

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 13
(THURSDAY 17 JUNE 2021)

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

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Mr Lewis Hunte QC appeared for Dr Kedrick Pickering.

Mr Daniel Fligelstone Davies of Silk Legal appeared for those members of the House of Assembly who are not members of the Government.

Counsel to the Commission Mr Bilal Rawat also appeared.

Dr Daniel O Smith gave evidence.

Dr Kedrick Pickering gave evidence.

Mr Archibald C Christian gave evidence.

Hon Marlon A Penn gave evidence.

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Those present:

Sessions 1

Mr Bilal Rawat

Dr Daniel O Smith

Ms Juienna Tasaddiq, Assistant 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

Session 2

Mr Lewis Hunte QC

Mr Bilal Rawat

Dr Kedrick Pickering

Ms Juienna Tasaddiq, Assistant Secretary
Mr Andrew King, Senior Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

Session 3

Mr Bilal Rawat

Mr Archibald C Christian

Ms Juienna Tasaddiq, Assistant Secretary
Mr Andrew King, Senior Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

Session 4

Mr Daniel Fligelstone Davies

Mr Bilal Rawat

Hon Marlon A Penn

Ms Juienna Tasaddiq, Assistant Secretary

Mr Andrew King, Senior Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

P R O C E E D I N G S

1
2 COMMISSIONER HICKINBOTTOM: Good morning, everyone.
3 Good morning, Dr Smith.

4 Can I just raise one matter before the business of the
5 day starts. Yesterday, I had cause to mention an article which
6 had appeared in the press in Virgin Islands News On-line, which
7 revealed the contents of the Ministers' Position Statement on
8 Governance, which was a document to which a duty of confidence
9 attached. I mention it now because further queries have been
10 raised by the press as to the current position with regard to
11 the inquiries which I ordered to be made yesterday.

12 I directed that the Attorney General and the
13 Governor's office respond by 9:00 a.m. today with a list of
14 people who had had access to the Position Statement and the
15 inquiries that had been made as to whether any of them had
16 breached their duty of confidence. The position is that,
17 overnight, both the Governor's Office and the Attorney General
18 have responded to that direction.

19 As a result of the Governor's Office response, I have
20 already met the Governor and the three Members of the Governor's
21 Office who had access to the Position Statement, and I have
22 satisfied myself that the breach of confidence did not emanate
23 from any of them; nor, as I indicated yesterday, did it emanate
24 from any Member of the COI Team in the BVI, who number five.

25 The Attorney General's response is that disclosure

1 within the BVI Government and legal team was quite widespread,
2 and her inquiries are ongoing, and that she is going to write to
3 me again when those inquiries are complete.

4 Thank you, Mr Rawat.

5 MR RAWAT: Thank you, Commissioner.

6 If I could also, for the purposes of the Transcript
7 record that there are no legal representatives present here on
8 behalf of those who have participant status in the Commission of
9 Inquiry.

10 Our first witness will be Dr Daniel Orlando Smith.
11 But before Dr Smith is sworn, may I take this moment just to
12 read some evidence into the record.

13 COMMISSIONER HICKINBOTTOM: Certainly, yes. Thank
14 you.

15 MR RAWAT: For the Transcript, what I'm going to read
16 extracts from is a Report of the Registrar of Interests covering
17 the Year 2008 to 2009. That Report was submitted to the
18 then-Governor and the then-Deputy Governor in May 2009 by
19 Victoreen Romney-Varlack, Registrar of Interests. As you will
20 remember, Commissioner, Ms Romney-Varlack only recently retired
21 from the post, having held it since the 18th of February 2008.

22 The Report covers the Year 18th of February 2008 to
23 18 February 2009. I do not intend to read every single part of
24 it, but only those portions as are relevant to your Inquiry.

25 COMMISSIONER HICKINBOTTOM: Yes, thank you.

1 MR RAWAT: It begins with an introduction which is as
2 follows: "There is no statutory requirement for the Registrar
3 to make a report. However, the Registrar compiled a Report on
4 the activities and status of the Office of the Registrar for the
5 period 18th of February 2008 to 18th of February 2009. This
6 Report is primarily for the information of the Governor and the
7 Deputy Governor. It is not intended to be circulated or tabled
8 in the House of Assembly".

9 The next heading is: "Register of Interests Act 2006",
10 and the text reads as follows: "The Register of Interests Act
11 2006 was passed by the Legislative Council of the Virgin Islands
12 into Law on 2nd of May 2006. It was subsequently Gazetted on
13 1st of June 2006, but was not brought into force until
14 18th February 2008. Section 1 of the Act provided for the Chief
15 Minister within six months of enactment to appoint a date by a
16 notice published in the Gazette for the coming into force of the
17 Act. This was not done within the time specified. An amendment
18 to the Act passed by the House of Assembly on 27th December 2007
19 authorised the Premier to appoint a date by notice published in
20 the Gazette on which the Act was to come into force. The Act
21 was brought into force on 18 February 2008".

22 The next heading is "Appointment of Registrar", and it
23 reads as follows: "The Virgin Islands (Constitution) Order
24 2007, under section 112, makes provision for the appointment of
25 a Registrar who may also be removed from office by the Governor

1 acting in his or her discretion. Simultaneously with the coming
2 into force of the Registrar of Interests Act 2006, the Registrar
3 was appointed on 18 February 2008. On 20th of February, the
4 oath of confidentiality, as required under section 13 of the
5 Register of Interests Act, was sworn by the Registrar before the
6 Registrar of High Court".

7 The Report then gives some details about the office
8 and administrative support given to the Registrar. I won't read
9 that out, but I pick up the next heading, which is as follows:
10 "Statutory requirement for Members' Declarations", and it then
11 continues: "Section 3(1) of the Registrar of Interests Act
12 makes reference for the period during which Members are to make
13 Declarations. They are: (1), within thirty days after the
14 coming into force of the Act; (2), on the date on which a Member
15 assumed the functions of his office; and (3) on each subsequent
16 anniversary of that date. When the Act came into force, Members
17 had already taken office on September 14, 2007, following the
18 general elections held in August 2007. Members were therefore
19 required to file their Declarations twice in 2008, the first
20 being within thirty days after 18 February and the next being
21 14 September 2008, the first anniversary after Members had
22 assumed office. Because the 14th of September fell on a Sunday,
23 the filing date was Monday, 15th of September, 2008".

24 The next heading is headed "Meeting with Deputy
25 Premier/Chairman Standing Orders Committee" and it reads as

1 follows: "The Registrar on 21st February 2008 wrote to the
2 Deputy Premier, who is the Chairman of the Standing Orders
3 Committee of the House of Assembly to seek her advice on how to
4 proceed in the absence of the Standing Select Committee in the
5 hopes that this would have galvanised some immediate action. A
6 meeting on 6 March with the Chairman and the Registrar resulted.
7 The Chairman promised to dialogue with the Premier to convene a
8 meeting to amend the standing orders. Such amendment had not
9 yet been made".

10 The next heading of the report is "Meeting with
11 Members of the House of Assembly", but that isn't relevant, and
12 I won't read it out, but the next section is. It is headed:
13 "Filing of Declarations March 2008", and reads as follows:
14 "Members of the House of Assembly filed their Declarations
15 within the time specified. On 19th March, the Registrar's
16 office was very busy receiving both Members and their
17 Declarations".

18 The next heading is: "Filing of Declarations
19 September 2008", and reads as follows: "Although Members had
20 advanced notice and several reminders for their second set of
21 Declarations which were due on 14th September, one year after
22 their taking office, the Registrar was acutely disappointed that
23 all Members did not file their Declarations on time. In fact,
24 some Members did not file until several months later, the last
25 being received on 10th February 2009. Had the Committee been

1 appointed, section 7 of the Act would have been invoked".

2 The next reading is: "Registrar of Interests, and that
3 reads as follows: "The Register that is required to be
4 maintained by the Registrar under section 4 of the action
5 remains just a blank book. The Committee that must approve the
6 format of the Register has not been appointed because the
7 standing orders of the House of Assembly under which the
8 Standing Select Committee falls have not been amended as date of
9 this Report. It follows then that those areas for which the
10 Committee is responsible have gone without attention".

11 It continues: "The Registrar is of the opinion that
12 the amendment to the Standing Orders of the House is not a
13 priority, even though several reminders have been issued by the
14 Registrar to both the Speaker and the Chairman of the Standing
15 Orders Committee. Note should be shown here that the report of
16 the Standing Orders Committee for amendment was laid on the
17 table of the Legislative Council as far back as 20th of
18 March 2007".

19 The Report continues: "Early in July 2008, a member
20 of the press visited the Registrar's Office to inspect the
21 Register. The member was visibly disappointed when he was
22 informed that the Register was not open to public scrutiny. The
23 Registrar referred him to the section of the Act which dealt
24 with the confidentiality of the Members' Declaration. Following
25 this, the Registrar issued a news release to update the general

1 public of the functions of the Registrar's Office and to remind
2 readers that the Register is not open to public inspection. On
3 17th July, the Register of Interests was the subject of
4 editorial in the BVI Beacon accompanied by a cartoon headed
5 "Commentary House of Assembly Register of Interests". The
6 cartoon depicted an open cookie jar with a 'closed to public'
7 sign surrounded by barbed wire".

8 Again if I move through to the next relevant heading,
9 it is headed: "Amendment to the Register of Interests Act", and
10 the text reads as follows: "During the speech from the throne
11 in 2008, it was announced that the Register of Interests Act is
12 to be amended to include senior public servants. When this
13 amendment is contemplated, it will be opportune for other
14 amendments to be taken simultaneously. Careful consideration
15 will, of necessity, need to be given to avoid any conflict
16 between whose Declarations are to be private and confidential
17 and whose Declarations are to be open to the public. Other
18 considerations will be the remit of the Registrar office and
19 accommodation staffing among others. Dialogue with the
20 Registrar of Interests could prove beneficial while compiling
21 the various amendments".

22 The next part of the Report concerns the budget of the
23 Office of the Registrar of Interests, and again I won't read
24 that out, but the Registrar's conclusion is as follows: "This
25 report is for the information of His Excellency the Governor and

1 the Deputy Governor; as there is no statutory requirement for
2 reporting, the Report is not for publication in any form".

3 Commissioner, the Report as submitted to the Governor
4 prompted a response in the form of a memorandum from the
5 then-Governor David Pearey, and this was dated the 16th of
6 June 2009, and if I may, I will read an extract from that.

7 COMMISSIONER HICKINBOTTOM: Could I have the
8 reference, the bundle reference, to the Report.

9 MR RAWAT: The bundle reference to the Report that
10 I've read out is the--it's the Governor's disclosure bundle.

11 COMMISSIONER HICKINBOTTOM: Yes.

12 MR RAWAT: And it is at page 81.

13 COMMISSIONER HICKINBOTTOM: Thank you very much.

14 MR RAWAT: And for the record, the statutory
15 instrument, the Notice under which the Registrar Victoreen
16 Romney-Varlack was appointed is at your page 80.

17 COMMISSIONER HICKINBOTTOM: Thank you.

18 MR RAWAT: The memorandum is dated the 16th of June
19 2009. You'll find it in the same bundle at page 87. Again, if
20 I read out the response of the then-Governor, it is as follows:
21 "Thank you so much for preparing the above report and forwarding
22 it with your memo of 8th of June. I congratulate you on a sound
23 start in introducing to the BVI this important constitutional
24 position which can contribute significantly to open Government
25 in the Territory. I agree that the 2006 Act has its limitation.

1 It is in a sense no more than a beginning to what should become
2 a rigorous and open process. The two areas, in my view, where
3 the Act should be sharpened up are: (a) in making the Register
4 public, and (b) in giving the Registrar teeth in the event of
5 non-compliance. Such amendments will need to be carefully
6 balanced so that all Parties (politicians included) can see the
7 benefits of greater rigor. You might therefore benefit from
8 furthering your research into similar registers in other
9 countries so that when you see the Premier, you're able to
10 present to him a set of carefully judged outlined amendments.
11 If these are accepted, they might then stand a chance of being
12 quickly transcribed into law. I would welcome your
13 clarification on the matter of the Standing Select Committee.
14 The middle paragraph of page 2 of the Report suggests, I believe
15 correctly, that you are pressing as a priority for the Select
16 Committee to be appointed. On the next page, however, you seem
17 to say that this should not be viewed as a priority. My own
18 view is that the first of these positions is correct. The
19 Select Committee needs to be approved so as to bring the
20 provisions of the Act fully into force".

21 And the then-Governor concludes this memorandum with
22 these words: "Many thanks again for the Report. You continue
23 to enjoy my full support".

24 The Registrar of Interests responded to that
25 memorandum, and this is in your same bundle at your page 90,

1 Commissioner, with a memorandum of her own dated the 23rd of
2 June 2009, and it reads as follows: "Thank you for your
3 memorandum of 16th of June 2009. I welcome your views and
4 indeed agree that the Act needs sharpening in the areas you have
5 outlined. There are others that I'm identifying for further
6 discussion with the Attorney General to obtain her legal
7 opinion. I want to address the matter you raised in your third
8 paragraph regarding the Standing Select Committee. I believe
9 the paragraph that has given arise to my apparent contradiction
10 is the following".

11 And the Registrar's memorandum then quotes as follows:
12 "The Registrar is of the opinion that the amendment to the
13 Standing Orders of the House of Assembly is not a priority even
14 though several reminders have been issued by the Registrar to
15 both the Speaker and the Chairman of the Standing Orders
16 Committee. Note should be taken here that the report of the
17 Standing Orders Committee for amendment was laid on the table of
18 the legislative counsel as far back as 20th of March 2007", and
19 the quoted text in the memorandum ends there.

20 The memorandum then continues with the Registrar
21 recording as follows: "I remain firm that the Standing Orders
22 of the House need to be amended and should have been amended
23 since 2007 to bring them in line with the changes brought about
24 by the 2007 Constitution Order and to recognise those areas
25 recommended for amendment by the Standing Orders Committee.

1 Perhaps the following text will clarify my thinking". And she
2 then sets out some text which I will now read, and it is as
3 follows: "It appears that the amendment of the Standing Orders
4 of the House is not a priority for those concerned with bringing
5 about the amendment and subsequently pointing the Standing
6 Select Committee to work with the Registrar of Interests".

7 And the Registrar concludes her memorandum as follows:
8 "I trust that this explanation gives some clarification on the
9 matter. I do look forward to your continuing support. Thank
10 you".

11 Commissioner, unless you wish me to read more letters,
12 that is all I wish to put into the record at this moment.

13 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

14 MR RAWAT: But if I could ask if Dr Smith could be
15 formally sworn.

16 COMMISSIONER HICKINBOTTOM: Yes, thank you.

17 DR DANIEL O. SMITH, COMMISSION WITNESS, CALLED

18 THE WITNESS: I do solemnly, sincerely and truly
19 declare and affirm that the evidence I shall give shall be the
20 truth, the whole truth, and nothing but the truth.

21 COMMISSION SECRETARY: Thank you.

22 COMMISSIONER HICKINBOTTOM: Yes, thank you, Mr Rawat.

23 MR RAWAT: Thank you.

24 BY MR RAWAT:

25 Q. Dr Smith, first thank you very much for coming to give

1 evidence to the Commission today. There are some formalities
2 that I need to deal with as I do with every witness.

3 The first one is to ask you, please, to give the
4 Commissioner your full name.

5 A. Daniel Orlando Smith.

6 Q. Were you still a Member of the House of Assembly, I
7 would ask for your professional address, but I won't do that
8 now. What I will tell you is that--and this is what I say to
9 every witness--is that I do try and keep my questions short and
10 simple. It doesn't always happen. So, if at any time I ask you
11 a question that you have difficulty understanding, then please
12 don't hesitate to ask me to repeat it or rephrase it in a
13 different way, and I will try and do so.

14 A. Okay.

15 Q. There are, to your left, as you'll see, a number of
16 bundles. You don't have to open any of them at the moment, but
17 I will take you to various documents in those bundles as we go
18 through your evidence.

19 The final thing--and this is something I say to all
20 witnesses--is that the microphone that's in front of you is just
21 there to record what you have to say rather than to amplify your
22 voice.

23 A. Okay.

24 Q. And so, it is important, if you can, just to keep your
25 voice up, speak slowly, and that way your answers can clearly

1 and accurately be recorded on the Transcript of the hearing.

2 Can I start again--and this is a question that I have
3 put to every witness which has come before the Commission--and
4 it is to ask you just to give a brief outline of your
5 professional background before you came into politics.

6 A. After leaving high school, I attended the University
7 of West Indies in Jamaica to study medicine, and having
8 completed the courses there in 1969, internships in The Bahamas.
9 I then returned home for one year, and then traveled to the UK
10 to pursue studies in general surgery, and then returned home
11 where I was the surgeon at the hospital. There was only one
12 surgeon in the BVI at that time.

13 Sometime later on I became the Chief Medical Officer
14 of the hospital. But before doing that I traveled again to the
15 UK where I did a Master's in community health in developing
16 countries and a public health degree and then returned home to
17 continue the work as general surgeon and as Chief Medical
18 Officer and for a time as Hospital Director.

19 Q. Thank you.

20 And correct me if this is wrong, but is it right that
21 the first time that you were elected as a representative was in
22 1999, when you were elected to the Legislative Council?

23 A. That is correct, yeah.

24 Q. And were you at that time the head of the National
25 Democratic Party?

1 A. I was the head of the party, yes.

2 Q. And again, correct me if this is wrong, you obviously
3 were on the Legislative Council, and you remained on the
4 Legislative Council between 2003 and 2007 when at that time the
5 NDP with you at its head was the largest party on the Council?

6 A. Could you rephrase that?

7 Q. Yes, I will do.

8 1999 is the first time you were elected to the
9 Council.

10 A. Correct.

11 Q. And between 2003 and 2007, you also served on the
12 Council?

13 A. Between 2003 and 2007, I served on Council as the
14 Chief Minister.

15 Q. Yes, and that was because at that time the NDP was the
16 largest party on the Council?

17 A. That is correct.

18 Q. Thank you.

19 A. That was after the election in 1999, okay, 1999.

20 COMMISSIONER HICKINBOTTOM: 2003, I think.

21 MR RAWAT: 2003.

22 THE WITNESS: 2003, yes.

23 BY MR RAWAT:

24 Q. Again, if we could ask you, you're quite softly
25 spoken, so if you could raise your voice a little.

1 A. Okay.

2 Q. If you feel the need to shout towards me, don't
3 hesitate to do so.

4 When it came to 2007, obviously at that time there was
5 a constitutional change, a number of constitutional changes, one
6 of which, of course, is that the Legislative Council became the
7 House of Assembly, but is it right that in 2007, you and the NDP
8 became the opposition?

9 A. That is correct.

10 Q. But you returned to Government in 2011, and then at
11 that point you took on the position of Premier and Minister of
12 Finance?

13 A. That is correct.

14 Q. And between 2011 and 2019, the NDP formed the
15 Government across two houses of Assembly?

16 A. That is correct.

17 Q. And over that period, you remained as Premier and
18 Minister of Finance?

19 A. Correct.

20 Q. And is it right that you retired from politics before
21 the 2019 Election?

22 A. That is correct.

23 Q. And so, you didn't stand in the most recent election?

24 A. I did not, no.

25 Q. But in terms of the span of your political career,

1 from 1999 to, I suppose, the end of 2018, if you like, were you
2 throughout a territorial candidate or sometimes what's described
3 sometimes as an at-large candidate?

4 A. Yes, I was a territorial candidate for all the
5 elections.

6 Q. Thank you.

7 You will have heard me reading from the report of
8 Ms Romney-Varlack, and from the material we sent you it will be
9 clear to you that one of the issues that is being investigated
10 at this stage of the Commission is the operation of the Register
11 of Interests.

12 What is your current view on publication of the
13 Register to the public?

14 A. I have actually not thought about that recently. When
15 it was enacted, it was private--you know, they had made the
16 Registrar, and it's something I have to give some more serious
17 thought before I can make a comment on that, given the whole
18 situation here in the BVI.

19 Q. For yourself, you would have been a Legislator in 2006
20 and through to 2008 when the Act was first of all enacted and
21 then brought into force?

22 A. That is correct, yes.

23 Q. And again, you will have heard from--that it was the
24 Registrar's view that it should be public. When you were in
25 office at that time, did you have a view about the benefits or

1 the risks of making the Register open to public inspection?

2 A. When I was in office, we--there was a collective view
3 that it should not be public of the Legislators.

4 Q. And did you share that collective view?

5 A. I shared that view at that time.

6 Q. And what was the reason, from your perspective, for
7 keeping it private?

8 A. The reason for keeping it private is that, once it
9 becomes public, then everyone and anyone gets into the business
10 of Legislators, people who have been elected to serve the
11 Territory. And in BVI, sometimes those interferences into the
12 business of Legislators can be very disturbing, can be very
13 serious, and that is why Members felt that it was best at that
14 time not to make it public.

15 Q. And you said it was a collective view. Was it a
16 unanimous view?

17 A. I would say "yes".

18 Q. And so, it wasn't a party political issue--

19 A. No.

20 Q. --to your recollection?

21 A. No.

22 Q. I appreciate that you've obviously been out of office
23 now for some time, and you will have had some distance from the
24 Register of Interests Act. So, if I can, can I just to assist
25 you, just remind you of the obligations that it imposed on

1 Members. You should have in front of you, I hope, a bundle
2 which is headed "Constitution and Legislation Bundle".

3 A. Okay.

4 Q. If you could, Dr Smith, please turn to page 59 in the
5 bundle. This is the first page of the Act. When it came into
6 force, it came into force in 2008, and so the obligations it
7 placed on Legislators was obligation on Members of the House of
8 Assembly. It was amended before it came into effect to change
9 the references that we will see in the Act which referred to
10 Legislative Council to House of Assembly.

11 If I take you, please, to page 61 and section 3,
12 section 3(1)--and I'm going to summarise it, but what the effect
13 of section 3(1) is that it poses an obligation on a Member to
14 make a Declaration using the form that's scheduled to the Act
15 within thirty days after this Act comes into force and
16 thereafter on the date on which he assumes the function of his
17 office and on each subsequent anniversary of that date, and the
18 Registrar's report explained how that worked.

19 The Declaration that has to be made--and we see that
20 at 3(2)--is Declaration in Respects of Interests held on the
21 date on which to make the Declaration arose.

22 So, looking at that, Dr Smith, would you accept that
23 Members of the House of Assembly had an obligation on the date
24 that they were sworn into the House to make a Declaration of
25 Interests?

1 A. That is what is indicated in this document.

2 Q. And so, if they didn't do it on that date, they would
3 then be in breach of the Act, wouldn't they?

4 A. Yes.

5 However, under the date that you were sworn in,
6 there's quite a lot of activities around that point, and I'm
7 sure it would have been easy for that date to slip.

8 Q. Yes.

9 Well, perhaps I'm going to take you in due course to
10 your own Declarations, and it may be that that might be a
11 point--an acute point for you to elaborate on what you have just
12 said.

13 If you could turn to 64 in the bundle, page 64,
14 please, and I'm taking you to section 7, I'm going to redirect
15 your attention, please, Dr Smith, to 7(a): "Where a Member
16 fails to make a Declaration within a period of three months from
17 the date on which the duty to make that declaration accrued, the
18 Member shall be in breach of the provisions of this Act, and the
19 Registrar shall, within 14 days of the knowledge of such breach,
20 submit a report of such breach to the Committee, which shall
21 meet to consider the Report within 21 days of its submission".

22 So, the effect of section 7 is to create a second
23 occasion when a Member could be in breach, if within three
24 months of the date of which they are--they should have submitted
25 the form, they still haven't, then again they're found to be in

1 breach. Would you accept that interpretation of section 7?

2 A. Yes, I did.

3 Depends also, as I read here, a Notice is given to the
4 particular individual.

5 Q. Yes, that's a slightly different provision because the
6 Registrar--are you looking at (b), Dr Smith?

7 A. Yes, (b) and (c).

8 Q. Yes. I can take you to those, but there is an
9 obligation under section 5(4), and under section 5(4), the
10 Registrar to check. You're turning it up. If you go to
11 page 62. What section 5 asks or mandates the Registrar to do is
12 first act as the Clerk to the Committee; second, enter into the
13 Register, declares into the Register the interests declared in
14 each Declaration, but before doing so the Registrar has to
15 satisfy himself or herself that a full and accurate Declaration
16 has been prepared, and this is the point where the Notice
17 requirement arises and that's at 4: "Where the Registrar is
18 satisfied that an entry in the Register has been made as a
19 result of a fraudulent or materially misleading Declaration,
20 then the Registrar shall mark the entries 'cancel' and by Notice
21 require the Member to make a new Declaration".

22 So, the note--that requirement only arises once the
23 Registrar has inspected the Declaration, and section 6(1), as
24 you've drawn attention to that, and that's at your page 63,
25 Dr Smith--it gives the Registrar power to, by notice, require a

1 person to supply to the Registrar information or produce
2 records, so the Registrar, in order to satisfy himself or
3 herself as to the accuracy of the Register can require further
4 information from a person, including a Member of the House of
5 Assembly.

6 But the point that I was making to you is that what
7 section 7 does is create yet another obligation on a Member of
8 the House of Assembly. If they'd missed the date, the Due Date,
9 the date that section prescribes, they have three months to get
10 the Declaration in; and, if they haven't done it within three
11 months, then a report has to be sent by the Registrar to the
12 Standing Select Committee. Would you accept that interpretation
13 of section 7?

14 A. Yes, okay.

15 Q. Thank you.

16 Now, what it does seem, doesn't it, Dr Smith, is that
17 an important part of the statutory mechanism around the Register
18 of Interests is the existence of a Standing Select Committee;
19 would you accept that?

20 A. I do, yes.

21 Q. From your own perspective--and I know I'm taking you
22 back in time, but were you a supporter of the Register of
23 Interests Act?

24 A. Yes, I was.

25 Q. And would you accept that a Register of Interests

1 would only be effective if it was, in fact, an accurate record
2 of people--of Legislators' interests?

3 A. I agree, yes.

4 Q. And was it your view that it was ultimately the
5 responsibility of each Legislator to file their Declarations?

6 A. It was the responsibility of each Legislator, yes.

7 Q. You were a party leader. You were at times also--and
8 for a significant period--the Premier. Taking your position as
9 party leader first, did you see that there was any obligation on
10 you as a party leader to encourage those who were in Government
11 with you or in opposition with you or from your own Party to
12 comply with the Register of Interests Act?

13 A. Let me just say that I was not the party leader. I
14 was--there is another person who was the party leader. I was
15 the president of the party at that time, but still I did have a
16 responsibility to discuss the matter with Members, yes.

17 Q. Forgive me. That's my ignorance of the structure of
18 the National Democratic Party.

19 A. No problem.

20 Q. Perhaps if I could more properly describe you as a
21 leading figure in the party.

22 But you said candidly that there was an obligation to
23 discuss it with Members. Did you, in fact, discuss it with
24 Members of your own Party the need for compliance?

25 A. I cannot recall exactly what happened, but I'm sure

1 that we discussed it.

2 Q. And so obviously the obligation is on those who are
3 alongside you Members of the House of Assembly. It's not on
4 your party, the sider party. So, from your recollection, can
5 you say those who sat alongside you were aware of the need to
6 make Declarations on time?

7 A. I would think that there would have been because it
8 was all in the Act.

9 Q. And turning now to you as Premier and Minister of
10 Finance, from that position, or did you use that position to
11 encourage all Members of the House of Assembly to comply with
12 their obligations under the Register of Interests Act?

13 A. I can't recall what I would have said to the Member of
14 the House of Assembly, but I'm sure I did advise or recommend
15 that they comply with the requirement to declare the Interests.

16 Q. And you may be able to take this from me, but the Act
17 doesn't impose any obligation on a Registrar to make or to
18 notify Members of the House of Assembly of their obligation to
19 submit on time. It doesn't impose any obligation to send
20 reminders or anything like that. It appears on the Act to
21 simply fall down to it's the Legislators' job: They either do
22 it or they don't. Would you accept that?

23 A. It seems that way, yes.

24 Q. And so, you accepted that the effectiveness of the
25 Register depends on compliance. So, if there is a culture of

1 non-compliance, that would inevitably, wouldn't it, undermine
2 the effectiveness of the Register?

3 A. That is correct.

4 Q. Now, I hope you have in front of you--if you could put
5 the legislation bundle just to one side, please.

6 A. Um-hmm.

7 Q. I'm afraid that the desk is perhaps a little bit too
8 small for all of the bundles that we've given you, but there
9 should be a bundle dealing with Government disclosures. If you
10 could just find that bundle, please. Thank you very much,
11 Dr Smith.

12 Could I ask you just to turn up in that page 96,
13 please.

14 If I have taken you to the right place, you should be,
15 Dr Smith, at a memorandum from the Registrar of Interests dated
16 the 19th of February 2014.

17 Do you have that, sir?

18 A. Yes.

19 Q. And if--if my math is right--and it is sometimes a big
20 "if"--in 2014, you would have been Premier and Minister of
21 Finance?

22 A. Yes.

23 Q. This is not a memorandum that is copied to you, but to
24 give context to other documents, another document I want to show
25 you, I want to take you to first. What it is, Dr Smith, is a

1 memorandum from the Registrar to the Governor dated the 19th of
2 February 2014, headed "Declaration of Interests". And if I--

3 COMMISSIONER HICKINBOTTOM: So, it was copied to the
4 Premier?

5 MR RAWAT: No, it wasn't. It wasn't copied to the
6 Premier.

7 COMMISSIONER HICKINBOTTOM: It's cc'd on the bottom.

8 MR RAWAT: I'm sorry, you're right. Thank you.

9 BY MR RAWAT:

10 Q. So, it is copied to you--

11 MR RAWAT: I'm grateful, Commissioner.

12 BY MR RAWAT:

13 Q. But what the first paragraph refers to is a meeting
14 between the Registrar and the Governor, and if I pick it up at
15 the second paragraph, it continues: "One of the matters we
16 discussed centered on the delinquency of some Members of the
17 House of Assembly in filing or not filing their Declaration of
18 Interests. I'm somewhat embarrassed to inform that there
19 remains some Members who have never filed a Declaration since
20 taking office on 8th December 2011. I have issued numerous
21 requests and reminders. I have exercised courage and brought
22 this matter to the forward during the standing Finance Committee
23 meetings, practically begging Members to desist from
24 contravening the statute and to do what is required under
25 section 3 of the Register of Interests Act. Unfortunately, my

1 pleas have gone unheeded. It is this state of inaction and
2 frustration that prompts me to now inquire whether you would
3 exert some influence at Cabinet Level, thereby encouraging
4 Members of Cabinet who are also Members of the House to respect
5 the requirements of the Register of Interests Act and the Virgin
6 Islands Constitution Order of 2007. In this connection, I'm
7 hereby copying the Premier for his input".

8 If I could ask you, please, just to turn up page 99,
9 Dr Smith. This is a memorandum from the Governor dated 9th of
10 July 2014, and it is addressed to you as Premier. The Governor
11 then was Boyd McCleary. It's headed "Register of Interests
12 Committee", and it reads as follows: "We have spoken several
13 times about the importance of the Register of Interests
14 legislation and of the need for a Register of Interests
15 Committee to be established by the House of Assembly. I attach
16 a letter dated 19th of February 2014 from the Registrar of
17 Interests to The Honourable Ronnie W Skelton, Chairman of the
18 Standing Orders Committee in the House of Assembly which spells
19 out the issue in some detail. Ms Romney-Varlack notes that, in
20 the absence of such a Committee, the Act is not fully
21 operational. The Register of Interests remains a vacant book.
22 The Virgin Islands Constitution Order 2007 and the Register of
23 Interests Act 2006 continue to be contravened. I welcome your
24 assurances that the Register of Interests Committee will be
25 established. I trust that this will not be much further

1 delayed".

2 You will find the letter that the Governor refers to
3 dated 19th of February 2014 at your page 97.

4 Now, it's dated at the top 19th of February 2014,
5 addressed from the Registrar to The Honourable Ronnie W.
6 Skelton, Chairman of the Standing Orders Committee. If we look
7 at bottom, Dr Smith, it is copied to the Governor but it is not
8 copied to you.

9 What the letter reads is: "I write in connection with
10 the Standing Orders Committee and the draft standing orders of
11 the House of Assembly. As you're aware, having been Chairman of
12 the Standing Orders Committee for the period August 2003 up to
13 about March 2007, the Report of the Standing Orders Committee
14 was laid on the table of the legislative counsel of the Virgin
15 Islands at the 48th sitting of the First Session of the 15th
16 Legislative Council on 20th of March 2007. Since then and up to
17 present there has been no forward motion on the Report. You're
18 also aware that the Registrar of Interests Acts was brought into
19 force on 18th February 2008. Simultaneously, the Registrar of
20 Interests was appointed to, among other things, maintain and
21 keep the Register in accordance with the Act. Section 4 of the
22 Act speaks as to how the Register shall be maintained and 'shall
23 be in such format as the Committee shall approve'".

24 Section 7(a) of the draft Standing Orders of the House
25 of Assembly make provisions for the Register of Interest

1 Committee. I have no doubt that you can understand how the work
2 of the Registrar of Interests is hampered by the non-existence
3 of the Register of Interests Committee. Since the coming into
4 force of the Act and appointment of the Registrar of Interests,
5 six-plus years have elapsed. The Act is not fully operational.
6 The Register of Interests Committee has not been appointed. The
7 Register of Interests remains a blank book. The Virgin Islands
8 (Constitution) Order 2007 and the Register of Interests Act 2006
9 continue to be contravened. All this is hinged on the Amendment
10 of the Standing Orders of the House and ultimately the
11 appointment of the Register of Interests Committee".

12 And she now concludes: "I now crave your indulgence
13 and seek your advice regarding the appointment of the Register
14 of Interests Committee".

15 Now, this is in 2014.

16 What--as Mrs Romney-Varlack points out, the Act comes
17 into force in 2008. It requires, as you've agreed, a Standing
18 Select Committee. And between 2008 and 2014, no such Committee
19 has been established.

20 Now, taking that period, 2008 to 2014, you were
21 obviously in Government and leading the Government, can you help
22 the Commissioner with this: What difficulties were there in
23 taking this important step of establishing a Standing Select
24 Committee?

25 A. I cannot recall a great deal about the discussions,

1 but as I note here, there is a Standing Orders Committee, which
2 would have been the body to use it, and really quite honestly I
3 cannot explain or tell you what happened at that point or why it
4 did not get there or what discussions happened.

5 Q. As Premier and Minister of Finance, you're not
6 chairing the Standing Orders Committee, are you?

7 A. No.

8 Q. But in your experience--and this is as an experienced
9 Legislator and a leader in Government, does it normally take six
10 years to amend Standing Orders in the House of Assembly?

11 A. It sometimes does take a while, depending on what the
12 subject is.

13 Q. Can you give the Commissioner an example of what you
14 mean by "a while"?

15 A. Not really. Any committee to be established sometimes
16 takes some time, because it requires discussion among Members,
17 and before it can arrive at a conclusion. Not all the time.
18 Some committees can be established immediately, you know, by the
19 Premier, or by the Speaker of the House but some of this can
20 take some time.

21 I cannot give an example of what happened, of course.
22 That's their job.

23 Q. Now, 2008 to 2009 actually spans--2014, forgive me,
24 spans two Houses of Assembly, doesn't it?

25 A. Um-hmm.

1 Q. It's the Second and Third Houses of Assembly.

2 I mean, again from your experience, would you consider
3 six year to be an usual period of time, an usually long period
4 of time to amend Standing Orders?

5 A. I would say that it was considerable time.

6 Q. Does it--and please say no if you think otherwise, but
7 does it reflect a lack of interest amongst Members in making
8 this a priority?

9 A. I would not say it reflects a lack of interest.
10 Perhaps I would say it reflects a lack of concern about the
11 consequences of making this fully operational, as I expect it to
12 be, and I would say that Members need assurance that their
13 affairs will not be subject to distortion and other activities
14 by Members who--people who would have gotten a hold of it. I
15 think that was perhaps the reluctance but not necessarily that
16 would have stopped it, but I would have been reluctant, I think.

17 Q. I didn't take it--take you to this piece of the 2006
18 Act, Dr Smith, but I think it's section 9 provides that the Act
19 would not be open to public inspection, and so that gives the
20 reassurance to Members that the public can't just walk in and
21 look at what they've declared. And, in fact, under section 13
22 there are very limited circumstances in which the Register can
23 be made public.

24 Doesn't the fact that even six years after the Act
25 comes into force that the system is not fully operational,

1 doesn't it actually reflect a culture of indifference to the
2 importance of having a Register of Interests?

3 A. I would not say in defense. I would say the
4 importance of the Register of Interests was accepted. The
5 Register of Interests have actually put in place, and the
6 question was about the formation of the Committee.

7 And I'm sorry I cannot tell you, you know, in detail
8 why the Committee was not established. It's been some time but
9 I would say it was not established.

10 COMMISSIONER HICKINBOTTOM: As Mr Rawat has explained,
11 under section 3 of the Act, you're in breach of the provisions
12 to make Declarations as soon as a Declaration is late. But,
13 under the Act, there is no sanction for that breach. The
14 sanction falls within section 7, where under which if you are
15 more than three months late, the Registrar is required, she's
16 mandated to make a report to the Standing Committee. So
17 that--those are the only teeth that the--the only sanction that
18 there is. No Select Committee, so there is simply no sanction,
19 and the result of no sanction says "Ms Romney-Varlack in her
20 letter of the 19th of February 2014 is that the Register of
21 Interests remains a blank book".

22 So, that it seems, at least she considered, the Select
23 Committee to be key in terms of compliance with the Act.

24 THE WITNESS: I hear you, and I agree with you, and
25 she's quite right, that it was necessary.

1 COMMISSIONER HICKINBOTTOM: So, the absence of the
2 Committee frustrated the purposes of the Act?

3 THE WITNESS: Frustrated purposes, yes, but it
4 still--the Act still caused Members to produce returns, albeit
5 not always, you know, at a correct time.

6 COMMISSIONER HICKINBOTTOM: Yes, thank you.

7 THE WITNESS: But returns were late.

8 BY MR RAWAT:

9 Q. One of the questions which remains unclear is when the
10 Standing Select Committee was established. The Honourable
11 Julian Fraser has already given evidence to the Commissioner,
12 and I hope I'm not misremembering what he said, but I think my
13 recollection is that he said it was in 2017. The Honourable
14 Melvin Turnbull's recollection was that it was much earlier than
15 that at the beginning of the Third House of Assembly in 2015.
16 And I wondered, if I may, if I could ask your assistance,
17 Dr Smith, just to establish the particular date. I hope--I'm
18 not asking you--it's not an exercise in memory. I do appreciate
19 it's been some time, but hopefully you will have to your right
20 some loose pieces of paper just--

21 A. Yes.

22 Q. Now, they are, just for the Transcript, Resolution
23 No 3 of 2016 of the House of Assembly, and then two articles.
24 If we start with the resolution which is dated at the bottom as
25 having been passed by the House of Assembly on the 25th day of

1 April 2016, and then recorded as being Gazetted on the 19th of
2 May 2016, I'm not going to read it all out, but would you agree
3 that what this Resolution did, Dr Smith, was, as of the 25th of
4 April 2016, it established under Standing Orders a Select
5 Committee known as the Register of Interests Committee?

6 A. That's correct.

7 Q. And, as part of the Resolution, it appointed the
8 following then Members of the House of Assembly to be Members of
9 that Committee, and they are as follows: The Honourable Mark
10 Vanterpool as Chairman; The Honourable Archibald Christian; The
11 Honourable Marlon Penn; the Honourable Alvera Maduro-Caines; The
12 Honourable Julian Fraser; and The Honourable Andrew Fahie. Is
13 that right?

14 A. That is correct, yes.

15 Q. If I take you to the second or to an article which is
16 from the Island Sun--do you have that, please, Dr Smith. The
17 article from the Island Sun is dated April 27th, 2016, and it
18 refers to the establishment of the Select Committee, but if I
19 take you to the second or the third paragraph which begins
20 "Premier and Minister of Finance", what it is recorded at is--it
21 records as follows: "Premier and Minister of Finance Dr The
22 Honourable D Orlando Smith moved the motion and explained that
23 the Register of Interests Standing Select Committee will carry
24 out and exercise all the functions stipulated under the Register
25 of Interests Act 2006". Now, I don't need to read out any more

1 of that report at the moment, but I pause there just to ask you
2 this: Is that your recollection that you would have been the
3 person responsible for moving the motion?

4 A. I probably did, but I cannot really confirm that
5 because the Standing Orders Committee, the Chairman falls under
6 that line, but if it said I did, then I can't deny it.

7 Q. Well, a newspaper report can be wrong. Sometimes they
8 have--

9 A. Yes.

10 Q. So, it's not a big point. It's more just in order to
11 assist the Commissioner with understanding the process of how it
12 works. But once the Standing Select Committee is set up, is it
13 down to the Chairman of that Select Committee to take its work
14 forward?

15 A. It is.

16 Q. It's not something, even though moving the motion is
17 attributed to you by the press, how the Committee works, when it
18 meets, what it does. It wouldn't have been a matter for you
19 just because you were then the Premier and Minister of Finance?

20 A. Once the Committee is set up, then the Committee meets
21 under the direction of the head of that Committee and in
22 cooperation with the Registrar of Interests.

23 Q. If I do take you back to the article and the
24 penultimate paragraph, it says as follows: "Romney-Varlack said
25 that successive Throne speeches mentioned the amending of the

1 Act to include senior public servants and making it necessary
2 for such civil servants to make Declarations. However, it was
3 noted that such inclusion would require that the Act be replaced
4 and repealed".

5 Do you remember at about the time that the Standing
6 Select Committee was established, which is 2016, that there was
7 discussion about amending the Act to require senior civil
8 servants or senior public servants to make Declarations?

9 A. I cannot remember any detailed discussion.

10 Q. Can you remember if at about that time, 2016, there
11 was any discussion about making the Register of Interests open
12 to the public?

13 A. I cannot remember that in 2016, but I know that there
14 has been discussions about whether it should be public or
15 private, yeah.

16 Q. If I could take you back now to your bundle which is
17 the bundles of documents relevant to you, and we just quickly
18 look at the Declarations that you've filed. If I take you,
19 please, to page 75, Dr Smith. This is a page, a registration
20 form for Declarations of Interests, and it's stamped at the top
21 "received July 7th, 2015".

22 Do you see that?

23 A. Yes, I do.

24 Q. And if you go to page 85, this is the last page of
25 this document. It might be a little faint, but can you confirm

1 that that's your signature?

2 A. That's correct.

3 Q. And it's dated the 25th of June 2015.

4 Now, the Due Date was the 23rd of June 2015, so you
5 were a couple of days out, weren't you, in terms of filing
6 dates? But if you then go to page 64, please, you should have
7 another Declaration of Interests, and your name is on it at the
8 bottom stamped "July 6th, 2016".

9 Do you have that? Page 64 at the bottom.

10 A. Yes.

11 Q. Now, your signature--and I hope it's your
12 signature--appears at page 73. Can you confirm that that is
13 your signature?

14 A. Yes, that is my signature.

15 Q. And it's dated at the bottom 13th of June 2016, so
16 remembering that at that time for that House of Assembly, the
17 Due Date was the 23rd of June, you had actually submitted before
18 the Declaration date?

19 A. Yes.

20 Q. If we go to page 52 now, it's now your 2017
21 Declaration stamped "June 27, 2017", with your name and
22 constituency at the bottom of the page.

23 Do you have that, Dr Smith?

24 A. I do have it, yes.

25 Q. The last page of that is at page 62.

1 Again, please confirm t that's your signature?

2 A. That's my signature.

3 Q. And that's dated the 26th--well, perhaps I will leave
4 it to you because I wasn't clear on the date.

5 Is that the 20th of June?

6 A. 26th of June.

7 Q. 26th of June. So, again, I think it's three days
8 outside the Due Date which was the 23rd of June.

9 But if we go to page 40, please. This is stamped
10 again with the stamp of the Registrar of Interests. She has
11 written in manuscript within the stamp the date "19th of
12 September 2018", and there's your name and your constituency on
13 that. But if you go to page 50, please, could you confirm if
14 that is your signature?

15 A. That is my signature, yes.

16 Q. Now, the date there is the 4th of September 2018,
17 isn't it, Dr Smith?

18 A. That's correct.

19 Q. So, certainly what can be clearly said in relation to
20 the 2018 Declaration, the Due Date for that being the 23rd of
21 June 2018, which is the anniversary of the date on which you
22 were sworn into the House of Assembly for that session, you were
23 out by nearly three months, so you had failed to submit in
24 accordance with section 3, hadn't you? Would you accept that?

25 A. That is correct. That's within the three months.

1 Q. Now, in each of these forms--and I will say it for the
2 record, that you provide details of your interests. They
3 remained unchanged over the four years for which we have
4 interests, but can I take you just to one particular part of it,
5 and that is if you could go to page 46, please.

6 A. What page?

7 Q. Page 46, please, Dr Smith.

8 A. Okay.

9 Q. Now, one of the--on the form, one of the paragraphs,
10 that's paragraph 6, requires Members of the House of Assembly to
11 give details of overseas visits, in specified circumstances, not
12 every single visit you ever do, but it's visits that are linked
13 to Membership of the House of Assembly where the cost is not
14 wholly borne by yourself or by public funds, but I wanted to
15 draw your attention to the note at the bottom of the page, which
16 says: "You are not required to register visits undertaken on
17 behalf of the Commonwealth Parliamentary Association. Other
18 categories of overseas visits which are exempt from the
19 requirement to register are listed in the guidance pamphlet on
20 Registration and Declaration of Members Interests".

21 Now, the declarations that we've looked at that relate
22 to you, Dr Smith, have been provided by the Registrar of
23 Interests, but do you remember receiving a guidance pamphlet on
24 Registration and Declaration of Members Interests?

25 A. I can't say right now that I do remember that.

1 Q. So, when it came to filling in the form, what guidance
2 did you have in completing your form?

3 A. What I'm saying is I cannot confirm that they did not
4 receive the form or that I received the form, but I must have
5 had some guidance.

6 And also, the question, Question 6, described
7 straightforward.

8 Q. So, if we break that down, so--I mean, separate to the
9 form itself, you can't remember whether you had a guidance
10 pamphlet or not?

11 A. Right. I can't remember.

12 Q. But as you said, and we're sort of in the middle of
13 the form at the memo, but we can look back at the beginning, but
14 you said in relation to paragraph 6 that the question seems
15 quite straightforward.

16 A. Yes.

17 Q. From your experience of completing these forms, did
18 you find that they presented--that they appeared--I am just
19 going to start that all over again.

20 Did you find when you had to respond to the questions
21 on the form that it created in your mind any uncertainty or
22 ambiguity about what information you were expected to declare?

23 A. There was just one section. I can take you to it.

24 Q. Yes, please, Dr Smith.

25 A. Page 61, section 9.

1 Q. Page 61, for the Transcript you have taken us to--

2 A. Yes.

3 Q. --the section which is paragraph 9 which deals with
4 declaring shareholdings?

5 A. Yes, exactly.

6 That I found a little challenging because the
7 companies that I would be involved in--and there were
8 no--recorded \$25,000 and then 25,000. That was not organised in
9 any such way.

10 And the other thing is that the companies that I was
11 involved in were all mentioned during the--in the paragraph,
12 three companies.

13 Q. I see.

14 Let's put that in context. If you go back--you have
15 taken us to page 61. If you look at the start of the form which
16 is at page 53--

17 A. Okay.

18 Q. --I think it's probably not--it's actually two that I
19 think we need to look at, page 654.

20 A. Yes.

21 Q. So, 1 asks you about Directorships, and you've
22 answered that in the negative, and then in 2 you list a medical
23 practice and a property rental company.

24 A. Correct.

25 Q. And so, under 9, Shareholders, you've listed something

1 called MHL Holdings. What was the difficulty that--or what
2 uncertainty or doubt did paragraph 9 create for you?

3 A. Okay. I had, like I said, recorded these medical
4 practice (unclear) and in other parts of the document. I had
5 not at that point made any calculations about share value and
6 that kind of stuff, but the MHL Holdings was a different matter,
7 and maybe I should not have put it--this is actually a company
8 that my wife is involved in, and has nothing to do with me but
9 because of this COI, I thought I would mention it.

10 Q. Because what you're asked there is do you have, either
11 yourself or with or on behalf of your spouse or other dependent
12 children, interests and shareholdings in any company or body?

13 A. Yes.

14 Q. But it's directed to shareholdings in which you have--

15 A. Yes.

16 Q. --you have a link?

17 A. So I need not put that down, no.

18 Q. So, stepping back from the form, and you may not be
19 able to answer this, but you've had the experience of having to
20 complete this form. Stepping out from that, were there areas
21 where you thought it could be clearer in terms of the
22 information it sought?

23 A. Well, that particular one could have been clearer. I
24 mean, I--

25 Q. And that's the one that sticks in your mind, is it?

1 A. Well, at the Notice, I did not fill in anything there,
2 but at least it's all throughout the document otherwise.

3 Q. Yes. There is just one--and I can show you a document
4 if it helps you, but a company called "PicSmith".

5 A. Yes.

6 Q. Did you have any connection with PicSmith?

7 A. Yes.

8 Q. And what was that connection?

9 A. I was a Shareholder and Director of PicSmith, yes.

10 Q. Now, the declarations that we've seen from you are
11 2015 to 2018, they make no mention of PicSmith. Is there a
12 reason you didn't mention it?

13 A. No, I will find it for you.

14 It depends on the time. In 2017 and '18, I was no
15 longer attached or involved in PicSmith.

16 Q. So, certainly after 2017, you wouldn't have had to
17 include it in your--

18 A. No, I would have included just the medical practice
19 and all that.

20 Q. But prior to that, you ought to have referenced it.

21 A. Prior to that I would have referenced it. Let me see.

22 Q. I don't think I need to take the point any further.

23 A. Yeah.

24 Q. I think you've helped us clarify that point.

25 If I may, could I just move on to a different topic,

1 please?

2 A. Sure, no problem.

3 Q. This is a question that I've asked of both now former
4 Members of the House of Assembly and current Members of the
5 House of Assembly, and it's about exemptions, and there may be a
6 particular dimension to you because of your professional
7 background as a medical practitioner, but I'm going to try and
8 summarise this, but as you probably are very well-aware,
9 section 67 of the Constitution deals with the tenure of seats of
10 Members of the House of Assembly. It provides in certain
11 circumstances that an elected Member has to vacate his or her
12 seat in the House. One of those circumstances, put very simply,
13 is if that elected Member becomes a Party or is linked to a
14 contract with the Government of the Virgin Islands.

15 Now, in those circumstances, the House can, if the
16 circumstances appeared just to the House, the House may exempt
17 an elected Member from vacating his or her seat.

18 Now, during your time as an elected Member, were you
19 were ever exempted from vacating your seat under section 67?

20 A. Yes, I did take a request to the House, and it was
21 approved, but once it approved, I did not take it any further,
22 meaning that I did not have a contract at all with the hospital
23 or the medical authority after that.

24 Q. Now, in your case--and please correct me if I'm
25 putting this wrong, but in your case, did that motion arise out

1 of the fact that prior to entering politics or that you were a
2 practicing medic?

3 A. I was a practicing medical--medicine--medical person.
4 I was a surgeon, general surgeon, and lots of other things, but
5 there is only one surgeon at the hospital, even then when I was
6 in the office, and there were times when that surgeon needed a
7 break, needed to go on vacation or something, and I thought I
8 could fill--I was--I was filling those needs before on an hour
9 basis, but I thought I could formalise it. But after it was
10 approved, I decided not to pursue it, and I just continued to as
11 before. So, when it was necessary.

12 Q. Thank you.

13 Just for the last matter from me, and it's just taking
14 you to your position and role as Premier and Minister of
15 Finance. Obviously, you would have sat in Cabinet for a
16 significant period of time.

17 Could you just--how did--just tell the Commissioner
18 how did--what was the system work during your time in Cabinet
19 for declaring conflicts of interest or interests related to an
20 agenda item before Cabinet?

21 A. When there was a matter that affected a particular
22 Member, that Member would be absent himself from any discussion
23 about that matter.

24 Q. What the Cabinet Handbook also provides--and I can
25 show you it, if it will help, but it allows a Member who has any

1 doubt or uncertainty about an interest to come--to bring it to
2 the Premier's attention. Did that happen, in your experience?

3 A. I think that matters like that were always discussed
4 in Cabinet with the Member absent. They may have brought it to
5 my attention, but then I would have taken it to Cabinet for
6 discussion there.

7 Q. Now, obviously aside from yourself as Premier, as a
8 sort of advice, were there, during your time in Cabinet, were
9 there other sources of advice that a Member could tap into in
10 order to assess whether there was, in fact, a genuine potential
11 or a need to declare an interest?

12 A. The Attorney General was always part of the Cabinet
13 sessions, and he would always advise on matter like that.

14 MR RAWAT: Mr Commissioner, may I just have a moment?

15 COMMISSIONER HICKINBOTTOM: Yes, certainly. A short
16 moment.

17 MR RAWAT: A very short moment, I think. I will just
18 check my notes, but I think having checked them that I have no
19 further questions for Dr Smith. And so could I conclude by once
20 again, thanking him for coming this morning to give evidence to
21 the Commission but also thanking him for the way in which he has
22 given that evidence.

23 COMMISSIONER HICKINBOTTOM: Yes. and may I thank you,
24 too, Dr Smith, both for coming and for giving your evidence so
25 clearly and helpfully. Thank you very much.

1 THE WITNESS: Glad to be of help.

2 MR RAWAT: Mr commissioner, I would normally ask you
3 to rise for a brief moment, but as I understand it, our next
4 witness is actually not scheduled until 1:00.

5 COMMISSIONER HICKINBOTTOM: Yes.

6 MR RAWAT: For various personal reasons, and so if we
7 could just rise now and then we will resume as soon as the
8 Witness is able.

9 COMMISSIONER HICKINBOTTOM: We'll resume at 1:00 of if
10 he's here earlier, when he arrives. Thank you very much.

11 MR RAWAT: Thank you.

12 THE WITNESS: Thank you.

13 (Witness steps down.

14 (Recess.)

Session 2

DR KEDRICK PICKERING, COMMISSION WITNESS, CALLED

COMMISSIONER HICKINBOTTOM: Thank you.

The first thing to deal with is the application for Dr Pickering to be represented by Mr Hunt.

MR RAWAT: Yes. Dr Pickering is here, Commissioner, as is Mr Hunt QC on his behalf.

COMMISSIONER HICKINBOTTOM: Thank you.

Mr Hunt, I've read your application. Thank you. It's an application to appear for Dr Pickering as a witness?

MR HUNT: Yes, please.

COMMISSIONER HICKINBOTTOM: Well, I've read the application, and I'll grant the application.

MR HUNT: Thank you very much.

COMMISSIONER HICKINBOTTOM: Thank you very much.

Yes, Mr Rawat.

MR RAWAT: Commissioner, for the Transcript, our next witness is Dr Kedrick Pickering, and can I ask if Dr Pickering could be sworn, please.

COMMISSIONER HICKINBOTTOM: Yes, thank you.

COMMISSION SECRETARY: Good afternoon. Would you like to swear an oath or make an affirmation?

THE WITNESS: Affirm, please.

COMMISSION SECRETARY: Could you take the piece of paper in front of you and turn it around.

1 THE WITNESS: Do I need to stand?

2 COMMISSION SECRETARY: No, you don't.

3 THE WITNESS: I do solemnly and sincerely and truly
4 declare and affirm that the evidence that I shall give shall be
5 the truth, the whole truth, and nothing but the truth.

6 COMMISSION SECRETARY: Thank you.

7 COMMISSIONER HICKINBOTTOM: Thank you, Dr Pickering.
8 Yes.

9 MR RAWAT: Thank you, Commissioner.

10 BY MR RAWAT:

11 Q. Dr Pickering, thank you for coming to give evidence to
12 the Commission today. Can we start off with one formality, and
13 that is to ask you, please, to give the Commissioner your full
14 name.

15 A. Kedrick Dudley Pickering.

16 Q. My questions are intended to be short and simple.
17 That doesn't always work out. And if at any time I ask a
18 question which you have difficulty answering, please do ask me
19 to repeat or rephrase it, and I will do so.

20 If you look to your left, you will see that there are
21 a number of bundles. We may need to look at some of them in due
22 course, but not right now. I'll take you to some of the
23 documents as we go along.

24 Can I ask that you remember, please, to keep your
25 voice up, to speak slowly. The reason for that is that a

1 Transcript of this hearing is being made, and it's important to
2 record your answers clearly and accurately.

3 You were asked to attend because you were at one time
4 a Member of the House of Assembly, but as with others, you had a
5 life before politics. So could I ask you, please, just to begin
6 by giving the Commissioner an outline of your professional
7 background before you entered politics.

8 A. How far back do I go?

9 Q. I think start from qualifying as a medic.

10 A. I qualified as a physician in 1985, University of West
11 Indies in Kingston, Jamaica, from where I did my internship, and
12 then I returned home, and I worked for two years in the health
13 system, and then I returned back to the University Hospital in
14 Jamaica where I did my residency and specialised in the field of
15 obstetrics and gynecology, and then returned back home in 1982,
16 and have practiced in the field of obstetrics and gynecology
17 since 1982.

18 Q. And to turn to your involvement in politics, is it
19 right that you were elected to what was then the Legislative
20 Council in 1999?

21 A. That's correct.

22 Q. And that was as a Member of the National Democratic
23 Party?

24 A. That is correct.

25 Q. And from that time on through to when you ceased to be

1 a Member of the House of Assembly, did you represent the Seventh
2 District throughout?

3 A. I did.

4 Q. I think between 2003 and 2007, the NDP was the largest
5 Party on the Legislative Council, wasn't it?

6 A. Correct.

7 Q. And then in 2007, when there was the new Constitution,
8 you went into opposition, but you returned in 2011 to
9 Government.

10 And is it right that you then took on the position of
11 Deputy Premier and Minister of Natural Resources and Labour?

12 A. Correct.

13 Q. And you remained in Government following the 2015
14 Election?

15 A. Correct.

16 Q. And what ministerial post, if any, did you hold in
17 that administration?

18 A. Same portfolio.

19 Q. But did you stand in the 2019 Election?

20 A. I did.

21 Q. But you were unsuccessful--

22 A. Correct.

23 Q. --obviously with that one?

24 A. Correct.

25 Q. Now, the topic that the Commissioner is investigating

1 at this stage is the question of interest, and particularly
2 interests in relation to membership of the House of Assembly,
3 but also acting as a Minister, and one of the issues that has
4 come up is the Register of Interests Act 2006. That provides
5 for a Register, but it provides for a Register that is not for
6 inspection by the public.

7 Now, during your time as a Member of the House of
8 Assembly up to 2019, what was your view on publication of the
9 Register?

10 A. It was mixed.

11 Q. And in what way was it mixed, Dr Pickering?

12 A. I think primarily because, as a growing society and we
13 were evolving, I think some of these things take time to be able
14 to achieve their full objectives, and so I think that initially
15 remaining private was probably the best--the best approach.

16 Q. Now, you said that things take time to reach their
17 full objectives. What do you consider to be the full objective
18 of a Register of Interests?

19 A. Well, it should be public at some point in time.

20 Q. We're now--the Act came into force in 2008. We are
21 now in 2019. Do you think the point in time has been reached
22 when it could be made public?

23 A. I don't know.

24 Q. You haven't got any view on it at the moment?

25 A. No, I don't.

1 Q. I can take you to the law, if it will help you,
2 because obviously you've been out of politics for a little time.

3 The 2006 Act--and do tell me if you want to look at
4 it, but section 3 of that Act imposed an obligation on each
5 Member of the House of Assembly, and that obligation was to make
6 a Declaration of your Interests on the day that you were sworn
7 into office. Now, obviously that day would change because it
8 would depend on which House of Assembly was sitting and when it
9 was first sworn in, but once that date had been reached, you
10 then had an obligation to make a similar Declaration on the
11 subsequent anniversary. So, sitting in the House of Assembly
12 you would probably make about four Declaration of Interests.
13 Was that an obligation that you were aware of, Dr Pickering?

14 A. Yes, I was.

15 Q. Another obligation that arises--well, the first thing
16 that follows from that was that if the Member of the House of
17 Assembly didn't file on time, then they were in breach of the
18 Act. You're nodding, but unfortunately the Transcript can't
19 record your nodding. Is that an agreement to what I've just put
20 or...

21 A. I'm not sure. Maybe you can rephrase it.

22 Q. Well, let's take you to the Act. I'll tell you what
23 it says, which is a better way to deal with it.

24 You should have a bundle. It's not your bundle, but
25 it's a bundle that, if you look at the bundles to your left, is

1 a bundle which is headed "Constitution and Legislation Bundle".

2 If you open that to page 59--

3 A. I prefer to listen.

4 Q. All right. Well, I'll read it to you so I think it's
5 important that you have the wording.

6 Section 3(1) provides: "A Member shall make a
7 Declaration in the form set out in" the Schedule--"set out in
8 Schedule 1 within thirty days after this Act comes into force,
9 and thereafter (a) on the date on which he assumes the function
10 of his office, and (b) on each subsequent anniversary of that
11 date".

12 So, the first obligation is that on the day that you
13 were sworn into office as a Member of the House of Assembly, you
14 should make a Declaration of Interests, and then on the
15 subsequent anniversaries of that date you should make a
16 Declaration of Interests.

17 Now, you're nodding yes again. The Transcript can't
18 record your--the movements of your head, so do you agree--I
19 mean, do you have any issue with what I've just read out to you
20 from the Act?

21 A. No, I don't.

22 Q. And if a Member of the House of Assembly doesn't file
23 a Declaration on the date due, they would be in breach of the
24 Act, wouldn't they?

25 A. That's what the law says.

1 Q. We couldn't quite hear you.

2 A. Is that what the law says?

3 Q. That's what I'm suggesting the law says. Nobody has
4 disagreed with me so far.

5 A. I don't have any disagreement with that.

6 Q. Thank you.

7 If the other way in which or the other obligation that
8 arises or risk to a Member of the House of Assembly that arises
9 under section 7 because section 7(a) provides that if a Member
10 fails to make a Declaration within a period of three months from
11 the date on which the duty to make the Declaration accrued, then
12 the Member shall be in breach of the provisions of the Act, and
13 the Registrar of Interests is mandated to make a report to the
14 Standing Select Committee. So, that's the second way in which a
15 Member of the House of Assembly can be in breach.

16 Now, part of the mechanism of the system was a
17 Standing Select Committee. Would you agree that the system is
18 only effective if there is, in fact, a Standing Select Committee
19 in place?

20 A. I agree.

21 Q. And that the system is only effective if the Register
22 of Interests, even if it is private, is an accurate record of
23 the Members' individual interests?

24 A. I agree.

25 Q. And in terms of where the responsibility to submit a

1 Declaration lay, is it your view that that responsibility fell
2 on each Member of the House of Assembly?

3 A. Yes.

4 Q. So, it wasn't your role, was it, as a senior Member of
5 your party, to ensure that there was compliance?

6 A. I don't know about that.

7 Q. Again, your voice is very soft, Dr Pickering, so if
8 you could just speak up.

9 A. Rephrase your question again.

10 Q. Did you see it, given that you were a senior Member of
11 your party, as any part of your role to ensure that other
12 Members of the House of Assembly in your party complied with
13 their obligations under the Register of Interests Act?

14 A. I guess so.

15 Q. Did you make--take any steps to ensure that they did
16 so comply?

17 A. Insofar as I did it myself, yes.

18 Q. But, you say insofar as you did it yourself, I mean,
19 how did you spread the word, so to speak? How did you share
20 that with other Members of the House of Assembly?

21 A. Once I had fulfilled my obligation, I would inquire
22 and remind others, simply.

23 Q. Do you remember that whilst a Member of the House of
24 Assembly, that you had correspondence with the Registrar of
25 Interests?

1 A. Yes.

2 Q. Do you remember sending--her sending you letters
3 notifying you that the Declaration of Interests was due?

4 A. Yes.

5 Q. And were you ever sent reminders or chasers if you did
6 miss the date?

7 A. Yes, I was sent reminders, and I was reminded by my
8 secretary, too.

9 Q. Can we look, then, at some of your Declarations,
10 please, and this is the bundle that you--that relates to you
11 alone.

12 If you go, please, to page 63.

13 A. I'm listening.

14 Q. Thank you very much, Dr Pickering.

15 Page 63 is the first page of a Register of Interests
16 Act Declaration. It's been stamped by the Registrar of
17 Interests with this date: January the 7th, 2015, and it has
18 your name at the bottom of it. On page 63, can you confirm
19 that's your handwriting?

20 A. Page 63?

21 Q. Yes, please.

22 A. Yes.

23 Q. That's your handwriting.

24 A. (Witness nods.)

25 Q. If you then go through to the last page of this

1 document, which you will find at page 73, there's a signature
2 there. Is that your signature?

3 A. Yes.

4 Q. There's a date in manuscript. Is that your hand?

5 A. Yes.

6 Q. Is the date the 7th of January 2015?

7 A. Yes, sir.

8 Q. Now, this Declaration is your Declaration for 2014,
9 and that House of Assembly was sworn in on the 8th of December
10 2014, which meant you had to have that Declaration in by the 8th
11 of December 2014, so would you accept that you were, therefore,
12 late with that declaration?

13 A. Yes.

14 Q. If you go, please, to page 52 in the bundle, again
15 that's stamped by the Registrar of Interests as August the 31st,
16 2016.

17 A. Yes.

18 Q. It carries your name on the front page. If you go
19 through to page 62, Dr Pickering, again please confirm that
20 that's your signature.

21 A. Correct.

22 Q. And underneath there's some dates in manuscript. Can
23 you tell the Commissioner which parts of that writing are yours
24 and which belong to somebody else?

25 A. The initial is mine.

1 Q. What about the date? Is that yours, 29th of August
2 '16?

3 A. That is correct.

4 Q. So, the text that says for 23rd of June 2015, that's
5 not in your hand?

6 A. No.

7 (Overlapping speakers.)

8 Q. I'm sorry, I spoke over you.

9 A. I said, "no, sir".

10 Q. That confirms, however, it's likely to be the
11 Registrar's handwriting, but it confirms that this is your
12 Declaration for 2015, which was due on the 23rd of August 2015,
13 and--23rd of June 2015, forgive me. So, you have submitted it,
14 it appears, over a year later.

15 So, again, would you accept that you failed to submit
16 that declaration on time?

17 A. That's correct.

18 Q. And, in fact, that you also fell outside the three
19 months that I referred you to earlier that's set out in
20 section 7; that's right, isn't it?

21 A. That's correct.

22 Q. If you go now to page 41, this is stamped by the
23 Registrar 5th April 2017--it's your Declaration again--and if we
24 look at page 51, can you confirm that that's your signature?

25 A. Correct.

1 Q. The date underneath looks to be the 5th of April 2017.

2 A. Correct.

3 Q. And what's endorsed possibly not in your handwriting
4 is that it's for the 23rd of June 2016; is that right?

5 A. That's my handwriting, correct.

6 Q. So, that's your submitted in April 2017, that's your
7 Declaration that was due on the 23rd of June 2016.

8 A. (Witness nods.)

9 Q. And so, that again, is a Declaration submitted after
10 the Due Date, isn't it?

11 A. Correct.

12 Q. It's also a Declaration submitted after that
13 three-month period that I referred you to that is set out in
14 section 7?

15 A. Correct.

16 Q. If you go and look, please, at page 40, right--if you
17 go, please, I can do it shortly, if I take you, please, to
18 page 38, Dr Pickering.

19 Page 38 is a letter addressed to you, dated the 8th of
20 January 2019 from Victoreen Romney-Varlack, the Registrar of
21 Interests, and it begins by wishing you and yours a very
22 productive and blessed new year, and then continues: "This
23 being my first communication to you for 2019, I fervently hope
24 that I will not have to write to you again for this year
25 regarding the undue Declarations of Interests that fell due on

1 23rd of June 2018 and 23rd of June 2017. I encourage to you
2 submit your Declarations without further delay".

3 Did you subsequent--do you remember submitting further
4 Declarations to the Registrar?

5 A. I honestly do not remember, sir. Don't recall.

6 Q. But it would appear, wouldn't it, Dr Pickering, that
7 by the 8th of January 2019, you had also failed to file your
8 Declarations for 2017 and 2018. Would you accept that?

9 A. It do appear so, but I can't--I don't remember for
10 sure.

11 Q. But it appears again from the Declarations that we've
12 seen, and this letter--that there were five years in a row where
13 you failed to file your Declaration on time, weren't there?
14 2014 through to 2018.

15 A. (Witness nods.)

16 Q. You're nodding again, Dr Pickering. Unfortunately,
17 it's not caught on the Transcript.

18 A. Yeah. I'm--I'm aware now. I can't say that I
19 honestly realised it was like that, but yeah, I'm aware now.

20 Q. Now, you say now you're aware and you didn't realise
21 at the time that it was like that, but why were--why was it like
22 that? How did that situation come about?

23 A. That's a good question. I don't know. I can't
24 remember why it happened that way.

25 Q. Is it a possibility that the House of Assembly or

1 Houses of Assembly that you were a part of simply gave no
2 importance to the Register of Interests?

3 A. That's a difficult question, but it could be possible.
4 I can't--I don't know how to respond to that. It could, it
5 could be not. Being aware of this now, it's--it's difficult to
6 say otherwise.

7 Q. And would you accept this, that where Legislators fail
8 repeatedly to file their Declarations in on time it undermines
9 the whole purpose of the regime, doesn't it?

10 A. Yeah, that's correct.

11 Q. I'm sorry, I didn't quite hear you again.

12 A. I agree with you.

13 Q. Now, one of the elements of that is the Standing
14 Select Committee. Dr Smith just gave evidence just before you,
15 and he confirmed that the first time that the Standing Select
16 Committee was established was in April 2016. Were you ever a
17 Member of the Standing Select Committee?

18 A. No, not that I remember.

19 Q. So far as you can remember, did you have anything to
20 do with the Standing Select Committee?

21 A. Not that I can recall.

22 Q. In terms of what you said in your form, you gave the
23 same answers across all of these forms, and so I'm not going to
24 take you through the detail, but what I would like to do is just
25 ask you some questions about the form itself.

1 Could you go to page 45, please.

2 This is not a question directed specifically at the
3 answers that you gave or the accuracy of the answers that you
4 gave, Dr Pickering. It's directed at what you might have
5 understood you were being asked to provide. It's paragraph 4 of
6 the form, and it's headed "Sponsorship". The first question
7 that a Member of the House of Assembly is asked to provide or to
8 answer is: "Did you benefit from any sponsorship before
9 election where, to your knowledge, the financial support in any
10 case exceeded in aggregate \$2,500?"

11 At the bottom, if you look, there are some Explanatory
12 Notes in italic, and Note 2 reads: "You should Register money
13 given to you by your Election Campaign Committee, and money
14 spent by your Election Campaign Committee in connection with
15 your election with your permission".

16 Now, what did you, when you came to fill in the form,
17 understand by the term "sponsorship before election"?

18 A. It says if you were given monies in excess of \$2,500
19 as an aggregate in total.

20 Q. So, did you read it as to encompass donations to a
21 political campaign?

22 A. In excess of \$2,500?

23 Q. Yes.

24 A. You're asking?

25 Q. Yes.

1 So, if someone came to you and gave you a donation of
2 \$2,000, you wouldn't declare that, would you?

3 A. No.

4 Q. On your understanding?

5 A. Yeah.

6 Q. But, if they gave you a donation to your campaign of
7 2,500 and above, then that is something that you understood you
8 had to declare?

9 A. Yes.

10 Q. One of the questions that the Commissioner has asked
11 of various witnesses is whether there is any regulation of
12 campaign financing. During the time that you were an election
13 candidate, were there any rules that governed how you as a
14 candidate could finance your campaign?

15 A. Not that I was aware of.

16 Q. If you turn to page 47, please. Page 47, please.

17 Paragraph 6 concerns overseas visits. I'm not going
18 to ask you a question about overseas visits, but I want to
19 direct your attention to the note, which says: "You are not
20 required to Register visits undertaken on behalf of the
21 Commonwealth Parliamentary Association. Other categories of
22 overseas visits which are exempt from the requirement to
23 Register are listed in the guidance pamphlet on Registration and
24 Declarations of Members' Interests".

25 To your recollection, did you ever receive,

1 Dr Pickering, a guidance pamphlet on Registration and
2 Declaration of Members' Interests?

3 A. I can't remember.

4 Q. Other than the Explanatory Notes in this form, to your
5 recollection, was any other guidance given to you as to how it
6 should be completed?

7 A. For what to be completed?

8 Q. As to how this form should be completed.

9 A. The form itself?

10 Q. Yes.

11 A. No.

12 Q. So, now, if I take you, please, to "Shareholders" at
13 page 50.

14 A. Five-zero?

15 Q. Five-zero, please.

16 You're asked there: "Do you have either yourself or
17 with or on behalf of your spouse or dependent children interests
18 in shareholdings in any company or body", and then there are
19 thresholds set out for you. And one of those that you have
20 listed is BVI Investment Club.

21 Dr Hubert O'Neal gave evidence yesterday, and he
22 recalled in his evidence that, in 2003 an issue had arisen in
23 relation to the BVI Investment Club. If that accords with your
24 recollection, can you assist the Commissioner further with what
25 the issue was in relation to BVI Investment Club?

1 A. I don't recall that at all.

2 Q. So, you don't recall that coming up in 2003 before the
3 House of Assembly or what would be the Legislative Council then?

4 A. No, I cannot recall. I mean, if you tell me something
5 specific, I might be able to respond, but I can't recall that.

6 Q. Right. I can't be any more specific because that's
7 pretty much what Dr O'Neal was able to say.

8 In completing the form, did you, yourself, consider
9 that any part of it was ambiguous or left room for doubt or
10 uncertainty in what was required?

11 A. Most of it was ambiguous.

12 Q. Did you ever raise that with anyone?

13 A. The Registrar of Interests herself, yes.

14 Q. And did you ever seek to raise it with the Standing
15 Select Committee?

16 A. I don't recall if I did that, but I'm sure recall us
17 discussing it internally.

18 Q. When you say discussing it internally, who discussed
19 it internally?

20 A. You know, caucuses.

21 Q. That's the NDP caucuses?

22 A. Yes.

23 Q. Now, if there were--did others share your concerns
24 about the content of the form?

25 A. Yes, it was a concern.

1 Q. If there was a concern, was there any reason why steps
2 were not taken to amend the content of the form?

3 A. That would be difficult for me to answer.

4 Q. Well, you've explained, Dr Pickering, that this was
5 discussed in caucuses. You have explained that you were not the
6 only one raising concerns.

7 A. (Witness nods.)

8 Q. Either everybody just talked about it and then did
9 nothing or they did something. Was something done?

10 A. About...

11 Q. About the concerns over the content of the form.

12 A. Nothing that I can recall.

13 Q. Did the concerns that were discussed at least within
14 the caucuses lead to perhaps requests for further guidance to be
15 issued to Members of the House of Assembly?

16 A. That is a topic that was discussed also.

17 Q. And what steps were then taken?

18 A. Nothing that I can recall.

19 Q. So, it may well have been that these discussions
20 stayed within the sanctity of the caucus and went no further?

21 A. Like a lot of things, unfortunately.

22 Q. Was there any reason that, despite there being
23 concerns, no one felt so concerned that they wanted to take
24 further steps?

25 A. Can you rephrase?

1 Q. Well, you've said that there were concerns. Your
2 evidence seems to be that those concerns didn't go beyond the
3 caucus.

4 A. (Witness nods.)

5 Q. My question is: If whilst there were concerns, was
6 there any reason it didn't go further?

7 A. I don't know why. Like a lot of things, you don't
8 know why.

9 Q. Was it simply that at least for the NDP caucus, the
10 Register of Interests was simply not a priority?

11 A. No, I wouldn't say that.

12 Q. Can you help at all as to why no steps were taken to
13 improve things?

14 A. I wish I could, but I stated I just can't seem to
15 recall why it wasn't.

16 Q. Can I move to a different topic, please, Commissioner.
17 You may remember this, Dr Pickering, but section 67 of the
18 Constitution of 2007 regulates the tenure of the seats of
19 Members of the House of Assembly, and it also sets out
20 circumstances in which an elected Member of the House of
21 Assembly is obliged to vacate his or her seat, and that
22 includes, to put it in summary, if he or she becomes a Party to
23 any contract with the Government of the Virgin Islands.
24 Circumstances in which they--that circumstance, if it arises,
25 has one caveat, and that is if, in the circumstances it appears

1 just to the House of Assembly to do so, the House may exempt
2 that Member from vacating his or her seat.

3 Now, during your time as a Member of the House of
4 Assembly, were you ever exempted from vacating your seat under
5 section 67?

6 A. I had no reason to.

7 Q. Now, Dr O'Neal recalls that there was a different sort
8 of exemption because, for him--and he said also for Dr Smith and
9 yourself--which was that because you were medical practitioners
10 working in public service, there was a different sort of
11 exemption so you could continue to do so. Do you recall that?

12 A. I'm not even sure what he said. I don't know to what
13 you refer.

14 Q. Well, I'm referring to Dr O'Neal's evidence, and his
15 recollection was that, alongside him--

16 A. I never read his evidence. I don't know what he said.

17 Q. That's why I'm summarising it for you.

18 A. Um-hmm.

19 Q. The point is: Either there was--Dr O'Neal is right
20 and, like him, you were exempted so that you could--

21 A. Exempted from what?

22 Q. Exempted so that you could continue to work as a medic
23 in public service.

24 A. You're confusing me. Work as a medic in the public
25 service?

1 Q. Yes.

2 A. Can you explain what that means?

3 Q. Yes.

4 Dr O'Neal's evidence was that because of the limited
5 numbers of medical practitioners, and particularly senior
6 medical practitioners within the BVI, exemptions were granted to
7 himself, you, and Dr Smith, and he gave himself as an example of
8 being the only ophthalmologist on the island, and that, he said,
9 allowed him to then continue working at Peebles Hospital.
10 Dr Smith's evidence just this morning was that he did bring a
11 motion forward to the House to allow him to work in support of
12 another surgeon who, if that person was away, then he could step
13 in. But he did not, in fact, do that, but he sought the right
14 to do so.

15 My question to you was, in light of what I hope is a
16 fair summary of the evidence of Dr O'Neal and Dr Smith, was
17 whether you were also afforded the same exception?

18 A. It was an interesting question because I've worked
19 continually at the hospital since 1986. I ceased to work in the
20 public service before I sought election to the House of
21 Assembly. I have provided services to the hospital as a
22 professional courtesy to my colleagues for which I have never
23 been financially remunerated, continually, and I still do it up
24 until this day. I have always made my services available to the
25 hospital at no cost, so I have never been remunerated during my

1 time in the House of Assembly for services. I have hospital
2 privileges. My patients pay me through the--privately or
3 through their insurance, but the public service does not, and I
4 do emphasise, does not, remunerate me in any financial way, and
5 it has never happened.

6 Q. The question wasn't really necessarily directed at
7 remuneration. The question was directed as whether there was a
8 need to be exempted, but your evidence seems to be that, whilst
9 sitting as a Member of the House of Assembly, no issue arose in
10 relation to your continuing to practice medicine?

11 A. No, I never had any--you used the word "exempted" in
12 the constitutional sense.

13 Q. That's because that was Dr O'Neal--

14 A. That's a different issue, but from where I sit, I
15 always had hospital privileges, and that I can attest to. I
16 have always had hospital privileges. "Exempted" means to me a
17 different issue all together. I mean, today I still have
18 hospital privileges, so I don't know if we're talking at
19 cross-purposes about exemption and privileges.

20 COMMISSIONER HICKINBOTTOM: As a medic working in the
21 public sector, do you have a contract to do that?

22 THE WITNESS: Absolutely not. No.

23 COMMISSIONER HICKINBOTTOM: Section 67--

24 THE WITNESS: I'm fully aware of that.

25 COMMISSIONER HICKINBOTTOM: That's where the exemption

1 comes in.

2 THE WITNESS: I'm fully aware of that, Commissioner.

3 COMMISSIONER HICKINBOTTOM: If there is no Contract,
4 possibly no exemption required.

5 THE WITNESS: Right.

6 COMMISSIONER HICKINBOTTOM: In any event, as I
7 understand it, you can't recall ever being exempted.

8 THE WITNESS: No, because I never had any reason--

9 COMMISSIONER HICKINBOTTOM: I now understand the
10 reason.

11 THE WITNESS: I've never had any reason to.

12 COMMISSIONER HICKINBOTTOM: Yes.

13 THE WITNESS: I've never engaged in any direct
14 contractual arrangements with the hospital, but I want to
15 emphasise the point: I've always provided services to the
16 hospital. Whenever it was necessary as a professional courtesy
17 to my colleagues when they had to travel overseas, for whatever
18 reason they weren't available, and I still do to this day. It
19 has been a part of my public service and my public commitment.
20 I want to emphasise that.

21 COMMISSIONER HICKINBOTTOM: Yes. No, I understand
22 that. Thank you.

23 BY MR RAWAT

24 Q. Thank you, Dr Pickering.

25 MR RAWAT: Commissioner, those are my questions. Can

1 I conclude by just thanking Dr Pickering for coming today and
2 thanking him for the way in which he has given his evidence.

3 COMMISSIONER HICKINBOTTOM: Can I thank you, too, Dr
4 Pickering, for your time and the way in which you've given your
5 evidence.

6 Mr Hunt, can I just raise one small point with you,
7 hopefully so that you don't have to come back again. What I've
8 said to the Attorney General and Silk Legal who represent other
9 current elected Members of the House of Assembly is that, at the
10 end of the evidence in respect of Members' interests, which will
11 be on Monday now, I will hear submissions on any criticisms I
12 might be minded to make as a result of the evidence I've heard.
13 The only criticisms, I think, that are relevant certainly with
14 Dr Pickering would be in respect of his acceptance that he was
15 late in declaring interests: But is there anything you want to
16 add at this stage in respect of that? There may not be.

17 MR HUNT: Well, thanks for the opportunity,
18 Mr Commissioner.

19 All I would say is that it seems clear that
20 Dr Pickering did not deliberately or willfully seek to evade
21 filing his disclosures.

22 COMMISSIONER HICKINBOTTOM: No.

23 MR HUNT: Is that what you mean?

24 COMMISSIONER HICKINBOTTOM: Yes. And if I can help in
25 this sense, because we've dealt with this with other witnesses:

1 Under section 3, if you're a day after the date, you're in
2 breach. And then under section 7, if you're three months 1 day
3 late, you're in breach of section 7. There are no defenses of
4 reasonable excuse or anything like that, it's simply you're in
5 breach because of time.

6 MR HUNT: I fully understand that, that once you're
7 late, you're late.

8 COMMISSIONER HICKINBOTTOM: Exactly.

9 MR HUNT: But the point that I was trying to make is
10 that sometimes we all forget to pay our taxes, but it doesn't
11 mean that we are evading. If you're late, you pay your taxes,
12 you're late. But nevertheless you pay them.

13 COMMISSIONER HICKINBOTTOM: I understand that, but
14 this is a statutory obligation which various Members, current
15 and past, have not complied with.

16 MR HUNT: Although in the end they did comply.

17 COMMISSIONER HICKINBOTTOM: Eventually, they did
18 comply.

19 MR HUNT: Yes.

20 COMMISSIONER HICKINBOTTOM: Okay. Good. We will
21 write to you anyway, Mr Hunt, but I just wanted to give you an
22 opportunity now. So that, if you had anything to say, you could
23 say it now.

24 MR HUNT: Fine. Thank you very much.

25 COMMISSIONER HICKINBOTTOM: Anything else, Mr Rawat?

1 MR RAWAT: No, thank you, sir.

2 Our next witness is due at 2:00. But if I could ask
3 you to rise briefly, once the witness is here we can start.

4 COMMISSIONER HICKINBOTTOM: Great. Thank you very
5 much.

6 (Witness steps down.)

7 (Recess.)

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Session 3

ARCHIBALD C. CHRISTIAN, COMMISSION WITNESS, CALLED

COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

MR RAWAT: Good afternoon, Commissioner. Our next witness is Archibald C. Christian. May I ask if Mr Christian can be sworn, please.

COMMISSIONER HICKINBOTTOM: Yes, thank you.

COMMISSION SECRETARY: Good afternoon. Would you like to swear an oath or make an affirmation?

THE WITNESS: Make an affirmation.

COMMISSION SECRETARY: If you could turn the piece of paper around.

THE WITNESS: This?

COMMISSION SECRETARY: Yes. Turn it around and read. Thank you.

THE WITNESS: I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.

BY MR RAWAT:

Q. Mr Christian, if you wish to keep your mask off whilst giving evidence, that's not a problem.

A. Thank you.

Q. It might be easier and more comfortable for you. Can I, first of all, thank you for coming to give evidence this afternoon, and there are some formalities that I need to deal

1 with. The first of those is to ask you to give the Commissioner
2 your full name?

3 A. My name is Archibald Clarence Christian.

4 Q. Now, I try, not always with success, to keep my
5 questions short and simple, but if I ever fail and you have any
6 difficulty in understanding a question, please do stop me and
7 ask me to repeat it or to rephrase it, and I shall try and do it
8 again.

9 A. Okay.

10 Q. There are a number of bundles in front of you on the
11 desk. You don't have to look at any of them for the time being,
12 but we will go through a number of documents as we go through
13 your evidence.

14 A. Okay.

15 Q. The last thing to mention to you, and I hope and
16 expect that it won't be a problem for you, but that is to
17 remember, please, to keep your voice up and to please speak
18 slowly and that's because we are having a Transcript made of the
19 Hearing. It's obviously very important that we can record your
20 answers as clearly and accurately as possible.

21 Now, the first question I'm going to put to you is one
22 that I've put to every witness who has come to give evidence so
23 far, and particularly those who have served or are serving in
24 the House of Assembly, and that is to ask you if you could just
25 give an outline to the Commissioner of your professional

1 background.

2 A. I'm a real estate appraiser by training. I joined the
3 firm of Smith Gore Overseas Limited in 1983 as a bookkeeper. I
4 worked in the Sales Department, and for the last 30-plus years
5 have worked in the appraisal Department. I'm also Director and
6 Shareholder of the company.

7 Q. Thank you for that.

8 Now, to move on to your political career, and I'm just
9 going to go through it quickly as I can, and correct me if I get
10 it wrong as we go along, but you were first elected to the House
11 of Assembly in 2011?

12 A. That's correct.

13 Q. And that was as a Member of the National Democratic
14 Party?

15 A. That's correct.

16 Q. And you were re-elected in 2015 again for the same
17 party?

18 A. That's correct.

19 Q. Were you a district or territorial representative?

20 A. I was a territorial representative.

21 Q. Throughout your time in the House--

22 A. Throughout my tenure in the House of Assembly.

23 Q. Thank you. And whilst in the House, did you occupy
24 any ministerial office?

25 A. I was the Junior Minister of Tourism.

1 Q. And you would have been in two Houses of Assembly, the
2 Second and the Third, so from 2011 to 2015 and 2015 to 2019?

3 A. That's correct.

4 Q. In which of those two administrations were you a
5 Junior Minister?

6 A. In the second, in the second term.

7 Q. Thank you. And did you, yourself, contest the 2019
8 election?

9 A. No. I retired from politics in 2019.

10 Q. Thank you. You may have gathered that, while the
11 topic that the Commissioner is investigating at this stage of
12 inquiry is the issues interests, and particularly interests that
13 are held by Members of the House of Assembly, but also
14 circumstances in which individuals have to declare such
15 interests.

16 A. Um-hmm.

17 Q. And one of the points that has come up--concerns the
18 Register of Interests of 2006. As you may recall, the current
19 Register is private. It is not open to the public for
20 inspection. There are certain circumstances in which it can be
21 inspected. Do you agree with that?

22 A. That's correct.

23 Q. Now, whilst you were in politics 2011 to 2019, what
24 was your view on publication of the Register to the public?

25 A. I didn't have any adverse opposition to the Register

1 of Interests information being made public. I am one of the
2 former politicians that held the view that, once we decided to
3 enter into public office and in particular politics that, you
4 know, our Declarations should be made available to the public to
5 a certain point, so I had no opposition to Declarations being
6 made public.

7 Q. You've qualified it by using the phrase "to a certain
8 point".

9 A. Yes.

10 Q. Did you in your own mind consider that there were
11 certain limitations that had to be imposed on publication?

12 A. Yes, I did.

13 Q. And what were those limitations?

14 A. Even though it has not applied to us in the Virgin
15 Islands, I suspect that because we are a very small population,
16 there are certain things about your Declaration that can be
17 misconstrued or misinterpreted by the members of the public, and
18 it could put you at a disadvantage based on perception.

19 Q. Now, if you, as a--if you were running for election
20 and you had--and you were a serving Member of the House of
21 Assembly and your Declaration was open to the public, do you
22 think that the requirement to make Declarations should extend to
23 candidates for Election Office in order to ensure that there is
24 no disparity of information?

25 A. Certainly I do because before we actually were

1 elected, we would still have to publish in an Official Gazette
2 or local newspaper certain information about your interests that
3 you hold, and I believe that's the basis on which you would
4 start providing information to the public about your various
5 interests. That would eventually come to more information as
6 you get into the Register of Interests Declarations.

7 Q. Thank you.

8 Now, you won't--there is no reason why you should have
9 heard this, but earlier this morning, at the start of today's
10 Hearing, I read into the record a report from the Registrar of
11 Interests, Mrs Romney-Varlack. In that Report which dates from
12 May 2009, she referred to statements from the Throne in 2008 of
13 an intent to amend the Register of Interests Acts, and it
14 covered public officials.

15 During your time in the House of Assembly, was that
16 ever something that was debated by the House?

17 A. I don't recall that we actually had a debate in the
18 House of Assembly regarding any further amendments, but I'm
19 aware that we did have discussions outside of House of Assembly
20 regarding the possibility that there would be some amendments
21 coming to the current bill or current act.

22 Q. Now, you said "outside the House". Was that within
23 the NDP caucus?

24 A. Correct, yes.

25 Q. Now, in terms of the efficacy of the Act, would you

1 agree that what's important is that the Register of Interests
2 is, as best as possible, an accurate record of the interests
3 held by Members at a particular point in time?

4 A. Absolutely.

5 Q. Now that you've left politics, you may have left the
6 detail of various acts and laws behind you, and if you need me
7 to remind you of the Register of Interests Acts, please do tell
8 me, but I hope we can take it shortly and you'll be able to
9 confirm what I'm about to put to you.

10 A. Okay.

11 Q. And that is that the Act imposes certain obligations
12 on the individual Members. The first obligation it imposes is
13 an obligation to make a Declaration of your interests on the
14 date that you are sworn into office.

15 A. Yes.

16 Q. That's something that you recall and remember; is that
17 right?

18 A. Yes.

19 Q. And so, if you don't do that, if you don't meet that
20 date, you're in breach of the Act?

21 A. Correct.

22 Q. There is then an obligation to make a Declaration on
23 each subsequent anniversary of that date?

24 A. Correct.

25 Q. And again, if you don't make that date, you are in

1 breach of the Act?

2 A. Correct.

3 Q. The third obligation arises when you have missed the
4 date because, under section 7, if within 3 months of that date
5 you still haven't filed your Declaration, you are said--and
6 these are the words of the Act--to be "in breach of the Act".

7 A. Correct.

8 Q. And the consequences that the Registrar is then
9 obliged to write a report about your breach to a Standing Select
10 Committee?

11 A. Correct.

12 Q. Now, in terms of complying with those obligations, did
13 the responsibility first and foremost lie on each Legislator?

14 A. I absolutely believe it rests with each Member, yes.

15 Q. In your time, which is quite a significant period of
16 time in the Legislature, 2011 to 2019, and when you started you
17 may have been seen perhaps as a more junior Member of the
18 Parliamentary Party, but was there guidance given to you about
19 how to fill in the form?

20 A. I don't recall that there was any particular guidance
21 given to me. I recall that the Registrar of Interests made
22 herself available should you require guidance, but I don't
23 recall that it was something that was directly put to Members
24 and made available.

25 Q. Did more senior figures in your Party take steps to

1 make sure that other Members of the Party within the House of
2 Assembly were complying with their obligations?

3 A. I don't recall.

4 Q. In terms of the authorities within the House,
5 obviously the House has a Speaker, you have a Deputy Speaker, it
6 has a Clerk to the House. During your time in the House, did
7 those authorities take any steps to remind Members of their
8 obligation under the Register of Interests Act?

9 A. The Speaker did.

10 Q. And how did the Speaker do that?

11 A. I think she did it by writing to Members and sometimes
12 in instances when we had a one-off meeting with the Speaker on
13 certain matters, she would refer to the fact that she received a
14 letter from the Registrar of Interests, advising that some
15 Members were perhaps delinquent in their filings.

16 Q. Did you, yourself, receive correspondence during the
17 time from the Registrar?

18 A. Yes, I did.

19 Q. She is--and she hasn't made any kind of statement to
20 the Commissioner, but would you agree that Mrs Romney-Varlack
21 was assiduous in writing to Members reminding them of their
22 obligations?

23 A. She was very assiduous.

24 Q. Could we look briefly, please, at a number of your
25 Declaration, and just--and if I explained, Mr Christian, what

1 I'm moving on to now is looking at two things: First, how the
2 system worked in terms of people making the dates, and the
3 second is--and which we'll go on to it perhaps in a little more
4 detail is--how useful the form was to you as a Member of the
5 House of Assembly.

6 A. Okay.

7 Q. If I take you, please, to page 132 in your bundle.

8 A. Yes.

9 Q. This is the first page of a registration form, so it's
10 the first page of your Declaration.

11 A. Right.

12 Q. It's stamped by the Registrar August 11, 2015. You
13 will find the last page of the document at page 162.

14 A. Yes.

15 Q. Can you confirm to the Commissioner that that's your
16 signature?

17 A. Yes, it is.

18 Q. And could you just tell us the date underneath,
19 please.

20 A. July 14, 2015.

21 Q. Now, this is for, I think if my math is right, for the
22 Third House of Assembly, which was sworn in on the 23rd of
23 June 2015, so it would appear that at least for this Declaration
24 you had missed the Due Date; would you agree with that?

25 A. Yes.

1 Q. And so, because of the way the Act works, you were, by
2 missing the Due Date, you were in breach of section 3?

3 A. Yes.

4 Q. If you go, please, to page 141?

5 A. Yes.

6 Q. And to help you, Mr Christian, we're looking at your
7 2016 Declaration, it's stamped June 21st, 2016, by the
8 Registrar, and if you go to 153--sorry, I correct that, to 151,
9 please.

10 A. Yes.

11 Q. Again, could you confirm that that's your signature?

12 A. That is my signature.

13 Q. And although I think the copy may be a little faint,
14 you've written underneath there June 23rd, 2016.

15 A. That's correct.

16 Q. So, the date stamp of the Registrar may have been
17 wrong, but in any event, because you had to file by 23rd of
18 June 2016, you have made the required date, haven't you, in
19 2016?

20 A. Correct.

21 Q. If you now go to the 2017 Declaration, which you'll
22 find at page--give me a moment--you'll find it at page 130.

23 A. Yes.

24 Q. It's not stamped by the Registrar this time, but if we
25 go to page 140.

1 A. Yes.

2 Q. Again, is that your signature?

3 A. Yes, it is, Commissioner.

4 Q. And again, you've put the date there of June 19, 2017.

5 A. Correct.

6 Q. And so, remind you again, the Due Date is the 23rd of
7 June, 2017, so in 2017, you have made the Due Date, haven't you?

8 A. Correct.

9 Q. Your last Declaration in that House of Assembly was
10 your 2018 Declaration. You'll find the first page of that at
11 page 117.

12 A. 117, Commissioner?

13 Q. Yes.

14 A. Yes, correct, I have it.

15 Q. That's the first page so that you can orientate
16 yourself. It's of your August 2018 Declaration. If I take you
17 to where your signature appears, that's at 129.

18 A. Yes.

19 Q. Again, that's your signature, isn't it?

20 A. That's correct.

21 Q. And you've dated it September 20th, 2018?

22 A. Correct.

23 Q. So, again, you are now, because of the Due Date is the
24 23rd of June 2018, you have missed the Due Date, haven't you?
25 You should have got it in by the 23rd of June 2018,

1 Mr Christian? Would you accept that?

2 A. I would accept that.

3 Q. Yes.

4 But you are luckily just inside the three months,
5 aren't you?

6 A. Correct.

7 And I think that would have applied to one of the
8 previous ones that you referred to as well.

9 Q. Yes.

10 A. In June.

11 Q. Yes.

12 I think I'm not going to suggest to you that you were
13 ever so delinquent to use the Registrar of Interests' word that
14 you came within the scope of section 7.

15 A. Thank you.

16 Q. Now, you should, I hope, have in front of you a loose
17 piece of paper, it's just there. One of the questions that has
18 been canvassed with witnesses is when the Standing Select
19 Committee was established. The Act, although it was--it came
20 into law in 2006, did not come into force until February 2008.

21 A. Yes.

22 Q. And part of the mechanism was the Standing Select
23 Committee.

24 Now, this appears to have been established for the
25 first time in April 2016. You are, what you have in front of

1 you, I hope, is the Resolution establishing the Standing Select
2 Committee.

3 Do you see that?

4 A. Yes, Commissioner.

5 Q. You are listed as one of the Members of that
6 Committee. Can you confirm that you were, indeed, appointed to
7 that Standing Select Committee charged with the Register of
8 Interests?

9 A. Yes, Commissioner.

10 Q. Now, that's in the Third House of Assembly.

11 A. Correct.

12 Q. The last House of which you were a Member.

13 A. Yes, sir--yes, Commissioner.

14 Q. In your time as a Member of that Committee, how often
15 did it meet?

16 A. Commissioner, I have the recollection of at least one
17 meeting in 2017 or thereabouts, and then unfortunately
18 afterwards we were impacted by Hurricane Irma and María, and the
19 rest is history.

20 Q. Now, between April 2016 and the arrival of Hurricane
21 Irma is still a significant period of time?

22 A. Correct.

23 Q. Was there any reason why the Committee couldn't meet
24 any earlier?

25 A. Commissioner, I couldn't give you an accurate reason.

1 You know, we are always guided by a Chairman, and the Chairman
2 basically sets the timetable and agenda, so I couldn't give a
3 reason why we--we didn't have more meetings.

4 Q. One of the tasks that the Committee has to do is to
5 agree the form of the Register. It is a requirement under the
6 Act that the Registrar enter Declarations into a Register.

7 A. Yes.

8 Q. The format of that Register falls to the Standing
9 Select Committee to determine?

10 A. Yes.

11 Q. And this was one of the concerns of the Registrar
12 expressed before 2016, and she described the Register
13 essentially as a "blank book".

14 Do you remember, at any time that you were a Member of
15 the Standing Select Committee, determining what form the
16 Register should take?

17 A. No, Commissioner.

18 Q. Do you remember the Chairman--and the Chairman is
19 recorded as The Honourable Mark Vanterpool--ever raising this as
20 something that the Committee had to deal with?

21 A. I don't recall, Commissioner.

22 Q. Now, you've acknowledged that the Registrar was
23 assiduous in her correspondence to Members of the House of
24 Assembly. I want to now look at the form itself, and we can
25 take any example of that. If we go to page 117, please,

1 Mr Christian.

2 A. Yes.

3 Q. This is a serious question, but did you find this a
4 difficult form to complete?

5 A. Initially, when I got the form and I started to go
6 through it, it did take me some time to understand or try and
7 understand the legal terminologies. In my opinion, it wasn't
8 written in layman's English, so you have to take the time and
9 try and understand what exactly the form was trying to extract
10 from Members.

11 Q. And did you go--you mentioned that--and these are my
12 words--that the Registrar's door was open to Members if they
13 needed assistance?

14 A. Yes.

15 Q. Was she your first Port of Call?

16 A. Absolutely, she was.

17 Q. Was there anyone else that you could have gone to for
18 assistance?

19 A. I didn't think about anyone else.

20 Q. Now, if we look at the Preamble, which is at 117, it
21 says "the main purpose of the Register of Interests is to
22 provide information of any pecuniary interests or other material
23 benefit which a Member receives which might reasonably be
24 thought by others to influence his or her actions, speeches or
25 votes in the House of Assembly or actions taken in his or her

1 capacity as a Member".

2 Now, stepping back from that wording and you have
3 spoken--you've given evidence about the inquiries you made and
4 your assessment of the form, stepping back from it, what
5 conclusion did you come to as to the purpose of this form?

6 A. My initial reaction to the form was that, as an
7 elected Member, I needed to disclose whatever interest I held as
8 a private citizen to the public so that the public could
9 understand exactly where my interests were and how I obtained
10 those interests. So, from the beginning of my political life, I
11 didn't have any adverse reactions, nor did I have any objections
12 to making whatever interests I held public.

13 Q. And so, even though you knew it was going to be
14 private, did you operate with that approach--

15 A. That's--that's the approach I operated with.

16 Q. Now, if you go to page 128.

17 A. Yes.

18 Q. This is the form. We obtained these forms from the
19 Registrar, but you'll see--and this is in relation to your
20 entry, and this is your 2018 form, it's your entry where you've
21 got to declare shareholdings.

22 A. Um-hmm.

23 Q. And she wrote underneath "you need to answer this
24 question more fully". And then that's on the 10th of October of
25 2018. If you just look at page 170 in the same bundle, this is

1 a letter from the 9th of January 2021 in which--

2 A. 2012.

3 Q. 2012, you're right. Thank you.

4 But the Registrar has acknowledged receipt of your
5 Declarations of Interests for 2011.

6 And she then says "in perusing the Declarations, I
7 note some questions which I believe are incorrectly answered",
8 and she then invites you to visit the office at your earliest
9 convenience.

10 A. Yes.

11 Q. So, do you remember her returning Declarations to you
12 for more information to be given or for details to be corrected?

13 A. Yes, I do remember.

14 Q. Now, we can jump back to page 117. I don't want to go
15 into the detail of your Declarations, Mr Christian. They are
16 focused on your links, if one likes, to Smith Gore BVI Limited.

17 A. Right.

18 Q. I will take you to pages if you need to see them, but,
19 in short, what you set out to do is you put your links to Smith
20 Gore in the form on more than one occasion, didn't you?

21 A. Yes, I did.

22 Q. And if we look at it, you declared--you can see at
23 118, you declared it as a directorship?

24 A. Yes.

25 Q. At 119, you also declared it is a source of

1 renumeration?

2 A. Yes, I did.

3 Q. And then if you go to 3--

4 A. Yes.

5 Q. --you, in effect, said that you or Smith Gore
6 effectively will, from time to time, undertake appraisals for
7 Government bodies?

8 A. Correct.

9 Q. And then you have also, if we go to 127, declared
10 shareholdings?

11 A. Yes, I did.

12 Q. So, was your approach to the form, or did you approach
13 the form with the appreciation that your association with a
14 company or a source of money outside being a Member of the
15 Assembly may have to be recorded in different ways in different
16 parts of the form?

17 A. That was my approach.

18 Q. Now, you said a few moments ago that you felt that the
19 form was--could have been written in layman's terms or layman's
20 English?

21 A. Layman's English, yes.

22 Q. It has the hand of a lawyer when perhaps it could
23 benefit from the hand of a real estate appraiser.

24 Now, for yourself--and again, I'm asking you to step
25 back and just focus on your experience in completing the

1 form--were there any particular aspects of it which you thought
2 could be improved?

3 A. Of the form?

4 Q. Yes.

5 I mean, it has 10 categories to it. Were there sort
6 of any particular sections or categories where you thought "I'm
7 not quite sure what's being asked of me here, I need more
8 detail"?

9 A. Yeah.

10 Commissioner, nine years later, if you look back at
11 the form, yeah, I think I could agree that perhaps some
12 improvements could be made in the way the questions are crafted
13 so that clearer interpretation could be garnered by the Member,
14 but I'm not an expert in crafting these types of documents, so I
15 can only offer my experience based on how I interacted with the
16 form.

17 COMMISSIONER HICKINBOTTOM: Yes, and that's all we can
18 ask for. The form is, in fact, attached to the statute.

19 MR RAWAT: It is.

20 COMMISSIONER HICKINBOTTOM: It is.

21 So the form is a mandated form under the statute.
22 It's how you approached it and how you understood it that
23 Mr Rawat is asking about.

24 THE WITNESS: Correct, yes.

25 BY MR RAWAT:

1 Q. Can I ask you just to turn to page 124, please.

2 What the form gives you is, as you go through it,
3 there are Explanatory Notes in italics, which as the
4 Commissioner has pointed out, the form is part of the Act.
5 You've spoken of the Registrar of Interests has a source of
6 information, but if you look at page 124, the last part of the
7 italicised writing, refers to a guidance pamphlet on
8 Registration and Declaration of Members' Interests. Do you
9 remember receiving a guidance pamphlet?

10 A. No, I don't recall.

11 Q. Either in what was your First House of Assembly was
12 2011-2015, or the subsequent House of Assembly?

13 A. I don't recall. I don't know if there is an example
14 of the guidance pamphlet that you can show me, but I have no
15 recollection.

16 Q. So, is it possible that you may have received it but
17 you do not now remember receiving it?

18 A. That's possible.

19 Q. I see.

20 A. That's possible.

21 Q. If you look--and this is just if you go to
22 page 128--sorry, 129, please, Mr Christian.

23 A. Yes.

24 Q. It's the last section of the form. It's headed
25 "Miscellaneous", and it tells the Member of Assembly completing

1 the form, "if bearing in mind the definition of purpose set out
2 in the introduction to this form"--that's the Preamble I took
3 you to earlier--'you have any relevant interests which you
4 consider should be disclosed but which do not fall within the
5 nine categories set out above, please list them".

6 Now, what--in your experience in filling the form,
7 what did you conclude you were being asked to give there?

8 A. I thought, Commissioner, that anything outside of what
9 was given in the previous sections of the form where you declare
10 your interests, your shareholdings, any other items outside of
11 that "should be listed under the miscellaneous", and in my
12 instance it didn't apply to me so I didn't fill it in.

13 Q. Now, the form says, it refers to "you have any
14 relevant interests which you consider".

15 Did you--was it your view that that question was
16 directed at you rather than at immediate family?

17 A. It could be both, me and a family member.

18 Q. And if a family member did have a relevant interest,
19 would you have declared it--

20 A. Absolutely.

21 Q. --on your understanding--

22 A. Based on my principles, I would have declared it.

23 Q. Could I just take you to another topic, please, and
24 that is section 67 of the Constitution, you may well know the
25 Constitution better than I do, Mr Christian, but section 67

1 relates to the tenure of seats of Members of the House of
2 Assembly, and it also covers circumstances in which a Member may
3 be required to vacate his or her seat.

4 One of those circumstances, put simply, is if that
5 Member becomes a Party to any contract with the Government of
6 the Virgin Islands.

7 A. Um-hmm.

8 Q. However, the House can exempt the Member from vacating
9 their seat.

10 A. Yes.

11 Q. And the House--it's a discretionary decision of the
12 House, and the House can do so if in the circumstances it
13 appears just to the House of the Assembly.

14 Now, in your case, during your time as a Member of the
15 House of Assembly, were you the beneficiary of an exemption
16 under section 67, which meant that you did not have to vacate
17 your seat?

18 A. No, Commissioner.

19 Q. Do you remember being asked to vote on such motions
20 exempting other Members from vacating their seat?

21 A. Yes, Commissioner.

22 Q. In those circumstances--and I appreciate it's a little
23 while ago now, but in those circumstances--what information was
24 available to you to help you determine how you would vote on the
25 motion?

1 A. Well, we were given a background perspective of the
2 Member that was brought before the House for exemption, the area
3 of business or expertise or a consultancy that that person would
4 have been provided, and then we would have an open debate on the
5 floor of the House, and then we would vote on the motion.

6 Q. And when you say "we", as in the "we" that has given
7 information, is that every Member of the House of Assembly,
8 irrespective of Party or Members of the Government?

9 A. Members of the House of Assembly, the entire body of
10 the House of Assembly.

11 Q. Was it the practice, in your Party, to meet in caucus
12 before such a motion in order to determine how you would vote as
13 a group?

14 A. We perhaps would have met in caucus and determined the
15 reason why the motion was being brought for that Member to be
16 exempt.

17 Q. And again, I'm asking you to dip back into your
18 memory, but you were a Member of the House of Assembly across
19 two sessions. How often were these exemptions granted in your
20 experience?

21 A. In our two terms, not very often, Commissioner.

22 Q. Are you able--this--

23 A. I recall one--I recall one occasion, yes.

24 Q. So--it's in the very low numbers, then?

25 A. Yes, absolutely.

1 MR RAWAT: Commissioner, may I just have a moment,
2 please?

3 COMMISSIONER HICKINBOTTOM: Yes.

4 MR RAWAT: Commissioner, those are my questions.

5 Can I conclude, first of all, by thanking Mr Christian
6 for coming this afternoon to give evidence to the Commission,
7 but also, secondly, to thank him for the way in which he has
8 given that evidence.

9 THE WITNESS: Thank you, sir.

10 COMMISSIONER HICKINBOTTOM: Thank you.

11 And can I add to that my thanks, Mr Christian, both
12 for coming and the manner in which you've given your evidence
13 very clearly and helpfully. Thank you very much.

14 THE WITNESS: Thank you, sir.

15 (Witness steps down.)

16 MR RAWAT: Commissioner, our next witness is not due,
17 I think, for some time. They're scheduled for 3:30. It's The
18 Honourable Marlon Penn. If he arrives earlier, we will, of
19 course, start as soon as we can.

20 COMMISSIONER HICKINBOTTOM: I will rise until then.
21 Thank you very much.

22 MR RAWAT: Thank you.

23 COMMISSIONER HICKINBOTTOM: Thank you, again.

24 THE WITNESS: Thank you.

25 (Recess.)

1 Q. Thank you.

2 As I tell all witnesses, I try to keep my questions
3 short and simple. I confess that it doesn't always work, but if
4 I ask you a question that you have difficulty understanding,
5 please do stop me and ask me to repeat it or rephrase it, and
6 I'll try and do so.

7 A. Okay.

8 Q. You will have in front of you on the desk a number of
9 bundles. You don't need to look at any of them now, but we will
10 go to some of the documents as we go through your evidence.

11 A. Okay.

12 Q. The last thing to ask you to do is just to keep your
13 voice up and to speak slowly. The microphone in front of you is
14 not there to amplify but to record. It's important for the
15 Transcript to accurately and clearly record your answers this
16 afternoon.

17 Can I start, as I have done with all witnesses and
18 that is to ask you just to give an outline of your professional
19 background before you came into politics.

20 A. Okay. In '95, I started work at the Department of IT
21 in the Government of the Virgin Islands as an data entry Clerk.
22 I left there in '97 and I went to the Financial Services
23 Department, which was then the Department where I was an IT
24 technician. Subsequent to my arrival at the Financial Services
25 Commission, I obtained a Bachelor's degree in management

1 information systems from the University of Temple in
2 Philadelphia. I subsequently left the Financial Services in
3 2011 after getting a seat on in the Eighth Electoral District.
4 When I left there, I was a technology development manager.

5 Q. Thank you.

6 You've helpfully confirmed the first time that you
7 were elected to the Legislative Assembly was in 2011, and that
8 was on behalf of the National Democratic Party?

9 A. Correct.

10 Q. And was it as a representative of the Eighth District?

11 A. Correct.

12 Q. And you were then re-elected in 2015 and in 2019?

13 A. Correct.

14 Q. And still throughout you've represented the Eighth
15 District?

16 A. Correct.

17 Q. Between 2011 when you were first elected in 2019, did
18 you hold any ministerial office?

19 A. No, I did not.

20 Q. Since 2019, you've been in opposition?

21 A. Yes.

22 Q. And you are the leader of Her Majesty's loyal
23 opposition; is that right?

24 A. That is correct.

25 Q. Thank you. To move on to the topic that I've

1 canvassed with more than one witness now, but it is important to
2 seek your view on it, Mr Penn, as you may have gathered, one of
3 the matters that the Commissioner is interested in is the
4 Register of Interests Act 2006 and how it operates as a system.
5 The one aspect of the Act is that the Register itself is not
6 available to the public.

7 A. Yes.

8 Q. It is available for inspection under prescribed
9 circumstances, but a member of the public can't just walk in and
10 see it; that's right, isn't it?

11 A. That's correct.

12 Q. Now, what is your view on publishing the Register to
13 the public?

14 A. I have no personal objections to Members' Declarations
15 being published publicly. If you ask the question, if we go
16 further in Members' personal Declarations and you creep into
17 private person declarations, then I have--I think we need
18 further conversations among Members, and further conversations
19 amongst the public, but for me as a public official, I have no
20 difficulty because that is the life that we've chosen.

21 Q. Can I break that down a little with you. Taking first
22 the position of Members of the House of Assembly, your view is
23 that if you become--if you seek election and you are elected to
24 the House, then your Declarations of Interests should be
25 available to the public?

1 A. I take that view.

2 Q. How long have you held that view?

3 A. It's been my view. I have no difficulty with my
4 Declarations being made public.

5 Q. Now, you referred to private individuals' Declarations
6 being made public. What did you specifically mean by private
7 individuals?

8 A. I mean, if there's any amendments to the list of
9 interests that requires to list private individuals who are not
10 elected Members, I think there needs to be a special
11 consideration in terms of how that information is shared with
12 the public.

13 Q. By "private", do you mean public officers?

14 A. No, I don't mean public officers.

15 Q. Right. So, in what circumstances do you think the
16 interests of a private individual might be made public?

17 A. Well, I don't know what level of amendments that we're
18 considering for the Register of Interests, so that's why I'm
19 saying there needs to be further conversations.

20 Q. But taking it to--and there has been--the Commissioner
21 has heard evidence this morning or received evidence about that,
22 in the past, there has been proposals to widen the scope of the
23 2006 Act to include public officers. Is that something that
24 you're in favor of?

25 A. I think once you're in public life, those I take need

1 to be considered.

2 Q. And that's even if you are someone in the civil
3 service who's appointed as a Secretary or to any job within the
4 civil service?

5 A. Again, the level of detail we have to discuss once we
6 see the level of detail.

7 Q. But, in principle, you would not be against measures
8 that capture the interests of public officers?

9 A. No.

10 Q. I'm going to ask you just to keep your voice up--

11 A. No.

12 Q. Sometimes I think you might nod "yes" or "no", but
13 it's not always recorded on the Transcript.

14 A. No problem.

15 Q. Thank you.

16 Would you accept this proposition, that the Register,
17 whether it is private or public, would only be effective if it
18 is an accurate record of the interests that are declared?

19 A. I accept.

20 Q. And for it to be accurate, it must be up-to-date,
21 mustn't it?

22 A. I accept.

23 Q. Now, you will, not least because you have been in the
24 House of Assembly for some years, but you may well be familiar
25 with the 2006 Act, and so I hope to take this shortly, but if

1 you need me to take you to the Act and what it prescribes,
2 please do tell me.

3 A. No, I'm fine.

4 Q. There is section 3 of the Act requires, doesn't it,
5 that, as a Member of the House of Assembly, you have to make a
6 Declaration of your interests on the day that you are sworn.

7 A. Correct.

8 Q. And you are then--that obligation arises on every
9 subsequent anniversary of that date, doesn't it?

10 A. Correct.

11 Q. But there is also a second obligation that arises, and
12 before I go to that, would you agree that if you--under the Act,
13 if you haven't filed by the date that the Declaration is due,
14 you are in breach of the Act?

15 A. Correct.

16 Q. And the next obligation that arises comes under
17 section 7 of the Act, and that's section 7(a) prescribes that if
18 a Member hasn't filed a Declaration within three months of the
19 date that it's due, then that is a breach of the Act, and that's
20 the wording of the Act itself? It defines that as a breach, and
21 the requirement is that the Registrar of Interests must write a
22 report to the Standing Select Committee. Is that an element of
23 the Act that you are aware of?

24 A. I'm aware.

25 Q. Now, in terms of where those obligations sit, do you

1 accept that it's the responsibility of each Legislator to
2 fulfill their Declarations and submit it?

3 A. That's accurate.

4 Q. You're now a Party leader. Are there any--in your
5 view, is there any role for Party leaders to ensure that Members
6 of their Party in the House of Assembly have complied with this
7 important regulation?

8 A. It's not explicit statutory obligation, but I think
9 leadership comes with responsibility.

10 Q. And expanding that beyond the Party, and without in
11 any way suggesting that you're not a youthful man, but are
12 there--do you see that as a more experienced Member of the House
13 that there is also an obligation there to encourage all of the
14 Members of the House of Assembly to file on time?

15 A. There is no statutory obligation, but again as I said,
16 leadership has responsibilities.

17 Q. Now, if you turn to your bundle, please, Mr Penn, and
18 to page 1 of the bundle.

19 A. Which one? It's the same one you sent to me?

20 Q. Yes, that's right.

21 You should, if I've taken you to the right page, have
22 a letter dated the 19th of February 2021. I think you've got
23 the index. If you turn through, the pages start you should have
24 the pages in the bottom center?

25 A. Yes, I have it.

1 Q. Page 1?

2 A. Yes.

3 Q. At the top there's the date 19th of February 2021.

4 A. Hum.

5 Q. And it sets out--it's a request addressed to you as a
6 Member of the House of Assembly, and it concerns the 2006 Act,
7 and at the beginning--at the bottom of the page, rather, the
8 letter sets out a number of requests from the Commissioner. The
9 first is to give the date and content of each Declaration of
10 Interests you've made. The second is, irrespective of making
11 any such Declarations--and that's on the next page--to give the
12 information and documents that you would provide in such a
13 Declaration if it had to be made as of the date of the letter.
14 And the third is--asks this: "If during your period of
15 appointment as a Member you failed at any time to comply with
16 your obligation to make such a Declaration, in respect of each
17 such failure a full explanation as to why you did not make such
18 Declaration".

19 Now, that letter was sent to you, as I said, on the
20 19th of February, 2021. Was there any reason you decided not to
21 reply to it?

22 A. We had a meeting similar discussing this letter
23 particularly. I was under the impression at the time that the
24 legal representatives to the IRU would respond on our behalf
25 because we were advised that we didn't have the legal parameters

1 to get that information from the--from the Registrar of
2 Interests.

3 Q. I see.

4 So, the advice given to you was that you couldn't get
5 the information sent--you couldn't consent to the information
6 being sent from the Registrar of Interests?

7 A. Yes, subject to why we made the amendment shortly
8 thereafter from the Registrar of Interests.

9 Q. And that's the amendment to the Act that allows a
10 Commission of Inquiry to access the Register?

11 A. Yes.

12 Q. Did you vote in that favor of that amendment?

13 A. Yes, I did.

14 Q. But if you look back at page 2, Mr Penn, the letter
15 asks for more than that. It asks you irrespective of the
16 Declarations, irrespective of the forms that you submitted to
17 the Registrar, it asks for the information and the documents
18 that you would provide.

19 Now, that's not something that the Registrar can help
20 with. It's something that comes from you. Was there any reason
21 that you didn't feel able to answer that question?

22 A. No.

23 Q. But you didn't answer the question?

24 A. NO, I did not.

25 Q. Was there any reason? Was that a question that you

1 could have answered at the time?

2 A. At the time the documentation prior to 2017 I did not
3 have. Probably could have answered with the subsequent
4 documentation, but I didn't.

5 Q. It may be the way I phrase the question but if you
6 look again at the request number 2 from the Commissioner, what
7 the Commissioner was asking was if you now, as of 19th of
8 February 2021, had to make a Declaration, what information and
9 documents would you provide to a Registrar?

10 A. Okay.

11 Q. That was something that you could have complied with,
12 wasn't it?

13 A. Probably, yes.

14 Q. And what 3 was asking, was that if at any you'd failed
15 with your obligation to make a Declaration to the Registrar,
16 could you give an explanation of that failure, that was
17 something you could have given to the Commissioner, wasn't it?

18 A. It could have.

19 Q. Could we look, please, at some of the Declarations of
20 Interests that you did file with the Registrar. And if I could
21 explain, Mr Penn--and this is the explanation I've given to a
22 number of witnesses--firstly, the Commissioner is--the purpose
23 of my question is to assist the Commissioner with understanding
24 the system that operates now and has operated in relation to the
25 Register of Interests Act, and so there are two aspects to that

1 in my questions, in two parts of what--of the questions that I
2 will be asking.

3 The first is to look at how Members complied, but the
4 second which we will come to is to ask individual Members of the
5 House of Assembly how they approached the form when they had to
6 answer questions on it. So, if I take the first aspect first,
7 and I ask you, please, to turn up page 165 in your bundle. This
8 is a document which is--it's a Declaration form. It's the first
9 page of it, and it has your name at the bottom and your
10 district. It's stamped as being received on February the 21st,
11 2017, by the Registrar. If you go, please, to page 175, you
12 have signed that, haven't you?

13 A. Yes, I have.

14 Q. That's your signature?

15 A. That's my signature.

16 Q. And underneath, the writing in relation to the dates,
17 is that in your hand?

18 A. Yes, it is.

19 Q. And what you've written is 21st of--is it 21st of
20 February 2017?

21 A. Yes, it is.

22 Q. For 8th of December 2013?

23 A. Yes, it is.

24 Q. And so were you, as of the 21st of February 2017
25 submitting a Declaration that was actually due on the 8th of

1 December 2013?

2 A. Yes.

3 Q. And so, doesn't it follow that you clearly were in
4 breach of the Act, weren't you?

5 A. Yes.

6 Q. So, you had missed in two ways. You had missed the
7 Due Date, December 2013?

8 A. Um-hmm.

9 Q. And you were also in breach of section 7; that's
10 right, isn't it?

11 A. Yes.

12 Q. If we go through--and please go to page 154. This is,
13 as we'll see in a moment, your Declaration for 2014.

14 Do you have the page, Mr Penn?

15 A. Yes, I do.

16 Q. Thank you.

17 It's stamped as received by the Registrar on
18 February 21st, 2017. Again, it carries your name and district.
19 And if you turn through to page 164, you have signed and dated
20 the document, haven't you?

21 A. Yes, I have.

22 Q. And what you have written is 21st of February 2017 for
23 8th December 2014. So, does it follow--and do you
24 accept--Mr Penn, that in relation to your 8th of December--your
25 2014 Declaration, you were in breach both of section 3 and of

1 section 7?

2 A. I accept.

3 Q. If you go through to page 144, please, again a
4 Declaration form stamped received February 21st, 2017, with your
5 name and district recorded on the front page. If you turn
6 through to page 153 again, you have signed and dated that form,
7 haven't you, Mr Penn?

8 A. Yes.

9 Q. And the date that you have written there--please
10 confirm--is the 21st of February 2017, for 8th December 2015.

11 A. Correct.

12 Q. And so, that is your 2015 Declaration being made. And
13 again, you were in breach of section 3 and section 7, weren't
14 you?

15 A. I confirm, yeah.

16 Q. If you go, please, to page 133, this is your--it's
17 stamped again. It's a Declaration form with your name and
18 district on it. It's stamped February 21st, 2017. If you go,
19 please, to page 143, again this is the last page of the
20 document. It carries your signature, and you've dated it,
21 haven't you?

22 A. Correct.

23 Q. And you have dated this one, 21st of February 2017,
24 for 8th December 2016.

25 So, once again, do you accept that this, your 2016

1 Declaration, was filed in breach of sections 3 and 7 of the 2006
2 Act?

3 A. I accept.

4 Q. Now, I'm going to pause there because what we have is
5 that on one date, the 21st of February 2017, you filed four
6 Declarations?

7 A. Um-hmm.

8 Q. And you filed them all late, didn't you?

9 A. I accept.

10 Q. Now, if you look, there is--there should be, I hope, a
11 loose piece of paper on the table in front of you.

12 You have been handed, Mr Penn, a resolution. It's
13 Resolution No 3 of 2016. It's the resolution of the House of
14 Assembly of the Virgin Islands, which resolved on the 25th of
15 April 2016 to do two things: The first was to establish a
16 Standing Select Committee known as the Register of Interests
17 Committee, and the second was to appoint a number of Members to
18 that Committee, and you were included amongst those; is that
19 right?

20 A. That's correct.

21 Q. Now, established on the 25th day of April 2016, at the
22 time that you were appointed to that Committee did you disclose
23 to anyone that you had not filed a Declaration of Interests for
24 some four years?

25 A. I don't think I did.

1 Q. Three years, I'm sorry.

2 A. I don't think I did, no.

3 Q. To your recollection--and this is a committee
4 established in the Second House of Assembly, so the 2011--sorry,
5 Third House, it's the 2015 to '19 session, how often did that
6 Select Committee meet?

7 A. I recall one particular meeting.

8 Q. And what was discussed at that meeting?

9 A. It was in 2017. I don't recall the specifics of the
10 meeting. I think the--I really can't--I don't want to say and I
11 don't recall the specifics.

12 Q. I appreciate it's some time ago, but doing the best
13 that you can, do you remember if the Committee was asked to
14 discuss the form of the Register itself?

15 A. I honestly cannot recall.

16 Q. And after that 2017 meeting, were there any other
17 meetings, to your recollection?

18 A. None to my recollection.

19 Q. Did you--were you aware that the one purpose of the
20 meeting was to consider--one purpose of the Committee was to
21 consider reports submitted to it by the Registrar?

22 A. I can't--I can't recall, to be honest with you.

23 Q. Did you, when the Committee did meet, reveal to anyone
24 else on the Committee that you had been delinquent for a number
25 of years in terms of submitting Declarations of Interests?

1 A. Not the Members of the Committee, but the Registrar
2 was aware.

3 Q. The Registrar was aware?

4 A. Because by that time I had already filed my
5 Declarations.

6 Q. I see.

7 Can I come back to the awareness of the Registrar in a
8 moment.

9 A. Um-hmm.

10 Q. Now--and I will just return, if I may, just to your
11 subsequent Declarations. If we go, please, to page 132--sorry,
12 if you give me a moment. It's 122, please. This is a
13 Declaration. It has your full name typed on it and your
14 district. It's got the stamp of the Registrar. She has written
15 in manuscript the date 16th of February 2021. If you go,
16 please, to page 132, Mr Penn, that's your signature, isn't it?

17 A. Yes, it is.

18 Q. And the date in typescript underneath is the 16th of
19 February 2021, but what's added is "for filing 23rd June 2017".
20 So, it would seem that you filed your 2017 Declaration on the
21 16th of February 2021; is that right?

22 A. Correct.

23 Q. So, once again, do you accept that you were in breach
24 of sections 3 and 7 of the 2006 Act?

25 A. I accept.

1 Q. If you go, please, to page 111, this is, I'm going to
2 suggest, your 2018 Declaration, but it is stamped by the
3 Registrar and dated 16th of February 2021. If you go to
4 page 121, that has your signature, doesn't it?

5 A. It does.

6 Q. And you have dated it--it's typed 16th of
7 February 2021 for filing 23rd of June 2018.

8 A. Correct.

9 Q. So, your 2018 Declaration was again late, and you're
10 again in breach of section 3 and 7 of the Act; right?

11 A. Correct.

12 Q. If you go to page 100, another Declaration of
13 Interests form from you stamped by the Registrar and dated the
14 16th of February 2021. If we go through to page 110, that again
15 is signed by you and dated, isn't it?

16 A. Yes, correct.

17 Q. The date that you have given is 16th of February 2021
18 for filing 12th of March 2019, so we are now in a new House of
19 Assembly, aren't we?

20 A. Um-hmm.

21 Q. So the Due Date has changed, but once again would you
22 accept that you are again in breach of sections 3 and 7 of the
23 Act?

24 A. I accept.

25 Q. The next Declaration of Interests that you filed is

1 found at page 89. Your name and your district appear on this.
2 It's stamped by the Registrar again dated the 16th of
3 February 2021, and we see at page 99. That's your signature,
4 isn't it, Mr Penn?

5 A. Yes, correct.

6 Q. You've dated it 16th of February 2021 for filing 12th
7 of March 2021.

8 A. Correct.

9 Q. 2020, forgive me. So, you filed your 2020 Declaration
10 on that date, and again you were in breach of sections 3 and 7
11 of the Act, weren't you?

12 A. Correct.

13 Q. Now, let's deal with your last and most recent
14 Declaration, which you will find at page 77 stamped by the
15 Registrar, dated in manuscript 25th of May 2021. If you go to
16 page 87, you have signed it on that page, haven't you? That's
17 your signature?

18 A. That's correct.

19 Q. And you have dated it, and it's typed, 25th of
20 May 2021 for filing 12th of March 2021, so you were two months
21 late with that, so that you would accept would be a breach of
22 section 3, wouldn't it?

23 A. I won't accept this one, and I'll explain.

24 Q. Is that because for personal reasons the Registrar was
25 unavailable?

1 A. No, it wasn't--it's not.

2 Q. All right. Please explain.

3 A. First of all, I want to publicly acknowledge my
4 previous breaches concerning late filing and breach of the
5 sections that you outlined. I additionally want to make a
6 public apology to the public as well for not adhering to my
7 statutory responsibility, which I take full responsibility for,
8 and I'm not making any excuses for.

9 What I will, however, note for the 2021 filing is that
10 I have an e-mail correspondence here from our administration, my
11 secretary, to the Registrar, on the 10th of March 2021, affixing
12 the 2021 filing, so the 2021 filing was, indeed, submitted. I
13 had updated 2021 deadline, and I made necessary adjustments to
14 ensure that going forward all my statutory obligations are filed
15 on time within the allotted periods as prescribed by the law.

16 Q. Would you be willing to provide the Commissioner with
17 that piece of correspondence?

18 A. Yes, I will. I have it right here printed, and I have
19 also the Declaration that was attached with the e-mail.

20 Q. If we can take that today, that would be very helpful.

21 A. Okay.

22 Q. Thank you.

23 Now, what it does show, though, is that, as of the
24 16th of February 2021, you filed four Declarations covering the
25 Years 2017 to 2020. What was it that prompted that burst of

1 activity?

2 A. In the recent filings?

3 Q. Leave aside your 2021 Declaration. That you filed
4 four on the 16th of February 2021, didn't you?

5 A. Yes, I did.

6 Q. What was it that prompted you to do all of that
7 activity on that date?

8 A. A follow-up notice from the Registrar outlining though
9 these Declarations were in abeyance.

10 Q. You should, I hope, on your table have a file, not
11 your own file. It might be labeled something like "Disclosure
12 from the Governor". If you turn to page 25 in that bundle there
13 is a letter dated the 19th of January 2016, addressed to you
14 from the Registrar, and in that case, she was reminding you of
15 the fact that you had not filed at that time Declarations for
16 2013, 2014, and 2015. The correspondence goes through, Mr Penn,
17 to page 51. I'm not going to take you through every single
18 letter, but it starts at page 25, ends at page 51 with a letter
19 on the 18th of August 2020, reminding you then of the need--to
20 use the Registrar's words, "delinquent Declarations of Interests
21 for the periods 12th of March 2020, 12th of March 2019, 23rd of
22 June 2018, 23rd of June 2017. By all means leaf through this
23 correspondence, but it's right, isn't it, that the Registrar
24 repeatedly wrote to you reminding you of your obligation to
25 fulfill, to submit Declarations on time, didn't she?

1 A. Correct.

2 Q. And it's right that she repeatedly sent you trace
3 chasers reminding you that you had failed to submit your
4 Declaration on time?

5 A. Correct.

6 Q. Did you enter into correspondence with the Registrar,
7 yourself?

8 A. Yes. I called the Registrar to get this situation
9 rectified.

10 Q. But you seemed to have rectified your non-compliance,
11 your delinquency, which is the Registrar's words, in sort of
12 four-year bursts, so you did 2013 to 2016 in 2017, and then 2017
13 to 2020 in 2021.

14 A. Um-hmm.

15 Q. Were there specific events that caused you in those
16 years to take the action that you had repeatedly declined to do?

17 A. No, I can't say that there were any specific events.

18 Q. Now, I drew your attention to the Resolution, which
19 appointed you as a Member of the Select Committee, the Register
20 of Interests committee in the last House of Assembly, the Third
21 House.

22 A. Um-hmm.

23 Q. The Commissioner has received evidence from other
24 Members of the House of Assembly that, in this house, the
25 Fourth House, a Standing Select Committee has been established

1 again; is that right?

2 A. Yes, that's correct.

3 Q. Can you remember when it was set up?

4 A. I think I have that information somewhere, if I can
5 remember.

6 On the 9th of September.

7 Q. 9th of September--

8 A. The 2nd of September--

9 (Overlapping speakers.)

10 Q. I think that information came from The Honourable
11 Neville Smith who said that the resolution was the 2nd of
12 September, and it was Gazetted on the 12th of September 2019?

13 A. That's correct.

14 Q. With your recollection?

15 A. That's correct.

16 Q. And others have said, and can you confirm, that you
17 were appointed a Member of that Committee?

18 A. Correct.

19 Q. How often since the 12th of September 2019 has the
20 Committee met?

21 A. I don't recall the Committee having a meeting as yet.

22 Q. Has there been discussion outside the formality of a
23 meeting as to what form the Register should take?

24 A. I have not had such discussions.

25 Q. You allowed yourself to be nominated to a committee in

1 the Third House in 2016 when you were non-compliant with your
2 own obligations. You allowed yourself to be nominated in 2019
3 to a Committee in this house when again you were still
4 non-compliant with your obligations.

5 Did you not anticipate or see that there could be a
6 conflict of interest for you in allowing your name to be put
7 forward?

8 A. That I anticipated?

9 Q. Or did you not see that there could be a conflict of
10 interest?

11 A. Possibly.

12 Q. Why, then, did you allow your name to continue to be
13 put forward on those two occasions?

14 A. No--I have no reason.

15 Q. I mean, if the Committee had asked the Registrar to
16 provide a report outlining the extent to which Members were
17 compliant without going into details of what they had declared
18 to her, but simply whether they had submitted by Due Dates, you
19 would have been in a very difficult position, wouldn't you?

20 A. Yes, I would.

21 Q. And for people who are on the Committee, who've been
22 nominated to the Committee, there is another difficult position,
23 isn't there, because it's beneficial to them that the Committee
24 should not meet and should not take action; isn't that right?

25 A. I don't--I won't subscribe to that particular position

1 because my intention was never to be in affairs exactly--affairs
2 means not my ratifying my Declarations, so I had no interesting
3 in committing not meeting.

4 Q. Have you ever called for a meeting of the Committee?

5 A. No, I have not.

6 Q. Either in the Third, while you were a Member of the
7 Third House or whilst you're now a current Member of the
8 Fourth House?

9 A. We discussed the possibility of a meeting in the
10 previous committee, yes, which we had a subsequent meeting.

11 Q. That was in the 2015 to '19 house?

12 A. Yes.

13 Q. Is that right?

14 A. Yes.

15 Q. Which I've been calling the Third House. I hope I've
16 got that right.

17 A. Yes.

18 Q. But taking your level of compliance, Mr Penn, it might
19 be suggested to the Commissioner that the way you have conducted
20 yourself shows a lack of regard for a statutory obligation
21 imposed on all Members of the House of Assembly. Would you
22 accept that?

23 A. I wouldn't--I wouldn't accept that, in that regard. I
24 was delinquent. I have admitted to my delinquency. I have made
25 steps to correct my delinquency going forward, and I'm going to

1 continue on that path.

2 Q. The Act came into force in 2008. A committee was not
3 established until 2016. So, in the absence of a Committee,
4 there was no one that the Registrar could write a report to. On
5 your evidence, since 2016, the Committee has met once. It has
6 never sought or asked or received a report from the Registrar.

7 Would you accept that the system that is in place is
8 not working?

9 A. I can't say that the Chairman hasn't been sought to
10 seek the Report from the Registrar.

11 Q. Which Chairman did you have in mind?

12 A. The one that met in 2017.

13 Q. Right. And that was--it's on the Resolution but it
14 was the Honourable Mark Vanterpool?

15 A. Yes.

16 Q. But do you remember The Honourable Vanterpool putting
17 a Report in front of you when you met that one occasion in 2017?

18 A. I can't recall the documents that were shared that
19 day.

20 Q. But insofar as you can recall, in this session of the
21 House of Assembly, you haven't received any reports, have you?

22 A. Not in this House of Assembly, no.

23 Q. And the point--it comes back to the same point,
24 though, doesn't it? Would you accept that the system is just
25 not working?

1 A. The system can be improved, yes.

2 Q. Well, as other Members of the House of Assembly told
3 the Commissioner, everything can be improved, but before we get
4 on to improvements, do you accept that the system is not
5 working?

6 A. I accept there are some issues with the system, yes.

7 Q. Well, do you accept that, in fact, the system has
8 never worked?

9 A. I can't accept that fact. It's true for all Members.

10 Q. Well, let's keep it to you.

11 You have been seriously delinquent for years, and no
12 sanctions have been imposed against you, have they?

13 A. No.

14 Q. And isn't that just an example of the fact that the
15 system just does not work and never has worked?

16 A. You could say that, yes.

17 Q. Well, I could say that. What do you say, Mr Penn?

18 A. Probably.

19 Q. Why does it--why do you qualify your answer with the
20 word "probably"?

21 A. You could say that, yes.

22 Q. Well, do you think that a system in which a Member of
23 the House of Assembly can wait four years before submitting
24 their Declarations of Interest is a system that is working
25 effectively?

1 A. I accept that it's not working effectively.

2 Q. I will leave it there.

3 Can I ask the second aspect now, which is actually
4 questions about the form as you filled them in. We can take any
5 example of form, and let's go to page 77?

6 A. Okay.

7 Q. I'm going to ask--just draw your attention to the
8 Preamble on the form, which says: "The main purpose of the
9 Register of Interests is to provide information of any pecuniary
10 interest or other material benefit which a Member receives which
11 might reasonably be thought by others to influence his or her
12 action, speeches or votes in the House of Assembly or actions
13 taken in his or her capacity as a Member".

14 You have now submitted, during your time in the House
15 of Assembly, nine forms. When you approach filling in the form,
16 what do you take to be the purpose of completing that form
17 having regard to the wording in the Preamble?

18 A. I take it that, based on the 10 paragraphs and the
19 Preamble that speaks to any pecuniary interests or material
20 benefit Members receive, that it needs to be listed based on the
21 paragraphs listed within the form.

22 Q. Would you accept that, if you are completing the form
23 diligently, the one thing that you need to have regard is what
24 others may think because it says "reasonably thought by others"?
25 So, have you to imagine, don't you, what would somebody else

1 think about a particular interest of mine. And if you keep that
2 in mind then, that guides what you put in the form, doesn't it?

3 A. Yes, specific to the paragraphs, yes.

4 Q. Now, you've said "specific to the paragraphs". Could
5 I take you to page 87, please. I'm going to refer you to
6 paragraph 10, but before I do, can I draw your attention to the
7 Declaration that each Member of the House of Assembly is asked
8 to sign, which reads as follows: "I declare that the
9 information contained in this Declaration is a complete and
10 accurate description of all interests that I am liable to
11 declare under the Register of Interests Act 2006".

12 Is it right that, in completing--let me put it this
13 way: When you completed these forms, did you appreciate the
14 importance of those words of that endorsement?

15 A. Which--repeat that again, the--the Declaration itself?

16 Q. Yes. There is a Declaration above the signature?

17 A. Um-hmm.

18 Q. Which I've just read out. It's the same Declaration
19 in every form.

20 A. Um-hmm.

21 Q. Did you, in completing your forms, appreciate the
22 importance of that declaration.

23 A. Yes, I did.

24 Q. Now, going back to your answer just a moment ago about
25 the Preamble, 10 is headed "miscellaneous".

1 A. Um-hmm.

2 Q. And it asks you: "If bearing in mind the definition
3 of 'purpose' set out in the introduction of this form you have
4 any relevant information you consider should be disclosed but
5 which do not fall within the nine categories set out above,
6 please list them".

7 Now, when you look at 10, what do you think that
8 paragraph is directed to?

9 A. If I have any interests, pecuniary interests or
10 otherwise, that doesn't fall within the nine categories before.

11 Q. Now, you say "if I have".

12 A. Yes.

13 Q. Do you think it is restricted to interests that you,
14 yourself, hold or interests that are also held by immediate
15 family.

16 A. It says you, it says from you, that you hold. So I
17 take it it means specifically me.

18 Q. Right. Now, this goes back to the point I made
19 earlier about how Members of the House of Assembly approached
20 these forms. And you, and yourself completing the form, did you
21 find it a particularly difficult form to complete?

22 A. The initial form that I completed I did them with the
23 assistance of the Registrar, so I explained to the Registrar
24 whatever my situation was, and she helped me go through the
25 process with the forms, so it wasn't difficult in that regard.

1 Q. And when completing it, and you have spoken of the 10
2 paragraphs, but do you think that there are aspects of the
3 wording of the form that create uncertainty or doubt for Members
4 of the House of Assembly as to what is required of them?

5 A. For me, after the explanation by the Registrar, no.

6 Q. Could you turn to page 83, please. This is the
7 section on overseas visits. That's not what I have taken you to
8 the page about, but do you see the note at the bottom, the last
9 sentence refers to other categories of overseas visits? Do you
10 have that?

11 A. Yes, I have it.

12 Q. It also refers to the guidance pamphlet on
13 Registration and Declarations of Members' Interests. Now, you
14 came into the House of Assembly in 2011. When you came into the
15 House in 2011, did you, when you arrived, receive a guidance
16 pamphlet?

17 A. No. I can't recall that I did.

18 Q. When you came in--back into the house in 2019--when
19 you came in 2015, did you receive a guidance pamphlet?

20 A. No. I received a form, but not the pamphlet.

21 Q. Have you ever received a pamphlet?

22 A. I can't recall receiving a pamphlet.

23 Q. Now, you've spoken of guidance being given to you by
24 the Registrar because you spoke to her about completing your
25 form, didn't you?

1 A. Yes.

2 Q. And you--there's obviously Guidance Notes within the
3 form itself?

4 A. Yes, there are.

5 Q. Was there any other source of guidance availability to
6 you as a Member of the House of Assembly at any time?

7 A. No, I followed the guidance from the Registrar that
8 she was giving to me in person.

9 Q. Now, through all nine forms, you have, in fact,
10 answered "no" to every single question, and so can I just ask
11 two questions about that. I don't want to go through every
12 paragraph and confirm your answers. You have answered "no" to
13 everything, but if we look, please, at 85 and paragraph 8 and
14 land, it says: "Do you have any land other than any home used
15 solely for the personal residential purposes of you or your
16 family?" And it then says: "If 'yes', please indicate below
17 the nature of the land".

18 Now, obviously would you accept that you're not
19 required to declare your personal home?

20 A. That's correct.

21 Q. And so, in answering "no", were you declaring, aside
22 from a personal home, you have no other interests in land?

23 A. No, I don't because I don't.

24 Q. Right. If I ask you just to turn back, please, to
25 paragraph 4--and this question is not directed to the answer

1 that you put to that paragraph, but it's the heading is
2 "Sponsorship", and it's this. If you look at (a), it says:
3 "Did you benefit from any sponsorship before election where, to
4 your knowledge, the financial support in any case exceeded in
5 aggregate \$2,500?" And I won't read it out, but if you look at
6 the bottom of the note, there is a note thereto that refers to
7 election campaign committee.

8 Now, my question is this: What do you understand to
9 be meant by the term "sponsorship before election"?

10 A. I take that to mean any sponsorship or donation or any
11 financial in-kind as given with that dollar amount or above.

12 Q. So, sponsorship, in your mind, encompasses financial
13 donations to the campaign?

14 A. I think while--while there is a different definition
15 for both, I think the intent is that to cover both of them.

16 Q. But do you--do you think that that intent could be
17 made clearer to Members of the House of Assembly if the form
18 were amended to make sure that--to tell Members of the House
19 that it included donations that they received?

20 A. It could.

21 Q. Because what you're asked is to list your sponsor, so
22 if it included donations, there would be a requirement to list
23 donors who gave you more than 2,500, wouldn't they?

24 A. Yes, it would.

25 Q. And from your answer, if anyone in your campaigns had

1 given you a financial donation or an in-kind donation above
2 2,500, you would have listed it there?

3 A. Yes, I would.

4 Q. Could I ask you, there's a small grey bundle--if you
5 look just at that bundle, please--if I explained to you what
6 this bundle is. It's--a request was made of the Cabinet
7 Secretary to produce under cover of Affidavit, "Election Notices
8 published in the Official Gazette".

9 A. Yes.

10 Q. Clearly, it is open to election candidates to publish
11 their Declarations elsewhere, but I want to draw your attention
12 to two pages which refer to you.

13 A. Um-hmm.

14 Q. The first is at page 18, if you give me a moment,
15 please.

16 Sorry, page 16. 16.

17 A. Okay.

18 Q. If you look at the top, Mr Penn, you've got--it's the
19 Gazette from the 10th of October 2011. So, this is from when
20 you first ran for elected office.

21 A. Um-hmm.

22 Q. And there's a Declaration there, and one of the--what
23 you say is "I give notice, I'm connected to the following
24 company association in the capacity as indicated", and one of
25 them is, as you say, NI Holdings Limited Member".

1 A. Yes.

2 Q. Now, if you turn through to 256 in the bundle, we're
3 now in the--

4 (Overlapping speakers.)

5 Q. --February 2019, so the most recent Election Notice
6 that you had to file.

7 A. Um-hmm.

8 Q. And it refers there to the Nottingham Investment Club.

9 A. Um-hmm.

10 Q. Just for completeness, two things. Is the Nottingham
11 Investment Club the same thing as NI--

12 A. It's the same thing. That was a typo. It should have
13 been Nottingham Investment Club.

14 Q. I see.

15 And obviously, is it something that you were a Member
16 of and you have been a Member of throughout your tenure in the
17 House of Assembly?

18 A. Yes, I'm a Member, but it's inactive.

19 Q. I see.

20 Has it always been inactive--

21 A. It's been inactive since I've been elected, yes.

22 Q. And is that the reason why you didn't record it in
23 your Declarations?

24 A. Yes, that's the reason why.

25 Q. Thank you.

1 Could I move a different topic, if I may, and it might
2 be that you'll be able to deal with my questions very swiftly,
3 and it's this: If you pick up the larger bundle, if you turn to
4 page 88, please, and if I explain, Mr Penn, this is a set of
5 Cabinet Minutes, and specifically they're Cabinet Minutes
6 produced by the Cabinet Secretary, Ms Sandra Ward, that relate
7 to Declarations of Interests.

8 Now, 88 is Cabinet Minutes from the 20th of February
9 2019. I will wait for you to turn up the page. Let me know
10 when you have it.

11 A. I'm there.

12 Q. You're there. Thank you.

13 Cabinet meeting 20th of February 2019. Now, listed
14 there is The Honourable Marlon A Penn, and it's Minister for
15 Health and Social Development.

16 A. Yes.

17 Q. Was that you?

18 A. Yes, it was.

19 Q. The reason I asked to check is because earlier you
20 said you hadn't held ministerial office?

21 A. You asked me in 2011.

22 Q. Okay.

23 A. You didn't ask me beyond that. You asked specifically
24 2011.

25 Q. Then that is my fault. So between 2011 and 2015 you

1 didn't hold ministerial office. Between 2015 and 2019, which
2 ministerial office did you hold?

3 A. I was Junior Minister for Trade, and then four months
4 just before the last general election I was made Minister for
5 Health.

6 Q. Thank you for that clarification.

7 If we look at page 88--and I will explain now that
8 you've given that clarification--the purpose of my questions,
9 which is about when--how Ministers or the process by which when
10 you're sitting in Cabinet you have to declare an interest. So,
11 stepping back from the detail of the page itself when you went
12 into Cabinet except it was for four months, but what did you
13 understand the process to be if you had to declare an interest
14 in an item?

15 A. You--I would notify the Premier, and then I would at
16 the meeting declare my interests.

17 Q. And would you then stay in the meeting or would you
18 leave?

19 A. Leave.

20 Q. If you had any doubts or uncertainty over whether
21 there was a conflict to be declared, who would you go to?

22 A. The Attorney General can assist me.

23 Q. In page 88--I need to ask you to just give me a moment
24 because there is a typo in my notes. No, there isn't. If I
25 could ask you to turn to page 113, please. It's the same

1 Cabinet meeting.

2 What we have here is--and I just want you to confirm
3 this for the record, but it's part of the--that same minute that
4 I took you to, page 113, there is the Deputy Premier and
5 Minister for Natural Resources and Labour introduced a
6 memorandum that is recorded as request to lease Crown property,
7 and it's Crown property on Beef Island. And it's a request from
8 you, isn't it, Marlon Penn?

9 A. Yes, it is.

10 Q. And you then recused yourself from the meeting for
11 discussion because it was a matter involving your interest in
12 the matter?

13 A. Yes, it was.

14 Q. So, did you just step out of it?

15 A. Yeah, I left the room, yes.

16 Q. Now, what Cabinet did was to grant approval to you to
17 lease that piece of land. Did that transaction, in fact, go
18 through?

19 A. No, it never did.

20 Q. I see.

21 And is that the reason why it doesn't appear on your
22 Declaration?

23 A. Yes.

24 Q. If you turn, please, to page 150. We're now at 24th
25 of February 2019 meeting of Cabinet. If you go to 167, there is

1 a Round Robin, which seeks variation of lease, and it's in
2 relation to Ephraim Penn. Do you see that?

3 A. Yes.

4 Q. And it was the Minister of Natural Resources and
5 Labour presented this via Round Robin. And if we go over to the
6 next page, you as Minister for Health and Social Development
7 declared an interest and did not sign the Round Robin; is that
8 right?

9 A. Yes.

10 Q. Now, that was a decision that permission be granted to
11 Ephraim Penn to assign his leasehold interest in land in Beef
12 Island to Trellis Bay Market Bar and Grill. What was the nature
13 of your relationship or what is the nature of your relationship
14 with Ephraim Penn?

15 A. That is my dad. He's had that lease--my family has
16 had that property in their name for decades.

17 Q. Now, the reason for drawing your attention to this is
18 wider than just confirming the detail. When you were sat in
19 Cabinet in terms of the ambit of interests that you had to
20 declare--obviously we've shown an example where you declared
21 your own personal interest--this is one where the connection is
22 to your father, but in terms of family interests, were you given
23 any advice as to how wide it would be?

24 A. No. The discussions surrounded my immediate family.

25 Q. And what did you take to mean--was meant by the phrase

1 "immediate family"?

2 A. Wife, spouse, spouse, children.

3 Q. And from the fact that you took this step, it would
4 include your parents, and would it include your parents on your
5 wife's side, on a spouse side, in your view?

6 A. Yes, it would.

7 Q. Would it include interests held by adult siblings, for
8 example, if you had a brother and they were wanting--they were
9 the subject of the Round Robin, would you have declared an
10 interest in those circumstances?

11 A. Yes, I would have left the room, yes.

12 Q. And again, is that a situation where, if there is
13 doubt and uncertainty, the expectation would be that you raise
14 it with either the Premier, the AG, or the CabSect?

15 A. Yes, I would.

16 Q. I just want to move on now to another topic, please,
17 and that is a question I have asked of more than, now, of more
18 than one Member of the House of Assembly. But you will be
19 aware, Mr Penn, of section 67 of the Constitution.

20 A. Yes.

21 Q. Which governs the tenure of seats of the Members of
22 the House of Assembly. It prescribes certain circumstances in
23 which a Member of the House has to vacate his or her seat. And
24 one of those is if--and I'm summarising it--if he or she becomes
25 a Party to any contract with the Government of the Virgin

1 Islands. That is subject, though, to an exemption in that if in
2 circumstances it appears just to the House of Assembly to do so,
3 the House may exempt any elected Member from vacating his or her
4 seat.

5 Now, the first question is whether you as a Member of
6 the House of Assembly, at any time during--from 2011 to now,
7 when you have held a seat, have you ever been exempted from
8 vacating your seat under section 67?

9 A. Yes, in 2012.

10 Q. And can you just explain to the Commissioner the
11 circumstances in which that arose?

12 A. Okay. In 2011, when I was first elected, I was
13 employed with the Financial Services Commission as the
14 Technology Development Manager. We were just in the process of
15 digitising the entire Commission's operations through a
16 mission-critical system called the Virgin System, which is the
17 Registry and regulatory information network of the Financial
18 Services Commission, which is what drives the Financial Services
19 Commissions' operations.

20 I was at that time before being elected to office, I
21 was the lead person on Phases I and II. I actually was a Deputy
22 lead on Phase I and the lead on Phase II. And just before my
23 election, the Commission was about to go live with Phase III
24 where I was critical in terms of my intellectual--my
25 institutional knowledge of the system and the process, so the

1 Commission sought my expertise after I was elected in 2011 to
2 assist with the Project, to ensure that the intellectual
3 institutional knowledge that I gained from the project, as we
4 could appreciate. In a small society like BVI, there are
5 limited persons with certain skill sets to do certain projects,
6 and I was sought back by the Commission to assist with the
7 transition of this process.

8 Additionally, we were able to get that project moving,
9 and subsequently with a team, of course, I was a Member of a
10 team of persons who got that project done, but I was a lead at
11 that time on the project.

12 I am happy to have been a part of that process because
13 that system, after the hurricanes of 2017, was the actual tool
14 that helped us to really transition in terms of revenues that
15 were collected through Financial Services. We were able to,
16 after the storms, be up and running one week after because of
17 Virgin's ability to operate remotely, so that was the reason why
18 that was sought.

19 The reality is that I got legal opinion at the time
20 from both the sitting Attorney General and from private lawyer
21 that advised that based on section 67, where the Commission is a
22 statutory organization, I was not required to seek that
23 permission in the House of Assembly, but through the--making
24 sure that I was transparent in the process and making sure that
25 I made it clear that my intention--what my intention was when

1 going through the process and section 67.

2 Q. And was it down to you to bring the motion before the
3 House of Assembly or was it brought on your behalf?

4 A. It was brought on my behalf.

5 Q. You said that was in 2012?

6 A. Yes.

7 Q. And that was the only time when you were a subject of
8 the motion?

9 A. That's the only time.

10 Q. Since then, to your recollection, how often have there
11 been--let's take the 2011 to 2015 House, how many such motions
12 were there placed before the House?

13 A. Not many.

14 Q. Can you try and give a number to not many?

15 A. I think less than five.

16 Q. And in this House, 2019 on--sorry, 2015 to 2019, was
17 that a similar situation, a small number of motions being put
18 before the--

19 A. 2019 to now?

20 Q. 2015 to 2019, first of all.

21 A. I can't recall any between that period.

22 Q. And between now, 2019 to now, have there been any such
23 motions?

24 A. There have been motions.

25 Q. How many have there been?

1 A. Three of them that I'm aware of that I can remember
2 right now.

3 Q. Now, as a Member of the House of Assembly, you
4 obviously get to debate and vote on the motion. What
5 information--and you're sitting in opposition. What information
6 is provided to you as a member of the opposition, to allow you
7 to assess the motion, the merits of it?

8 A. We will get--we would get the details of the
9 Resolution, or the motion, outlining the specifics of what the
10 Member is seeking or what the Member is seeking to do whether
11 it's through a business or through personal relationships, and I
12 think whatever additional documentation is necessary to complete
13 the process would come--would be--we can--can be sought in order
14 to get that process completed.

15 Q. At what stage is it--and this is as a member of the
16 opposition--what stages in the process can you seek further
17 information?

18 A. You can see before the motion comes to the House.
19 Because most times it's to give notice, and you have it when the
20 order paper goes out. You could ask for additional information.
21 You could ask for additional information on the floor. You
22 could ask for a recess of the House to get additional
23 information. You could ask for additional information at
24 several different points of the process.

25 Q. If we show you the example of asking for more

1 information or asking for a recess, is that the sort of thing
2 that has to be voted on?

3 A. Typically, the Speaker is--allows, if a Member has a
4 concern or point of privilege or point of information, would
5 allow it.

6 Q. I see. Thank you. The last topic I hope--well, I
7 would like to cover with you, it arises out of other evidence
8 that has been given to the Commission. I think you provided
9 today a report which has come from the office of the Deputy
10 Governor concerning and it's the Report from the ad hoc
11 Elections Legislation Committee of October 2020.

12 A. Sure.

13 Q. Do you have a copy of that with you, Mr Penn?

14 A. I'm not seeing it yet.

15 Q. Thank you.

16 And just so that we can, for the Transcript, give it
17 context, if we go to the first page, 1, I'm just going to
18 summarise, but what it says is that Cabinet in its meeting of
19 5th of February 2020 agreed there's an ad hoc Elections
20 Legislation Committee be appointed by the Governor, and the
21 Deputy Governor was appointed to serve as Chair of the
22 Committee, and there were a number of people appointed to it,
23 including yourself, and you're there listed as a representative
24 from the House of Assembly.

25 A. Yes.

1 Q. Now, we won't need to go through the entirety of the
2 Report. I just want to pick up a couple of points and then ask
3 you what the current position is.

4 If you go to page 6, and there is--and this is the
5 section of the report dealing with the Supervisor of Elections'
6 recommendations from the 2019 general elections, and it's part
7 of a table. Item 8 is, the recommendation is election campaign
8 financing, rules to be drafted to regulate campaign financing.
9 And it's ticked or crossed as a recommendation that the
10 Committee accepted.

11 And then the comment is as follows: "The Committee
12 agrees with this recommendation as it creates a fair and
13 transparent process and eliminates acts of corruption. However,
14 research will be undertaken to determine how this will work in
15 the Territory. The following comments were made: Options for
16 financing should be included in the Rules to support those who
17 do not have as much money to finance their campaign but still
18 have an opportunity to fully participate; and secondly, some
19 controls may be necessary".

20 I pause there. Can you assist the Commissioner with
21 this: In terms of the reference to "some controls may be
22 necessary", what sort of controls did the Committee have in
23 mind?

24 A. I don't think we were specific about those controls.
25 I think this was supposed to be a further discussion in terms of

1 the way forward for campaign financing.

2 Q. I see.

3 So, this Report is December 2020. Has there been
4 further discussion within the Committee about taking matters
5 forward?

6 A. The Committee had *** finished its work with the
7 Report then it was submitted, and there was a discussion I
8 believe with the House of Assembly on the Report.

9 Q. On the content of the Report?

10 A. Of the Report, yeah.

11 Q. And looking at this specifically, because the
12 Committee considered a number of recommendations, but we're
13 focusing on electoral campaign financing. After that meeting or
14 debate in the House of Assembly, what other steps have happened
15 since in relation to electoral campaign financing?

16 A. None that I'm aware of.

17 Q. If you go, please, to page 14, this is the Committee's
18 consideration of observer mission's recommendations from the
19 2019 Election: Recommendation 10 was to "increase trust in the
20 system, comply with the UNCTAD"--that's, I think, a UN
21 Convention--"and remove the risk of corrupt practices, the
22 Virgin Islands authorities must legislate and institute policies
23 for candidate and Party financing and the registration of
24 political parties for financial reporting purposes".

25 And the Committee that you were a part of agreed that

1 recommendation and made the following comments: "The Committee
2 agrees with these recommendations. It creates a fair and
3 transparent process and eliminates acts of corruption. However,
4 research will have to be undertaken to determine how this will
5 work in the Territory. The following comments were made:
6 Options for financing should be included in the rules to support
7 those who do not have as much money to finance their campaign
8 but still have an opportunity to fully participate. Some
9 controls may be necessary".

10 Now, that's obviously--those comments echo what we
11 looked at a few moments ago.

12 A. Yes.

13 Q. But again, this, as part of the Report, was taken to
14 the House of Assembly, was it?

15 A. Yes, it was.

16 Q. And subsequent to that you are aware of any further
17 steps being taken on this point?

18 A. I'm not aware of any further steps.

19 Q. What it includes is that the reference to some
20 research will have to be undertaken to determine how this will
21 work in the Territory. As far as you're aware, has any research
22 been undertaken?

23 A. The Committee finalised the process. I'm not aware of
24 anything that's happening beyond that.

25 Q. I see. If you look 12 on the same page, the

1 recommendation that was made was "it is recommended that price
2 lists for campaign ads be published prior to the start of the
3 campaign so that all candidates enjoy equal opportunities and
4 that complies with campaign finance rules to be developed can be
5 adequately overseen".

6 Now, that was a recommendation with which the
7 Committee that you were part of disagreed, and what the comment
8 is, is: "The Committee did not agree with the recommendation.
9 They agreed that a policy on campaign pricing can be proposed
10 where prices are made public. But the Office of the supervisor
11 of elections has no authority to regulate".

12 Now, I don't know whether, if you can, elaborate on
13 that. Why was this a recommendation that the Committee did not
14 feel able to accept?

15 A. I can't recall the specific discussion, to be frank.

16 Q. In relation to the issue, the publishing of price
17 lists for campaign ads, where did you fall in relation to that
18 issue? Were you for the recommendation or against it?

19 A. I don't foresee that being an issue, the price list or
20 the price list across the board, so I don't see it being an
21 issue of not publishing this.

22 Q. On a personal level, it's not a particular difficulty
23 for you?

24 A. No.

25 COMMISSIONER HICKINBOTTOM: Just, if you can help me

1 on this, this was an ad hoc Committee.

2 THE WITNESS: It was an ad hoc Committee, yes.

3 COMMISSIONER HICKINBOTTOM: And in the background at
4 the beginning of the report, it says that Cabinet agreed that
5 this ad hoc Committee be appointed by the Governor.

6 THE WITNESS: Yes.

7 COMMISSIONER HICKINBOTTOM: So, the Committee was
8 appointed by the Governor. So, did you formally report to the
9 Governor? I know this went, you say, to the House of Assembly
10 as well, but there was a formal report to the Governor and then
11 it went to the Cabinet and the House of Assembly, too?

12 THE WITNESS: I don't know the Chairman did. I don't
13 know the Chairman did.

14 COMMISSIONER HICKINBOTTOM: Right.

15 THE WITNESS: Because this particular discussion I
16 really can't recall it so I don't know if the Chairman reported.

17 COMMISSIONER HICKINBOTTOM: So, you were obviously
18 involved in preparing the Report. But what happened to it after
19 it had been--

20 THE WITNESS: That was the one that was supposed to
21 finance the report was the Chair.

22 COMMISSIONER HICKINBOTTOM: Right, because he was the
23 Chair.

24 THE WITNESS: Yes.

25 COMMISSIONER HICKINBOTTOM: I understand that. That's

1 helpful. Thank you.

2 MR RAWAT: Mr Commissioner, I have come to the end of
3 my questions, so can I conclude first of all by thanking Mr Penn
4 for coming this afternoon to give his evidence, but also for
5 thanking him for the way in which he has given that evidence to
6 the Commission.

7 COMMISSIONER HICKINBOTTOM: Yes. Thank you, Mr Penn,
8 for your time.

9 THE WITNESS: Thank you.

10 COMMISSIONER HICKINBOTTOM: And coming to give
11 evidence. It's much appreciated.

12 THE WITNESS: Thank you.

13 (Witness steps down.)

14 MR RAWAT: That concludes our business for today,
15 Mr Commissioner. We will have witnesses tomorrow. I think we
16 will start at mid-day tomorrow with those witnesses.

17 COMMISSIONER HICKINBOTTOM: Yes. Good. Thank you
18 very much.

19 (Whereupon, at 4:51 p.m. (EDT), the Hearing was
20 adjourned.)

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", positioned above a horizontal line.

DAVID A. KASDAN