4th of May, which was drafted by the Minister, he's not
8 requesting that you represent him in the Commission of Inquiry
9 as a Minister.

10 MR ROWE: Not at all.

11 COMMISSIONER HICKINBOTTOM: Okay. Okay. Okay. So,
12 the only Application, then, is the application of yesterday--

13 MR ROWE: Yes.

14 COMMISSIONER HICKINBOTTOM: --which is the Application
15 that you--you represent all of the House of Assembly members bar
16 the Attorney as House of Assembly members.

17 MR ROWE: Indeed.

18 COMMISSIONER HICKINBOTTOM: Yeah. Okay.

19 And the Minister is one of those?

20 MR ROWE: The Ministry?

21 COMMISSIONER HICKINBOTTOM: No, the Minister is one of
22 those.

23 MR ROWE: He's one of those.

24 COMMISSIONER HICKINBOTTOM: Yes (unclear)--

25 MR ROWE: He is. (Unclear.)

1 (Overlapping speakers.)

2 COMMISSIONER HICKINBOTTOM: Okay. Let me just drill
3 into that a bit.

4 MR ROWE: Certainly.

5 COMMISSIONER HICKINBOTTOM: The Commission of Inquiry
6 Rules envisage a number of people--a number of persons being
7 represented by the same counsel. And, indeed, the Commission of
8 Inquiry Rules encourage people with the same interest to do
9 that.

10 Now, the Attorney General on Tuesday eloquently
11 submitted that the Ministers had--were concerned with the
12 Commission of Inquiry because of their interest in governance
13 and future governance. So, why isn't their interest identical
14 to the interest of the House of Assembly members?

15 Just before you answer that, a second question is
16 this: No one I don't think--but correct me if I'm wrong--is
17 suggesting there is a potential conflict of interest between the
18 House of Assembly members and the Ministers for these purposes.
19 There is no conflict reason why the Attorney--or any
20 person--should not act for both within the Commission of
21 Inquiry.

22 MR ROWE: If I may, thank you.

23 With respect to the first question, it is--the
24 membership comprises (unclear) 14 of which not all are
25 Ministers.

1 COMMISSIONER HICKINBOTTOM: No.

2 MR ROWE: And indeed, there is (unclear) the
3 opposition who have no Ministry responsibilities whatever, but
4 who have legislative responsibilities.

5 So, in that respect, they are different and--if that
6 answers that first question.

7 COMMISSIONER HICKINBOTTOM: Well, not quite. I mean,
8 it might answer the question--it might answer the question. If
9 you're seeking to represent the House of Assembly, but you're
10 not.

11 MR ROWE: No, members of the House of Assembly.

12 COMMISSIONER HICKINBOTTOM: Exactly. And--

13 MR ROWE: Not the House of Assembly.

14 COMMISSIONER HICKINBOTTOM: No, members of the House
15 of Assembly have a legitimate interest in the governance of the
16 BVI now and in the future.

17 MR ROWE: Mm-hmm.

18 COMMISSIONER HICKINBOTTOM: The Ministers have a
19 similar interest.

20 MR ROWE: Indeed.

21 COMMISSIONER HICKINBOTTOM: Indeed, they have the same
22 interest as individuals because--

23 MR ROWE: They did--

24 COMMISSIONER HICKINBOTTOM: --you're not talking about
25 the House of Assembly as the Legislature.

1 MR ROWE: I think we should generalise that all
2 members of the BVI society have an interest in that, and this is
3 why the COI is welcome.

4 COMMISSIONER HICKINBOTTOM: Well, there is some force
5 in that, but--

6 MR ROWE: Thank you.

7 COMMISSIONER HICKINBOTTOM: But--

8 MR ROWE: Mm-hmm.

9 COMMISSIONER HICKINBOTTOM: --the Legislature--those
10 in the Legislature and those in the Executive are both within
11 arms of Government, and so they have, if you like, a particular
12 constitutional interest, which I understand, but I'm not sure at
13 the moment what the difference in interest is.

14 Why can't the Attorney or, indeed, you represent all
15 of the Ministers in their official capacity and all of the
16 legislators in their official capacity? Because otherwise,
17 when, for example, a Minister is giving evidence, both the
18 Attorney, and if your Application is allowed, you, or someone
19 within your firm, will, first of all, be allowed to be here and,
20 therefore, there'll be duplication, and secondly have a prima
21 facie right to be here. I say "prima facie" because, although
22 under the Act, a participant has a right to participate in the
23 COI through the whole COI under Section 2 and under the COI
24 Rules, particularly Rule 13, I have powers to restrict the
25 nature of the participation.

1 MR ROWE: Indeed.

2 COMMISSIONER HICKINBOTTOM: But why should there be
3 that duplication of effort and public money in respect of people
4 who have the same interest?

5 MR ROWE: It is that there is a third aspect to the
6 legislature, which falls upon your general cause to recommend to
7 the Attorney General, and I suppose the DPP, find criminal
8 charges against members; that if members act outside of the
9 scope, which may well be findings you will come to, of their
10 ministerial or their legislative authority, they will have to be
11 considered as private individuals in that instance. And in that
12 instance--

13 COMMISSIONER HICKINBOTTOM: I'm sorry. I just want a
14 clarification because I want you to finish your submission,
15 please, but when you say "they," are you talking about the
16 possibility of individual members of the House of Assembly
17 having some findings within the Commission made against them
18 and, therefore, be open to prosecution?

19 MR ROWE: Precisely.

20 COMMISSIONER HICKINBOTTOM: But--

21 MR ROWE: As indicated from the Act itself, it enables
22 under the proviso of Section 15 provided (unclear) there is no
23 person giving evidence before the Commission shall be
24 compellable to incriminate himself, and every person shall in
25 respect of any evidence given by him before the Commission is

1 entitled to all the privileges to which a witness giving
2 evidence before the High Court is entitled. One such
3 entitlement would be a right to have to be instructed by
4 counsel, because I think because there are no members of the
5 Legislature who are, in fact, barristers or solicitors except
6 for that person we do not represent who is well skilled.

7 But--and so, for that reason, given that proviso and
8 given your powers under the Rules to limit the questioning that
9 we (unclear) there we have may undertake because the rules set
10 out very specifically that under 14--

11 COMMISSIONER HICKINBOTTOM: Yes.

12 MR ROWE: --you receive any evidence that you might
13 consider assists your purposes, and it--that permits witnesses
14 to give statement.

15 And at 15, whether you grant me (unclear)--grant this
16 audience at all to ask questions which fall outside the purview
17 of limited interests.

18 (Overlapping speakers.)

19 COMMISSIONER HICKINBOTTOM: Section 2 does not express
20 that--

21 MR ROWE: Indeed.

22 COMMISSIONER HICKINBOTTOM: --to exclude you.

23 MR ROWE: To exclude, precisely.

24 COMMISSIONER HICKINBOTTOM: But in relation to
25 self-incrimination, two points:

1 Firstly, if it is a Minister who is giving evidence,
2 then that Minister has the Attorney General to--I was going to
3 say "protect him," but probably a better phrase is to raise any
4 objection--to raise any issue of privilege in relation
5 self-incrimination that might be raised by any question. So,
6 that would only apply to those members of the House who were not
7 Ministers.

8 MR ROWE: Not Ministers.

9 COMMISSIONER HICKINBOTTOM: And, secondly, as soon as
10 any suspicion or allegation or criticism within the scope of the
11 Terms of Reference is made of a Minister, then I think the
12 Attorney General accepts that she would have to bow out because
13 of the potential conflict of interest.

14 MR ROWE: Precisely.

15 COMMISSIONER HICKINBOTTOM: And similarly, you would
16 have to do the same.

17 MR ROWE: Precisely. Well, I have none of the
18 constitutional powers of the Attorney General.

19 COMMISSIONER HICKINBOTTOM: No, no.

20 MR ROWE: (Unclear.) (Overlapping speakers.)

21 COMMISSIONER HICKINBOTTOM: No, I mean, no--I mean the
22 Attorney General very eloquently on Tuesday explained the role
23 she plays in the public interest, but you don't have that.

24 MR ROWE: Indeed.

25 COMMISSIONER HICKINBOTTOM: So, in those

1 circumstances, if the members of the House of Assembly have the
2 same interest as Ministers, why can't they be represented by the
3 Attorney who will be representing participants, in any event,
4 and will have the public interest in mind, too?

5 MR ROWE: (unclear) firstly, for what it's worth, it
6 is a constitutional right to have counsel of their choice. That
7 is the first rule, I think, of natural justice.

8 COMMISSIONER HICKINBOTTOM: No, no, no, no. Hold on a
9 minute.

10 Firstly, you said that they have that right. That
11 isn't the case. But, firstly, where does that right spring
12 from? It doesn't spring from the Act.

13 MR ROWE: Does it spring from (unclear)? The Act--

14 COMMISSIONER HICKINBOTTOM: Act, the 1880 Act.

15 MR ROWE: Let us look to it.

16 COMMISSIONER HICKINBOTTOM: But while you're looking
17 at that, even if I accept that--that's certainly the
18 convention--but even if I accept that, what an individual is not
19 entitled to do is to have counsel and then say they want a
20 completely different team of counsel not represented
21 through--not representing the individual through the counsel of
22 choice.

23 Mr Wheatley's coun--the Minister's counsel of choice
24 is the Attorney General. That is his counsel of choice.

25 MR ROWE: As Minister.

1 COMMISSIONER HICKINBOTTOM: Well, no, he's an
2 individual. That's his counsel of choice. Are you saying that
3 he has a right to have a second counsel of choice for a
4 different aspect? And a counsel whose--in re--whose--where the
5 interests completely overlap and there is no conflict of
6 interest?

7 MR ROWE: It is. It is our position, and we hold fast
8 to it, that there is a complete separate between the three seats
9 he holds.

10 COMMISSIONER HICKINBOTTOM: But the Attorney has
11 explained this on Tuesday. She explained that the Office of
12 Attorney General, which is an office as the Senior Legal Advisor
13 to all three arms of the Government, has an inherent conflict of
14 interest within it, but it is a conflict which she's used to
15 dealing with and dealing with properly, so there is no conflict
16 of interest.

17 I mean, are you saying that, in considering the
18 Application, I have to ignore the public interest of conserving
19 public funds where reasonably necessary--where reasonably
20 possible?

21 MR ROWE: And it is at no cost to the public?

22 COMMISSIONER HICKINBOTTOM: Sorry?

23 MR ROWE: At what cost to the public, through the
24 Commission, Mr. Commissioner?

25 COMMISSIONER HICKINBOTTOM: What you're

1 envisaging--and I hasten to say, this is not to (unclear) refuse
2 your Application but--

3 MR ROWE: No, no, (unclear)--

4 (Overlapping speakers.) It needs to be tested.

5 MR ROWE: Indeed.

6 COMMISSIONER HICKINBOTTOM: But if your Application
7 is--if I accept your Application, an individual--today the
8 Minister--will have two different teams of representatives, both
9 being paid for by the BVI public--

10 MR ROWE: Mm-hmm.

11 COMMISSIONER HICKINBOTTOM: --and in respect of which
12 he has the same interest, and that's an interest in good
13 governance. And is proportionality and the public purse, are
14 they matters that I can take into account, or do I have to
15 ignore those?

16 MR ROWE: This confidentiality relate to each other is
17 an issue that you should look at more closely, should examine
18 more closely.

19 The responsibilities of the Attorney General and the
20 conflicts she might arise, that might arise there, would fall, I
21 think, under the Rules, under the Act itself, Section 13. And I
22 think had there not been exclusive, there would not have been a
23 Section 12. Shall we look at those closely.

24 If you look at 12--

25 COMMISSIONER HICKINBOTTOM: Yes.

1 MR ROWE: Barrister, Solicitor General's functions are
2 set out in 13. But it says any person at 12--

3 COMMISSIONER HICKINBOTTOM: No, no, I'm sorry,
4 Section 13 has nothing to do with it. What Section 13 says is,
5 "the barrister or solicitor appointed by the Attorney General to
6 assist the Commissioners"--and it goes on, and that's counsel
7 to--that's Mr Rawat, and she's appointed him under that section.

8 MR ROWE: Yes. Wonderful.

9 COMMISSIONER HICKINBOTTOM: And he has to act in the
10 public interest, and that's what he's doing. We're not talking
11 about that. We're talking about the Ministers and the members
12 of the House of Assembly and whether sensibly they need to be
13 represented by different teams, both being paid for by the
14 public purse, and you say yes, they do, as I understand your
15 Application, but I'm not quite sure why because your interests
16 are the same.

17 MR ROWE: The interest are in terms of individual
18 interests, and I would say that, in every respect, every citizen
19 of the BVI is interested in this Commission of Inquiry.

20 COMMISSIONER HICKINBOTTOM: But we've already
21 established, I think, that the Legislature and the Executive
22 have a particular interest in governance because they're two
23 arms of the--three arms of Government?

24 (Counsel conferring.)

25 MR ROWE: (Unclear) the powers exercised,

1 Mr Commissioner, under this Act are not separate from, exempt
2 from, but rather act in alignment to the rules of natural
3 justice and (unclear). Under those Rules, there is, I think,
4 with respect, not a consideration for the Commission but as of
5 the interested parties to determine what is in their own best
6 interest. It is, with respect, sir, you being the arbiter, the
7 determinator (pause in audio) certainly within your power to
8 admit or not but certainly justiciable as to whether their
9 choice of counsel to represent them (pause in audio) is found
10 pleasing to you--

11 COMMISSIONER HICKINBOTTOM: Natural justice requires
12 me to be fair. Are you saying it would be unfair--unfair--to an
13 individual who's a member of the House and the Minister if the
14 Attorney General represented his interests both as Minister and
15 as member of the House of Assembly?

16 MR ROWE: If they chose, respectfully, Commissioner,
17 to have both. It is their choice.

18 COMMISSIONER HICKINBOTTOM: But this is a matter of
19 fairness.

20 MR ROWE: It's their choice. It is not a choice,
21 respectfully, that ought to be determined by the Commission
22 itself. It's their choice. They have--especially where they
23 have found and have expressed that the broad scope of this what
24 you described this morning, firstly information-collecting mode,
25 where they have no concept of where--or if it could be described

1 as a fishing expedition.

2 COMMISSIONER HICKINBOTTOM: No, it's not. Mr Rowe,
3 several of these arguments--and you weren't to know this--

4 MR ROWE: (Unclear.)

5 COMMISSIONER HICKINBOTTOM: But several of these
6 arguments were deployed yesterday by Mr Neale, and it's not a
7 fishing exercise. How can it be a fishing exercise? The whole
8 purpose of a Commission of Inquiry is to gather information.

9 And, as I put to Mr Neale, and I hope the analogy
10 holds good, but don't complain to me if it doesn't--my analogies
11 often don't--

12 MR ROWE: Thank you.

13 COMMISSIONER HICKINBOTTOM: We aren't trying to catch
14 fish. Our job under Paragraph 1 is to ascertain whether there
15 is any evidence that there are any fish in the pond at all; and
16 so, that's why it's an inquisitorial process. It's not an
17 adversarial process.

18 And Mr--and the Minister today has been called simply
19 to provide information.

20 But can we move on to--

21 MR ROWE: If I may, sir.

22 COMMISSIONER HICKINBOTTOM: No, carry on.

23 MR ROWE: If I may, we anticipate--and this goes under
24 the Attorney General--that if it is that the scope is going to
25 be limited solely to the ministerial, we would be happily take

1 our leave--happily take our leave--because we countenance no
2 overlap in terms of our function.

3 COMMISSIONER HICKINBOTTOM: But we don't know. I mean
4 it's clear from the correspondence with the Minister that the
5 focus of the question--the focus of the questioning is likely to
6 be in his position as Minister, but I cannot, either in respect
7 to the Minister or perhaps future witnesses, we can't restrict
8 questioning and have to stop questioning if a question is raised
9 of a witness in another capacity because that happened
10 yesterday, and there is no problem. We can't simply stop. But
11 does that--I'm interested in the pract--how do you see this
12 working in practice. Do you see you attending at every hearing
13 that a member of the House, including Ministers, is a witness?

14 MR ROWE: That is what you would anticipate, and the
15 "me" is actually a "we". There are three, three--

16 COMMISSIONER HICKINBOTTOM: Both of you?

17 MR ROWE: Not, not (unclear), at least one--

18 COMMISSIONER HICKINBOTTOM: Yes, yes.

19 MR ROWE: --of three persons can--

20 (Overlapping speakers.)

21 COMMISSIONER HICKINBOTTOM: It would only be
22 duplication, not triplication.

23 MR ROWE: Not triplication at all.

24 And if it is that they required at the expense, that
25 duplication, we think--we think there is nothing inappropriate

1 in the same way, Commissioner, you--there was the power of the
2 Governor to appoint several Commissioners, not just yourself,
3 that could not be treated in the same respect as duplication or
4 triplication, because it is within the power of the Governor
5 too, and as a choice, he selected it.

6 One Commissioner. Here is a choice of the legislators
7 to choose to have in one respect the Attorney General and in
8 another us in that res--in this regard.

9 COMMISSIONER HICKINBOTTOM: Thank you very much,
10 Mr Rowe.

11 Is there anything else?

12 MR ROWE: Unless you have more for me, ask more of me,
13 sir.

14 COMMISSIONER HICKINBOTTOM: Thank you very much.
15 Attorney, probably you should be next.

16 (Pause.)

17 COMMISSIONER HICKINBOTTOM: Attorney, what do you have
18 to say about this?

19 My understanding is that--I think this is Mr Rowe's
20 submission--that you could act for individual members of the
21 House of Assembly in their official capacity.

22 ATTORNEY GENERAL SMITH: Thank you, Commissioner. I
23 believe that was also my submission on Monday.

24 COMMISSIONER HICKINBOTTOM: It was--

25 ATTORNEY GENERAL SMITH: Yes.

1 COMMISSIONER HICKINBOTTOM: On Tuesday, I think--

2 (Overlapping speakers.)

3 ATTORNEY GENERAL SMITH: On Tuesday, yes, when I first
4 appeared.

5 COMMISSIONER HICKINBOTTOM: Yes, yes.

6 ATTORNEY GENERAL SMITH: And that was also my position
7 then, and I indicated that the members may feel that there's too
8 much on my plate, and we did have that discussion.

9 I also indicated at that time that I do represent all
10 the branches of Government. I am willing to do so. I'm
11 available to do so. But I believe that what Mr Rowe
12 is--Mr Rowe's Application represents a position that has been
13 presented to him collectively by the other members of the House
14 of Assembly.

15 So, I don't know that I have very much to add to what
16 he's saying, except to state that I am willing and able and,
17 indeed, it is my responsibility to represent the three branches
18 of Government.

19 And I believe that I am actually quite neutral on his
20 Application because I stand ready to carry out my
21 responsibilities in any event, so I think that's as much as I
22 would have to say on that, Commissioner, unless there is
23 something else--

24 (Overlapping speakers.)

25 COMMISSIONER HICKINBOTTOM: No, no, I think that's, if

1 I might say so, a very fair stance to take.

2 Do you have any observations in respect to, given that
3 you could represent the interests, the official interests, of
4 members of the House, which, I think, are probably the same as
5 those of Ministers in this regard but, in any event, you could
6 represent them. There is no conflict of interest. You will be
7 here in any event because--I mean, not literally you but--

8 ATTORNEY GENERAL SMITH: Yes--

9 (Overlapping speakers.)

10 COMMISSIONER HICKINBOTTOM: --a representative on your
11 behalf will be here, in any event, when, for example, Ministers
12 are questioned.

13 ATTORNEY GENERAL SMITH: Certainly, sir.

14 COMMISSIONER HICKINBOTTOM: And, therefore, there will
15 be duplication of effort and costs, or have you no submissions
16 to make on that either.

17 ATTORNEY GENERAL SMITH: Well, Commissioner, I think,
18 as a matter of fact, that would be the case. I don't know that
19 I want to make submissions on it--

20 COMMISSIONER HICKINBOTTOM: No, no.

21 ATTORNEY GENERAL SMITH: --but I think it is--actually
22 that is (unclear)--

23 COMMISSIONER HICKINBOTTOM: (Unclear), again that's--

24 ATTORNEY GENERAL SMITH: Yes.

25 COMMISSIONER HICKINBOTTOM: --that's a fair stance.

1 Okay. Thank you much. Thank you very much.

2 ATTORNEY GENERAL SMITH: Thank you, sir.

3 COMMISSIONER HICKINBOTTOM: Mr Rawat, have you got any
4 submissions in respect to this?

5 MR RAWAT: May I make some brief observations, sir.
6 The position that we reached is that Mr Rowe accepts that he
7 cannot represent the House of Assembly as an entity. Rather, he
8 has--his Application is made on behalf of 14 members, all the
9 members of the current House of Assembly except the Attorney
10 General. The Attorney General has reiterated today, as she did
11 on Tuesday, that she has identified no conflict at this point in
12 time between her representing Ministers or other arms of
13 Government and representing individual members of the House of
14 Assembly.

15 So, in that sense, the Application is premature. One
16 would have--and we can--in my submission, you can rely on the
17 Attorney that, were the situation to change in relation to an
18 individual Minister or an individual member of the House of
19 Assembly, she would be swift to notify you that a conflict of
20 interest has arisen.

21 And so, the position is just simply that those members
22 of the House of Assembly have decided that they should be
23 separately represented, even though a significant number of
24 them, as Ministers already happy with the Attorney General
25 representing them.

1 Mr Rowe has made the point that natural justice allows
2 an individual's access to their counsel of choice, and that is
3 an unfettered access. In my submission, that is not the case,
4 and one doesn't actually see that reflected in the Virgin
5 Islands Constitution of 2007. And I'm thinking particularly
6 about 16, which is headed "Provisions to Secure Protection of
7 Law," and that refers to the safeguarding of individual
8 liberties when faced with a criminal charge or faced with the
9 determination of civil rights and obligation.

10 And, of course, as you pointed out, this is not a
11 forum where you will be asked to determine guilt or you will be
12 asked to determine someone's civil right, which is an
13 inquisitorial process. And the Act gives you powers not only to
14 determine whether someone falls within Section 12 and is truly
15 concerned with the Inquiry. And I would submit that, yes, all
16 members of the public are concerned with this Inquiry because of
17 its subject matter, but something above and beyond that must be
18 shown.

19 Similarly, you can decide under the Act whether or not
20 someone needs representation, and you can decide the extent to
21 which that representative can participate in the Inquiry, and
22 that flows not just from Section 2 but also from Section 9. So,
23 the position we are in is that, as yet, no conflict has arisen.
24 It is not enough to say that it might arise in the future. In
25 my submission, there has to be some more concretisation of a

1 conflict.

2 And so, you are entitled, in making your decision, in
3 my submission, to have regard to proportionality, and that is
4 for two reasons: firstly, because, under the Act, you are
5 responsible for the good management of your own proceedings;
6 and, secondly, you are entitled, in my submission, to, at the
7 very least, make observations as to the very legitimate public
8 concern there may be over a multiplicity of lawyers attending,
9 particularly for the same witness, at public expense.

10 And that leads to the one issue that you've raised,
11 but in my submission, hasn't really been answered, and then that
12 is the mechanics of it. You will want to call a witness to have
13 all matters put to that witness, if necessary. The witness
14 would, I'm sure, prefer to have all matters put to him or her in
15 one go, but what hasn't really been answered is how that works.
16 At what point does representation shift? Is it question by
17 question? What happens if there is a question that both
18 advocates say engaged their roles? What happens if, in the view
19 of the Attorney General, someone should not be relying on the
20 privilege against self-incrimination, which Mr Rowe pointed to,
21 whereas in his view that person should do?

22 These are questions that are not easy to answer, but
23 they are questions that would be resolved by the fact that the
24 Attorney is present and is already instructed and able to act,
25 and is ready to identify conflicts at an early stage if they

1 arise.

2 Is there any other point on which I can assist, sir?

3 COMMISSIONER HICKINBOTTOM: One other--just one point,
4 I think, Mr Rawat. In respect of the members of the House, who
5 neither the Attorney General, who's--he's not in the
6 application, nor Ministers who are being represented by the
7 Attorney, do you have any submissions to make on whether they
8 are concerned in the Inquiry for the purposes of Section 12
9 because of their role--although as individuals--because of their
10 role as legislators?

11 MR RAWAT: This may be a point on which you're not
12 with me, sir, but in my submission, the proper way where
13 individual members of the House of Assembly would be engaged in
14 the COI is in relation to your Paragraph 3 of your Terms of
15 Reference because that enables you to make recommendations as to
16 good governance.

17 Now, in my submission, it will become a matter for you
18 what information and from whom you seek in terms of what
19 recommendations ought to be made, but it would be open to
20 individual members to make submissions and at that point to
21 contribute to your Inquiry. In my submission, they do not need
22 to be participants in order to do that.

23 And it does raise, perhaps, an interesting question
24 for Mr Rowe because we have been proceeding on the assumption
25 that there is no conflict between individual members, but they

1 may take a very different view of what is good governance. They
2 may take a very different view about what recommendations you
3 ought or ought not to make.

4 So, I don't think, in my submission, the fact that
5 they--and I accept it's a legitimate interest in good
6 governance, but it's not at this stage requiring to have
7 participant status.

8 COMMISSIONER HICKINBOTTOM: Yes. Anything else,
9 Mr Rawat?

10 MR RAWAT: Nothing, sir, to be said at this point.

11 COMMISSIONER HICKINBOTTOM: Your response, Mr Rowe?

12 MR ROWE: Simply put, Commissioner, I think the
13 essence of that last contribution from Mr Rawat is that the
14 House has no locus standi. I think essentially that is what it
15 is.

16 COMMISSIONER HICKINBOTTOM: No, it's not. With
17 respect, Mr Rowe, I don't think that was the gist of what he
18 said. I think what he said was that, in terms of good
19 governance, which is the focus of members of the House of
20 Assembly in the Terms of Reference that I have, they could--in
21 any event without being participants--they could make
22 submissions in relation to governance as it is now and, indeed,
23 recommendations as to good governance in the future. They don't
24 have to be participants to make those representations.

25 I mean, with respect to Mr Rawat, I think that that's

1 not the core of this point. The core of this point is whether
2 they are concerned. If they are concerned, sufficiently
3 concerned, in the COI Terms of Reference, under Section 12, they
4 have a right to participate. The fact that they might, in any
5 event, be able to make recommendations or make submissions
6 doesn't--is not to the point.

7 MR ROWE: You know, but, Mr Commissioner, in the words
8 of an old--as a boy--the "Lost in Space," you might be aware of
9 it, that computer Robert who says: "That does not compute."
10 Here it is that this Commissioner--this Commission--by its wide
11 scope and historically what has occurred in other commissions in
12 other territories has the scope to suspend from its Report,
13 suspend the Constitution to deprive those persons duly elected
14 as representatives of persons of the Virgin Islands, where they
15 have found already that bills which they have properly passed
16 have not been assented to by the Governor, notwithstanding the
17 restrictions that he has under the Constitution, and having been
18 advised by the Secretary of State that they are to await the
19 conclusions of this Commission of Inquiry. It must be a
20 particular concern to them that, certainly in terms of their
21 constitutional functions and duties--

22 COMMISSIONER HICKINBOTTOM: I know but I'm sorry, but
23 that's the point I was making, Mr Rowe.

24 MR ROWE: The point I was just raising, what he says
25 does not compute--

1 (Overlapping speakers.)

2 COMMISSIONER HICKINBOTTOM: What I was saying is the
3 first question under Section 12 is, are members of the House of
4 Assembly implicated or concerned in the or a matter under
5 inquiry. And the fact that they can make recommendations in
6 report to governance does not answer that question, in my view.
7 You say they are concerned. We know that ministers are
8 concerned because I found that on Tuesday.

9 MR ROWE: Yes, sir.

10 COMMISSIONER HICKINBOTTOM: So...

11 MR ROWE: (Unclear) certainly is quite competent
12 counsel to respond but (unclear)--

13 (Overlapping speakers.)

14 COMMISSIONER HICKINBOTTOM: Is there anything else you
15 would like to add?

16 MR DAVIES: Yes. What I would say is that the
17 Commission of Inquiry isn't just looking into the current
18 administration. It is also looking into the past
19 administration, some of the members of which now sit in
20 opposition, namely the member for the 8th District, the Leader
21 of the Opposition, and Mark--the Honourable Mark Vanterpool
22 would have also have formed a part of the last administration.

23 COMMISSIONER HICKINBOTTOM: I'm sorry, we may have a
24 technical issue.

25 (Pause.)

1 MR DAVIES: Sorry, that firstly, what I was saying for
2 the purposes of record--

3 COMMISSIONER HICKINBOTTOM: Yeah, what you're saying
4 is there is an opposition, and you say they have a legitimate
5 interest in the--in governance.

6 MR DAVIES: In the governance, and not only that, but
7 their past actions, and I do believe from the media reports that
8 the Commission of Inquiry is also looking into how certain
9 allocations were spent in terms of the--I think I was reading it
10 on the Social Security stuff--was it allocations to the
11 districts?

12 MR ROWE: Yes.

13 MR DAVIES: The allocations to the districts which
14 would make them necessarily implicated because you have to say,
15 well, the Commission will be called to inquire into and to make
16 a determination as to whether or not these allocations
17 themselves were indeed done properly or properly made.

18 And then the other aspect which I would say to it is
19 that, although the--if it is that the Minister and other persons
20 have chosen, House of Assembly has chosen to have a team of
21 lawyers working on their behalf, then so be it, and maybe the
22 Attorney General could still be working complementary to each
23 other. It doesn't mean--

24 COMMISSIONER HICKINBOTTOM: But that--I'm sorry, just
25 respond--firstly, that's not what has been proposed. What is

1 being proposed, from what Mr Rowe, are two completely separate
2 teams with a wall between them, dealing with two completely
3 separate aspects, albeit protecting the same interests for the
4 same people.

5 And, secondly, you mentioned matters which the press
6 suggests are being investigated, I assume the press say--because
7 of wrongdoing, but if wrongdoing is suspected or alleged, then
8 that is not within the scope of this hearing, of the current
9 hearing, which is simply to collect information.

10 MR DAVIES: Well, my point is not that criminal
11 proceedings, it's that the Commission will be called upon to
12 look into such things. And, in that circumstance, the members
13 are entitled to representation on that point. But what my other
14 point is is that while the Rules, the COI Rules which fall
15 underneath the COI Act, do state that the Parties will be
16 encouraged to have a single counsel where--

17 COMMISSIONER HICKINBOTTOM: No, no, no, no, no, I'm
18 sorry. This is not right. The Rules encourage different people
19 with similar interests to have single counsel. It makes no
20 reference to the circumstances which I didn't envisage of a
21 single person asking for two completely separate counsel with a
22 wall between them. I'm afraid I didn't envisage that but--and
23 the Rules don't cover it.

24 MR DAVIES: Well, the Rules don't cover it, but it
25 doesn't take away from the fact that if somebody is in a

1 participant in it, they are in this--in the Commission of
2 Inquiry, Section 12 does state that they are entitled to
3 counsel, and "counsel" can be determined in the plural, if you
4 want, if you want a literal interpretation, but the literal
5 interpretation isn't generally used in the BVI underneath the
6 Interpretation Act. It is purposive that is to be taken above
7 the literal interpretation. That's Section--under the amended
8 one, Section 42, if you would like to take a look at it.

9 And my point is simply is that, if they are entitled
10 to counsel, they are entitled to whichever counsel they like,
11 regardless of and it's--I don't know if it is really--would be
12 just or proper for the Commission to deny them with what
13 counsels they would want to have. That is a matter entirely for
14 the House of Assembly. And if it is that the House of Assembly
15 has taken a position whether it should relate to members
16 as--that are not Minis--or Ministers that they want another set
17 of counsel to be representing them, then I think that is a
18 decision that ought to be respected by the Commission rather
19 than the House--to put it quite bluntly, rather than the
20 Commission riding roughshod over the determination of what the
21 House of Assembly will think is in their best interest.

22 COMMISSIONER HICKINBOTTOM: With respect, it's not.
23 The House of Assembly have not made any decision.

24 MR DAVIES: Well, with respect, I don't think that
25 necessarily--I don't--

1 (Overlapping speakers.)

2 COMMISSIONER HICKINBOTTOM: This is an Application by
3 not the House of Assembly, we made that--Mr Rowe made that
4 abundantly clear at the outset--but on behalf of individual
5 members, 14 of them, of the House of Assembly.

6 And it's my job to determine whether, in terms of
7 Ministers, whether I have to allow Ministers to have two
8 separate counsel with a wall between them protecting the same
9 interest, in circumstances in which the Attorney General is
10 ready, willing, and able to protect those interests.

11 MR RAWAT: With res--

12 MR ROWE: If I may pass for your attention,
13 Commissioner, a letter from the Speaker of the House, which
14 speaks to what it is that he expects of us, and delivered
15 today--I apologise for the late presentation-but it's from
16 Julian Willock and the parties attending. It says: "This
17 e-mail serves as confirmation that Silk Legal BVI, Inc., and in
18 particular Messrs Richard Jewel (phonetic), Daniel Fligelstone
19 Davies and Denison Fraser (phonetic) have been instructed by the
20 House of Assembly to represent the other members of the House of
21 Assembly, 14 members, in their official capacities except for
22 Attorney General in the Commission of Inquiry.

23 I raise this to say that it is solely for the smooth
24 functionality of this Commission and our willingness to not
25 cause duplication, that the Attorney General (unclear) have had

1 through discussion agreed that there would be this Chinese wall.
2 It is our agreement to facilitate this Commission that we have
3 agreed this.

4 COMMISSIONER HICKINBOTTOM: All right, sir. If I
5 was--this is not expressing a view--

6 MR ROWE: Indeed.

7 COMMISSIONER HICKINBOTTOM: But if I were of the view
8 that far from facilitating smooth running of the Commission of
9 Inquiry, it would disrupt it, then the Application would be
10 withdrawn.

11 MR ROWE: If it is that you find within the course of
12 its operations--and we are here anticipating your
13 approval--certainly we, as counsel, would--and I'm recognising
14 your powers as a High Court Judge, myself being a judicial
15 magistrate--would accede and readily respond to whatever
16 direction you give.

17 COMMISSIONER HICKINBOTTOM: Okay.

18 MR ROWE: No question about that.

19 COMMISSIONER HICKINBOTTOM: Good.

20 I need to think about this.

21 MR ROWE: (Unclear.)

22 COMMISSIONER HICKINBOTTOM: What I'll do is I'll give
23 my ruling over the course of the next few days, so hopefully by
24 Monday at the latest. What I propose to do today is to press on
25 with the evidence from the Minister and the Permanent Secretary.

1 Anything else in relation to the Application,
2 Attorney? Because I think you may have to leave in term--once
3 we get on to the evidence.

4 ATTORNEY GENERAL SMITH: Thank you, Commissioner.
5 Nothing for in terms of the Application. I was just going to
6 ask for your leave to withdraw the Solicitor General, and
7 Ms Knock would be able to continue with the evidence--or the
8 application.

9 COMMISSIONER HICKINBOTTOM: Certainly. I mean what I
10 will do, I'll just finish off with the Application. Then what
11 I'll do is I'll leave for a few minutes while the room is
12 reconstituted for the Minister and the Permanent Secretary.

13 (Pause.)

14 COMMISSIONER HICKINBOTTOM: You can be here. You're
15 bound by the confidentiality undertaking, in any event. No,
16 nothing is to prevent that.

17 Now, in relation to the Transcript of this part of the
18 hearing, Attorney, any--nothing confidential has been discussed,
19 has it?

20 ATTORNEY GENERAL SMITH: Not that I would see, so I
21 believe there is nothing, yeah.

22 COMMISSIONER HICKINBOTTOM: Mr Rowe, so the Transcript
23 can be published?

24 MR ROWE: Certainly.

25 COMMISSIONER HICKINBOTTOM: Good.

1 And in relation to the ruling, I might want to look at
2 the Transcript before I finalise the ruling, and I suspect the
3 Transcript will probably not come through until Monday or
4 Tuesday, but I'll get the ruling out as quickly as I can.

5 What (unclear) to know is I'll just leave the room for
6 a few moments so that everybody can reconstitute the room ready
7 for the evidence. Good. We thank you.

8 (Recess.)

9 COMMISSIONER HICKINBOTTOM: Is everyone here that
10 should be here? I think so.

11 Just a couple of things again before we start.

12 Mr Fligelstone Davies, I spoke slightly too quickly
13 about your staying because the privilege and confidentiality
14 that we're concerned about, the reason why it's private, is the
15 Attorney's; and so, what I'll do is I'll ask the Solicitor
16 General whether she has objection to your staying. We don't
17 know what's going to be disclosed in terms of the evidence, but
18 it's a matter, really, for the Solicitor General.

19 SOLICITOR GENERAL: I have no objection (unclear).

20 COMMISSIONER HICKINBOTTOM: No objection, fine. Thank
21 you very much.

22 There you are. You can stay. Thank you.

23 MR DAVIES: Thank you.

24 COMMISSIONER HICKINBOTTOM: Now, what I think would be
25 most helpful because, Minister, Permanent Secretary, Mr Rawat

1 will be asking you some questions first. But I think it would
2 be helpful if you were both sworn, and then we can be, as it
3 were, as flexible as we need to be in terms of answering any
4 questions, if, for example, there comes a point when a question
5 is asked which it may be more convenient for you to answer than
6 the Minister, or whatever.

7 So, could you both please be sworn.

8 COMMISSION SECRETARY: Please lift your left hand and
9 then read the Witness Oath.

10 THE WITNESS: I swear to Almighty God the evidence I
11 shall give shall be the truth, the whole truth, and nothing but
12 the truth.

13 COMMISSION SECRETARY: Thank you.

14 COMMISSIONER HICKINBOTTOM: And, Dr. Potter, would you
15 like to make an oath or an affirmation? Take the Bible in your
16 left hand and repeat or read the oath.

17 THE WITNESS: I swear by Almighty God that the
18 evidence I shall give shall be the truth, the whole truth, and
19 nothing but the truth.

20 COMMISSION SECRETARY: Good. Thank you very much.

21 COMMISSIONER HICKINBOTTOM: Now, Mr Rawat, do you want
22 to begin the question, please?

23 MR RAWAT: Yes, (unclear). I hope everyone can see
24 and hear me.

25 BY MR RAWAT:

1 Q. Good afternoon, Minister. Good afternoon, Permanent
2 Secretary. It's a little unusual in that we're going to be
3 asking questions of both you at about the same time, so I'll
4 take it in stages if I may.

5 Can I first ask you both just to take it in turns to
6 give the Commissioner your full name, please.

7 COMMISSIONER HICKINBOTTOM: Minister first.

8 A. (Minister Wheatley) Vincent Odel Wheatley.

9 COMMISSIONER HICKINBOTTOM: Dr Potter?

10 A. (Dr Potter) Marcia Elowyn Rosa (phonetic) Potter.

11 Q. And if you could give your professional address,
12 please? Minister first, please.

13 COMMISSIONER HICKINBOTTOM: The office?

14 THE WITNESS: (Minister Wheatley) Yeah.

15 COMMISSIONER HICKINBOTTOM: We'll get Dr. Potter to
16 answer first.

17 THE WITNESS: (Minister Wheatley) It's a new office.

18 THE WITNESS: (Dr Potter) Third floor, (unclear)
19 Building, Lower Estate Road Town, Tortola.

20 COMMISSIONER HICKINBOTTOM: And that's obviously your
21 office, too?

22 THE WITNESS: (Minister Wheatley) Yes. One of them.

23 BY MR RAWAT:

24 Q. Thank you very much, Dr Potter.

25 If I first of all start off by thanking both of you

1 for coming to give evidence today, your willingness to assist
2 the Commission is much appreciated.

3 My questions are meant to be short and simple. If at
4 any time you have difficulty understanding a question,
5 particularly given that it's being asked over remotely or you
6 would like me to repeat or rephrase the question, then please do
7 feel free to ask me to do so.

8 There is a bundle available to you both, I hope, which
9 is a bundle of documents. They're documents you will be
10 familiar with. We may need to look at those in due course but
11 not at the moment.

12 Can I also ask you both, when you answer the
13 questions, please to remember to keep your voice up and to speak
14 slowly, and that's so your answers can be accurately and clearly
15 recorded for the Transcript of this hearing.

16 If at any time you would like a break, please do raise
17 that with the Commission.

18 If I just explain perhaps just the purpose of asking
19 you both to come and give evidence today and my asking you
20 questions, there are a number of matters on which we believe you
21 may be able to further assist the Commission in your position as
22 Minister and Permanent Secretary. You are attending as
23 witnesses. As a witness and indeed it's an obligation that
24 falls on every lawyer, you must try to assist the Commissioner
25 in his investigation. There is legal representation here for

1 you both, but I would stress that I don't intend through my
2 questions today to put to either of you criticisms or
3 allegations that you have to answer.

4 Minister, if I may, I'll put my questions to you,
5 first of all, but if it may well be that in some matters you
6 need to defer to Dr Potter or she may feel that she can further
7 add detail to what you have said already, if so, can you please
8 make that clear and we will then turn over to Dr Potter? Both
9 of you.

10 Can I just start with you first, Minister, and we're
11 just going to start with some preliminary questions, but could
12 you just give the Commissioner a brief outline of your
13 background before you entered politics.

14 A. (Minister Wheatley) Absolutely. How far back do you
15 want to go?

16 Q. A potted history, not too far. But just what were you
17 in professional life before you became a politician?

18 A. (Minister Wheatley) Immediately before. Okay. Happy
19 to answer that.

20 My title was called Sister Islands Programs
21 Coordinator, which sits in a governor's--the Deputy Governor's
22 office. My role concerned government services on the islands
23 outside of Tortola, mainly Jost Van Dyke, Virgin Gorda, and
24 Anegada.

25 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt.

1 And when were you first elected, Minister?

2 THE WITNESS: (Minister Wheatley) February 25th, 2019.

3 BY MR RAWAT:

4 Q. Yes, thank you. And when were you appointed to your
5 current role in Government?

6 A. (Minister Wheatley) As a Minister, I was elected on
7 February 25th, 2019; I think I was sworn in a week later,
8 March 3rd--6. It seems like a long time ago.

9 Q. And for ease, if I could pause you there, Minister,
10 and I'll just switch to Dr Potter.

11 Dr Potter, could you just again just give the
12 Commissioner a brief outline of your civil service career,
13 please. When did you join the civil service?

14 A. (Dr Potter) I joined the civil service here in the
15 Virgin Islands in 1984. I was a teacher at the then-BVI High
16 School for 18 years. I then transitioned to become the Head of
17 the University of the West Indies School of Continuing Studies,
18 with offices located at the Level (unclear) Community College.
19 Then I returned to Central Government as the Chief Education
20 Officer in 2006, I think, it was '06 or '07, 2007, and then
21 became the Permanent Secretary in the Ministry of Education in
22 2011, and became the Permanent Secretary in the Ministry of
23 Natural Resources, Labour and Immigration in September 2019.

24 Q. Thank you very much.

25 And before I leave you, Dr Potter, there was a

1 question that I put to the Cabinet Secretary earlier this week,
2 and I wondered if you could help with it.

3 COMMISSIONER HICKINBOTTOM: Mr Rawat, the Minister
4 would like to add something to that.

5 THE WITNESS: (Minister Wheatley) Just one bit,
6 (unclear) importance. I was also a school teacher for many
7 years, taught secondary schools. That's it.

8 COMMISSIONER HICKINBOTTOM: Yes. Thank you, Minister.

9 BY MR RAWAT:

10 Q. Thank you, Minister.

11 Sorry, if I go back to Dr Potter.

12 Dr Potter, I just wanted to ask for your help with a
13 question that I put to Ms Sandra Ward, the Cabinet Secretary.
14 It's really about the structure of the BVI civil service.

15 Does the BVI--is there a head of the BVI civil
16 service?

17 A. (Dr Potter) Yes, there is. The Deputy Governor serves
18 as our supervisor as Permanent Secretaries and deals with the
19 matters of the public service.

20 Q. Thank you. If I switch now back to the Minister.

21 Minister, again, as you'll be aware, the Commission
22 has sent you four requests as Minister of Natural Resources,
23 Labour and Immigration. I want to ask you questions just today
24 just about one of those.

25 And the requests were--if I bring the bundle up in

1 front of you, you should see--have you got that bundle?

2 A. (Minister Wheatley) I do.

3 Q. The index isn't paginated, but if you go to Page 1,
4 that's the request that we're going to ask you about, which is
5 Request No. 2.

6 Do you have that, Minister?

7 A. (Minister Wheatley) What page?

8 Q. Page 1. It's paginated in the bottom right-hand
9 corner.

10 A. (Dr Potter) Page 1.

11 A. (Minister Wheatley) Um-hmm.

12 Q. And, Dr Potter, do you have it as well?

13 A. (Dr Potter) Yes, sir.

14 Q. Thank you.

15 I will go into the detail of it in a moment, Minister,
16 but these requests were addressed to you in person. Could you
17 just help the Commissioner, how did you go about responding to
18 the request from the Commission?

19 A. (Minister Wheatley) Let me explain. The Ministry is a
20 structure. I'm a Minister. I sit as main policymaker a head of
21 a Ministry with several departments. When a request comes in to
22 me, it is forwarded immediately to the department that handles
23 that particular topic. So, a question coming in on lands would
24 naturally go to the PS who would then forward it to the Lands
25 Committee to provide the information.

1 Q. Okay. I'll switch to Dr Potter now.

2 Dr Potter, is that what happened in this case with
3 this request? It came to you, and then did you send it to the
4 Lands Department?

5 A. (Dr Potter) Yes, sir, that's correct, to the Lands
6 Unit, but I think it's different. Is it Lands Committee, Lands
7 Unit, Lands Department. It's a Lands Unit within the Ministry.

8 Q. I think--well, thank you for that. We must be
9 accurate, so that's very helpful.

10 And was it the Lands Unit that then took that request
11 forward or do you oversee their work, Dr Potter?

12 A. (Dr Potter) I would have overseen the officer with
13 responsibility for oversight of that unit, would have put the
14 information together, would have shared it with me, and I would
15 have instructed him to forward it to the Attorney General's
16 Office, so we were acting as the persons who were helping us to
17 send the information forward.

18 Q. Is this when you say the Attorney General, are you
19 familiar with the Inquiry Response Unit?

20 A. (Dr Potter) The In--yes, sir.

21 Q. And would--and did you--I think as we understand it,
22 the Inquiry Response Unit asks recipients of a request to fill
23 in a questionnaire. Did you have to do that in this instance?

24 A. (Dr Potter) Yes, they did.

25 Q. And as far as you're aware, Dr Potter, the documents

1 that are sent to the Inquiry Response Unit, are they sent in
2 their original form, or do you change them in any way?

3 A. (Dr Potter) No, they were not changed in any way.
4 They were the original documents as we hold them in the
5 Ministry.

6 Q. So, if something was in an Excel spreadsheet, you sent
7 it. As an Excel spreadsheet.

8 A. (Dr Potter) Yes, we--

9 Q. You may not be able to answer this question, but when
10 you provide documents--and I know you said it went to the
11 Attorney General, but it's Inquiry Response Unit, I think,
12 that's facilitating transfer to the COI, when you provide the
13 documents in electronic form, does it go with the metadata, do
14 you know?

15 A. (Dr Potter) It goes in--pardon me? Could you repeat
16 that. If it goes into the...

17 Q. When you--if you give the documents to the IRU in
18 electronic form, do you know whether it--and if you don't know
19 the answer to this, please say so, but do you know whether it
20 goes with the metadata?

21 A. (Dr Potter) I can't respond to that. No, I don't
22 know.

23 Q. Thank you.

24 And then, as we understand it, what happens then is
25 once you pass the documents on to the IRU, it then comes from

1 them to us; is that right?

2 A. (Dr Potter) Correct.

3 Q. So, once you've handed it over to them, do you have
4 any further involvement in dealing with the request?

5 A. (Dr Potter) No, sir.

6 Q. Okay. Well, I'll switch back, please, to the
7 Minister.

8 Minister, I'll take you back to the request now in
9 more detail, if I may. And perhaps what I'll do is I'll just
10 read out the three matters that your department was asked to
11 respond on.

12 Firstly, details and copies of any criteria or
13 guidance that is published, whether internally and/or externally
14 to the public and/or adhered to relating to the BVI Government's
15 process for the disposal of Crown Land, including the disposal
16 of a lease or other interest in the land. Second, details of
17 all disposals of Crown Land including the disposal of a lease or
18 other interest in the land in the last three years to date,
19 including the papers upon which the BVI Government made the
20 decision to dispose including all valuations relied upon and the
21 rationale for the disposal. Third, details of any disposal of
22 Crown Land, including the disposal of a lease or other interest
23 in the land in the past ten years, whether BVI Government did
24 not receive payment as per the Contract for instrument of sale.

25 Can I deal just with the last first, please, if I may,

1 and can I take you to Page 414 in the bundle.

2 COMMISSIONER HICKINBOTTOM: 414, Mr Rawat?

3 MR RAWAT: Yes, please, sir.

4 COMMISSIONER HICKINBOTTOM: No. 414, it is right at
5 the end, 414.

6 THE WITNESS: (Minister Wheatley) Oh, sorry.

7 BY MR RAWAT:

8 Q. Thank you. I'll just wait and make sure Dr Potter has
9 the same document.

10 A. (Dr Potter) Yes, sir.

11 Q. Now, this, we believe or we understand, was a
12 memorandum that your department prepared. It in effect is sort
13 of summary of the answer to the request, and we can see that
14 there is Question 1, Question 2 on the--on Page 414. If you
15 turn, please, through this document to Page 418, the answer is
16 given to Question 3, which was the last question I read out from
17 the summons--from the Letter of Request: For any disposal of
18 Crown Lands to take place, the BVI Government must receive full
19 payment of the consideration sum for that portion of land that
20 was approved by the Cabinet of the Virgin Islands, formerly
21 Executive Council. Therefore no instrument to sell, produce or
22 executed without the sum being paid in full by the
23 Awardee/Grantee.

24 I pause there. I'm going to ask you, we may be
25 jumping around in this bundle, Minister so--and Dr Potter. If

1 you can go back now to Page 7 in the bundle. You should, I
2 hope, if I'm taking you to the right page, be looking at an
3 e-mail dated the 24th of March 2021 from the Inquiry Response
4 Unit. Do you both have that?

5 A. (Dr Potter) Yes.

6 Q. I'm not going to read it all out, but it's responding
7 to this request that I've just been asking you to look at, and
8 specifically to Point 3 of the request, which is then set out,
9 and underneath the wording in italics it reads: "The Ministry
10 of Natural Resources, Labour, and Immigration, has considered
11 the records it holds and has confirmed it does not hold any
12 document responsive to Point 3 of the request as there has been
13 no disposal of Crown Land in the last 10 years for which the BVI
14 Government has not received payment as per the Contract for
15 instrument of sale."

16 I just wanted for the avoidance of any doubt--and this
17 answer can come from either you, Minister, or Dr Potter, but is
18 that accurate, that that's the--an accurate statement of the
19 position over the last 10 years for the Ministry?

20 COMMISSIONER HICKINBOTTOM: Let's take the Minister's
21 answer first and then we can move to Dr Potter.

22 THE WITNESS: (Minister Wheatley) I really cannot say.
23 I've only been there for the last 27 months. So, I have to take
24 them at their word in this case, right? Can I say for sure, no,
25 if it's accurate?

1 COMMISSIONER HICKINBOTTOM: Do you know if it's
2 accurate for your period, your two years?

3 THE WITNESS: (Minister Wheatley) I would have to
4 assume it is. It's always followed. I don't think we
5 have--there's stuff on the computer?

6 (Overlapping speakers.)

7 COMMISSIONER HICKINBOTTOM: We will come to Dr Potter.

8 THE WITNESS: (Minister Wheatley) (Unclear) records, I
9 copy to (unclear) so he can find certain things that quickly.
10 But I certainly would think if it's--the Government's policies
11 would be adhered to at all times.

12 Q. So--

13 A. I would hope so at all times.

14 COMMISSIONER HICKINBOTTOM: So, is your answer this:
15 Until you took office, you don't know?

16 THE WITNESS: (Minister Wheatley) I would not know,
17 no.

18 COMMISSIONER HICKINBOTTOM: But after office, you
19 believe that to be the case.

20 THE WITNESS: (Minister Wheatley) Yes, I believe it to
21 be the case. I'd be surprised (unclear).

22 COMMISSIONER HICKINBOTTOM: And Dr Potter?

23 THE WITNESS: (Dr Potter) Since I've been in office,
24 that has been the case. Prior to, I cannot respond to that.
25 Depend on the records that the Lands Office issued me or the

1 Lands officers report to me.

2 COMMISSIONER HICKINBOTTOM: Okay. There you are,
3 Mr Rawat.

4 MR RAWAT: Thank you, sir.

5 BY MR RAWAT:

6 Q. What that answer does suggest, though, is that, for
7 all disposals of land, the Government has, in effect, received
8 full payment.

9 Minister, has there--are you aware of any for which
10 the BVI Government has only received partial payment as per the
11 Contract or instrument of sale?

12 A. (Minister Wheatley) There are some circumstances where
13 portions are allowed a payment plan, but a transfer does not
14 happen until the Final Payment is made. I cannot think of any
15 instance that I'm aware of where somebody received the actual
16 title before full payment was made.

17 Q. Dr Potter, do you have anything to add to that?

18 A. (Dr Potter) No, sir, that's correct.

19 Q. And that approach, Minister, where you only get title
20 when you've made full payment under a payment plan that applies
21 presumably to residential and commercial disposals.

22 A. (Minister Wheatley) I would assume that, but the issue
23 of land--well, I'll let you ask the question.

24 Q. Sir, I think--I pause there, as I think Dr--when I put
25 the question to you, Dr Potter was nodding. I wonder whether

1 she may be able to add on that question.

2 A. (Dr Potter) No, nothing to add. Sorry.

3 MR RAWAT: Sir, may I just have a moment just to pick
4 something up.

5 (Pause.)

6 MR RAWAT: Thank you.

7 BY MR RAWAT:

8 Q. If we could go back, please, to--well, we may--if you
9 want me to take you to the page I'll do so.

10 Page 414, yes, let's go back to it.

11 414 again, please.

12 You'll see, then, we're turning to Question 1 now on
13 the request that we sent to you, Minister and Dr Potter, but
14 what we see under Question 1, which was about policy, criteria
15 and guidance that there were links pertaining to two documents,
16 and both of those documents have been disclosed. If I take you
17 to one of these, which is the land distribution and BVI research
18 one, the first one that's there linked, that we find at 206 in
19 the bundle.

20 (Pause.)

21 BY MR RAWAT:

22 Q. Now, if you've got the right page, you should see a
23 letter dated the 18th of November 2020, addressed to the
24 Governor. Do you have that?

25 A. (Minister Wheatley) Correct, I have it.

1 Q. If one turns through the page and it ends at 209, it's
2 not entirely--it appears to be unsigned. But as far as you,
3 Minister, or you, Dr Potter, are aware, was that letter sent to
4 the Governor?

5 A. (Minister Wheatley) As far as I'm aware, yes it was
6 sent to the Governor. I met with the Governor and discussed it,
7 also.

8 Q. Dr Potter, anything to add?

9 A. (Dr Potter) Just that--you wanted personal signed
10 (unclear). It was signed by the Head of the Lands Unit on my
11 behalf.

12 Q. Thank you.

13 Just in this context, because you've mentioned
14 conversations with the Governor, Minister, if you look at 236 in
15 the bundle.

16 A. (Minister Wheatley) Uh-huh.

17 Q. There is now--Dr Potter may be better able to help with
18 this, but what we should have is a letter addressed to the
19 Governor dated 6 of January 2021. Do you have that?

20 A. (Minister Wheatley) That's correct.

21 Q. If we go to the last page of that, 239, it's unsigned,
22 but it carries Dr Potter's name and title. I flag up for you,
23 please, 279, which is dated the 22nd of January 2021. Last page
24 is at Page 282, and this one is signed.

25 Now, with one minor correction that I'll draw your

1 attention to in a moment, both these two letters are identical.
2 So, is it possible that the 6 of January 2021 was a draft and it
3 was the 22nd of January letter that was sent to the Governor?

4 A. (Dr Potter) It's possible. I can't recall it
5 (unclear), but I know not that we did find additional
6 information and did send it to the Governor to say that we would
7 like to correct the letter, to add additional information that
8 was sent in, and that would be the minor--the change that you
9 would have seen between this and the previous letter.

10 Q. So, it may be that the 6th of January letter was sent
11 out, and then an amended version was sent a couple of weeks
12 later to the Governor.

13 A. (Dr Potter) Yes.

14 Q. I think with the small change that we see is at 282,
15 and it's, in fact, just the last paragraph, really, Dr Potter,
16 it's the reference to a Comprehensive Land and Marine Estate
17 Policy in draft, and that's the change we've identified, and
18 it's in a way an update because you say "the same will be
19 advanced to Cabinet in due course."

20 Before I leave this document, and please don't think
21 this is a cheeky request, but the letters are responding to a
22 letter from the Governor dated the 18th of December 2020. Would
23 it be possible for you to provide that letter to the Commission?

24 A. (Dr Potter) Yes, I will.

25 Q. Thank you.

1 Now, the--I think the Comprehensive Land and Marine
2 Estate Policy is the second document mentioned in the memorandum
3 that we see at Page 414, and we will find that at 240 in the
4 bundle, Page two-four-zero (240).

5 Now, the letter that went to the Governor on the 22nd
6 of January says that this document, the Land and Marine Estate
7 Policy was in draft. Can you update the Commissioner as to
8 whether it's been finalised as yet?

9 A. (Minister Wheatley) It has not been finalised as yet.
10 I expect it will be finalised within the next six weeks or so.

11 Q. So, it's not yet gone to Cabinet.

12 A. Yes, it's gone to Cabinet and forwarded to AG Chambers
13 to--for vetting. And so--

14 Q. I'm sorry to interrupt you, Minister. Perhaps could
15 you just explain what has happened to this paper thus far, then.

16 A. (Minister Wheatley) Okay. It was drafted, approved by
17 Cabinet, and sent to AG Chambers to finalise before being taken
18 to the House.

19 Q. I see. And you say--who was it that prepared the--this
20 policy paper?

21 A. (Minister Wheatley) If memory serves me right, a
22 consultant by the name of George Romeley (phonetic), who works
23 for us on climate-change issues and marine issues. George
24 Romeley.

25 Q. If you go to 257 in the bundle, and this is part of

1 this document. It's the--it's headed the "Policy
2 Recommendations for Addressing Identified Issues," if you look
3 at Footnote 7, it says: The implementation timeline for the
4 policy is anticipated to be five years. The policy was drafted
5 in 2018, which will represent Year 0 along the proposed
6 timeline, and will not be accounted within the initial
7 implementation period.

8 So, that suggested to me that this policy paper was
9 drafted in 2018; is that right?

10 A. (Minister Wheatley) I cannot speak to that, based on
11 the document in front of me. I was elected in 2019, so I can't
12 say for sure, but it does say 2018. He's been around for many
13 years, assisting government, at the government producing these
14 kinds of policies, so it very well might have been done in 2018.

15 Q. Dr Potter, can you help at all?

16 A. (Dr Potter) No, I can't. I came to the Ministry under
17 the policy, and Minister and I have been pushing to get the
18 policy through, as we see it is an important document going
19 forward.

20 Q. You say, Dr Potter, you've been pushing to get the
21 policy through. We've got a situation here where it was
22 written--it appears to have been written in 2018. In 2021, it's
23 still in draft. Can you given the Commissioner any explanation
24 for why it has taken so long to move this policy forward?

25 A. (Dr Potter) I really can't. I joined the Ministry. We

1 discussed it with the officer who was responsible for
2 spearheading this initiative, and Minister asked that we get it
3 to Cabinet as quickly as possible because we saw it as an
4 important policy for the Ministry, and the officer did what he
5 had to do to finalise the paper for Cabinet, and it went forward
6 to Cabinet.

7 Q. Thank you.

8 Now, I saw the Minister smiling when I put that
9 question to you.

10 Minister, do you have anything to add to that
11 question?

12 A. (Minister Wheatley) Well, you're asking us (unclear)
13 working more efficiently, and I can't answer that question. I
14 imagine they're very busy and it might not be a priority for
15 them. Attorney General Chambers, this Government came in a
16 very, very heavy legislative agenda. I mean, just yesterday, we
17 were in the House, we had three pieces of legislation that had
18 been passed in one day. So, I imagine that I guess they're busy
19 at Chambers, is all I can say. I have been begging and pleading
20 for these people for a year-and-a-half.

21 Q. Thank you.

22 Can I take you just to Page 251 in the paper and
23 Paragraph 12, which is headed "Management of Crown Lands," and
24 it sets out a summary of how many lands--how much land in the
25 territory is owned by the Crown but then concludes there exists

1 no Management Plan to provide for the sound planning management
2 and use of Crown Lands.

3 And if we go to 260--

4 A. (Dr Potter) 260?

5 Q. Two-six-zero (260), please, Dr Potter. The--there is
6 a section under part three which is called, headed "Suboptimal
7 Management of Crown Lands," and it makes the same point, that
8 there exists no management plan to provide for the sound and
9 sustainable acquisition, distribution, and use of Crown Lands,
10 and then makes a number of recommendations which have
11 implementation dates that are now--will arrive at 2019 or 2020.

12 The present position is, that's--this situation still
13 pertains, doesn't it? There isn't a Management Plan for the
14 sound and sustainable acquisition, distribution and use of Crown
15 Lands, is there?

16 A. (Minister Wheatley) I think the correct answer would
17 be no as part of what the marine estate plan does, (unclear)
18 plan, piece of legislation yet to be passed to bring us into a
19 reality. We're working feverishly to get both parts through the
20 Chambers and through the House.

21 Q. Can I ask for your assistance with this, Minister?

22 Once it's gone past AG vetting and it then reaches the
23 House, is it open to the House to reject some or all parts of
24 the policy?

25 A. (Minister Wheatley) Absolutely. It's given a first

1 reading, it has public consultation, comes back for a second
2 reading, we then have debate about the merits of it, and during
3 that stage changes may be made, subtractions or additions. It's
4 been going for days or hours, depending.

5 Q. And so, some of these policy recommendations may not
6 see the light of day, depending on what the House decides.

7 A. (Minister Wheatley) Very true.

8 Q. Thank you.

9 Can I take you back to that first response of the
10 Governor at Page 206 in the bundle. We saw this a few moments
11 ago, and I think Dr Potter, please correct me if I get this
12 wrong, but I think you told us that this was from the Land Unit
13 under your name.

14 A. (Dr Potter) Correct.

15 Q. You're nodding yes.

16 A. (Dr Potter) Yes.

17 Q. This, as we saw when we looked at Page 414 is a
18 document relied on by the Ministry as part of its response to
19 the COI's first query. If we go to 209, there's a table which
20 is headed "Approved cost per lot for residential purposes," and
21 deals with various parts of the island.

22 How are the costs--

23 A. (Minister Wheatley) One correction of the territory,
24 these are different islands.

25 Q. Yes, yes, I accept that. But can you help us with

1 this: How is that cost bigger for each of these lots of land
2 calculated?

3 A. (Minister Wheatley) Yes, I'm not a hundred percent
4 sure. It is a formula. I can't say I know exactly what it's
5 based on. Sometimes \$1 per square foot, sometimes \$2 per square
6 foot.

7 Let me give you a better answer. All lands in the BVI
8 are handled very differently, so let's start at one of them. I
9 didn't really see, is it listed here? Let's start it here, on
10 Tortola. Nottingham Estate. Nottingham Estate was (unclear) of
11 slaves back in 1776. All of that particular estate, Mary
12 Nottingham gave all of the slaves (unclear) that land for free,
13 so that land doesn't have a cost to it. They get that land for
14 free. It's different to land, let's say in Anegada. Anegada
15 has a whole different (unclear). They pay \$1 for land in
16 Anegada. But if you move to a place (unclear), that may be \$2
17 per square foot. It has a different covenant to it. Or if you
18 go to Nibbs Estate, again a different covenant to the land.
19 Based on the historical significance of how the land came to be.

20 Market value, I believe, it's hardly ever used when
21 dealing with Crown Lands for local persons. Lands are very,
22 very (unclear). Landownership is serious, something very
23 sacred, so we do not use market prices as most persons will not
24 be able to afford market prices. That has the sales practice
25 for many, many years.

1 Q. And is that going to remain the case going forward?

2 A. (Minister Wheatley) I think under the marine estate
3 policy and as we get more toward zoning, there might be a
4 uniformity. Again based on island sizes, the land will be
5 valued differently. Tortola is the biggest island. Jost Van
6 Dyke is a smaller island, so the values may vary depending on
7 the size. So, I cannot say for sure if we'll ever get to a
8 uniformity price. I mean (unclear) their issue is land and
9 lease because of the activities surrounding the property. So
10 should we get to uniformity across the territory, I cannot say
11 it will happen. It's impract--

12 Q. But in terms of the sort of historical values, for
13 example, you gave the example of the Nottingham Estate, and then
14 I think the Nibbs Estate, but that's not going to change, is it?

15 A. (Minister Wheatley) No, I--it's safe to say that those
16 established ones will not change. The question will be--and in
17 no subdivisions come in what that policy would be at that time.

18 Q. And if you take--sorry, Minister, I cut across you,
19 please finish your answer.

20 A. (Minister Wheatley) These here will not change. I
21 think it's safe to say they will not change.

22 Q. And that's because of the history associated with
23 those pieces of land.

24 A. That is correct.

25 Q. I follow. Thank you.

1 So--but if we--if we take it correctly, that Crown
2 Land, which falls outside the lists that we see here, falls
3 outside land that has a historical context to it, what--how is
4 the cost for lot of that kind of land, if it's going to be
5 disposed for residential purposes, how is that assessed at the
6 moment?

7 A. (Minister Wheatley) I think the thinking is we use the
8 Spooners Estate, which is, I think, the most reasonable one. We
9 use that as the model for going forward, which I think is \$2 per
10 square foot--so \$1 dollar per square foot, according to this
11 chart here.

12 Q. Right.

13 What's the position in relation to
14 commercial--disposal of Crown Land for commercial purposes? How
15 is that valued?

16 A. (Minister Wheatley) That's given a commercial rate,
17 more commercial rate. It's a lot more expensive than
18 residential.

19 Q. If you look at Page 208, if you look at the third
20 paragraph down, if I draw that to your attention: However, in
21 more recent times, matters relating to the transfer of Crown
22 Lands have been more systematic as valuation reports are
23 required before any Crown Lands transfers are executed. The
24 same can be said for leases for Crown Land for commercial
25 purposes. The Ministry has outsourced most of the requests for

1 valuation for the sale of Crown Lands with a few being conducted
2 internally by the Senior Lands Office.

3 So, my questions are directed, Minister and Dr Potter,
4 to the situation that exists at the moment, not what you may
5 want it to be in the future but how it exists at the moment.
6 So, keeping that in mind, is the position now that, leaving
7 aside the land that comes within the historical construct that
8 you outlined, Minister, that whether it's disposed for
9 residential purposes or commercial purposes, a Valuation Report
10 will be obtained?

11 A. (Minister Wheatley) That is absolutely correct.

12 A. (Dr Potter) Correct.

13 Q. Do you agree with that, Dr Potter?

14 A. (Dr Potter) Yes, that's correct.

15 A. (Minister Wheatley) Totally correct--

16 (Overlapping speakers.)

17 Q. And when it says--I'm sorry, Minister, again I've
18 interrupted you. Please go ahead.

19 A. (Minister Wheatley) I was going to say, it will not be
20 processed without an evaluation, which I fully support.
21 Particularly in recent times I think from last year May, as part
22 of an incentive to encourage local purchasers to buy more lands
23 with zero taxes on all land transfer.

24 However, to capture a subsidy effect, every piece of
25 land had to be valued so it could not avail of what the

1 Government actually made available as a subsidy. Going forward,
2 all Crown Land will be valued. I must say in the past, I think
3 there are many cases where it was not done.

4 Q. And do you know why it was not done in the past?

5 A. (Minister Wheatley) Because interest was in having
6 local persons own property. Not so much to make any money from
7 it but to make the land available and affordable.

8 Q. Now, just if I could break down your answer a little
9 bit, please, Minister, the--firstly, that the pres--you told us
10 the present position is that whether it's commercial or
11 residential there is going to be a Valuation Report. And are
12 these Valuation Reports held by the Ministry?

13 A. (Minister Wheatley) Yes, and a copy. Wherever the
14 file goes, a copy goes with it, but we do keep a copy at the
15 Ministry.

16 Q. You said that, a short while ago, there was an
17 exercise undertaken to look at the valuation of land. Is the
18 product of that exercise also within the possession and control
19 of the Ministry?

20 (Overlapping speakers.)

21 A. (Minister Wheatley) Repeat the question, please?

22 Q. Sorry. A few moments ago, you men--you said that
23 there was an exercise undertaken to look at the value of Crown
24 Land, which--

25 (Overlapping speakers.)

1 A. (Minister Wheatley) --for sale. Those that have been
2 sold must be valuated, not generally speaking. But it is
3 (unclear)--

4 (Overlapping speakers.)

5 A. (Minister Wheatley) --(unclear) subdivision we attempt
6 to make available to process, at that--at a point of sale, the
7 land is valued before it is sold.

8 Q. Right, so I misunderstood you. So, the Ministry
9 hasn't undertaken an exercise that is an attempt to value all
10 Crown Land that has not yet been sold.

11 A. (Minister Wheatley) No, that's not true. It's not
12 happening.

13 Q. Right. But what you do do at the moment is if a piece
14 of Crown Land is going to be sold either for residential
15 purposes or for commercial, it is valued then.

16 A. (Minister Wheatley) That is correct.

17 Q. So, the file will carry, if you like, a piece of paper
18 that says this is the market rate of this piece of land.

19 A. (Minister Wheatley) That is correct.

20 Q. And that travels with the file wherever it goes, even
21 if--

22 (Overlapping speakers.)

23 Q. --even if it leaves the Ministry.

24 A. (Minister Wheatley) Also (unclear) and holding licenses
25 must be accompanied with the file.

1 Q. Thank you.

2 We may have already dealt with some of this, but just
3 to assist the Commissioner, and this letter to the Governor sets
4 out some of this, but could you just summarize the current
5 process for the disposal of Crown Land. There is reference, for
6 example, to the Land Committee. So, if we start with the Land
7 Committee, if you can take the Commissioner through the chain,
8 if you like, of how a piece of Crown Land gets disposed.

9 A. (Minister Wheatley) Okay, so, some communities they're
10 currently right now want active Lands Committee, and that's in
11 Anegada, but in the past there have been committees for
12 Spooners, Nibbs Estate, Stevens Estate, Spooners Estate and
13 Virgin Gorda. These committees usually get together in a
14 community and they propose persons based on age criteria,
15 whether you own property already or not, and that list is sent
16 to the Ministry of the Lands Committee as recommendations for
17 persons who should receive land. A part from the committees
18 personally write to the Ministry directly requesting Crown
19 Lands. Other instances, person's representative may also make
20 representation for that person to gain a piece of Crown Land, so
21 there are four or five different avenues that are requests made
22 into the Ministry.

23 Once the Ministry is about to give out to distribute
24 Crown Lands, a Cabinet paper must be done and sent to the
25 Cabinet for final approval. Once Cabinet approves the list, it

1 is then sent back to the Ministry to execute.

2 Q. Right. I think we'll look at some of those decisions
3 shortly. So, in effect, a recommendation that a sale of Crown
4 Land being made can come from a variety of sources.

5 A. (Minister Wheatley) That is correct.

6 Q. But your Ministry--could you, yourself, as Minister,
7 make a recommendation in Cabinet?

8 A. (Minister Wheatley) I'm also a representative of our
9 district, so yes, the concerned, they do come to me and ask can
10 they get Crown Land. I said you have to apply. So I may take
11 that into Cabinet. So, yes, the answer is yes, I as Minister
12 can make recommendation also to Cabinet.

13 Q. But are you doing it as the a representative or are
14 you doing it as the Minister?

15 A. (Minister Wheatley) As a representative for the
16 person.

17 Q. Is that power, even though you may not have done it,
18 but is that power for you in your ministerial position to make
19 recommendations to Cabinet?

20 A. (Minister Wheatley) Power?

21 Q. Yes.

22 A. (Minister Wheatley) Only my Ministry can do that.
23 Only me can take a paper to Cabinet concerning land distribution
24 outside (unclear) which falls under the (unclear) authority, in
25 that case comes to the Premier's Office or the Minister of

1 Telecommunication Works and Utilities, but every property
2 outside of the (unclear), my Minister must take it to Cabinet
3 for approval.

4 Q. So, even if the one Lands Committee is that now at the
5 moment operating, even if that Lands Committee wants to make a
6 relation, it all has to come through you.

7 A. (Minister Wheatley) Cabinet.

8 Q. Right.

9 A. (Minister Wheatley) Me to take to Cabinet. These are
10 non-binding recommendations. They're simply recommending
11 persons who they think deserve land for whatever reason.

12 Q. And a representative, another representative who wants
13 to make a recommendation, would also have to come through your
14 Ministry.

15 A. (Minister Wheatley) That is correct.

16 Q. Now, you've described them--so you're in effect the
17 gatekeeper. But are you always obliged to at least take it to
18 Cabinet, even if it's non-binding?

19 A. (Minister Wheatley) (Unclear) We have a dat--let me
20 put it this way. We have a database of probably several
21 thousand names because this has been going on for 30-40 years,
22 person apply, all the names are kept in a database. I have a
23 tally (unclear) for one district now, there are at least 1000 I
24 know for the 9th District, names in a database.

25 The question becomes if I only have five pieces of

1 land available, which five is selected for those five pieces of
2 land? So, it does come down to a political decision, should I
3 give it to Jane or Harry and based on what criteria?

4 We use several criteria. One could be the person
5 needs to have a family and a place to live, so lands provided
6 where they get a home. The person wants to buy a home but they
7 don't have land, they may get land in that position.

8 This comes down to making a decision (unclear) which
9 four or five will get that thing--that land. Many persons want
10 land but not all persons can afford to purchase land.

11 COMMISSIONER HICKINBOTTOM: Are there other criteria?
12 You've mentioned--

13 THE WITNESS: (Minister Wheatley) Yes, there is
14 several criteria. Age, yes, they are at least 18 years or
15 older.

16 COMMISSIONER HICKINBOTTOM: And are these set out
17 somewhere?

18 THE WITNESS: (Minister Wheatley) Yeah, here in the
19 same document.

20 COMMISSIONER HICKINBOTTOM: Thank you.

21 THE WITNESS: (Minister Wheatley) Things like are you
22 a first-time homeowner, your age, can you afford it to build on
23 the property, and so forth.

24 COMMISSIONER HICKINBOTTOM: Thank you.

25 BY MR RAWAT:

1 Q. So, Minister, you said that the criteria, when the
2 Commissioner asked you where are the criteria set out, you said
3 here in this document. Which were you referring to?

4 A. (Minister Wheatley) There's a copy in here, I think
5 the same one you pointed out that was sent to the Governor, on
6 second page.

7 Q. Is this Page 206?

8 A. (Minister Wheatley) Yes, 206. That's the general
9 requirements.

10 A. (Dr Potter) No, the later ones.

11 A. (Minister Wheatley) No, I think the one from the 30th.
12 They'll all be arranged under the same thing.

13 A. (Dr Potter) Page 237, 236-237.

14 A. (Minister Wheatley) 237?

15 A. (Dr Potter) 236-237 (unclear)?

16 A. (Minister Wheatley) 236-237 that governs--that it
17 governs how you may go about selecting somebody for property.

18 Q. If I look at 236, that's the first letter that went to
19 the Governor or--you know, before it was slightly amended.

20 A. (Minister Wheatley) Yes.

21 Q. Because that refers to the Nibbs Estate, North Sound
22 Advisory Committee, Spooners Estate land. Now, do they not come
23 within the sort of historical distributions that you were
24 speaking about a few moments ago?

25 A. (Minister Wheatley) That is correct.

1 Q. Right. Now--

2 (Overlapping speakers.)

3 Q. But if the Commissioner is questioning, if one
4 looks--I accept that there may be historical consequences that
5 bind you, Minister, for example, in terms of what--how much you
6 can offer a piece of land at. But looking at that the land that
7 falls outside that, do you have written down criteria or
8 guidance as to how you should allocate that land?

9 A. (Minister Wheatley) We use--in that case, we use a
10 Spooners model which is the most recent one and the most
11 advanced one of all of these here, and they were the first
12 non-historically binding subdivision done, was heavily
13 researched, and this is the model used, Spooners--on Page 237.

14 Q. Yeah.

15 A. (Minister Wheatley) --Estate Land (unclear) Committee,
16 that Committee we use those recommendations as our guidelines
17 for new subdivisions that don't fall within historical context.

18 The only one that might be of exception is Salt Island
19 because for the first time in history we have a Salt Island
20 Lands Committee. That they're more likely to follow the
21 Spooners model, though it has significant historical aspects to
22 it also, but the Spooners would be the basis for forming any new
23 policy on any new subdivision.

24 Q. And that's because that's the most recent in time of
25 the old--

1 (Overlapping speakers.)

2 A. (Minister Wheatley) --model, the most recent one, the
3 Spooners model.

4 Q. And just taking it through, then, and correct me now
5 if I've misunderstood you, so you have had in the past Lands
6 Committees, for example, in relation to the Nibbs Estate and
7 others, there is only one in place at the moment.

8 A. (Minister Wheatley) Anegada Lands Committee.

9 Q. But for that land that falls outside the historical
10 arrangements, you use Spooners as your benchmark.

11 A. (Minister Wheatley) That is correct.

12 (Overlapping speakers.)

13 A. (Minister Wheatley (Unclear) we will use a Spooners
14 model to create the one for that. It will be the basis for
15 creating a new model.

16 Q. The Lands Committee can make a recommendation that
17 land should be sold to a particular individual, but that
18 all--but a representative can do so, but it all comes through
19 your Ministry.

20 A. (Minister Wheatley) At the end of the day, that is
21 correct.

22 Q. And it's your Ministry that's responsible for taking
23 it to Cabinet.

24 A. (Minister Wheatley) That is correct.

25 Q. Now, when you take it to Cabinet, you must presumably

1 put it in the form of a report or a memorandum; is that right?

2 A. (Minister Wheatley) Correct.

3 Q. And that may have appendices to it like a Valuation
4 Report.

5 A. (Minister Wheatley) Valuation Report, the person's ID,
6 and whatever else is needed.

7 Q. Will there be details about the price--

8 A. (Minister Wheatley) Sorry--
9 (Overlapping speakers.)

10 A. (Minister Wheatley) One second. That Report will not
11 have the valuation on it yet. It's when there's--when a persons
12 are chosen and the land is selected, before it is transferred,
13 at that point a valuation is when the valuation is done.

14 Q. Right.

15 So, what is it--right. So, can you, as Minister, if a
16 Lands Committee were to make a recommendation that you should
17 dispose of Crown Land to X, can you, as a Minister, say,
18 applying the Spooners criteria, I'm not going to do this. I'm
19 not going to take this to Cabinet?

20 A. (Minister Wheatley) Well, absolutely. You can't take
21 it to Cabinet. I have several thousand Applications.

22 Q. So, you have more Applications than land.

23 A. (Minister Wheatley) There you go.

24 Q. Right.

25 Now, if you were to take it to Cabinet, what

1 information do you take to Cabinet for them to make the decision
2 to dispose of that piece of land?

3 A. (Minister Wheatley) It will be whatever criteria was
4 used to choose those parcels, like what is the age of this
5 person, a single mother, are they a young family, can they
6 afford to build on this property, do they have other properties
7 anywhere else, stuff like that.

8 Q. Now, that's in the context of a residential disposal.
9 What information did you take to Cabinet in the context of a
10 commercial disposal?

11 A. (Minister Wheatley) Same criteria.

12 Q. Sorry, I didn't hear your answer.

13 A. (Minister Wheatley) Yes, they're the same criteria.
14 The nature of the business will be one of them, what does this
15 person want this land to do. It may require an environmental
16 study, an EIA. It may require a business plan and those kind of
17 criteria. The criter--

18 Q. Now--

19 A. (Minister Wheatley) --criteria for commercial starts
20 with a residential reviews and it expands out into what the
21 nature of the business. The person would have to be--it could
22 be like a local person. Depends on what the Governor of the day
23 is trying to do, they try to promote local businesses or not, so
24 it may vary depending on what the Government is trying to do in
25 that time.

1 Q. If we look at Page 207, if you look at very top, it
2 says: Before any decisions can be made on the recommendations
3 of Applicants, an approved development or Master Plan must be
4 prepared and approved by the town and country planning
5 department.

6 So, would that approved developmental Master Plan,
7 would that be something that also goes to Cabinet?

8 A. (Minister Wheatley) In the end, yes, it has to go to
9 Cabinet. All the plans, approvals, everything, for final
10 approval. There are many steps to commercial land.

11 So, commercial land can be of two types, maybe a local
12 developer, they may be a foreign developer. There are slightly
13 different criteria for both. But at the end of the day, these
14 developments must come to Cabinet, all the full approvals for
15 the go-ahead.

16 Q. So the--whether it's residential or commercial, it
17 goes through your Ministry. Your Ministry puts together all the
18 necessary papers, takes it to Cabinet, Cabinet makes the final
19 decision. And is it at that point that you get the Valuation
20 Report?

21 A. (Minister Wheatley) Once a parcel has been approved to
22 own the property, at that time we do the Valuation Report.

23 Well, now land for residential versus commercial are
24 two very, very different sort of scenarios. One of the things
25 that we would do as a government, and based on what we are

1 trying to do before the proposed (unclear) gets to this point,
2 we would have an interview with the person as a Government or as
3 a Cabinet or as a caucus, and the person would come in and then
4 present their idea: This is what I would like to do, and I
5 would like to do it in this area over here.

6 If we disagree with the development, it ends right
7 there, because many persons have all sorts of ideas of things
8 they want to do, and the Government may disagree with the
9 development. The personally come in and they present to
10 Cabinet: I need to lease 500 acres to do a marina, a hotel.
11 Once you said okay, then they start doing their studies--their
12 feasibility studies, their business plans, their EIAs, and all
13 these other documents. There is a list of requirements that is
14 given to the person. You need to do this things and then you
15 come back to us, (unclear) until we get to the point where we
16 can sign a Development Agreement with that person, and that
17 Development Agreement at that point will have a lease with the
18 valuation of the property.

19 (Overlapping speakers.)

20 Q. So--

21 A. (Minister Wheatley) Only the lease part is handled by
22 the Ministry. The business part is handled by the Premier's
23 office.

24 Q. Define the business part of it. What's that?

25 A. (Minister Wheatley) The nature of the business,

1 getting your plans done, getting your plans approved, getting
2 your EIAs done, getting your business plan done, Premier's
3 office, these are that part of it. Once all is approved, the
4 lease is the last thing you will get. In some--

5 (Overlapping speakers.)

6 Q. So that comes to you?

7 A. (Minister Wheatley) In some cases, yes. In some
8 cases, some person they'll say until I get the lease, I can't
9 begin to negotiate at anybody. I need to have the lease first.
10 It's something that we look at very, very carefully. It is not
11 something we like to do because there are historical records of
12 persons who got leases and never developed the property and just
13 tied it up.

14 Q. And why do you think they just did that, just tied up
15 the land like that?

16 A. (Minister Wheatley) Because maybe their
17 finances--their financing fell through for whatever reason. The
18 person that had committed to the development pulled out. There
19 may be a number of reasons where somebody might have property to
20 development and it never happens. They go bankrupt at the very
21 beginning.

22 Q. So--

23 (Overlapping speakers.)

24 A. (Minister Wheatley) --with scrutinizing developments
25 and commercial leases.

1 Q. If I take you back to the question that the
2 Commissioner asked, the--we--so we have in terms of Crown Land,
3 you could have a disposal for a residential purpose; you could
4 have a disposal, if you like, for shall I call it a small-scale
5 commercial purpose; but then you could have the larger-scale
6 development which is could either be a local developer or
7 foreign developer.

8 A. (Minister Wheatley) That's correct.

9 Q. And when we're in those last two scenarios, that's
10 when the Premier's Office is likely to be involved.

11 A. (Minister Wheatley) Very much involved with the
12 business, the impact of the business on a community, the impact
13 on the environment and so forth. The Premier's Office is very
14 much involved with that business development.

15 Q. But if you take each of those four possibilities,
16 leave aside the letter to the Governor, which was a response to
17 the Governor explaining, no doubt, giving an answer to a
18 question he has raised, is there written down either an internal
19 memoranda within your Ministry and/or in the Premier's Office,
20 is there criteria that says when you get a recommendation for
21 the disposal for residential purpose, these are the criteria to
22 apply? When you get it for a local developer, these are the
23 steps to take. Is there--is it written down somewhere in your
24 Ministry?

25 A. (Minister Wheatley) In an application form, yes. I

1 thought there was one attached here. This is an application
2 form that a person must fill out. So, once they want to apply
3 for Crown Land, for example, in Anegada there is form that's
4 filled and sent to the Ministry. Some person may just write a
5 letter, but rest being done like a subdivision in Anegada, there
6 is an application form that's filled out with all the
7 information.

8 COMMISSIONER HICKINBOTTOM: I'm sorry. I think
9 Mr Rawat's question is a different one, so the application form
10 is filled out, and you have a--

11 THE WITNESS: (Minister Wheatley) And it's submitted.

12 COMMISSIONER HICKINBOTTOM: Yeah, and it's submitted.
13 And you have a number of applications, but what criteria do you
14 apply to the application to determine it?

15 THE WITNESS: (Minister Wheatley) As I said earlier,
16 (unclear) 236. Is she person a first time homeowner, or do
17 they own property already? Is it a single person? Is it a
18 family? Can they afford to build (unclear)?

19 (Overlapping speakers.)

20 COMMISSIONER HICKINBOTTOM: And are those criteria set
21 out somewhere in a document?

22 THE WITNESS: (Minister Wheatley) Yeah, they're here.
23 (Unclear) here already. Well yes, they are known, they are
24 known.

25 BY MR RAWAT:

1 Q. It's not the situation, is it, Minister, when a
2 recommendation comes into your Ministry--and Dr Potter may be
3 able to assist with it--but civil servants considering a
4 recommend--an Application for Disposal of Land are not going to
5 look to the letters to the Governor. There must be some
6 document where they--which sets out ask yourself the following
7 question, the questions that you, yourself, have put. Is it
8 written down somewhere for civil servants to follow?

9 A. (Minister Wheatley) Yes. They are the ones who
10 produced this for the Government, for the Governor.

11 Q. I appreciate that they produced it for the Governor,
12 but if you imagine that they hadn't produced it for the Governor
13 or until they produced it for the Governor, is there another
14 piece of paper that says, when you consider disposal of land,
15 these are the criteria to apply?

16 A. (Minister Wheatley) Let me put it this way: The
17 answer is yes, but they may change from Minister to Minister.
18 For example, when I came in, one of the things I added to the
19 list, I met there, was a person's ability to develop land that
20 distributed to you. Because what I had noticed over the years,
21 a number of persons who were awarded property 20 years ago, 30
22 years ago, and it was never developed. So, to avoid that
23 happening, because the land is not that big, to avoid land being
24 given to someone and not being used, we give priority to persons
25 who are--who can develop within a reasonable time of one to

1 let's say three or four years.

2 COMMISSIONER HICKINBOTTOM: Was that policy which you
3 changed because you added the criter--

4 THE WITNESS: (Minister Wheatley) I added that
5 criteria to what I met here.

6 COMMISSIONER HICKINBOTTOM: But where is it? Where it
7 the memo to civil servants saying, look, in addition to these
8 six criteria, there's now a seventh.

9 THE WITNESS: (Minister Wheatley) It's my Ministry.
10 My officers know I told them.

11 COMMISSIONER HICKINBOTTOM: You literally told them
12 orally. Yes, okay.

13 THE WITNESS: (Minister Wheatley) This was done in the
14 office. (Unclear) criteria add to the other ones that you
15 already have.

16 COMMISSIONER HICKINBOTTOM: It's written down in the
17 office.

18 THE WITNESS: (Minister Wheatley) In my office.

19 BY MR RAWAT:

20 Q. Dr Potter, can you help with this? I mean, is there a
21 written policy for civil servants to follow when dealing with
22 disposal of Crown Land?

23 A. (Dr Potter) I would say that, but I join the Ministry
24 and I ask what do we use. The file was brought to me and I was
25 shown the criteria as written out by--for the Spooners Estate

1 land that is being used as the current criteria for land. And
2 officers would have written on it what the Ministers added to
3 it, saying that this is also the criteria to be used.

4 So, the file is the one that is picked up and they
5 looked at it. They know that they're using the criteria for the
6 Spooners land and they follow that criteria. I have not seen
7 anything in writing which says that the Minister say that that
8 should be changed or it should be given or something else should
9 be written, but that is what is on the file and it's followed.

10 Q. Right (unclear). Can you explain why it wasn't
11 provided to us, then?

12 A. (Minister Wheatley) Yes, yes, absolutely. I thought
13 it was in the document here. I'm surprised it's not here, the
14 full Spooners policy.

15 (Overlapping speakers.)

16 COMMISSIONER HICKINBOTTOM: Okay, that's fine.

17 So, what civil servants rely on, as I understand, is
18 the Spooners criteria.

19 THE WITNESS: (Minister Wheatley) The Spooners
20 criteria.

21 COMMISSIONER HICKINBOTTOM: And on a piece of paper,
22 and on that piece of paper, Ministers probably more than one
23 Minister, has written other criteria on. Is that right?

24 (Overlapping speakers.)

25 THE WITNESS: (Dr Potter) (Unclear) yeah.

1 COMMISSIONER HICKINBOTTOM: Okay. And you can provide
2 that?

3 THE WITNESS: (Minister Wheatley) Oh, yes.

4 BY MR RAWAT:

5 Q. Thank you, sir.

6 Can I just go back a little bit, please, Minister,
7 just to one question. I was asking you about sales and whether
8 you'd ever--you know, had ever been in a situation where you
9 hadn't received the full price for a sale, and you clarified
10 that for us. Could I just clarify whether that was the
11 same--that's the same position in relation to Crown Land leased
12 by the BVI Government. Do you remember I showed you answer to
13 Question 3, and that talks about obviously contracts and
14 instruments of sale. What's the position in relation to Crown
15 Land leased by the BVI Government?

16 A. (Minister Wheatley) When you process Crown Land, you
17 get what's called "unencumbered", "unencumbered land",
18 "freehold". When you buy a piece of Crown Land, you get
19 freehold land. That's a one-off price for that property. You
20 just pay property taxes every year after. When you get a lease,
21 a lease is a yearly rent--so (unclear) yearly amount of money,
22 you pay yearly, because you don't have absolute title.

23 Q. Yes.

24 A. (Minister Wheatley) So every year you pay whatever the
25 valuation amount is for that year.

1 Q. But have you had situations where people leasing Crown
2 Lands have not made their payments or who have been late in
3 making their payments?

4 A. (Minister Wheatley) I am sure it happens. I am very,
5 very sure it happens.

6 Q. Well, can you give the Commissioner an indication of
7 the extent of the problem?

8 A. (Minister Wheatley) That we will have to research. I
9 don't know of any from the leases that we have, but I am sure
10 there are cases of persons haven't paid their lease for whatever
11 reason.

12 Q. And is it some--and what something that just says--is
13 it possible that someone could just not pay their rent for a
14 number of years and just go undetected?

15 A. (Minister Wheatley) No, it's very likely because
16 (unclear) wasn't paid.

17 Q. But I mean how far in arrears do some people get? Do
18 you know?

19 A. (Minister Wheatley) In some instances we have a lease
20 and you go into arrears, it ultimately reverts back to the
21 Crown. (Unclear) and holding license, if you have the License,
22 and you don't develop in a specified period, it reverts back to
23 the Crown.

24 Q. There is a slight difference, isn't it. This is
25 obviously a policy initiative of yours, not to allow lands to

1 lie fallow. This is the--the question is going to a situation
2 where someone has an annual lease where they pay an annual sum
3 to the Government. But do you have a situation where people are
4 not paying that sum to the Government?

5 A. (Minister Wheatley) I do not know offhand, but--I
6 don't know.

7 Q. Dr Potter, can you help at all?

8 A. (Dr Potter) No, you would have to research with Lands
9 Unit.

10 Q. All right. So if I have a moment.

11 Could you tell me with this last point, Minister, on
12 this issue, if you go to the index of this document, you'll see
13 that there is a heading for a table called "Documents
14 Disclosed."

15 A. (Minister Wheatley) Page again?

16 COMMISSIONER HICKINBOTTOM: It's not numbered. It's
17 right at the beginning, Minister, and it's the--if you find a
18 page called "Index," which is the first--if you turn over the
19 front sheet, and Mr Rawat is referring to the document on the
20 right-hand side of that. Yeah, I think that's the one he's
21 referring to.

22 MR RAWAT: Yeah.

23 BY MR RAWAT:

24 Q. I'll go by page number. If you--I just want--I'm not
25 going to take you to these reports, but if you go to 94, you see

1 there it's the Nibbs Estate Land Use Committee Report. And then
2 further down at 125, the North Sound Land Advisory Committee
3 Report. You also have just above it 86, the Spooners Estate
4 Advisory Land Committee Report, above that, the Stevens Land
5 Subdivision Committee Report.

6 Are these the ones that relate to the historical
7 arrangements that you were referring to?

8 A. (Minister Wheatley) That is correct.

9 Q. So, we can separate Crown Lands, too, can't we? Those
10 that are the subject to the historical arrangements and the
11 Crown Land that is not subject to it, which was dealt with in a
12 slightly different way.

13 A. (Minister Wheatley) Spooners. Spooners is the one
14 that's different from this bunch.

15 Q. Right. Spooners is your benchmark at the moment.

16 A. (Minister Wheatley) Yes, that is correct.

17 Q. Is there any reason to think that Spooners as a
18 benchmark is out of date?

19 A. (Minister Wheatley) And that's why we decided, based
20 on the trends we have seen, the purchasers acquire land and
21 don't develop the land for a very long period of time, that's
22 depriving other folks of acquiring land and other criteria that
23 must demonstrate an ability to develop the land within a
24 reasonable period of time.

25 Q. Thank you.

1 MR RAWAT: Sir, I've noticed the time. I'm going on
2 to a different topic. I don't know whether everyone can do with
3 a break.

4 COMMISSIONER HICKINBOTTOM: I thank that's probably
5 right, Mr Rawat. I've got my eye on the time, too.

6 Can we have half-an-hour break? Is that sufficient,
7 Minister?

8 THE WITNESS: (Minister Wheatley) That's fine.

9 COMMISSIONER HICKINBOTTOM: Come back at 10 past 2:00,
10 and then we'll resume and finish.

11 We'll come back at 10 past 2:00. Thank you very much.

12 MR RAWAT: Thank you.

13 (Recess.)

14 COMMISSIONER HICKINBOTTOM: We're ready to start,
15 Minister, Dr Potter.

16 Mr Rawat, can you still see and hear us?

17 MR RAWAT: Yes, I can, sir, and I hope everyone in the
18 room can see and hear me.

19 COMMISSIONER HICKINBOTTOM: We can, yeah. Thank you.

20 BY MR RAWAT:

21 Q. Just to continue the questions, please, Minister.
22 The--I'm sorry to go back to this, but can I just clarify: You
23 said the Valuation Reports are sort of produced towards the end
24 of the process.

25 A. (Minister Wheatley) That's correct.

1 Q. And Valuation Reports produced for both residential
2 and commercial property?

3 A. (Minister Wheatley) That is correct.

4 Q. So, does Cabinet make the decision, the disposal
5 decision, without the benefit of the Valuation Report?

6 A. (Minister Wheatley) No. It happens with the Valuation
7 Report.

8 Q. All right. So that--so, when Cabinet, whether it's a
9 commercial or a residential disposal Cabinet, when making that
10 decision will have a Valuation Report in front of them?

11 A. (Minister Wheatley) Other reports will be there, as
12 appendices to the paper.

13 Q. Great. Thank you very much.

14 Can I take you to Page 1, again, then we look at the
15 requests.

16 I just want to just remind you--and you can read it
17 for yourself or I'll re-paraphrase it, but number two was:
18 Details of all disposals of Crown Land in the last three years,
19 including the papers upon which the BVI Government made the
20 decision to dispose, including all valuations relied upon, the
21 rationale for the disposal.

22 Now, as I understand it, your Ministry is responsible
23 for taking the matter to Cabinet.

24 A. (Minister Wheatley) That is correct.

25 One quick thing. The need for the valuation was a

1 relatively new development. In the past, it was not there,
2 (unclear) so a relatively new development.

3 Q. And when you say relatively--sorry, sir.

4 COMMISSIONER HICKINBOTTOM: When you say "relatively
5 new"?

6 THE WITNESS: (Minister Wheatley) Within the last
7 year.

8 COMMISSIONER HICKINBOTTOM: Right. So, valuations,
9 Mr Rawat, are only sometime in the last year they came in.

10 THE WITNESS: (Minister Wheatley) As a mandatory
11 something. (Unclear) leases are always the preferred,
12 residential and so forth, and (unclear) was not always required.
13 It was only made mandatory very recently, full valuations.

14 BY MR RAWAT:

15 Q. If we go to back to 414--

16 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt
17 your train of thought. When you say "very recently", in the
18 last year, do you know approximately when, Minister? Or--I mean
19 it's not a test.

20 THE WITNESS: (Minister Wheatley) No, I have to go
21 back and see exactly when that came.

22 COMMISSIONER HICKINBOTTOM: But it can be found out.

23 THE WITNESS: (Minister Wheatley) All right.

24 COMMISSIONER HICKINBOTTOM: That would be helpful,
25 thank you.

1 BY MR RAWAT:

2 Q. Was it the case, Minister, before it became mandatory,
3 Valuation Reports would sometimes go to Cabinet and sometimes
4 not?

5 A. (Minister Wheatley) That's correct.

6 Q. Now, the answer to Question 2 is given in summary in
7 the memorandum under the heading Question 2, and you can see
8 there is a table, which I don't know whether you and Dr Potter
9 could confirm, but it would seem to me that shows all of the
10 disposals from 2018 onwards.

11 A. (Minister Wheatley) It shows when the process was
12 finalised, land issues in the BVI have been going on for 20, 30,
13 40 years. The day it is processed or finalised are what you see
14 here, so now you see 2019 means it was submitted in 2019. It
15 might have been started in 1970, but this was concluded, so to
16 speak.

17 Q. Right. So, it's when the final tick was made is when
18 it comes within the three years.

19 A. (Minister Wheatley) Correct.

20 Q. In terms of the papers behind these disposals, what we
21 asked for was what did the Cabinet see.

22 Now, we've been told about the ExcoTrack system, if
23 I've got it right, which the Cabinet Secretary uses it, and I
24 see Dr Potter is nodding her head. Am I right to assume that,
25 if your Ministry is submitting documents to Cabinet, you would

1 put it on the ExcoTrack system?

2 A. (Dr Potter) Yes, that's correct.

3 A. (Minister Wheatley) That is correct, and it's a
4 relatively new system. It started in 2019.

5 Q. How were you--I know you're both effectively
6 relatively new to the Ministry but are you aware of how it was
7 being done before 2019?

8 A. (Minister Wheatley) Yes. Bundles like this, big
9 bundles.

10 Q. And what would go would be presumably a paper from the
11 Ministry about that disposal together with all the material that
12 was considered necessary for Cabinet.

13 A. (Minister Wheatley) That is correct.

14 Q. Which, now as a matter of mandate includes the
15 Valuation Report.

16 A. (Minister Wheatley) That is correct.

17 Q. What we have been--if you turn up, please 331, what we
18 have been given is not the papers behind each disposal or behind
19 what was being considered by Cabinet but these expedited
20 extracts, and this is an example of one. Before I go further
21 and I just--we should just do this for the record, Minister, but
22 you will see the names of the people who were the recipients of
23 the disposal. No--any family relation there?

24 A. (Minister Wheatley) Well, absolutely. We are a small
25 community. We are all related, so they'll be my cousins.

1 Q. I see. The--but this, as I understand the expedited
2 extract, it is produced in advance of the finalisation of
3 Cabinet minutes so that a decision can be taken forward without
4 needing to wait until the minutes are done.

5 A. (Minister Wheatley) So action can be taken before the
6 Minister confirms; that is correct.

7 Q. So, it allows your Ministry to get on with its work.

8 A. (Minister Wheatley) And the reason it is done
9 sometimes, this is very old issue, you see the memo 2016, that
10 was started along before that. It was probably a 15-year,
11 20-year issue finally being finalised.

12 Q. Now, that's what we've got, but it must be the case,
13 mustn't it, was--would be the--in relation to this disposal,
14 your Ministry would have put other papers before Cabinet.

15 A. (Minister Wheatley) Absolutely. Actually, I've got
16 cadastral surveys and maps would have been attached also,
17 showing the exact location and how it borders existing
18 surrounding properties.

19 Q. And this may be a better question for Dr Potter, but
20 where does your Ministry hold these papers?

21 A. (Dr Potter) They're held in files in the Ministry. At
22 present, they're not in the present location where we sit
23 because we have had to move from the Central Administration
24 Complex, but they're packed in boxes in the Central
25 Administration Complex to be moved to another location soon, as

1 they complete the works on the Central Administration Complex.

2 Q. And are they--when you say they're held in boxes, so
3 it's obvious they're actually all held in hard copy.

4 A. (Dr Potter) Yes, all in hard copy. We are now in the
5 process of trying to scan all our files. We started with
6 present affairs and trying to go backward, but they're not all
7 digital at this point in time, no.

8 Q. Do you, in any event--obviously you receive the
9 expedited extracts--again, I think this is a better question for
10 Dr Potter, but do you, as Permanent Secretary, receive the full
11 Cabinet minutes in due course?

12 A. (Dr Potter) No, I don't receive Cabinet minutes. I
13 receive the extract only, and then we act upon the decisions
14 that are stated in the extract.

15 Q. And so it doesn't--full minutes don't come to the
16 Ministry at all.

17 A. (Dr Potter) Not to the Permanent Secretary, no.

18 A. (Minister Wheatley) They're confidential.

19 Q. Right. So they'll--would they come to you presumably,
20 Minister, not in your capacity as Minister but in your capacity
21 as a member of the Cabinet.

22 A. (Minister Wheatley) That is correct.

23 Q. Now, I hope you'll both accept this, but it doesn't
24 appear to be the case that that Request No. 2 that we put for
25 access to all of the papers on which decisions were made by

1 Cabinet has been complied with because, clearly, there's
2 material underlying the expedited extract, isn't there?

3 A. (Minister Wheatley) Well, I'm not sure what you
4 received--you asked for a document earlier that was sent to you
5 before, so I'm not sure if it was sent and you simply didn't get
6 it or if it wasn't sent. (Unclear)--

7 Q. Dr Potter, can you help?

8 A. (Dr Potter) In the case of the list that you just
9 referred to and all the Cabinet papers and so on, I don't think
10 that those would have been sent because they are in files down
11 in the Complex, but we would have to seek to get an officer
12 willing to go to search through those boxes and pick out all of
13 the files to send them forward, which I would add would be
14 mouldy, which is one of the problems we have with the files, but
15 I don't think you would have received every single Cabinet paper
16 and the appendices attached to them in this case, and that is
17 why the officer opted to do the listing.

18 Q. I follow. It's not intended as a criticism, but of
19 the officer involved, but I think if we start--the starting
20 point was that the--you would accept, both of you, wouldn't it,
21 that if we look back at the request, the Commission was seeking
22 those documents, wasn't it?

23 A. (Dr Potter) That's one interpretation, yes. I could
24 understand the interpretation, yes.

25 Q. Well, with respect, Dr Potter, it isn't an

1 interpretation. It's a reality.

2 A. (Dr Potter) (Unclear) circumstances another
3 interpretation was taken with them, but if they are requested,
4 we can seek to get an officer to retrieve those files to send
5 them forward.

6 Q. Can I take it in stages, please, Dr Potter.

7 They have already been requested. They haven't been
8 provided to the Commission. Now, you may be right that the
9 officer may have taken a decision for practical reasons as to
10 why they couldn't comply with the request. As you've explained,
11 the files are held in boxes in another building. The difficulty
12 for the Commission was that we were not told that. We simply
13 were given what we were given.

14 Now, you've said that if--that the request from the
15 Commission's point of view is still outstanding. One solution,
16 a practical solution, which I would suggest--put one to put to
17 you and the Minister, is is there any difficulty in the
18 Commission team coming along to inspect these hard copies?

19 A. (Minister Wheatley) I have no trouble at all.

20 And I must apologise, it wasn't made known to me that
21 anything was missing. I'm hearing for the first time (unclear)
22 was missing.

23 Q. Minister, as I've said, we're not here to--it's not an
24 issue on which we want to make criticism of anyone. We
25 appreciate that it takes time for officers in your Ministry to

1 respond to our request. And I think as the Commissioner has
2 indicated, we are grateful for the efforts that have been made.
3 But would you accept one way through this would be for the
4 Commission team to be able to come in and inspect those hard
5 copy documents?

6 A. (Minister Wheatley) I have no objection. Absolutely
7 it's perfect. You can--any time you want.

8 COMMISSIONER HICKINBOTTOM: Just to pause a moment
9 because obviously you're willing for the team to look.

10 But, Dr Potter, you say that they are stored in boxes
11 in the Central Administration Complex?

12 THE WITNESS: (Dr Potter) Administration Complex, yes.

13 COMMISSIONER HICKINBOTTOM: Some may be mouldy, which
14 suggests that they may not be in peak condition.

15 THE WITNESS: (Dr Potter) Yes.

16 COMMISSIONER HICKINBOTTOM: I think you suggested
17 there are a lot of them.

18 THE WITNESS: (Dr Potter) Yes, sir.

19 COMMISSIONER HICKINBOTTOM: I mean, not to be precise,
20 but what sort of amount of boxes are we talking about? These
21 are all of the Crown Land documents in hard copy until 2019 when
22 ExcoTrack came in going back.

23 THE WITNESS: (Dr Potter) I will say that I meant a
24 Ministry full of paper, and we have been trying to get them
25 scanned. It's an awful lot of paper--

1 COMMISSIONER HICKINBOTTOM: Yes.

2 THE WITNESS: (Dr Potter) Which we need to get
3 digitised. And because they are land matters, they are
4 extremely important that we get them digitized and to secure
5 these documents.

6 COMMISSIONER HICKINBOTTOM: I understand that, and I
7 also understand the practical difficulties arising from the fact
8 that they aren't on a shelf. They're in a different building.

9 In respect of the Inquiry that--the Letter of
10 Requests, it asks for--asks for details of disposals of land in
11 the last three years, and then details of disposal of land in
12 the last 10 years where payment wasn't received.

13 Does the fact that there is a limitation in respect of
14 time, and you said--at least looking at this one request--

15 THE WITNESS: (Dr Potter) Yes.

16 COMMISSIONER HICKINBOTTOM: --other requests may be
17 different, does that help in identifying the right boxes?

18 THE WITNESS: (Dr Potter) There would have to be a
19 search. I can't tell you how much time would be needed to
20 research them, but we certainly will do our best to try to
21 identify all that are necessary for this inquiry, but it's a lot
22 of files and a lot of boxes to go through.

23 COMMISSIONER HICKINBOTTOM: I just wondered if--
24 (Overlapping speakers.)

25 THE WITNESS: (Dr Potter) I am--the officer who was

1 responsible for the move, I'm not sure how he labelled the
2 boxes, so I would need to ask her about it.

3 (Overlapping speakers.)

4 THE WITNESS: (Dr Potter) But it's doable, but we will
5 do the search--

6 (Overlapping speakers.)

7 COMMISSIONER HICKINBOTTOM: You'll need to ascertain
8 how the storage is done first.

9 THE WITNESS: (Dr Potter) Yes.

10 COMMISSIONER HICKINBOTTOM: Okay.

11 Mr Rawat, I'm sorry, I just wanted to work out the
12 practical issues of the COI team.

13 SOLICITOR GENERAL: And I was just wondering,
14 Commissioner, whether there was a health concern with the mould.
15 I just want to inquire.

16 COMMISSIONER HICKINBOTTOM: If there was a--

17 SOLICITOR GENERAL: It was a health concern in terms
18 of accessing the file due to mould.

19 COMMISSIONER HICKINBOTTOM: Okay.

20 SOLICITOR GENERAL: From both Parties, the
21 Commissioners, the Commission and the officers. I was just
22 wondering the condition because I think I heard the word "mould"
23 mentioned, because sometimes you have to clean the files before
24 you access them, so I just wondered.

25 COMMISSIONER HICKINBOTTOM: So, anyway, you probably

1 heard that, Mr Rawat, that there's not only a problem with
2 amount and the manner in which they've been stored but also the
3 Solicitor General says that the conditions in which they're
4 stored aren't known, but there is a possibility that they may
5 not be optimal, and there is a possibility that there may be
6 some HSW issues with regard to identifying the documents.

7 MR RAWAT: I wonder there may be a way through it,
8 though, sir, because obviously we're grateful for the assistance
9 that is being offered by the Minister and Dr Potter, but we want
10 to find a proportionate way through.

11 If I look--if I take you, sir, for example to Page 331
12 in the bundle, now this is, I think, Memorandum 251-2020 of the
13 16th of July 2020.

14 Now, this--and Dr Potter may be able to correct me if
15 I'm wrong--this would be an example where the papers would have
16 been put on to ExcoTrack, wouldn't they?

17 THE WITNESS: (Dr Potter) They should have, yes, sir.

18 BY MR RAWAT:

19 Q. So, would they still be on ExcoTrack?

20 A. (Dr Potter) Yes, they should be there, yes.

21 Q. So, in fact, if we worked on the list backwards from
22 2021 backwards, it may well be that the greater majority of
23 disposals on the list that were going back to sometime in 2019
24 when ExcoTrack came into operation, those would all be on
25 ExcoTrack, wouldn't they?

1 A. (Dr Potter) Yes.

2 A. (Minister Wheatley) I think the request, then, would
3 have to go to the Cabinet Secretary to produce.

4 COMMISSIONER HICKINBOTTOM: I think, from
5 recollection, the Cabinet Secretary and--with the Attorney
6 General is considering whether the Commission can't simply have
7 access to ExcoTrack but--

8 (Overlapping speakers.)

9 COMMISSIONER HICKINBOTTOM: But, I mean, the point you
10 make is a proper one to make.

11 THE WITNESS: (Dr Potter) But, Commissioner, if you
12 would allow me to give me to Tuesday or Wednesday next week, I
13 would be able to say to you all that are available online that
14 you can have on what we would need to go to the boxes to search
15 for to be--

16 (Overlapping speakers.)

17 COMMISSIONER HICKINBOTTOM: Yes, that would be very
18 helpful (unclear).

19 MR RAWAT: Thank you, sir, and thank you to Dr Potter
20 for that offer. It's very helpful.

21 BY MR RAWAT:

22 Q. Could I just ask Dr--it may be a question that
23 Dr Potter may be able to assist us with, just if we go to
24 Page 416 in the bundle, if you see--if you work your way down
25 from the top, Dr Potter, can you see Transfer of Land to the

1 British Virgin Islands Ports Authority and Transfer of the Crown
2 Lands to the BVI Airports Authority? Do you have those?

3 A. (Dr Potter) Yes, sir.

4 Q. If you read across, it says: Documents from BVIPA
5 missing. Documents from BVIAA missing. And I'm just wondering
6 whether you can shed any light on what that entry might mean.

7 A. (Dr Potter) I'm not understanding exactly what
8 documents, but in carrying out the transfer, they would have had
9 to provide documentations of.

10 A. (Minister Wheatley) Boards.

11 A. (Dr Potter) --the Board, the members of the Board, the
12 information related to each member of the Board to be able to
13 provide their initial maps of the area that they are speaking
14 to, et cetera, before we would be able to send a paper forward
15 and to conclude the issue of transfer of those lands to them.

16 Q. But I mean--but could it be that documents were, in
17 fact, received from the Authorities but have now--cannot be
18 located?

19 A. (Dr Potter) I--I'm not sure, but the matters that I
20 have been involved with with both agencies, I know that they
21 have documents outstanding to send to the Ministry.

22 (Overlapping speakers.)

23 Q. And again, going back to ExcoTrack--

24 COMMISSIONER HICKINBOTTOM: Just one moment, Mr Rawat.

25 And you may not be able to answer this because the

1 memo is dated 2019, but are these in ExcoTrack?

2 THE WITNESS: (Dr Potter) They should be, yes.

3 COMMISSIONER HICKINBOTTOM: Okay.

4 THE WITNESS: (Minister Wheatley) But not if they were
5 not registered...portions of lands were not registered.

6 COMMISSIONER HICKINBOTTOM: No, there was a Cabinet
7 memo said--

8 THE WITNESS: (Dr Potter) Yes.

9 COMMISSIONER HICKINBOTTOM: --that the matters went to
10 Cabinet. I was just wondering whether the--what went to Cabinet
11 would be on ExcoTrack.

12 THE WITNESS: (Minister Wheatley) Oh yes, absolutely.

13 COMMISSIONER HICKINBOTTOM: Okay. Sorry, Mr Rawat.

14 BY MR RAWAT:

15 Q. I mean, and just on that, I mean, as I understand it,
16 the Minister--or I appreciate ExcoTrack has limited log-in
17 access. It's restricted, isn't it?

18 A. (Minister Wheatley) Yes.

19 Q. But the Minister as the person going to bringing an
20 issue to Cabinet is the person that puts the material onto
21 ExcoTrack; is that right?

22 A. (Minister Wheatley) No, that's not right, no.

23 A. (Dr Potter) There are--the Permanent Secretary and
24 other senior officers have been given access to ExcoTrack where
25 we uploaded the papers and all of the documents. The Minister

1 has sight of those papers and documents on ExcoTrack, and would
2 say whether he in agreement with what we have, but he wishes to
3 see something else added before the papers are verified by the
4 Cabinet Office and then the Minister signs off to say that he's
5 in agreement for the paper to go forward to Cabinet, so get that
6 extract after.

7 Q. So, given that you have log-in access as a Permanent
8 Secretary, you would, in relation to these transactions, be able
9 to access ExcoTrack, wouldn't you, and check for us what's
10 there?

11 A. (Dr Potter) Yes. Once the papers are papers for this
12 Ministry yes, I would be able to access the papers--

13 A. (Minister Wheatley) Only for this Ministry.

14 Q. I see. All right.

15 A. (Dr Potter) (Unclear) forward to another Ministry then
16 I would have no further access to it.

17 Q. I see.

18 But in relation to all of those on the list, you might
19 be able to give that further information to us, Dr Potter.

20 A. (Dr Potter) Yes, sir.

21 Q. Thank you very much.

22 MR RAWAT: Sir, I think those are all the questions I
23 would like to ask of the Minister and Dr Potter at this time on
24 the requests. If I could just have a couple of minutes to check
25 with members of the team whether there is anything else I've

1 missed, that would be helpful.

2 COMMISSIONER HICKINBOTTOM: Certainly. Thank you,
3 Mr Rawat.

4 (Pause.)

5 MR RAWAT: So, I think on Request No. 2, I have no
6 further questions. I can confirm that.

7 May I, if I could, just ask Dr Potter some questions
8 in her role as a Permanent Secretary while she's here with us.

9 COMMISSIONER HICKINBOTTOM: Yes, thank you.

10 BY MR RAWAT:

11 Q. Dr Potter, I just wanted--it's general questions
12 really about the role of the Permanent Secretary within the BVI
13 civil service. We've heard, as I explained to you earlier from
14 the Cabinet Secretary, who is also able to give us some insight
15 on this, but can you just explain to the Commissioner what does
16 your role involve as Permanent Secretary?

17 A. (Dr Potter) The Permanent Secretary is the
18 administrative head of the Ministry. The Permanent Secretary
19 supervises the staff within the Ministry, and has--the direct
20 reports to the Permanent Secretary are the heads of departments
21 under that Ministry and the senior officers within the Ministry
22 who are then responsible for their various units and
23 departments.

24 I--the Permanent Secretary is responsible for taking
25 the policy direction from the Minister and ensuring that the

1 policies are implemented in due course.

2 Q. Do you have any role in giving policy advice to your
3 Minister?

4 A. (Dr Potter) Yes, I do.

5 Q. Are there limit--are there any limits to the matters
6 on which you are allowed as a civil servant to give advice?

7 A. (Dr Potter) I'm not sure. As I've always told my
8 staff, advice can be taken. Given advice doesn't necessarily
9 have to be taken, but I think if I see something that I think I
10 ought to be advising the Minister on, I will advise the Minister
11 on the matter.

12 Q. And if that advice is not taken, is that recorded,
13 that the Minister has decided not to take your advice?

14 A. (Dr Potter) Not necessarily.

15 Q. Does your--one of the issues that the Cabinet
16 Secretary gave evidence on was how attendees at Cabinet have to
17 declare any interest in the matter on the Agenda. Now, you
18 obviously don't go to Cabinet, but do you give advice to your
19 Minister or a Minister on declarations of interests?

20 A. (Dr Potter) I have never had to, so--I've never done
21 it, but I've never had to.

22 Q. I mean, are you--when--obviously you run the
23 Department and the Minister may change from time to time. When
24 a new Minister comes in, are you made aware of their interests,
25 any interests that they may have which could affect their

1 ability to carry out their role?

2 A. (Dr Potter) No.

3 Q. Do you think that if you were able to have access to
4 that information, it would assist you?

5 A. (Dr Potter) I suppose information is always good and
6 important, but as I said, I have never had to deal with the
7 matter of Ministers' interest getting into any matter I've had
8 to deal with.

9 A. (Minister Wheatley) That information is held by the
10 Elections Office. Every candidate before they run, must declare
11 their interest in anything that's held at the Elections Office.

12 Q. Thank you, Minister.

13 A. (Minister Wheatley) (Unclear) declare again.

14 Q. I'm sorry? I didn't quite catch the last--when you
15 run again, you declare again?

16 A. (Minister Wheatley) No. Before you run, you have to
17 declare all your assets and so forth. If you win, you have do
18 it for a second time officially now as a member of Government.
19 That is done every year henceforth.

20 Q. Thank you.

21 Going back to Dr Potter, drawing more widely on your
22 experience, is there any obligation on Ministers to report
23 discussions they may have with third parties about government
24 policy?

25 A. (Dr Potter) I'm not sure I understand the question.

1 If the Minister--if there is an obligation of the Minister to
2 report to the Permanent Secretary?

3 Q. Yes, to report--yes, that they may have had
4 discussions about government policy with third parties or may
5 have been approached by a third party in a way that could affect
6 the policy of Government.

7 A. (Dr Potter) I don't know that there is an obligation.
8 The experience I've had with the Ministers I've worked with is
9 that if they have had discussions related to a matter that we're
10 dealing with and some policy decision, they would tell me that X
11 said so and so on. Would you think about it, or do you think we
12 should move forward with it? But I don't know that there's an
13 obligation to report to the Permanent Secretary.

14 Q. When you--when Ministers have made that sort of
15 disclosure to you, has it been recorded down?

16 A. (Dr Potter) Well, it depends. If we're in a formal
17 meeting and I'm taking notes, and I take notes if it's not a
18 formal meeting, not necessarily, no.

19 Q. Thank you.

20 Now, you told us a little while ago that the Deputy
21 Governor is, in effect, the head of the civil service, if you
22 like. You're a senior civil servant. Is there a forum in which
23 you and others at your level can meet to discuss matters of
24 common interest?

25 A. (Dr Potter) The Deputy Governor convenes a meeting of

1 all Permanent Secretaries once per month.

2 Q. We were told by the Cabinet Secretary about the
3 General Orders for the public service, which appear to be last
4 revised in 1982. Are you aware of those?

5 A. (Dr Potter) Yes, sir.

6 Q. They seem--they are publicly available. But are you
7 aware of any other protocols or directives that govern how civil
8 servants in the Virgin Islands should go about their work?

9 A. (Dr Potter) No. I know that there have been attempts
10 to upgrade the general orders, but general orders, I guess to
11 use a term, that's the Bible for the civil service, public
12 service, at this time.

13 Q. If a civil servant in the Virgin Islands had a concern
14 over the conduct of a Minister, for example, because the
15 Minister isn't following guidance or policy, how can the civil
16 servant raise that concern?

17 A. (Dr Potter) The public officer could report--could
18 speak to the Permanent Secretary if they don't wish to speak to
19 the Minister directly or go to the Deputy Governor or to the
20 Governor to report what the matter is.

21 Q. And is that written down anywhere, or is it just left
22 them to find out for themselves?

23 A. (Dr Potter) I'm not sure it is written down. I
24 suppose I rely on my Public Administration 101 from university
25 days.

1 A. (Minister Wheatley) If I could add to that, Ritter
2 House, the last sitting, the whistleblower legislation, which is
3 aimed at just that, giving public officers or the public a
4 mechanism to report Ministers or anyone in public service.
5 (Unclear) going into public consultation throughout all the
6 districts in BVI. By next month should be a second and third
7 reading and then become law. This would strengthen
8 accountability in the public service.

9 Q. This is a question just for Dr Potter. But during
10 your time in the civil service, have you become aware of other
11 civil servants who had concerns but did not feel able to raise
12 them?

13 A. (Dr Potter) No. Generally, some officers would get
14 upset because a Minister didn't take their advice that they
15 wanted, but I can't say they've been so upset they had to go to
16 report or they chose to report anything to somebody, the higher
17 position.

18 Q. The--can I just pick up on--I have no further
19 questions for Dr Potter, so may I just pick up on one point that
20 the Minister said, which was about declarations in the
21 Gazette--when you have to declare it in relation to an election.
22 Could you just clarify a little bit further, Minister, the
23 process.

24 So, you said that when you're running for office, you
25 have to--you have to make a declaration of interest. Is that

1 then--is that published in the Gazette? Is that right?

2 A. (Minister Wheatley) It's published in the newspapers.

3 Q. Right.

4 And when you--if you succeed to office, you then have
5 to make another declaration. Is that the one that you made to
6 the Registrar of Interests?

7 A. (Minister Wheatley) That is correct. The second
8 one--if you win, the second one goes to the Registrar of
9 Interests.

10 Q. I see. But the first one is when you're a candidate
11 and then that will be published publicly.

12 A. (Minister Wheatley) Those papers, yes; it's made
13 public.

14 COMMISSIONER HICKINBOTTOM: That's an Elections Act.

15 THE WITNESS: (Minister Wheatley) Yes.

16 COMMISSIONER HICKINBOTTOM: As opposed to Registration
17 of Interest Act.

18 THE WITNESS: (Minister Wheatley) That's only for
19 elected persons. The Registrar of Interests is for elected
20 persons. The Elections Office is for candidates.

21 Q. Thank you. So, I have no further questions, but can I
22 just conclude by thanking both the Minister and Dr Potter for
23 their time today and the help that they've given us.

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

1 THE WITNESS: (Minister Wheatley) Can I give a closing
2 statement?

3 COMMISSIONER HICKINBOTTOM: Sorry?

4 THE WITNESS: (Minister Wheatley) Can I give a closing
5 statement?

6 COMMISSIONER HICKINBOTTOM: No, I'm afraid not.

7 I mean, do you want add anything--I mean, you're--it's
8 always open to you to give information to the Commission of
9 Inquiry. If you want to give that now as Closing Statement, I
10 would have no objection to that.

11 THE WITNESS: (Minister Wheatley) No, if you don't
12 mind, it was a question you asked at the very beginning.

13 COMMISSIONER HICKINBOTTOM: Yes.

14 THE WITNESS: (Minister Wheatley) and I feel as an
15 elected person, I should be answering that question. I asked
16 Mr Rawat why were we concerned with the Commission of Inquiry.

17 COMMISSIONER HICKINBOTTOM: Go ahead, Minister.

18 THE WITNESS: (Minister Wheatley) If I may.

19 COMMISSIONER HICKINBOTTOM: Yes.

20 THE WITNESS: (Minister Wheatley) The challenge we
21 have as elected persons, I love the exercise. We all believe in
22 a very same thing: Good governance, transparency, and
23 accountability. We do not feel that Commission of Inquiry was
24 the way to go about it. If that's the objective to go about
25 doing what we are doing now, we are after the very same thing.

1 The way it came out, (unclear) and The Guardian, BBC News, the
2 House of Parliament and all over the world simultaneously, it
3 put a blanket over the territory. It damaged our financial
4 services immediately. That's part of our objection. The way it
5 happened. The objective is not a problem. We want the same
6 things you want: good governance, accountability, and
7 transparency. That's why we are passing all of these laws like
8 whistleblower, to bring institutions to bear upon our people and
9 on our country.

10 But the way that this happened did more damage than
11 good in a very short term, and that's an objection we have. We
12 have no problem with the Commission of Inquiry with the whole
13 procedure, but the way it happened seemed to be not in good
14 faith.

15 COMMISSIONER HICKINBOTTOM: Well, I know that's a view
16 held by some, and obviously held by you, Minister, but it's not
17 relevant to the terms of the Inquiry.

18 THE WITNESS: (Minister Wheatley) I get that.

19 COMMISSIONER HICKINBOTTOM: Because however the
20 Commission of Inquiry came about, I have the Commission to
21 fulfill.

22 THE WITNESS: (Minister Wheatley) I respect that.

23 COMMISSIONER HICKINBOTTOM: And I will fulfill it.
24 But I understand that there are views about how it came about,
25 and that's been--those views have been expressed, I think, in

1 the House of Assembly and certainly in the media.

2 I--it would be wrong of me to comment on them except
3 to say that under the Act, the Governor can only set up a
4 Commission of Inquiry if he considers it's in the public
5 interest, and I know your views may differ from what is in the
6 public interest, but that's what the statute says.

7 THE WITNESS: (Minister Wheatley) And I respect that,
8 and I know you will do an excellent job.

9 COMMISSIONER HICKINBOTTOM: That's very kind.

10 But can I echo Mr Rawat's thanks to both you,
11 Minister, and to Dr Potter, for coming and giving the evidence
12 and the way in which you've given it, which has been clear and
13 helpful.

14 Just two other things before I close today's hearing.
15 Firstly, can I remind everybody that this is a private hearing.
16 I'll come on to deal with whether it can be opened up, but even
17 if it is opened up at a later stage by the publication of the
18 Transcript, until the Transcript is published, it is
19 confidential, and that's to avoid any possible misreporting.

20 Solicitor General, do you have any comments about
21 the--whether there is anything in this afternoon's hearing, the
22 evidence that should be reserved? I wouldn't have thought so,
23 but it's for you to say.

24 I mean, speak to the Minister if you want to speak to
25 the Minister because at least some of the confidential and

1 privileged will be his.

2 THE WITNESS: (Minister Wheatley) It's public
3 knowledge.

4 SOLICITOR GENERAL: Commissioner, I am not--I don't
5 have anything in red highlighted in my notes that refers to
6 that. However, out of the abundance of caution, we would
7 request the same, in a very short time, one to three days, to
8 review and reserve our comment on the confidentiality issue.

9 COMMISSIONER HICKINBOTTOM: Okay, you'll have it. As
10 I say, it's almost certainly the Minister's privilege or
11 confidentiality. I mean, there may be confidentiality in others
12 raised, but as on Tuesday's hearing, we will send the Transcript
13 to the Attorneys as soon as we have it, and give you two or
14 three days to make any suggestions, any redactions that are
15 necessary, with reasons, and then we'll publish the Transcript
16 one way or the other.

17 Until it's published, as I say, it is confidential,
18 and that obviously, Mr Rawat, applies to you as much as it does
19 to everybody else.

20 Mr Rawat, is there any other business for today?

21 MR RAWAT: I don't believe so, sir. Thank you.

22 COMMISSIONER HICKINBOTTOM: Thank you, Solicitor
23 General. Thank you, Minister. Thank you, Dr Potter.

24 (Collective "thank you"s.)

25 (End of hearing.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", is written above a solid horizontal line.

DAVID A. KASDAN