

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 12

(WEDNESDAY 16 JUNE 2021)

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

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Solicitor General Mrs Jo-Ann Williams-Roberts and Mr Niki Olympitis of Withers LLP (instructed by the Attorney General) appeared for various BVI Government Ministers and public officials.

Mr Richard Rowe of Silk Legal and Mr Deniston Fraser 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.

Hon Julian Fraser gave evidence.

Hon Melvin M Turnbull gave evidence.

Dr Hubert Robinson O'Neal gave evidence.

Hon Natalio D Wheatley gave evidence.

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Those present:

Sessions 1 & 2

Mrs Jo-Ann Williams-Roberts, Solicitor General

Mr Richard Rowe, Silk Legal

Mr Deniston Fraser, Silk Legal (sub-contracted from DenJen Law)

Mr Bilal Rawat

Hon Julian Fraser

Hon Melvin M Turnbull

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

Session 3 & 4

Mr Niki Olympitis, Withers LLP

Mr Bilal Rawat

Dr Hubert Robinson O'Neal

Hon Natalio D Wheatley

Ms Juienna Tasaddiq, Assistant Secretary

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

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COMMISSIONER HICKINBOTTOM: Good morning, everyone.

Just before starting, can I just deal with a couple of things.

First, Mr Rowe, you'll remember on Monday that we had a discussion about section 16 of the Evidence Act and the compellability of witnesses in particular, the Speaker.

Under section 15 of the Commissions of Inquiry Act, for a witness not to comply with a summons is a criminal offense, but under section 16 of the Evidence Act, in certain limited circumstances, the Legislative Council now the House of Assembly have set out circumstances in which someone such as a House of Assembly Member need not comply with a summons. They're very limited. We discussed that. And we agreed that, on Monday, the scope of section 16, the Speaker did not fall within it because the scope of it is a Member of the House of Assembly need not comply with the summons if there's a sitting of the House or a sitting of a committee of the House, and those did not apply to the Speaker on Monday.

But helpfully, on instructions, you confirmed that Friday of this week would be convenient for the Speaker, and it was fixed that he should honor his summons at 12:00 noon on Friday in the published schedule that is when he's due to be heard. At three minutes to 11:00 last night, we had--the COI Secretary had an e-mail from your partner, Mr Fligelstone

1 Davies, as follows: "Dear Mr Chandler, please see below for
2 e-mail", and then there's a quoted e-mail coming apparently from
3 the Speaker to you that "Silk Legal, to date I am not aware of
4 when I have to appear before the Commission of Inquiry as I have
5 not"--that word is in capitals--"seen anything in writing from
6 you nor a summons from the COI after indicating I was available
7 on Monday, the 14th of June, 2021 at 1:30 p.m. However, I will
8 make myself available on Monday June 21, 2021, at 1:00 p.m. I'm
9 very busy with House of Assembly matters as we have another
10 sitting on Thursday, the 17th of June, 2021. Please convey to
11 the Commissioner that I will be on standby for Monday, and when
12 they are ready for me, I will arrive. However, I will not be
13 sitting in a waiting room for hours. Please confirm when this
14 has been conveyed to the COI and send me a copy of whatever
15 paper you will be required to file on my behalf to give effect
16 to this request".

17 That's the end of the quotation and, indeed, the end
18 of the e-mail that you sent the COI Secretary.

19 What one's attempted to ask, Mr Rowe, what is going
20 on, but it's unnecessary, I think, for me to do that, just--

21 MR ROWE: Yes.

22 COMMISSIONER HICKINBOTTOM: I'd just like you to
23 confirm that the Speaker will be here to honor his summons at
24 noon on Friday.

25 MR ROWE: Attorneys are creatures of their

1 instructions, Commissioner. I can only advise and having also
2 the of consequences of not taking the advice regarding to the
3 sections I read.

4 COMMISSIONER HICKINBOTTOM: Well, just one moment.
5 From this e-mail, which appears to emanate from the Speaker to
6 you, he seems not to know that he's due here at 12:00 noon on
7 Friday.

8 MR ROWE: That's not the case.

9 COMMISSIONER HICKINBOTTOM: Good. So, he knows that
10 that's when he needs to comply with the summons?

11 MR ROWE: He knows.

12 COMMISSIONER HICKINBOTTOM: So, why were we sent this
13 e-mail?

14 MR ROWE: We sent this e-mail because we were
15 instructed by our clients to do that.

16 COMMISSIONER HICKINBOTTOM: Right.

17 MR ROWE: You'll appreciate how many years, like
18 myself with these grey hairs, while instruction can never be
19 accepted in full, rejected in full or in part.

20 COMMISSIONER HICKINBOTTOM: So, when this e-mail was
21 sent to you, the Speaker was aware--

22 MR ROWE: Certainly.

23 COMMISSIONER HICKINBOTTOM: --that he is due to comply
24 with his summons at 12:00 noon on Friday, although he says that
25 he had not seen anything in writing from you.

1 THE WITNESS: There is nothing in writing because we
2 had communications at work.

3 COMMISSIONER HICKINBOTTOM: What you said to your
4 client, of course, is privileged.

5 MR ROWE: Indeed, sir.

6 COMMISSIONER HICKINBOTTOM: But in any event, he knows
7 that there are no issues about service of the summons. There
8 are no issues about service of notice of when he is due to come
9 because we have told his legal representatives, and that is
10 sufficient. So, you accept that we have done everything that we
11 need to do?

12 MR ROWE: It might help, given the consequences, if a
13 direct summons to him was sent again. It would help in terms
14 of--if he's--if it's not too inconvenient.

15 COMMISSIONER HICKINBOTTOM: Well, it's unnecessary
16 because he's got the summons, but--and you have told him. You
17 can put that in writing to him. I just want to make absolutely
18 sure that there is nothing else we should do, in your view, to
19 make him legally compellable.

20 It's important.

21 MR ROWE: Indeed.

22 COMMISSIONER HICKINBOTTOM: Because if he doesn't turn
23 up on a summons when he's due to turn up, that is a criminal
24 offense.

25 MR ROWE: Indeed, indeed. He's been so informed.

1 COMMISSIONER HICKINBOTTOM: He's been informed.

2 Anything you want to add, Mr Rawat?

3 MR RAWAT: Nothing. Thank you, Commissioner.

4 COMMISSIONER HICKINBOTTOM: Okay. Thank you, Mr
5 Rawat.

6 Can I just raise one other smaller point but an
7 important one: Under the rules in the Protocols, everyone
8 participating in a Hearing is asked to come here 20 minutes
9 before we start. That's because we have to set up the
10 technology and set up the hearing room, and we want to start on
11 time because we have so much business to get through, so could I
12 just politely remind everybody to turn up in good time so that
13 we can start on time.

14 Thank you all very much.

15 Mr Rawat.

16 MR RAWAT: Thank you.

17 Commissioner, before I call our first witness of
18 today, can I, just for the record, introduce the
19 representatives.

20 COMMISSIONER HICKINBOTTOM: Yes.

21 MR RAWAT: On behalf of the Attorney General, we have
22 here today the Solicitor General, Jo-Ann Williams-Roberts, and
23 on behalf of seven elected Members--the seven Members of the
24 House of Assembly, which includes speakers, we have Mr Richard
25 Rowe of Silk Legal.

1 Our first witness this morning is The Honourable
2 Julian Fraser.

3 As you'll remember, on Monday, Mr Fraser was sworn
4 because he gave brief evidence about his availability, and there
5 is no need to swear him in again.

6 COMMISSIONER HICKINBOTTOM: No. Mr Fraser, you're
7 still bound by your oath and affirmation.

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

10 BY MR RAWAT:

11 Q. So, if I can continue, first of all, Mr Fraser, can I
12 thank you for returning to give evidence today. There's no need
13 for me now to ask for you to put your full name into the record
14 or, indeed, your professional address. What I will tell you is
15 this: That as we go through, I strive to keep my questions
16 short and simple, but if at any time I put a question to you
17 that is difficult to understand, please do ask me, and I'll
18 rephrase it or repeat it in a different way.

19 There are a number of bundles in front of you. We
20 will, as we go through, go to different documents in the
21 bundles, but you don't need to look at them now.

22 Could I also just finally ask you to keep your voice
23 up and speak slowly, and the reason for that is because, as
24 you'll be aware, a Transcript is being made of this Hearing, and
25 it's important to record your answers as clearly and accurately

1 as possible.

2 Can I start, as I have done with every witness so far
3 who has come to give evidence to the Commissioner, and that is
4 by asking you to give an outline of your professional background
5 before you entered politics.

6 A. I am a registered architect in the State of New York
7 and the United States and Virgin Islands. I practiced
8 architecture in the city of New York until 1993, when I came to
9 the BVI, and there I practiced architecture until I entered into
10 politics--or got elected, I should say--in 1999.

11 Q. If I pick it up on that last answer, in 1999 was the
12 first time you were elected as a Member to the House of
13 Assembly?

14 A. Yes, it was.

15 Q. It would have been at that time the Legislative
16 Council?

17 A. At that time, yes.

18 Q. And that was--were you--that was for the Virgin
19 Islands Party; is that right?

20 A. That's right.

21 Q. And you were elected to represent the Third District?

22 A. That's right.

23 Q. And you have represented the Third District since that
24 time?

25 A. Yes, I did.

1 Q. Is it right that between 1999 and 2003, you held
2 ministerial office?

3 A. Yes.

4 Q. I think, first of all, you were the Minister for
5 Natural Resources and Labour, and then you were subsequently
6 appointed Deputy Chief Minister and Minister of Communications
7 and Works?

8 A. That's correct.

9 Q. And then between 2003 and 2007 you were in opposition?

10 A. Yes.

11 Q. And then in 2000--between 2007 and 2011, your party
12 returned to Government; and, in that time, you were again the
13 Minister for Communications and Works; that's right?

14 A. Yes.

15 Q. And then you--the party once again went into
16 opposition thereafter, but you ultimately led them into the
17 general elections of 2015?

18 A. That's correct.

19 Q. And then became leader of the opposition until
20 August 2017?

21 A. That's correct.

22 Q. And you then subsequently formed a new political
23 party, is that right, called "Progressives United"?

24 A. That's correct.

25 Q. And you contested the 2019 Election and were again

1 elected to the House of Assembly?

2 A. Yes.

3 Q. Now, in the Third District, at present, how many
4 people live in the Third District?

5 A. Approximately 3,000, which is same for all districts
6 subsequent.

7 Q. I was going to ask for your assistance on that because
8 The Honourable Vincent Wheatley gave evidence yesterday
9 afternoon, and he said that there are boundary arrangements
10 that--and rearrangements from time to time--that seek to ensure
11 that the population in each district is approximately the same?

12 A. That's correct.

13 Q. Would you agree with that?

14 A. That's correct.

15 Q. Of the approximate number which you gave us
16 three-and-a-half thousand who live in your district, how many
17 are eligible to vote?

18 A. About 1,600.

19 Q. The official results as published on the
20 Government--the BVI's website records that in 2019, 1,102 votes
21 were cast in the Third District, and you received 519, which was
22 47.10 percent of the total vote; your closest opponent then
23 receiving 294 votes, which is 26.68 percent. Does that accord
24 with your recollection of the outcome of the 2019 Election?

25 A. It does.

1 Q. One of the points that you may or may not have picked
2 up on this, but one of the points that I have been asking
3 Members of the Houses of Assembly about is making the Register
4 of Interests available to the public for inspection, and I've
5 been asking for their views about the benefits of such a step.
6 What is your view on publication of the Register?

7 A. It depends. I can't give you my views on that until I
8 see the details.

9 Q. But in principle, do you have a view? Do you think
10 that it would be a good idea for the public to be able to
11 inspect the Register?

12 A. It's something that I'm prepared to look at. We have
13 the benefit, when we're making laws, to debate the Bill before
14 we sign off on it, and in the debate all these things come out.
15 It may not be something that I can latch on to wholeheartedly.
16 The merits warrants my support, I'll give it.

17 Q. There is a Register of Interests Bill in 2021 in the
18 offing?

19 A. Is there?

20 Q. Well, that was the evidence of the Attorney General.
21 The evidence that the Attorney General gave was that the Bill is
22 still in the drafting stage, it has not yet reached Cabinet and
23 it hasn't, therefore, not yet reached the House of Assembly.

24 The part of the evidence of the Attorney General was
25 to confirm that there is a clause in the Bill that would make

1 the Register of Interests available to the public.

2 And against that background, what I'd like to ask you
3 is whether you were aware as to whether there have been
4 initiatives in the past from various Legislators to make the
5 Register of Interests public?

6 A. No, I never heard it a before, and that's a flaw in
7 the system because there is no consultation. We're in the House
8 of Assembly, and I have to come here to learn that there's a
9 Bill coming before the House with such proposals, and then you
10 expect me to support it.

11 Q. I'm not asking you whether you are going to support
12 that Bill or not.

13 A. Yes. You asked me if I want to support the principle.

14 Q. Yes.

15 A. You should have told me about it before.

16 Q. Well--

17 A. This is so huge it needs discussion.

18 Q. My question was whether, to your knowledge, being a
19 Legislator who has represented the Third District since 1999,
20 you were aware of previous initiatives from either Members of
21 the House of Assembly--it would be Members of the House of
22 Assembly to make the Register of Interests public?

23 A. No.

24 Q. Never.

25 Have you ever spoken publicly either in support or

1 against a measure to make the Register of Interests public?

2 A. Never discussed it.

3 Q. Could I ask you--I hope you will have in front of you
4 a bundle which is headed "Constitution and Legislation Bundle".

5 THE WITNESS: Commissioner, if I may.

6 COMMISSIONER HICKINBOTTOM: Yes.

7 THE WITNESS: I understood that, first of all, I was
8 asked to submit documents to you, which I did, and particularly
9 speaking about the Register of Interests and Declaration of
10 Interests, the law was changed to give the Commissioner for
11 Inquiry access to the information in the Register--in the
12 Register. I presume that you have all that information. My
13 question would be: Why am I here answering questions about this
14 issue? If you have the information, I don't know--I'm just
15 asking.

16 COMMISSIONER HICKINBOTTOM: Well, first, let's confirm
17 that the information we have got is the correct information that
18 you've lodged. With a number of witnesses, the information that
19 we're being provided by the Registrar is not complete, we have
20 been told in oral evidence.

21 And also, I'm particularly concerned about not simply
22 whether individual Members of the House of Assembly have
23 complied, but the system, whether the system works. And the
24 "system", I mean, do people comply with their statutory
25 obligations in terms of the form, do they well understand what

1 their obligations are, is their understanding the same? The
2 evidence we've heard to date is that understanding of the form
3 differs very much as between individual Members of the House.

4 So, I'm looking, in particular, to the system because
5 I'm interested at the moment in governance.

6 THE WITNESS: The question I would like to ask,
7 Commissioner, is, I understand that my Attorney is not allowed
8 to cross-examine me.

9 COMMISSIONER HICKINBOTTOM: Well, an Attorney can't
10 cross-examine his own client, but in any event, this is not a
11 trial. This is an investigatory process, an inquiry in which
12 I'm trying to obtain information.

13 So, it's really the Commissioner who asks the
14 questions usually through counsel to the Inquiry.

15 If Mr Rowe thinks that there are matters that should
16 be put to you which have not been put to you, then, under the
17 Commission of Inquiry Rules, there is a process for dealing with
18 that. Mr Rowe, who has the Rules, will know what that is, but
19 it's effectively to raise any further questions with me either
20 through counsel or directly.

21 THE WITNESS: So, as it is for this particular sitting
22 that I'm in right now, I'm allowed to defend myself?

23 COMMISSIONER HICKINBOTTOM: Against what? There are
24 no allegations being made.

25 THE WITNESS: Well, if I want to enter something into

1 the record, if I want to answer a question that's given that
2 requires reference to something, a particular--a particular
3 article of law or something to that effect?

4 COMMISSIONER HICKINBOTTOM: Well, if it's law, then
5 obviously Mr Rowe will help us with that, but I don't think
6 there's any particular point of law at issue. I don't
7 think--well, we'll have to see what you say in regard to your
8 obligations, but the Act in terms of obligations is very clear.
9 I think no witness so far has suggested that those obligations
10 are not clear.

11 THE WITNESS: Commissioner, no witness so far.

12 COMMISSIONER HICKINBOTTOM: Yes.

13 THE WITNESS: But I am not any witness.

14 COMMISSIONER HICKINBOTTOM: No, no. You may say that
15 the obligations are not clear, and that would then be your
16 evidence.

17 THE WITNESS: Right.

18 And I think that each witness will be different
19 unless, you know--I expect each witness to be different.

20 COMMISSIONER HICKINBOTTOM: Yes.

21 THE WITNESS: I will be different.

22 COMMISSIONER HICKINBOTTOM: No, no. The evidence of
23 each witness has been--is, of course, different, but in
24 particular in relation to understanding various parts of the
25 form their evidence has differed.

1 But what I suggest is that Mr Bilal Rawat will ask you
2 some questions. If you have any issues in relation to any of
3 the questions, raise those with me.

4 THE WITNESS: That's just basically what I wanted to
5 know.

6 COMMISSIONER HICKINBOTTOM: Certainly, yes. Thank
7 you.

8 THE WITNESS: Thank you so much.

9 BY MR RAWAT:

10 Q. What I would--

11 MR ROWE: Sir, is it still my understanding that we
12 will having discussions on our submissions on Friday?

13 COMMISSIONER HICKINBOTTOM: Well, almost. What I said
14 was, Mr Rowe, is that I'd hear submissions on "criticisms", is
15 perhaps the best word to use, any criticisms of any particular
16 witnesses at the end of this topic. The end of this topic, now,
17 of course, will be on Monday but not on Friday, but--

18 MR ROWE: Friday? As I say, you will notice,
19 Commissioner, that our position is that the Salmon rules are not
20 just suggestions but are binding law. This is our submission.

21 COMMISSIONER HICKINBOTTOM: I understand that, and I
22 don't want to interrupt the evidence unnecessarily.

23 MR ROWE: No, no, but I want to let you know.

24 COMMISSIONER HICKINBOTTOM: But at the moment--

25 MR ROWE: Yes.

1 COMMISSIONER HICKINBOTTOM: And you've seen some of
2 the witnesses.

3 MR ROWE: Indeed.

4 COMMISSIONER HICKINBOTTOM: And the evidence of the
5 others is either available on YouTube or the Transcript.

6 MR ROWE: Indeed.

7 COMMISSIONER HICKINBOTTOM: But I'm looking at the
8 moment at the system Register of Interests. All of the
9 witnesses, bar two, to my recollection--I'll be corrected if I'm
10 wrong--have accepted that they have been in breach of section 3
11 of the Register of Interests.

12 MR ROWE: Indeed. Indeed.

13 COMMISSIONER HICKINBOTTOM: And indeed, some of them
14 in breach of section 7. Whether it's necessary to write to them
15 or you about those admitted breaches is something that we can
16 discuss on Monday.

17 THE WITNESS: Indeed.

18 COMMISSIONER HICKINBOTTOM: They've simply accepted
19 it. There is no sort of mystery or doubt about it, but I will
20 hear submissions on that on Monday.

21 MR ROWE: There is no doubt, sir. You made it
22 positively clear that the process still is investigatory.

23 COMMISSIONER HICKINBOTTOM: Yes.

24 MR ROWE: There is no accusatory aspect to it.

25 COMMISSIONER HICKINBOTTOM: No.

1 MR ROWE: That is, we understand.

2 COMMISSIONER HICKINBOTTOM: But the witnesses have
3 frankly and openly accepted that they are in breach.

4 MR ROWE: Indeed, indeed.

5 COMMISSIONER HICKINBOTTOM: But I'll deal with how we
6 deal with that on Monday.

7 MR ROWE: I appreciate that.

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

10 Mr Rawat.

11 MR RAWAT: Thank you.

12 (Mr Rowe conferring with the witness.)

13 BY MR RAWAT:

14 Q. I think you've got open in front of you, Mr Fraser,
15 the bundle that is related to you, but there should also be on
16 the table a bundle that is headed "Constitution and Legislation
17 Bundle"?

18 A. Yes.

19 Q. And perhaps if we start off with that bundle so that
20 we can see the context in which--

21 MR ROWE: May I have a copy of that, please? It's not
22 here. This bundle is (unclear).

23 BY MR RAWAT:

24 Q. The Constitution and legislation bundle and also the
25 policy bundles were issued by the COI, I think, over the

1 weekend, with the direction that they would only be available in
2 electronic form and that applicants, if they need to, should
3 bring their own copies. I don't think we would have prepared a
4 copy for any advocate in the room.

5 MR ROWE: You know, it's Constitution--with us, we
6 were told--we were informed by them that they were delivered
7 certain documents. We have not been received.

8 COMMISSIONER HICKINBOTTOM: Mr Rawat is right in
9 relation to this bundle, as I understand it, and again I'll be
10 corrected by someone if I say anything wrong. Withers asked for
11 the individual bundles for their witnesses Monday, and they were
12 provided with those over the weekend.

13 MR ROWE: We received those.

14 COMMISSIONER HICKINBOTTOM: Yes.

15 MR ROWE: We received those, but this seems to be a
16 new bundle?

17 MR RAWAT: It was a bundle that was e-mailed out over
18 the weekend, and it was e-mailed--I'm sorry to cut across you.

19 MR ROWE: That's okay.

20 MR RAWAT: It was e-mailed to all the legal
21 representatives of the participants, with two messages.
22 Firstly, that it might be added to from time to time, but
23 secondly, that it would only be retained in electronic form, and
24 so if any legal representative wanted to have a hard copy--

25 (Overlapping speakers.)

1 MR RAWAT: --then to print it off themselves.

2 MR ROWE: I will have to check with our Secretary, but
3 it wasn't provided to me.

4 COMMISSIONER HICKINBOTTOM: Mr Rowe, I suspect that
5 Mr Rawat will be referring to very few provisions in this
6 bundle, and I suspect that they will be fairly short provisions.

7 MR ROWE: Indeed.

8 MR RAWAT: And ones with which Mr Rowe will be
9 familiar.

10 COMMISSIONER HICKINBOTTOM: He will be very familiar
11 from the previous witnesses.

12 MR RAWAT: I want to assist Mr Fraser by giving him
13 context.

14 BY MR RAWAT:

15 Q. Mr Fraser, if we could go to page 59 in the bundle.

16 A. I'm there.

17 Q. This is the first page of the Register of Interests
18 Act 2006, and that came into force on the 18th of February 2008,
19 and it is the current law that relates to the Register of
20 Interests, and it's the law that relates to Members of the House
21 of Assembly making Declarations of Interests. It has, just to
22 assist you, been amended twice: Once in 2007, to change
23 references to the Legislative Council to House of Assembly; and
24 the second--

25 A. Can I actually say it came into force in 2008?

1 Q. Yes, 18th of February 2008?

2 A. But it was amended in 2007.

3 Q. Yes.

4 A. I--

5 Q. I can show you the amending Act.

6 COMMISSIONER HICKINBOTTOM: The Act was amended before
7 it came into force.

8 MR RAWAT: Yes.

9 COMMISSIONER HICKINBOTTOM: Mainly, Mr Fraser, to take
10 into account the changes in the Constitution, in particular the
11 change of name of the Legislative Council to the House of
12 Assembly.

13 THE WITNESS: That I understand, but it couldn't have
14 been an Act if it didn't come into force.

15 MR RAWAT: Well--

16 THE WITNESS: It must have been a Bill.

17 BY MR RAWAT:

18 Q. It is perhaps one of the outstanding questions about--
19 (Overlapping speakers.)

20 Q. --about the way that legislation is drafted in the BVI
21 because sometimes a Bill is referred to as an Act, and I can see
22 show you an immediate example of that if you wish, but it's
23 accepted that it applies to the House of Assembly.

24 A. The title is wrong. That's what it is. The title is
25 incorrect. It couldn't have been an Act of 2006 if it was

1 passed in 2008.

2 COMMISSIONER HICKINBOTTOM: No, no--well, again,
3 Mr Rowe will correct me if I'm wrong, it was passed in 2006, but
4 it didn't come into force--you know statutes can be passed and
5 not come into force. Before it came into force in
6 February 2008, it was amended. That's not unusual, Mr Fraser.

7 THE WITNESS: Okay.

8 COMMISSIONER HICKINBOTTOM: It was an Act.

9 THE WITNESS: It was accepted in 2008 and became an
10 Act--

11 BY MR RAWAT:

12 Q. It came into force, began to apply as piece of law in
13 2008.

14 COMMISSIONER HICKINBOTTOM: But the assent was in
15 2006, so the Act is the Register of Interests Act 2006, but it
16 came into force in February 2008.

17 BY MR RAWAT:

18 Q. More recent amendment which you will be aware of is
19 the 2021 amendment that came before the House of Assembly, and
20 that was to amend the acts so the Commission of Inquiry could
21 receive information from the Registrar of Interests.

22 If I take you just to page 61, please. Section 3 of
23 at the bottom of the page records--section 3(1): "A Member
24 shall make"--

25 A. Page 61?

1 Q. 61.

2 A. Good.

3 Q. "A Member shall make a Declaration in the form set out
4 in Schedule 1, within thirty days after this acts comes into
5 force and thereafter on the date on which he assumes the
6 function of his office and on each subsequent anniversary of
7 that date".

8 Subsection 2(a) reads: "A Declaration of Interest
9 under this section shall be made in respect of interests held on
10 the date on which the duty to make the Declaration arose".

11 So, bringing that to the modern day, there is an
12 obligation on Members of the House of Assembly on the day that
13 they are sworn into the House to make a Declaration under this
14 Act, and then on the anniversary of that date thereafter. If
15 you go, please, to section 7.

16 A. So, the first Declaration would have been in 2011?

17 Q. Yes. But if you are--if you--well, the first
18 Declaration within 30 days of 18th February 2008, but--

19 A. The Declaration has to be made when the Act comes into
20 force or when you get elected?

21 Q. If you look at section 3(1), it says: "Within 30 days
22 after this Act comes into force".

23 A. Okay.

24 Q. But thereafter--and other Members of the House of
25 Assembly have accepted this--when on the day you were sworn into

1 the House of Assembly, that's when the duty arises.

2 A. Okay.

3 Q. And that date will change, depending with each new
4 House of Assembly.

5 If you go to 7, section 7 at 64, I just want to draw
6 your attention to section 7(a): "Where a Member fails to make a
7 Declaration within a period of three months from the date on
8 which the duty to make that declaration accrued", and then
9 continue at the bottom--"the Member shall be in breach of the
10 provisions of this Act and the Registrar shall within 14 days of
11 the knowledge of such breach submit a report of such breach to
12 the Committee which shall meet to consider the report within 21
13 days of its submission".

14 The reference to the Committee is explained in the
15 "Interpretation" section of the Act, which is at page 60. The
16 "Committee" means the Standing Select Committee of the--and that
17 should be House of Assembly--charged for the time being with the
18 consideration of matters relating to the Register.

19 And so, there is a second way in which a breach can
20 arise for a Member. If three months after the date on which you
21 are supposed to file your Declaration and you still haven't,
22 that is a second breach, and the Registrar has to send a report
23 to the Standing Select Committee.

24 Now, this Standing Select Committee would have come
25 into force at some time from 2008, and it will be reconstituted

1 for a new House of Assembly. Have you ever been a Member of the
2 Committee of the Standing Committee in your time as a Member of
3 the House of Assembly?

4 A. Yes.

5 Q. In which session of the House of Assembly were you a
6 Member of the Committee?

7 A. In the Third House of Assembly.

8 Q. And that ran from--what were the dates of the Third
9 House of Assembly?

10 A. 2017 to 2019.

11 Q. In that--

12 A. And may I add, that that was the first Committee for
13 the Register of Interests. There was never one before.

14 Q. So, in previous Houses of Assembly, none had been set
15 up?

16 A. It couldn't be because the Standing Orders didn't
17 provide for it--

18 Q. Thank you for that.

19 (Noise interference.)

20 A. --making it impossible to form a committee.

21 Q. Can you remember when in 2017 that was established?

22 A. I can't tell you the date. I'm sorry.

23 Q. So, sometime in 2017, the Standing Orders were amended
24 to allow for the establishment of the Standing Select Committee?

25 A. Yes.

1 Q. Once it was established and you became a Member, could
2 you just clarify, what was your role on the Committee?

3 A. Well, once the Chairman calls a meeting and it
4 convenes, we sat--we had one meeting in the Register General's
5 office, and the--Register of Interests office, Registrar's
6 office, and the report before us at the time was dealt with.
7 Don't ask me what it was at this stage. So a while since then
8 we had a catastrophe, you remember? Because a lot of memories
9 still lapse, but it was after the hurricane, just in the period
10 just after the hurricane we had a meeting.

11 Q. And during your tenure in the House of Assembly, that
12 was the only one, the only meeting of the Committee?

13 A. Only meeting.

14 Q. And at that time, you were in opposition; is that
15 right?

16 A. Yes.

17 Q. From 2017 to '19.

18 And subsequent to that, in this House of Assembly,
19 you've not been appointed to the Standing Select Committee?

20 A. No, I have not.

21 Q. Could I ask you, obviously because you have been a
22 long-standing Member of the House of Assembly, you have a number
23 of Declarations, but you have been consistent in terms of the
24 details that you have provided. I'd like to, therefore, just
25 take you to one example of the form which you completed, to ask

1 you questions about your approach to the form. If you go back
2 to your bundle, please.

3 If you could go, please, to page 142.

4 A. Yes, I'm there. 142?

5 Q. This is a Declaration, Mr Fraser, that you made for
6 2021. There's a stamp at the top of the page. It's the stamp
7 of the Registrar of Interests. In manuscript is written the
8 date 26th of May 2021.

9 If we want to just perhaps deal with this quickly.

10 A. The twenty-sixth?

11 Q. Twenty-sixth of May 2021.

12 But if you look at page 149, can you confirm that
13 that's your signature on that page?

14 A. It certainly is.

15 Q. And it carries the date March 12, 2021?

16 A. It does.

17 Q. If we could go back to page 142, please.

18 A. 142.

19 Q. And as I said, the form reflects your answers
20 consistently, giving different information from one form to the
21 other.

22 A. Um-hmm.

23 Q. The first paragraph of the form requires a Member of
24 the House of Assembly or asks a Member of the House of Assembly:
25 Do you have remunerated or unremunerated Directorships in any

1 company? And you've answered "no" to that.

2 That's the position, is it, for you?

3 A. Which one you're looking at, the one that's from the
4 Register?

5 MR ROWE: Yes.

6 THE WITNESS: The first question you're looking at?

7 BY MR RAWAT:

8 Q. Yes.

9 A. Yes.

10 No. My answer is no, just as it states there.

11 Q. Now, do you--in your approach to this question, and
12 the reason I ask it is because different Members of the House of
13 Assembly have taken it to mean different things, but what did
14 you take the question to mean?

15 A. Exactly what it says.

16 Q. So--

17 A. You have to--you have to bear with me in the fact that
18 I was there when this law was made. I have not--I have no
19 excuse for being ignorant of the law. It says exactly what it
20 says, so we should have remunerated or unremunerated
21 Directorship, the answer is "no".

22 Q. You then go to page 143?

23 A. Yes.

24 Q. Remunerated employment, office, profession, et cetera,
25 and you're asked, as a Member of the House of Assembly, do you

1 have any employment, office, trade, profession or vocation,
2 apart from membership in the House of Assembly or ministerial
3 office from which you are remunerated or in which you have any
4 pecuniary interests.

5 And again, you've answered "no" to that, as you have
6 on every Declaration of Interests.

7 A. Yes.

8 Q. And so, that's your position.

9 So, is it your position that, once you were elected as
10 a legislator, you ceased, for example, to practice as an
11 architect?

12 A. Yes.

13 Q. Now, some Members of the House of Assembly, in filling
14 in this form, have taken this to be the place to disclose
15 d/b/as. Now, you've made the point that you were there when
16 this law was made, and there is no excuse to being here--as you
17 said, yourself, you have no excuse to be ignorant of the law.
18 But from that position, would you agree that that is where you
19 would expect such details to be given by a Member of the House
20 of Assembly?

21 A. I can't speak for other Members of the House of
22 Assembly. I can only speak for myself. The answer is straight.
23 No interests.

24 (Overlapping speakers.)

25 A. None whatsoever.

1 Q. The reason--it wasn't asking you to either speak for
2 individual Members themselves, but because you, as you said,
3 yourself, you were there, and so you can assist the Commissioner
4 with insight into the purpose of this law and in particular the
5 purpose of this form. And from that unique position, perhaps,
6 would you accept that if someone were wanting to declare a trade
7 license or a d/b/a or any other kind of business, that's where
8 you would expect it to be?

9 A. That's a good place to put it.

10 Q. Now, at the bottom of that page is paragraph 3, which
11 is--refers to "clients", and it asks: "Does any of the paid
12 employment registered in Categories 1 and 2 entail the provision
13 to clients of services which depend essentially upon or arise
14 out of your position as a Member of the House of Assembly", and
15 you're directed to the notes which you'll see overleaf, and in
16 particular you're directed to Note 1: "Services covered by this
17 category include action connected with any parliamentary
18 proceedings, sponsoring meetings or functions in the House of
19 Assembly building or offices, making representations to
20 Ministers, Fellow Members or public servants, accompanying
21 delegations to Ministers and provision of advice on
22 parliamentary or public affairs".

23 Now, again, you have answered no to that as you've
24 done throughout.

25 A. Yes.

1 Q. That's your position made clear.

2 A. Right.

3 Q. But taking you back to that position of the person who
4 was there when this became law, can you assist the Commissioner
5 with what you understand to be the purpose of this paragraph?

6 A. It suggests that if you have any involvement with
7 persons who assist you in any which way in your parliamentary
8 duties and you, in return, facilitate them with some form of
9 favor, you're supposed to disclose that.

10 Q. So, if you're a director of the company and you
11 facilitate access to a Minister, for example, on behalf of a
12 client, that's where that should be recorded, would you accept
13 that?

14 A. Right.

15 If we don't have what you call "lobbyists" here, but
16 if you were to get involved with the functions and duties of a
17 lobbyist, you ought to take gifts or favors from that person in
18 return for giving them access, this is where you would expect to
19 see this information.

20 Q. I'll come back to this question shortly, but if I take
21 you, then, to the next paragraph which you'll see at 144, and
22 it's paragraph 4 of the form headed "Sponsorship", and it has
23 two elements to it: "The first is, did you benefit from any
24 sponsorship before election where, to your knowledge, the
25 financial support in any case exceeded in aggregate \$2,500"?

1 You've again answered no in every Declaration of
2 Interests, but putting the question more widely, what do you
3 understand is meant by "sponsorship before election"?

4 A. Any contribution. Any contribution someone make to
5 you towards your election is a sponsorship.

6 Q. So, that includes a monetary donation. Would it
7 include provision of services, in your view?

8 A. Sure does.

9 Q. What the Member is also asked--and this is at (b)--"do
10 you benefit from any form of sponsorship financial or material
11 support as a Member of the House of Assembly?" And again,
12 that's obviously if--is that intended to catch where once you're
13 a serving Member of the House of Assembly you get any benefit
14 from anyone, for example, subsidised accommodation, you should
15 be declaring it there?

16 A. Yes.

17 Q. I can take the next sections shortly. Paragraph 5 of
18 the form which you'll find at your page 145, Mr Fraser.

19 A. Yes.

20 Q. Is headed "Gifts, Benefits and Hospitality in the
21 Virgin Islands". It sets some threshold, but it is intended,
22 isn't it, for a Member to declare any gift or benefit or
23 hospitality that meets those thresholds but which they receive
24 from a company, organization or person within the Virgin
25 Islands? Would you agree with that?

1 A. I do.

2 Q. Sixth, at 146, Overseas Visits. What the Member of
3 the House of Assembly is expected to declare is not personal
4 trips that they may make as any individual may make but, rather,
5 trips that they are making overseas as a Member of the House of
6 Assembly but which they don't fund themselves or isn't funded by
7 the public purse. That's the proper interpretation of this
8 paragraph, isn't it?

9 A. That's it.

10 Q. And then if we go to seven--and I should say for the
11 record, in relation to both paragraph 5 and paragraph 6, you
12 have indicated "no", as you have done on every Declaration?

13 A. Yes.

14 Q. Seven is--returns us to benefits and gifts, but it's
15 overseas benefits and gifts. This is your page 147, and again
16 there are thresholds set. But there the elected Member of the
17 House of Assembly is asked to declare any gift or benefit
18 received from a foreign government, organization or person,
19 which in any way relates to your membership in the House of
20 Assembly. Now, again you said "no" to that, but that's again
21 intended to catch hospitality that's given to you, for example,
22 as a Member of the House of Assembly?

23 A. Exactly. Exactly.

24 If I can give you an example.

25 Q. Yes, please.

1 A. One time, there was travel--I had a meal. Someone
2 offered to pay for it, and I told them, you can't do that. You
3 don't know where this is going to end up; pay for my own meal.
4 Simple as that was, so...

5 Q. Um--

6 A. With this Declaration of Interest, you may not get the
7 same answer from others that you will get from me, but I can
8 tell you I walked into this with my eyes wide open because, like
9 I said, this bill was created during my tenure, and I know what
10 it's all about. I know to stay away from these things. When I
11 got into politics, I discontinued my practice. I don't collect
12 a dime for anything that I do. I don't do anything, so don't be
13 surprised whether you see the answer is "no".

14 Q. You made the point that you said you walked into this
15 with your eyes wide open?

16 A. Wide open.

17 Q. Stepping back from the form--and you've filled
18 in--filled it in a number of times--do you think it's clear as
19 to the purpose as to what it wants a Member to declare?

20 A. I'm very clear about that. My performance is clear as
21 well.

22 Q. You have, if we go to 8, which is at 147, where you
23 have answered "yes" is to land. The question that is asked of
24 the Member of the House of Assembly is this, isn't it: "Do you
25 have any land other than any home used solely for the purpose of

1 personal residential purposes of you or your family?" And so,
2 there is no obligation on you as a Member of the House of
3 Assembly to declare your own home, is there?

4 A. Right.

5 Q. Its purpose is to identify if you have any other land
6 interests; is that right?

7 A. Right.

8 Q. Now, you have declared ownership of two pieces of
9 land. You said that you're an owner in common of a piece in Sea
10 Cows Bay and another one in Chalwell Hannah's. And that's again
11 what you have said throughout your Declarations of Interests.
12 It has not changed.

13 A. Right.

14 Q. Just so that we are clear about your approach to the
15 form, neither of these are your personal residential home?

16 A. No.

17 Q. And again, when you approached the form, you didn't
18 see any ambiguity in what you were being asked to disclose?

19 A. No.

20 Q. If we go to shareholding, which is at 9, again there
21 are thresholds as to what the shareholdings that a Member is
22 obliged to disclose, but again you've always answered "no"?

23 A. Right.

24 Q. But returning again to your wider experience, is it
25 your position that that is also clear about what it's seeking?

1 A. Exactly it's clear.

2 Q. Now, 10 is headed "Miscellaneous". It's on 148. And
3 it says this: "If bearing in mind the definition of purpose set
4 out in the introduction to this form you have any relevant
5 interests which you consider should be disclosed but which do
6 not fall within the nine categories set out above, please list
7 them".

8 If I just remind you what it says about the definition
9 of "purpose", you'll find that if we go back to page 142. And
10 I'll read that out, at least the definition: "The main purpose
11 of the Register of Interests is to provide information of any
12 pecuniary interest or other material benefit which a Member
13 receives which might reasonably be thought by others to
14 influence his or her actions, speeches or votes in the House of
15 Assembly, or actions taken in his or her capacity as a Member".

16 Now, before asking you a question about how you
17 interpreted the operation of paragraph 10, what you disclosed
18 was a condo jointly owned with your wife. Why was it that you
19 put that? And this is in New York. Why was it that you put
20 that under paragraph 10?

21 A. There was no other place to put it. It's not under
22 shareholdings. It's not under land, which is up in 8. But
23 indeed it is assets that I own, and I think that "Miscellaneous"
24 was the place for me to put that.

25 Q. You didn't put this under "land". Is it your

1 understanding that land relates to land within the Virgin
2 Islands?

3 A. No, land--the condo that we're talking about is in a
4 building with other--it does not include a plot of land.

5 Q. I follow that.

6 A. So I thought the most appropriate place for me to put
7 that was under "Miscellaneous".

8 Q. Now, taking the wider question, and that's the
9 purpose, paragraph 10 takes you back to the purpose of the form?

10 A. Yeah.

11 Q. And so, what in your view, is paragraph 10 intended to
12 do?

13 A. Capture anything that you have of value, significant
14 value, that does not fall within the categories 1 through 9 in
15 this particular paragraph.

16 Q. Now, you said it's to capture anything that you have.

17 A. Of significant value.

18 Q. Do you limit the paragraph to assets that are held by
19 the Member, or do you think it captures other persons within
20 that Member's family?

21 A. By a Member. Had it meant--had it meant anything
22 different, it would speak to the same--it would speak to--it
23 would speak the same language as paragraph 9. Paragraph 9
24 speaks of other people besides the individual. This paragraph
25 doesn't.

1 Q. I see.

2 So, it speaks--the paragraph us points out,
3 paragraph 9, speaks of the spouse and dependent children,
4 doesn't it?

5 A. Right.

6 Q. Now, if one is looking back at the Preamble at 142, do
7 you accept this, that in completing this form, what the Member
8 of the House of Assembly has to do is to keep in mind that they
9 should be declaring interests which others might think could
10 influence their conduct as a Member of the House of Assembly?

11 A. Others. In the Virgin Islands, there are a lot of
12 others for several reasons, and you can never satisfy all these
13 others that you may be thinking about in this--in this document.
14 I think that the Members, including myself, were quite clear on
15 this Bill when it was made, what the form is saying, and if they
16 had any intent at the time to capture anyone else, they would
17 have put it in here because it's mentioned before. It's not
18 that it's an oversight. It's in the forefront of their mind.
19 Anyone other than the Member is captured in this document
20 already. If they wanted to put it in this particular paragraph,
21 they would have put it in there as well. It's not that they
22 didn't know about it.

23 Q. It may be the way I phrased my question. When I was
24 taking you back to--if you look at 142 in the bundle.

25 A. Yes.

1 Q. And that's the Preamble. The Preamble is where there
2 is a reference to "others".

3 A. I see that.

4 Q. It doesn't come from me. It comes from the document
5 itself.

6 A. No, I understand that.

7 Q. Yes.

8 A. But you're saying that others might perceive, and I
9 said to you that it's pertaining to the Member, and you asked
10 the question whether or not it shouldn't--if it shouldn't be
11 pertaining to Members' families and others, and I said no. If
12 it was, then the draft of the Bill and the legislators who
13 passed it would have put it in that particular paragraph because
14 they know it exists, but they chose to put it in paragraph 9
15 only.

16 COMMISSIONER HICKINBOTTOM: Mr Fraser, I understand
17 that, and I understand that interpretation. I think--and this
18 isn't something we have investigated, I don't think, with any of
19 the other witness, but there seems to me to be an internal
20 ambiguity within the form in this sense: If you look at the
21 Preamble to which Mr Rawat has referred, it says the main
22 purpose of the Register, so this is when we're looking at a
23 purpose of instruction this helps. "The main purpose of the
24 Register of Interests is to provide information of any pecuniary
25 interest or other material benefit which a Member receives", so

1 that's restricted to a Member on its face, not family, but in
2 various places within the paragraphs, paragraph 9 we'll do,
3 because we've been looking at Shareholders. Do you have, either
4 yourself or with or on behalf of your spouse or dependent
5 children interest in shareholdings.

6 So, there's a potential ambiguity there because the
7 purpose refers only to the pecuniary interest or other material
8 benefit which a Member receives, but that includes in
9 paragraph 9 that shareholdings, which a spouse or a dependent
10 child receives, that seems to me to be an internal tension
11 within the form.

12 THE WITNESS: Well, to deviate in that particular
13 instance, but for the rest of the document it held through,
14 through the Preamble.

15 COMMISSIONER HICKINBOTTOM: No, no, I'm sorry. I
16 understand your construction, but there seems to me to be that
17 tension within the document.

18 THE WITNESS: I don't see the tension. I really
19 don't.

20 The preamble, as I see it, seems to suggest that there
21 are no ulterior motives in the document. Just answer the questions as
22 they're posed truthfully. There are no tricks involved.

23 The way I'm getting it from the Commission today is
24 that, in order for a Member to fill this form out, even a Member
25 who was a part of making the Bill, needs to hire an Attorney

1 because the interpretations that I'm hearing didn't factor into
2 making the bill.

3 COMMISSIONER HICKINBOTTOM: I understand that, and I
4 understand your construction but other Members have regarded
5 paragraph 10 as including interests which are held by family
6 members.

7 THE WITNESS: I've heard other Members say that they
8 didn't get advice and they need consultation and all the rest of
9 it. I heard all that. So I'm not going to particularly sit
10 here and say that you've heard from--well, Members claimed that
11 they're not in favor of the Bill.

12 COMMISSIONER HICKINBOTTOM: But your evidence is that,
13 in your view, the--each paragraph is clear, and all Members have
14 to do is to respond to that clear paragraph--

15 THE WITNESS: Truthfully.

16 COMMISSIONER HICKINBOTTOM: Of course.

17 THE WITNESS: Commissioner, I'm under no illusion that
18 you might be of the view that this form needs to be amended.
19 The Bill needs to be--I'm not under an illusion that you might
20 be under that view. However--and I can support the fact that
21 you would like to see it, some form of form you would like to
22 see it amended. However, what I can't accept is myself or any
23 other Member being judged based on what you think should be. I
24 think we should be judged on what is.

25 COMMISSIONER HICKINBOTTOM: No, that I think misses

1 the point I was making. The point I was making is not what I
2 think. It's that individual Members of the House of Assembly
3 construe this form differently. You think it's clear. Others,
4 I think it's clear, but have a different interpretation, others
5 think that it's unclear. That's the only point.

6 THE WITNESS: One of the good things about this is
7 that I'm here today, and in the coming days you will be meeting
8 with other Members who were there when this Bill was made. And
9 one of the things that really intrigues me is when I listen to a
10 court of law using Bills that we have created, we made into law,
11 they never refer to the objects and reasons. It's just
12 interpreted just the way they see it and from their legal minds,
13 but sometimes it's far from what the law-makers had in mind.
14 But what can we do? Once it's passed, it's out of our hands and
15 we have to abide by your interpretation.

16 COMMISSIONER HICKINBOTTOM: But, Mr Fraser, that as a
17 proposition is correct. This is not a court of law.

18 And secondly, Mr Rawat was referring you to the
19 purpose of the form. That's all.

20 THE WITNESS: Okay.

21 COMMISSIONER HICKINBOTTOM: Okay. Thank you,
22 Mr Rawat.

23 THE WITNESS: I think Mr Rawat expected--

24 COMMISSIONER HICKINBOTTOM: What was that?

25 THE WITNESS: Commissioner, I said I think he expected

1 this today. He expected to have this between us.

2 BY MR RAWAT:

3 Q. Well, what I hope, and what we are getting, Mr Fraser,
4 is that you are giving full answers to my questions, and it is
5 very important to hear from you, because, as we have
6 established, you are a long-serving Member of the House of
7 Assembly.

8 A while ago, the Commissioner explained to you that
9 one of the issues that he is interested in is how the system
10 works. Now, you have provided to the Commission your
11 Declaration forms, and they cover 2013 to 2020, so there is a
12 substantial amount of paper. What I'd like to do is just try
13 and take all of that paper which has been provided to you in a
14 chronological way, but I'm not going to take you back,
15 necessarily, to 2013. What I would like to start with is
16 page 238 in the bundle, and it's taking you back to 2015.

17 A. 238?

18 Q. Yes, please.

19 A. Okay.

20 Q. If I've taken you to the right page, you should see a
21 letter from the Registrar of Interests Victoreen Romney-Varlack
22 dated the 26th of August 2015.

23 A. Yes.

24 Q. It's addressed to you as Third District
25 representative, and she says there, I quote: "I wrote to you on

1 17th of June 2015 regarding the filing of a Declaration of
2 Interests on 23rd of June 2015, the date on which it became
3 statutory due". At this date of writing, 26 of August 2015, I
4 have not had any response from you. I remind you of the
5 requirement to file such Declaration and request that you do
6 this soonest".

7 If you would, going through the documents, if you turn
8 over to 237?

9 A. Yes.

10 Q. On the 19th of January 2016, the Registrar wrote again
11 to you in these terms: "I write to remind you of your past due
12 Declarations of Interests which fell due on 8th December 2014
13 and 23rd June 2015. It's imperative that you seek to have this
14 outstanding matter rectified".

15 If you go to 236.

16 A. Yes.

17 Q. On the 11th of May 2016, the Registrar wrote again to
18 you in these terms: "Dear sir, I'm to remind that your
19 Declaration of Interests for the periods 8 December 2014,
20 23rd June 2015, are now overdue. I hasten to encourage you to
21 seek to correct this situation. You will be aware that another
22 Filing Date is fast approaching and another Declaration will be
23 due". And she then adds in brackets "Section 3 of the Register
24 of Interests Act 2006 refers".

25 Now, if you turn over to page 235.

1 On the 24th of May 2016, the Registrar wrote to you,
2 and she wrote as follows: "Dear sir, June 23rd, 2016, will mark
3 the first anniversary of your taking office as a Member of the
4 Third House of Assembly following the general elections of 2015.
5 As a Member of the House of Assembly, you are required to file a
6 Declaration of Interests on each anniversary of taking office as
7 mandated by section 3 of the Register of Interests. I take this
8 opportunity to remind you and indeed encourage you to make your
9 Declarations of Interests on the form provided herewith to
10 reflect your interests as of 23rd June 2016". The letter
11 continues, but I won't quote any more of it.

12 If you go to 234 in the bundle, 23rd of August 2016,
13 the Registrar writes to you again: "Dear sir, please refer to
14 the copies of correspondence dated 11th of May 2016 and 24th of
15 May 2016 respectively and seek to have these outstanding matters
16 rectified without undue delay".

17 And so, what the Registrar was reminding you there was
18 of the need to file your 2014 Declaration, your 2015
19 Declaration, and your 2016 Declaration.

20 If you go to now page 231, please. On the 13th of
21 December 2016, the Registrar wrote to you in these terms: "Dear
22 sir, I make reference to my letters of 23rd August 2016,
23 11 May 2016, and 24 May 2016 regarding your Declarations of
24 Interests for the periods 23rd June 2016, 8 December 2014, and
25 23rd June 2015. Kindly revert at your earliest convenience".

1 She continues: "Please either come into the office or call me
2 soonest so that we can have this matter rectified".

3 If you go to 230, this is a letter from the 1st of
4 March 2017. It's headed "Declarations of Interests", and the
5 Registrar writes as follows: "Please refer to my letter to you
6 of 13th December 2016 and respond with your Declarations of
7 Interests for the periods 8 December 2014, 23rd June 2016--2015,
8 and 23rd June 2016".

9 She continues: "As this matter is long overdue, I
10 hasten to remind you that you continue to contravene section 3
11 of the Register of Interests Act of 2006. I'm confident that
12 you do not wish to maintain this position. I therefore expect
13 to hear from you soonest".

14 If you go to 229, on the 29th of March 2017, the
15 Registrar of Interests wrote again to you, and it was in these
16 terms: "Dear sir, Declarations of Interests 8 December 2014,
17 23rd June 2015 and 23rd June 2016. My letter to you of
18 1st March 2017 has gone unheeded. Your Declarations of
19 Interests for the period 8 December 2014, 23rd June 2015, and
20 23rd June 2016 remain outstanding. You continue to contravene
21 section 3 of the Register of Interests Act 2016"--that's a
22 typographical error, but then the Registrar then asks this
23 question: "Why"?

24 And she continues: "Please make every effort to have
25 your Declarations of Interests for the period 8 December 2014,

1 23rd June 2015, and 23rd June 2016 completed and deposited at
2 the Office of the Registrar of Interests by no later than 15th
3 April 2017 or sooner".

4 If you go to page 204 in the bundle, Mr Fraser, you
5 should have a letter on your headed notepaper as the
6 representative from the Third District addressed to the
7 Registrar of Interests, and your letter is dated April 10th,
8 2017. The Registrar has stamped it as being received on
9 April 12th, 2017, and you write as follows: "Re: Declaration of
10 Interests for the Years 2014, 2015, and 2016. Dear Madam
11 Registrar, I respond to your letter of March 29th reminding me
12 of my delinquency for the years referenced and is pleased to
13 report that the said Declarations are attached for your use in
14 accordance with the provisions of section 3 of the Register of
15 Interests Act 2016", and then you say "my sincerest apologies",
16 and I end quote there.

17 Obviously, 2016 is a typographical error. It should
18 be 2006.

19 Prior to that response on April the 10th, 2017, had
20 you been in correspondence or discussions with the Registrar
21 before that, sending that letter?

22 A. Before I sent my letter?

23 Q. Yes.

24 A. No. I got her correspondence but I wasn't in
25 correspondence with her. I might have seen her and spoke to

1 her, most likely not about this, but just casually, maybe.

2 Q. Your voice is drooping a little.

3 A. I said yes, probably--I might have seen her during
4 that period in a social setting maybe but not professionally.

5 Q. I see.

6 A. And definitely from 2014 to 2017, I would have seen
7 her standing in Finance, and she would raise the issue about
8 delinquency.

9 Q. I see.

10 Under the Act itself--and you made the point that you
11 were there when it became law--

12 A. Yes.

13 Q. --we've seen that one of the letters is actually a
14 notice letter to Members of the House of Assembly like yourself,
15 notifying you of the date on which your Declaration is due and
16 what you need to do, and indeed giving you a form.

17 Under the Act, it's right, isn't it, that there is no
18 actual requirement on a Registrar of Interests to do that?

19 A. My screen is blank.

20 COMMISSIONER HICKINBOTTOM: Sorry. Just hang on a
21 second, Mr Fraser.

22 Mr Fraser's screen has gone blank, if that can be
23 looked at, please.

24 (Pause.)

25 COMMISSIONER HICKINBOTTOM: Thank you.

1 BY MR RAWAT:

2 Q. Are you ready to continue?

3 A. Yes.

4 Q. Thank you.

5 I was putting this to you that, under the Register of
6 Interests Act, there's no requirement on any Registrar, is
7 there, to send a Member of the House of Assembly a notice
8 telling them of their obligation?

9 A. Well, then our Registrar was overly kind to us to send
10 us notices repeatedly.

11 Q. Nor is there an obligation on a Registrar to send any
12 Member of the House of Assembly letters reminding them if they
13 are overdue and have missed the date. Would you agree with
14 that?

15 A. I don't know if that's what the law says. I'm not
16 sure.

17 Q. I won't press the point.

18 Can I look at the Declaration--

19 A. I've seen so many of those, I would figure that it was
20 our obligation to do it.

21 Q. Or it could have been, as you pointed out, an act of
22 kindness on the part of Victoreen Romney-Varlack because the
23 obligation on her is to write a report if you are more than
24 three months overdue of the date on which the Declaration should
25 be submitted, isn't it?

1 COMMISSIONER HICKINBOTTOM: As I understand your
2 evidence, Mr Fraser, that was--there is a statutory obligation
3 under section 7 where a Member is more than three months in
4 breach, there's a statutory obligation on the Registrar to send
5 a report to the Standing Committee. But my understanding of
6 your evidence is that, until 2017, there was no Standing
7 Committee.

8 THE WITNESS: Right. That's correct.

9 COMMISSIONER HICKINBOTTOM: So, it was not a very
10 effective system.

11 THE WITNESS: Well, the question will be now what good
12 has the Committee done? What good has having a Committee done?
13 I'm sure we'll probably get to that before we leave today.

14 BY MR RAWAT:

15 Q. If we look briefly at the Declarations that you then
16 submitted on the--in April 2017, you, first of all, sent at that
17 time on that date your Declaration for 2014, and I'm going to
18 take you to the copy that the Registrar of Interests has given
19 to the Commissioner. If you go to page 221 in your bundle, this
20 is the first page of your 2014 Declaration. It is stamped by
21 the Registrar as received on 12th April 2017.

22 A. Yes.

23 Q. But if you go to page 228.

24 A. Yes.

25 Q. Can you confirm that that is your signature?

1 A. It is.

2 Q. And you've dated it 8--December 8, 2014, and that's in
3 typescript--

4 A. No. Yes, in typescript. Yes, I did.

5 Q. If you go to your--to page 213 now--

6 A. Yes.

7 Q. --I'm taking you to your 2015 Declaration as received
8 by the Registrar, and she's again stamped it April 12th, 2017.

9 A. Yes.

10 Q. The last page of that document you will find at
11 page 220.

12 A. Yes.

13 Q. Again, can you confirm that that carries--that's your
14 signature there?

15 A. It is.

16 Q. And in typescript is the date June 23rd, 2015?

17 A. Yes.

18 Q. If you go to 205, please.

19 A. Yes, I'm there.

20 Q. This is now the last Declaration that you submitted
21 under cover of your letter of the 10th of April to the
22 Registrar. It's your 2016 Declaration. She again stamped it as
23 received on April 12, 2017.

24 If we go to page 212. Again, is that your signature?

25 A. That is my signature.

1 Q. And it carries now the typescript date June 23rd,
2 2016.

3 A. Yes.

4 Q. Now, these three Declarations have all been submitted
5 substantially after the date they were due, haven't they?

6 A. Yes.

7 Q. But you have dated each one with the date on which
8 they were due. Why--

9 A. That's correct.

10 Q. Why didn't you date them on the date that they were
11 completed?

12 A. You notice that each time she writes, she tells you
13 which ones are delinquent, and that's what I'm responding to,
14 the delinquency. If she said it's June--June 23rd, 2016, I
15 responded to that with that date. That's what it's for.

16 Q. So, again, taking you back to when the law was being
17 made, was it your expectation as one of the lawmakers that no
18 matter how late you are with the Declaration, you should date it
19 with the date on which it was due?

20 A. That was my status at that date.

21 Q. But doesn't that risk that the--doesn't that carry
22 with it the risk that the wrong impression is given?

23 A. What do you mean by "wrong impression"?

24 Q. Well, if you date it with the date that it's due but
25 in fact you submit it a year later, are you not giving the

1 impression that you completed the document on the Due Date?

2 A. No. She would have--I don't know what her filing
3 system--what the Registrar's filing system is all about. If
4 there's a bin for 2016, there's a bin for 2015 and you just drop
5 whatever belongs in there, but the date she received it, she has
6 it on there. It tells--you don't need to be a rocket scientist
7 to realise that it came in on that date because she stamped it.

8 Q. So, it stamps the Registrar to keep a record of when
9 she receives documents and Declarations?

10 A. And it tells what my status was at that particular
11 time. If I was to submit a Declaration late and my status
12 changed, let's say--let's say I have holdings on the 14th--2014
13 but I submitted it in 2015 and I have no holdings and I was to
14 record that I have zero holdings and all that stuff, that
15 wouldn't--that would be false.

16 Q. Why do you--why do you need to put the--if you're
17 giving the information as of the date the Declaration is due?

18 A. Yes.

19 Q. Why can't you make that clear on the form by endorsing
20 it rather than by giving the date on which it was due?

21 A. Endorsing it how?

22 Q. Adding an entry in your miscellaneous section or
23 making clear at the bottom that you are giving a Declaration--as
24 of 2017, you're giving your Declaration of your assets as of
25 2014?

1 A. Maybe you could do that. That's your choice, but I
2 chose to respond to the particular date that it was due. It's
3 for that date.

4 Q. Can I just ask you just clarify a point. This is,
5 independently of the Registrar, you provided the Commissioner
6 with your own Declarations of Interests as held in your own
7 records, and it's right, you have retained the Declarations or
8 copies of the Declarations of Interests that you submitted to
9 the Registrar?

10 A. Yeah.

11 The funny thing, you talk about the delinquency and
12 all that. Delinquency has for--for some people has something to
13 do with logistics. For instance, all the documents I got to you
14 came electronically, and it could have been done 5:00 in the
15 morning, 6:00 in the afternoon or whatever time it was, a
16 Saturday or Sunday. It came electronically. But the
17 Declarations, I mean, it's a document that you walk up to the
18 door with and drop it off.

19 I'm not suggesting--I don't know how it could work if
20 you were able to do it electronically, but I'm not suggesting
21 that that be the case because I'm not sure that the security
22 measures can be--can be attained. But in the case of you, the
23 COI, it wasn't difficult. I had records of those, but I was
24 able to send them in.

25 Q. The--when you--I'm going to try and break it down.

1 First of all is, you kept records of your Declarations
2 of Interests?

3 A. For the most part, yes. Some cases we had to go
4 through a period of hurricane and all that stuff that caused a
5 lot of disruption, so we can't be so sure.

6 COMMISSIONER HICKINBOTTOM: Were the records that you
7 kept, kept electronically or in hard copy?

8 THE WITNESS: Electronically.

9 COMMISSIONER HICKINBOTTOM: Yes, thank you.

10 BY MR RAWAT:

11 Q. If you go to page 228, please.

12 A. 228?

13 Q. Yes, please.

14 This is your--looking at your 2014 Declaration as
15 received from the Registrar. It's the last page on which your
16 signature appears, and you confirmed has your signature.

17 A. Yes.

18 Q. If you could hold a finger at that page and then turn
19 forward to page 30, this is the last page of your 2014
20 Declaration as you provided it to the Commissioner, so this came
21 directly from you and your records. It carries the same date in
22 typescript December the 8th, 2014. And is that your signature?

23 A. Yes.

24 Q. But if you compare pages 2,000--pages 30 and 228, you
25 said in both of them carry your signature, but what's there

1 appears to be slightly different.

2 A. Yes, because the Secretary is not electronic.

3 COMMISSIONER HICKINBOTTOM: That's why I asked whether
4 you kept them in electronic form.

5 THE WITNESS: I figured.

6 BY MR RAWAT:

7 Q. Yes. So, in providing the documents to the
8 Commissioner, did you print off the electronic version and
9 re-sign it?

10 A. Right.

11 Q. I see, so that explains the difference between the two
12 documents.

13 A. It doesn't--

14 COMMISSIONER HICKINBOTTOM: You signed two different
15 documents. You signed one document in 2016, and one document to
16 send to us.

17 THE WITNESS: Right. Whereas the document that was
18 sent to the Commissioner, which is on page 30, might be an
19 electronic signature. The one that went to the Registrar of
20 Interests is not because she got her hard copy.

21 BY MR RAWAT:

22 Q. I see.

23 So, you delivered a hard copy to the Registrar, and
24 when you provided it to the Commissioner directly yourself--

25 A. It was electronic--I think that's an electronic

1 signature on this one.

2 Q. Thank you. We're at the stage where you were to use
3 the word of the Registrar delinquent in relation to 2014, 2015,
4 and 2016. The obligation on you as a Member of the House of
5 Assembly under section 3 is to submit those Declarations either
6 on the day you assume office or on the subsequent anniversary of
7 that day. Do you accept that in relation to those three
8 Declarations you were in breach of section 3?

9 A. Yes.

10 Q. In relation to those three Declarations of 2014, 2015,
11 and 2016, they obviously reached the Registrar more than three
12 months after the date on which they were due?

13 A. Right.

14 Q. In section 7.

15 Do you accept that, in relation to those three
16 Declarations, you were also in breach of section 7 of the Act?

17 A. Right.

18 Q. Could you go to page 203, please, in the bundle.

19 This is a letter dated 14th of June 2017.

20 A. Um-hmm.

21 Q. Addressed to you. It says: "Dear sir, June 23rd,
22 2017 will mark the third anniversary of your taking office as a
23 Member of the Third House of Assembly. According to section 3
24 of the Register of Interests Act of 2006, a Member is required
25 to file a Declaration of Interests and the date in which he

1 assumes the function of his office and on each subsequent
2 anniversary of that date. The Declaration form is now provided
3 for you to file your Declaration of Interests and that of your
4 spouse and/or child as at 23rd June 2017. I look forward to
5 receiving your Declarations of Interests on or about 23rd of
6 June 2017. As 23rd June falls on a Friday, I would receive your
7 Declaration of Interests on Tuesday, the 27th of June 2017".

8 And so, what the Registrar is doing there is giving
9 you, as a Member of the House of Assembly, a notice again of
10 your obligation arising under the Act; that's right, isn't it?

11 A. Yes.

12 Q. If you go to 47 in the bundle--

13 A. 47?

14 Q. Yes, please. 47.

15 A. Yes.

16 Q. This is the first page your 2017 Declaration. It's
17 the copy that you supplied directly to the Commissioner, and if
18 you go to the last page, which is at page 54.

19 A. Um-hmm, yes.

20 Q. It's dated June the 8th, 2017.

21 A. Yes.

22 Q. Just so that we can be clear in terms of the
23 chronology, that's obviously dated before you had received the
24 Notice letter from the Registrar. So, did you submit your 2017
25 Declaration either before the date it was due or on the date it

1 was due?

2 A. 2017?

3 Q. Yes.

4 A. Don't you have one from her with a stamp on it?

5 Q. I'm sorry, your voice has dropped again.

6 A. Don't you have one from her with a stamp on it?

7 Q. No.

8 A. That's strange. That's strange, 2017.

9 You have '18 and '19?

10 Q. Yes, I will take you to those in a moment.

11 A. '20.

12 Q. Yes.

13 A. But you don't have '17?

14 Q. It's a small point, you may not remember now given
15 it's a few years ago, but it goes to this, Mr Fraser: Do you
16 remember just providing your 2017 Declaration on time?

17 A. I don't know because she must have it, she must have
18 had it because it's not in her notes which I responded to.

19 Q. Perhaps it's something you could look into it, but
20 it's not something I think we need to take further now.

21 If you go to 202 in the bundle.

22 A. Just one second. Just one second.

23 (Witness reviews document.)

24 A. I have a June 7th--I have a June 2017 from the
25 Registrar.

1 Q. Okay. Let's--take me to it.

2 A. Page 176.

3 Q. And it's stamped 23rd of February 2021.

4 A. Okay. And then you went back to...

5 (Witness reviews document.)

6 A. You have a June on page 47, 2017, we go back to
7 page 176, you have a 2017 as well.

8 Q. So--

9 A. That's the one that was submitted to her.

10 Q. Stamps it as received in 2021.

11 A. 2021? '17, '18--what's the letter--she would have a
12 letter from me as well.

13 (Overlapping speakers.)

14 Q. Can we pause that and I will come back to it because I
15 will take you through the correspondence.

16 A. Do you remember the page?

17 Q. We can get to the letter that you sent to her as we go
18 through the correspondence.

19 A. Okay.

20 Q. And I will allow you to deal with that point.

21 A. Okay.

22 Q. If you go to page 202.

23 A. 202. Just A second. I got it.

24 Q. Yes.

25 It's now the Notice letter for 2018. So, on the 23rd

1 of May 2018, the Registrar of Interests writes to you and says:
2 "Dear sir, June 23rd, 2018 was the fourth anniversary of your
3 taking office as a Member of the Third House of Assembly.
4 Section 3 of the Register of Interests Act 2006 mandates that a
5 Member of the House of Assembly is required to file a
6 Declaration of Interests on the date in which he assumes the
7 function of his office and on each subsequent anniversary of
8 that date. A Declaration form is herewith provided for your
9 filing of your Declaration of Interests and that of your spouse
10 and child as at 23rd of June 2018". So, again, giving you
11 notice of the need to file your Declaration for 2018 by 23rd of
12 June 2018.

13 A. Can I say something regarding this?

14 Q. Yes, please.

15 A. I want to go back to 2017. I note keenly that the
16 three-month deadline was one day after, which was the 8th of
17 September, one day after that humongous disaster that the
18 Territory suffered, called Hurricane Irma. If I miss that
19 three-month deadline, well, if I fell afoul of that three-month
20 deadline in one day, that I was affected by Hurricane Irma,
21 nothing was the same after that for 2018 or '19 or whenever.
22 Whose offices, including mine, that wasn't decimated, destroyed,
23 documents destroyed. This same room that we are in was used for
24 the House of Assembly meetings. High school had been destroyed
25 and is still not rebuilt. The Government administration complex

1 destroyed and now being worked on. Government offices had been
2 distributed throughout the Territory.

3 I don't want to believe--I don't want anyone to get
4 the impression that that disaster didn't have an impact on this
5 Territory. I am more concerned about people who don't have
6 roofs over their heads. I stood in knee-high water--ankle-high
7 water distributing food in a community center in my district
8 that has not been rebuilt yet, still working on it. (Unclear)
9 the racetrack was destroyed. So I want to see some context in
10 this whole thing. I know that you're concerned about the
11 Declarations of Interests which we were supposed to
12 do--Commissioner, we were supposed to declare. In my case, my
13 Declaration has remained the same for the 16 or so years since
14 this thing--this Act has been in place.

15 I'm not looking for any excuses, to make any excuses,
16 I'm just telling you the facts.

17 COMMISSIONER HICKINBOTTOM: Mr Fraser, we certainly do
18 not underestimate the consequences of the 2017 hurricanes or,
19 indeed, later the COVID pandemic, but we have been through, in
20 some detail, the correspondence that you've received from the
21 Registrar in respect of your 2014, '15, and '16 Declarations.
22 They were all put in in 2017.

23 The 2017 Declaration is a slight mystery because the
24 date stamp that the Registrar has put on it is 2021, but all of
25 the correspondence, which is in the bundle, which she sent you

1 between 2018 and 2021, none of it refers to the 2017
2 Declaration. So it looks as though, although we haven't got a
3 date-stamped version, that that may have been put in in 2017.

4 THE WITNESS: I think it was in put in in 2021, but if
5 you go to my letter, my letter might clear it up. I'm not sure.

6 COMMISSIONER HICKINBOTTOM: Okay. But 2017 is not
7 clear. But just putting 2017 to one side, the correspondence
8 which Mr Rawat I'm sure was certainly going to go through, for
9 the next three years is very similar to the correspondence
10 you've had earlier from the Registrar, regular correspondence
11 referring to the declarations that were due in June 2018,
12 March 2019, March 2020. And those dates when the Declarations
13 were due are repeated in correspondence on a regular basis
14 through to the 5th of January 2021, which is on page 184.

15 THE WITNESS: I'm not refuting that at all.

16 COMMISSIONER HICKINBOTTOM: There she reminds you that
17 the Declarations due for 2018, 2019, 2020, and then they're put
18 in in January 2021.

19 THE WITNESS: '21.

20 COMMISSIONER HICKINBOTTOM: Now, I understand the
21 point you make that the substance of your Declarations hasn't
22 changed, I understand that, but we're dealing here with
23 governance and process; and, in terms of process, you were
24 delinquent for three years from 2014 and then for, I think, four
25 years through to 2021, when Declarations were simply not

1 submitted on a regular basis, despite the fact that the
2 Registrar had sent you polite but persistent reminders. Is that
3 the case?

4 THE WITNESS: That I was delinquent?

5 COMMISSIONER HICKINBOTTOM: Yes.

6 THE WITNESS: Yes, I was.

7 COMMISSIONER HICKINBOTTOM: And Mr Rawat has already
8 put it to you in respect of the first three.

9 THE WITNESS: First three.

10 COMMISSIONER HICKINBOTTOM: '14, '15, '16, but in
11 respect of '17, '18, '19, and '20, again, breaches of section 3
12 and section 7 because none was made within three months.

13 THE WITNESS: Correct, yes.

14 COMMISSIONER HICKINBOTTOM: Thank you. I thought that
15 may shorten that slightly, Mr Rawat.

16 MR RAWAT: Unless you require me, Commissioner, I'm
17 not going to take Mr Fraser, in light of his answers, to all of
18 that correspondence. But if I could take him to page 151 in the
19 bundle.

20 BY MR RAWAT:

21 Q. You've--and this may clear up what your position was,
22 Mr Fraser, but it's a letter dated 23rd of February 2021, and
23 you respond to the letter of March 10, 2020, from the Registrar,
24 which was the most recent letter she'd sent you. Well, it
25 wasn't, in fact, the most recent letter but it's the one you

1 chose to respond. I think that the most recent letter she sent
2 you was on the 5th of January 2021, but on the 23rd of--

3 A. Just a second. I'm responding to her letter
4 of--whether it's dated and responded to this particular
5 letter--March 10th.

6 Q. Yes.

7 A. You seen the March 10 letter?

8 COMMISSIONER HICKINBOTTOM: That's March the 10th,
9 2020, nearly a year before. I'm not sure that we have that
10 letter.

11 BY MR RAWAT:

12 Q. The last letter before that response--

13 A. (Unclear.)

14 Q. The last letter that you had from the Registrar before
15 that response is at page 184.

16 A. Okay. Page 184 does refer to March 19th,
17 March 12th--no, 184 is January 5th letter.

18 Q. Yes. So, on January 5th, she's written to you
19 reminding you that there were outstanding Declarations.

20 A. Yes.

21 Q. And then--

22 A. She doesn't mention 2017.

23 Q. No. But if we go to your letter, at 151, you say: "I
24 respond to your letter of March 10th, 2020, reminding me of my
25 obligation to file my Declarations of Interests on my

1 anniversary March 12, 2020. This Report that the said
2 Declaration together with those for 2016, '17, and '18, which my
3 records show were not submitted, are attached for your use in
4 accordance with the provisions of section 3".

5 A. I think the reason I responded to--mentioned March 10
6 is because they may have had all the years on that particular
7 letter.

8 Q. But you had already by this time submitted, in fact,
9 your 2016 Declaration, that you had done back in April 2017?

10 A. Oh, okay.

11 Q. But if you turn over--I mean, the First Declaration
12 that was sent under cover of that letter is stamped by the
13 Registrar, and she's put the manuscript date of 27--23rd of
14 February 2021 there. So, there are--and that includes a 2017
15 Declaration. So, it would seem that, as of February 23rd, 2021,
16 that's when you submitted your Declarations for 2017, 2018,
17 2019, and 2020?

18 COMMISSIONER HICKINBOTTOM: I think that records with
19 your recollection, Mr Fraser, when you said that you thought
20 2017 was submitted in 2021.

21 THE WITNESS: Right, yes.

22 BY MR RAWAT:

23 Q. So, I won't take you to the Declarations themselves
24 because as you've already acknowledged to the Commissioner, you
25 accept that you were delinquent and that you had--you were in

1 breach of the Act in serving these late?

2 A. According to the dates, of course. What can I say?

3 Q. And again, just for the record, but we don't need to
4 look at it, but you've dated them on the dates that they were
5 due.

6 A. Right.

7 Q. But obviously, as you pointed out, the Registrar
8 stamped them with the date that they were received.

9 A. You have to--you have to understand that we don't know
10 the system that the Registrar used. We are not familiar with
11 her system, so you send it in for the date that it's due, how
12 she files it, I don't know. Her means of determining when she
13 got it is important, so she put a stamp on it.

14 Q. But independent of her approach, there is still a
15 statutory obligation on you, as a Member of the House of
16 Assembly, to file it on the date that it's due, isn't there?

17 A. It is.

18 Q. Can I just ask you what position was in relation to
19 your 2021 Declaration? That would have been due, I think,
20 in--12th of March 2021. Did you submit that on time, or did you
21 have it ready to submit on time?

22 A. Did you--did you get it from me?

23 Q. Um--

24 A. I sent it yesterday.

25 Q. Well, if you go to 141 or 142 in the bundle?

1 A. 142?

2 Q. Yes.

3 That's the first page of it as received by the
4 Registrar, and it's stamped, and it's dated the 26th of
5 May 2021.

6 A. It was due when?

7 Q. Well, it would have been on the 12th of March?

8 A. March.

9 Q. 2021. But if you look at page 139--before you answer,
10 Mr Fraser, look at page 139, and you will see why I've asked the
11 question that I have.

12 I'm not going to read the letter out in full, but.

13 (Overlapping speakers.)

14 Q. --on the 5th of May 2021, the Registrar had written to
15 all Members explaining why--referring to a letter written in
16 February asking Members to submit their Declarations of
17 Interests by 12th of March 2021; explained why she was then
18 unavailable for a period, and that that had been explained by
19 the Office of the Clerk of the House of Assembly to Members.

20 So, there may be reasons to explain why the
21 Registrar's stamp on that day carries a stamp of May 2021, but
22 my question is: Do you remember having it ready to submit by--

23 (Overlapping speakers.)

24 A. My letter is dated March 12, yes. It was ready to go
25 then, but I got correspondence from the Registrar indicating

1 that she was going to be ill--I mean, she was going to be out
2 due to illness, and as a result we should hold off on submitting
3 because there is nobody to submit it to.

4 Q. I see.

5 A. If I'm still waiting--if I was waiting to get a
6 response as to when I should bring it, I certainly got this one,
7 the same one that you have, dated May 5th.

8 Q. So, to summarise it, at least in 2021, your
9 Declaration was ready to be filed on time?

10 A. Exactly.

11 Q. Can I move on to just another matter briefly, and that
12 is an issue that we have asked other Members of the House of
13 Assembly to help with, and that's how the system for allocating
14 assistant grants work, and I just wanted you if you could just
15 confirm the position?

16 A. Before we move on to that, if I may, I would like
17 to--to say that, I need to--I need to enter into the record that
18 the perception on the street might be that Members of the House
19 of Assembly are a group rogues, who under this particular act
20 and their responsibility to declare their Interests is left
21 alone to themselves and they do anything they wish, but that is
22 far from the truth. If you look at the Act itself under
23 section 5, subsection 4, it says: "Where the Registrar--whether
24 the Registrar is satisfied that an entry into the Register has
25 been made as a result of the fraudulent or materially misleading

1 Declarations by a Member (a), the Registrar shall (1), note the
2 entry as canceled, and (2), by notice require the Member to make
3 a new Declaration in respect of the interests held at the date
4 the fraudulent or materially misleading Declaration was made;
5 and (b), the Member shall be required to make the new
6 Declaration within 24-28 days from the date of the Notice".

7 So, section 5 says: "The Registrar shall mark as
8 canceled any entry which has been incorrectly made".

9 So, it's not as if Members can submit anything they
10 wish and get away with it. It's not as if Members can do
11 anything they want with a Declaration. And as you pointed out
12 aptly, the Act does, in fact, have a deadline by which these
13 things are supposed to be submitted, and the 30 days is
14 beyond--beyond the 30 days you are in breach.

15 So, I think that I've heard you speak in glowing terms
16 about the responsibilities of a committee, and it's your hope
17 that a committee can remedy these--can remedy what you have seen
18 taken place. I'm not sure, and I think that when it comes to
19 governance, I will be able to elaborate more as to why I'm not
20 sure, Commissioner, about your hopes and aspirations for
21 remedying what you see happening here now.

22 COMMISSIONER HICKINBOTTOM: Mr Fraser, we're looking
23 at the system, and although there are provisions in the Act, one
24 of which you've referred to whereby the Registrar has powers
25 to--in respect of sanctions where a Declaration is wrong, the

1 picture that the evidence paints is, firstly, that Members of
2 the House of Assembly put in Declarations late or, with respect
3 to you, very late in some cases.

4 Secondly, under section 7--and this is not a criticism
5 of the Registrar, but it's a fact, under section 7 of the Act,
6 under which the Registrar has to report a Member who is over
7 three months' late to the Standing Committee, that is not done.
8 You've referred to one instance we have no documents in relation
9 to that, but generally it's not been done.

10 Thirdly, the Standing Committee which oversees this,
11 on your evidence, didn't exist until 2017. And on the evidence
12 that we've had to date has never met with the sole exception to
13 which you've referred. And the Standing Committee, of course,
14 is of Members of the House of Assembly, some of whom are in
15 breach of their obligations under the Act.

16 Now, as a system at the moment, that doesn't seem to
17 me to be an effective governance system. You say that there may
18 be things that we can do to--that can be done to improve it.
19 There is a Bill that's been drafted which may address--may
20 address some of these issues, but simply in terms of the
21 governance system, the system in the 2006 Act does not, on the
22 face of it, seem to be optimal.

23 THE WITNESS: From what I know, Commissioner, I'm not
24 sure that the Committee is--is privy to Declarations. I don't
25 think the Registrar can, in fact, divulge a Declaration of a

1 Member to the committee.

2 COMMISSIONER HICKINBOTTOM: Another issue is the
3 extent to which the Registrar can show what has been declared to
4 anybody, including the Standing Committee, including, we've
5 heard from some witnesses, to the Members of the House of
6 Assembly whom their own Declarations. So, it's very restrictive
7 in terms of publicity, too, but these are matters that, as I
8 say, we're--I'm looking at the system at the moment, and the
9 evidence that we're receiving on the system is very helpful to
10 build up a picture in relation to it.

11 Yes, Mr Rawat.

12 BY MR RAWAT:

13 Q. To move on, and I hope, try and take it briefly. I'm
14 going to try and summarise the evidence from other Members of
15 the House of Assembly to see if you agree with it, Mr Fraser.
16 The first is that all district representatives have access to a
17 fund which is \$125,000 a year and which is allocated on a
18 quarterly basis?

19 A. I want you to explain what you mean by "access".

20 Q. Well, that they can distribute assistance grants?

21 A. They can trigger the mechanisms to assist individual
22 from a vote that's held by the Clerk of the House. We don't
23 have access to the money.

24 Q. No. But you will receive an application--this is the
25 evidence as others have given, as someone will submit an

1 application to an elected representative.

2 A. Sure.

3 Q. The elected representative will make an assessment of
4 that application.

5 A. Sure.

6 Q. They will determine whether it should result in an
7 assistant grant or not. The application then goes to the Clerk
8 to the House of Assembly, who also undertakes a review. If the
9 Clerk has a concern, it will be returned back to the Member. If
10 there is no concern, it then goes to the Treasury Department,
11 who--to borrow Minister Wheatley's phrase, "cuts the check", and
12 then that is then distributed. That goes--the check goes back
13 to the House of Assembly, and it's distributed from there. It
14 doesn't go back straightaway to the Member.

15 The Treasury Department can also raise a concern.

16 A. You say that the check doesn't get to the Member?

17 Q. Well, Minister Wheatley's evidence yesterday was that
18 the check sort of doesn't go straight from the Treasury
19 Department to the Member, it goes via the House of Assembly.

20 A. Yeah, but it does end up with the Member.

21 Q. Yes, and it's distributed then.

22 A. Yes, yes.

23 Q. Would you accept this proposition, which is the
24 evidence of a number of Members of the House of Assembly that
25 the amounts that they can allocate each year is never enough

1 when set against the number of requests for assistance that they
2 may receive during the course of the year?

3 A. Let me say that the requested--the requests are
4 greater than the amount that we have.

5 Q. And so, there is an exercise to be done, a difficult
6 exercise of trying to assess the merits of each application and
7 who you can help and who you can't?

8 A. It's difficult.

9 I believe that the reason I didn't answer your
10 question straight is because, what is enough? It's never enough
11 because last year--we had \$225,000 as opposed to a regular year
12 where you have 125,000. I wouldn't even mention the 300,000 on
13 top of that, which was \$525,000 last year. And it was never
14 enough, it was not enough. So, the more you get, it's as if
15 this sitting is not going to do wonders for that vote that we
16 have now. I say "wonders", I mean, the voters are going to
17 mushroom after they see this.

18 Q. Just one point on the--there are guidelines,
19 Commissioner, I understand, which are issued, one set of
20 guidelines that are issued to all Members of the House of
21 Assembly for processing assistance grants. That allows for
22 district office expenses relating to rent, staff, and operating
23 expenses up to a maximum of 24,000 per annum.

24 So, a district representative might not choose to do
25 this, but they can use some of that money to fund an office in

1 their district; is that right?

2 A. That's right.

3 How old are those guidelines that you're looking at?

4 How old are those guidelines that you're looking at?

5 Q. That's a question I can't answer, but they are, as I
6 understand it, the guidelines that Members of the House of
7 Assembly--

8 A. I can assure you that they're more than 15 years old.

9 COMMISSIONER HICKINBOTTOM: We've asked the question,
10 Mr Fraser. We're waiting for the answer. This is not a
11 complaint. We only asked the question yesterday but we've asked
12 the question.

13 THE WITNESS: So, \$24,000 back then and \$24,000 now,
14 we can see the difference.

15 BY MR RAWAT:

16 Q. So, your evidence is that they haven't been updated in
17 15 years?

18 A. No, they haven't been. They haven't been. And I'm
19 surprised that Members have access to that--that list of
20 guidelines.

21 Q. Why are you surprised that they have access to those
22 guidelines?

23 A. I haven't seen one of those for a while, from the time
24 it came out, and the last time we were asking about it, I don't
25 know where it came from. I haven't seen it, if you have a copy

1 of it. But I'm familiar with--it came at a time when, Attorney,
2 your colleague Deniston Fraser was Clerk at the House of
3 Assembly. You could ask him what year those were.

4 Q. Well, the copy of the guidelines, in fact, that we are
5 referring to is a copy that was provided by Mr Fligelstone
6 Davies anyway.

7 COMMISSIONER HICKINBOTTOM: That's where it came from.

8 BY MR RAWAT:

9 Q. That's where it came from.

10 If I move on to a separate question, and that is the
11 Constitution providing under section 67 that the House of
12 Assembly can vote to exempt a Member from the need to vacate his
13 or her seat, if they are, to paraphrase, a Party to in some way
14 to a contract with Government. I take it that you have never
15 either sought exemption or been exempted under section 67?

16 A. Correct.

17 Q. Obviously, motions may have come before the House of
18 Assembly for seeking an exemption on which you would then have
19 to vote as a Member of the House of Assembly.

20 A. Yes.

21 Q. I think we've heard recent evidence from The
22 Honourable Neville Smith who explained the circumstances in
23 which he sought such a motion from the Members of the House of
24 Assembly.

25 A. Yes.

1 Q. In those circumstances, can you help the Commissioner
2 with this: What information would be provided to you, as a
3 Member of the House of Assembly, before voting on the motion in
4 order for you to decide which way you will vote?

5 A. We just get the request. It's simply the motion
6 itself on a sheet of paper.

7 Q. And is that then debated on the floor of the House?

8 A. Yes, there is debate. However, I think that Members
9 are not keen to debate each other on matters pertaining to each
10 other.

11 I will tell you what my position is, the fact
12 that--the fact that the Constitution provides for such an
13 exemption means that the Member is entitled to it. That's my
14 position. I'm not going to stand there and try to argue against
15 it.

16 Q. What the Constitution asks the House of Assembly to
17 do, it says in the circumstances it appears that just to the
18 House of Assembly to do so, the House may exempt any elected
19 Member.

20 So, my question is how do you assess whether something
21 is just or not?

22 A. That's exactly my point, the fact that the
23 Constitution provides for it, that language is moot. Just--what
24 is just? You don't know what is just yourself?

25 Q. I don't need to. I'm not a Member of the House of

1 Assembly, which is why I'm asking you.

2 A. Even the guy on the street wouldn't know what it means
3 if he looks at it. What do you mean by just? If it's just. Of
4 course it's just. If the man took it to the Cabinet with his
5 Members, he brought it to the House of Assembly, I have yet to
6 see someone being turned down.

7 I think there was a time when there was an argument on
8 the floor regarding one such exemption, and I bet that Member
9 who stood up or tried to voice an objection to it never done it
10 again.

11 Q. And why did they never do it again?

12 A. They weren't as popular as they were before.

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

15 COMMISSIONER HICKINBOTTOM: Yes, thank you.

16 MR RAWAT: Commissioner, those are all my questions.
17 Can I conclude by thanking The Honourable Fraser for coming this
18 morning, for giving his evidence, and indeed for the way in
19 which he has given that evidence to you.

20 COMMISSIONER HICKINBOTTOM: Can I just echo that,
21 Mr Fraser. Thank you very much for your time, thank you very
22 much for your answers and the clear way in which you've
23 presented your evidence. And I think--I can't remember the
24 time, but I think you're due to give evidence next week in
25 relation to governance.

1 THE WITNESS: Next Tuesday, I think it is, at 2:00 or
2 1:00. Sometime.

3 MR RAWAT: Yes.

4 COMMISSIONER HICKINBOTTOM: It's Tuesday afternoon, I
5 think.

6 MR RAWAT: We mentioned that to The Honourable Fraser
7 when he was here on Monday, and he confirmed that that date is
8 in his diary, so we shall see him again very soon.

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

11 MR RAWAT: Could I ask you to rise briefly for five
12 minutes so we can reset the room.

13 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

14 (Recess.)

15 MR RAWAT: Before I call our next witness, can I just
16 for the record confirm that Mr Deniston Fraser is here to
17 represent the interests of the next witness, who is The
18 Honourable Melvin Turnbull.

19 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

20 BY MR RAWAT:

21 Q. I think good afternoon now, The Honourable Turnbull.

22 A. Good afternoon.

23 Q. You, of course, came on Monday, when you were sworn,
24 so there's no need to swear you in again, but first of all can I
25 thank you for returning to give evidence. I think we probably

1 kept you a little longer than we promised to, but hopefully
2 we'll get through everything in relatively quick order.

3 There's no need either for me to ask you to give your
4 full name or address because you did that on the last occasion.

5 As I explained to all witnesses I do try and keep my
6 questions short and simple.

7 A. Yes.

8 Q. But if at any time I put a question to you that you
9 have difficulty understands, please don't hesitate to ask me to
10 repeat or to rephrase it.

11 A. Certainly, thank you, sir.

12 Q. There are a number of bundles there on the desk. You
13 won't need to look at all of them, but those that you do need to
14 look at I will take you in due course.

15 A. Thank you.

16 Q. Final request from me, please remember just to keep
17 your voice up, to speak slowly, and that's because that allows
18 to us have an accurate and clear record of your evidence as we
19 go through the Hearing.

20 Could I start, as I have done with all the Witnesses
21 who have given evidence in this session, and that is to ask you
22 just to give an outline of your professional background before
23 you entered politics.

24 A. Thank you, Commissioner. Thank you, Mr Rawat.

25 Before I entered politics, my profession started in

1 2002, where I came became an insurance agent with AIG in
2 Hollywood, Florida. Then moving on to becoming an Associate
3 Manager, subsequently moving back to the BVI in 2005, where I
4 was the Manager for a financial services firm, in the BVI
5 financial services, responsible for pensions, investments and
6 retirement plans as well as insurance, so my background prior to
7 politics in terms of education background and professional
8 background stemmed on the field of finance.

9 And then in 2013, I left my job and started a
10 non-profit organization where I was mentoring youth between the
11 age of 12 and 18 to keep them out of the judicial system, to
12 keep them from getting records, so I worked alongside with the
13 Youth Court of The Virgin Islands, the Ministry of Education,
14 Ministry of Health and Social Development, and a number of
15 social organizations, including the health and community
16 organizations.

17 Q. Thank you very much for that outline.

18 Can I now turn to your career as an elected
19 representative.

20 Is it right that you were first elected to the House
21 of Assembly in 2015?

22 A. That is correct.

23 Q. And that was as the Member for the Second District,
24 and you were elected as a Member of the National Democratic
25 Party?

1 A. Yes, I was.

2 Q. And have you represented the Second District since
3 that time?

4 A. That is correct.

5 Q. Between 2015 and 2019, please correct me if I've got
6 this wrong, but the NDP was then in Government?

7 A. Yes, they were.

8 Q. Did you hold any ministerial office in that
9 administration?

10 A. No, I did not. I was a back-bencher. Acted, I think
11 on two occasions, maybe three as one time I believe as the
12 Minister for Health and another time might have been Minister
13 for Natural Resources.

14 Q. I see.

15 Now, obviously you were successful in the 2019
16 Election, but you now sit as part of the opposition.

17 A. Yes.

18 Just by way of correction, for the record, the record
19 must reflect that, before the end of the term, I left the
20 government side and walked over and sat as Member of the
21 opposition prior to the elections of 2019.

22 Q. I see.

23 So, when you say you were sitting as a Member of the
24 opposition, was it for any particular party?

25 A. At that time I left, and I was an individual

1 independent candidate or representative on the opposition.

2 Q. But for the 2019 Election, you returned to the NDP
3 fold?

4 A. No, I didn't.

5 Q. You're still--

6 A. 2019 We formed the progressive Virgin Islands
7 movement, new party that contested the elections.

8 Q. I see. So you are now a representative of the
9 progressive Virgin Islands movement?

10 A. That is correct.

11 Q. Thank you for that clarification. I'm sorry if I got
12 it wrong?

13 A. Not a problem.

14 Q. To return to the Second District, how many people live
15 in your district?

16 A. There are about, I would say, between 35 and--3500
17 persons living in the Second District. It encompasses parts of
18 Tortola and as well as Jost Van Dyke.

19 Q. Can you help me with this. I think this may have been
20 evidence from Minister Wheatley yesterday. Because this is a
21 question that I've asked of a number of Members of the House of
22 Assembly. But Minister Wheatley spoke of rebounding
23 initiatives that occurred from time to time with the aim of
24 keeping the population in each district roughly the same. Would
25 you agree that that is what goes on?

1 A. Well, I believe it may be the case because I remember
2 the Second District at one point did not include Jost Van Dyke.
3 Jost Van Dyke was a part of the first electoral district, so
4 there have been some changes over the year but since I've been
5 elected from 2015 to present there haven't been any recent
6 changes.

7 Q. Now, the official record on the BVI Government website
8 records that, in 2019, in the Second District, 1,015 votes were
9 cast, and you received 54.19 percent of those votes which is 550
10 with your closest opponent receiving 465 votes which is
11 45.81 percent.

12 A. Yes.

13 Q. Does that accord with your recollection of the outcome
14 of the 2019 Elections?

15 A. Very much so, and I remain eternally grateful to the
16 people of the Second District for that.

17 Q. Now, one of the issues that I have canvassed with
18 those Members of the House of Assembly that have given evidence
19 so far to the Commissioner, and this goes to--its starting point
20 is the evidence of the Attorney General. The Attorney General
21 has explained that there is a draft bill which I could show you,
22 if you need to see it, but it's headed the Register of Interests
23 Act 2021, but it's still a Bill, and this is a Bill that has not
24 yet reached Cabinet and, therefore, not yet reached you in the
25 House of Assembly.

1 But one of its proposals is to make the Register of
2 Interests available for public inspection. As you'll be aware
3 at the moment, that is not the case. Is that an initiative that
4 you would be in favor of?

5 A. Well, I believe--I believe once I see the Bill and
6 have the opportunity to review the contents. Obviously in the
7 House of Assembly we have the opportunity to do our research,
8 prepare for the debate, and then in the Committee Stage we make
9 our recommendations, suggestions of what we might think are
10 feasible.

11 As we continue to develop our country, in the
12 Territory of the Virgin Islands was just about 70-plus years old
13 in terms of our legislative arm of governance, I believe it is a
14 place that we need to move to.

15 I hold the position personally, that as a servant of
16 the people, that's what I am here to do, serve the people of the
17 Second District, and by and large the Territory, so the affairs
18 that I'm responsible for as a public servant leader, I believe,
19 I won't be opposed to having the register made public.

20 Q. And moving on from that, do you think that such a
21 step, or it is your view that such a step would only increase
22 accountability to the public and transparency to the public?

23 A. Well, the question--

24 COMMISSIONER HICKINBOTTOM: Sorry, hold on one second.

25 It's a mechanical issue.

1 (Pause.)

2 COMMISSIONER HICKINBOTTOM: The answer I'm afraid,
3 Mr Turnbull, has to be yes, so technology can be reset.

4 Shall we literally have a five-minute break? Would
5 that help?

6 TECHNICIAN: Yes.

7 COMMISSIONER HICKINBOTTOM: It's better we have a
8 five-minute break and come back when the internet has been
9 reset.

10 THE WITNESS: Understood.

11 COMMISSIONER HICKINBOTTOM: Thank you very much.

12 (Brief recess.)

13 COMMISSIONER HICKINBOTTOM: Thank you. We are doing
14 quite well with the technology, but hopefully it will now stand
15 up.

16 Thank you, Mr Rawat.

17 MR RAWAT: Thank you.

18 BY MR RAWAT:

19 Q. Welcome back, Mr Turnbull.

20 One of the issues that we are exploring with witnesses
21 in this session is the Register and the system for Members of
22 the House of Assembly to be able to declare their interests as
23 required. If you don't need me to do this, do tell me. But can
24 I just take you to what the Register of Interests Act obliges
25 you as a Member of the House of Assembly to do so you can see

1 the context of my questions.

2 A. I'm aware.

3 Q. So, you're aware that section 3 requires you to, on
4 the date that you're sworn as a Member of the House of Assembly
5 to make a Declaration and then on each subsequent anniversary of
6 that date?

7 A. Yes, sir, I am aware.

8 Q. And are you also aware that if within three months of
9 that date you haven't filed a Declaration, then the Registrar is
10 obliged to write a report about you to a Standing Committee?

11 A. Yes, I am. I am aware of that.

12 Q. Now, the evidence of The Honourable Julian Fraser this
13 morning was that that Standing Committee was only set up in
14 2017. Do you have--is that your recollection of when the
15 Standing Committee in relation to the Register of Interests was
16 set up?

17 A. If I--if my recollection serves right, I believe,
18 after being elected in 2015, I believe that Committee was--was
19 in place shortly thereafter.

20 Q. Were you ever a Member of the Committee?

21 A. No, I was not.

22 Q. And did you, in that period, 2015 to 2019, did you
23 learn anything about its workings or what it was up to at all?

24 A. In terms of the Committee?

25 Q. Yes.

1 A. No. I was made aware that neither in the Third House
2 of Assembly nor in this present house, the Committee has never
3 met.

4 Q. And in this present House of Assembly, are you a
5 Member of the Committee?

6 A. No, I'm not.

7 Q. Now, as you've indicated, you are aware of your
8 obligations. Do you keep copies of the Declarations you submit
9 to the Registrar?

10 A. The ones that I have submitted I didn't keep copies,
11 but I recently acquired the copies of all submissions made.

12 Q. And was that by going to the Registrar and asking for
13 copies?

14 A. That is--that is correct.

15 Q. They are in the bundle for you. I just want to sort
16 of quickly take you through them.

17 If you go to page 134?

18 A. Yes, I'm there.

19 Q. Hopefully, if we're on the same page, you will see the
20 first page of the registration form stamped July the 7th, 2015.

21 Do you have that?

22 A. That's correct.

23 Q. Now, if you go to page 142 I'm taking you to the last
24 page of that document.

25 A. Yes.

1 Q. 142.

2 A. Um-hmm.

3 Q. Can you confirm, please, Mr Turnbull, is that your
4 signature?

5 A. Yes, it is.

6 Q. And it's dated July the 7th, 2015, isn't it?

7 A. That's correct.

8 Q. Now, in that House of Assembly, which was, as you set
9 out, the Third House of Assembly, you were sworn on the 23rd of
10 June 2015?

11 A. That is correct.

12 Q. So would you accept that, in relation to this
13 Declaration, you were late in making the Declaration?

14 A. From the 23rd to the 7th of July, that's correct.

15 Q. If we go to page 123 now--

16 A. Yes.

17 Q. This is a Declaration, and it's stamped with the date
18 June 13, 2017.

19 A. Yes.

20 Q. But if you turn to page 133, and taking you to the
21 last page--

22 A. Um-hmm, yes.

23 Q. --dated the 13th of June 2017--sorry, I should have
24 confirmed this. And confirm for us that it does carry your
25 signature?

1 A. It does.

2 Q. And in terms of the manuscript writing underneath
3 that, that's in your hand?

4 A. Yes, it is.

5 Q. And what you have written there is 13th of June 2017,
6 but you've added "for June 23rd, 2016".

7 A. That is correct.

8 Q. So, again would you accept that again you were late in
9 submitting that 2016 Declaration?

10 A. Yes, I would confirm that.

11 And, Commissioner, if I may make a submission before
12 this body.

13 COMMISSIONER HICKINBOTTOM: Yes.

14 THE WITNESS: I am, by no means I take responsibility
15 for the submissions that have been made late on my behalf.
16 There are years where I've erred in not submitting submissions
17 in a timely matter, and there's also times where my submissions
18 may have been in breach of the laws of the Virgin Islands.

19 Also, I have copies--and I admit that I have copies of
20 reminders from the Registrar of Interests asking me to comply
21 with the regulations of this Act, and I by no means make any
22 excuses. I take full responsibility for my actions because I
23 know, as a servant leader of this Territory, the buck stops with
24 me as the leader, as the representatives.

25 And I want to also take this time to apologise

1 personally to you, Commissioner, to the Registrar, to the people
2 of the Second District and the people of the Virgin Islands for
3 my tardiness, but this is in no way, shape or form reflects my
4 overall representative and the serious nature in which I take
5 the job that is afforded me the people of the Territory has
6 bestowed upon me, so I just wanted to make that submission,
7 please.

8 COMMISSIONER HICKINBOTTOM: Mr Rawat may take you to
9 some of this.

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: Some of the
12 correspondence, but the correspondence we've seen in respect of
13 other Members, in particular the last Witness, Mr Fraser, The
14 Honourable Julian Fraser--

15 THE WITNESS: Yes.

16 COMMISSIONER HICKINBOTTOM: --shows that the Registrar
17 was diligent in this sense: That she sends letters shortly
18 before the Due Date for the Declaration.

19 THE WITNESS: Okay.

20 COMMISSIONER HICKINBOTTOM: And reminders on a fairly
21 persistent basis following. And is that--is that a picture that
22 you would confirm, that she sent these letters--

23 THE WITNESS: Yes, she did. Yes, she did.

24 COMMISSIONER HICKINBOTTOM: Thank you.

25 BY MR RAWAT:

1 Q. If I could explain, Commissioner, and indeed to
2 Mr Turnbull, what I propose to do is take my questions in two
3 stages basically.

4 Given that your answers what I'd like to do--and it's
5 in fairness to you as well--is take you to the individual
6 Declaration and just get on the record whether in each of them
7 you accept that you were in breach or not.

8 A. Yes, sir.

9 Q. But the second aspect of my questions would be
10 directed to the details that you've put on some of the forms,
11 but it's to seek your assistance as to how easy or not you found
12 it to answer the questions on the form.

13 A. Okay.

14 Q. So, if we can do the first stage, if I may. I've
15 taken you to page 123.

16 A. Yes.

17 Q. If you go to the last page of page 123, which I think
18 you will find it as page 133.

19 A. Yes.

20 Q. So, that's where we were.

21 So, you submitted your June 23rd, 2016, Declaration
22 almost a year late, didn't you?

23 A. That is correct.

24 Q. And so, again, this is where you've accepted that you
25 were in breach of the Act in regard of that declaration?

1 A. Yes, sir.

2 Q. If you go to page 112--

3 A. Yes, sir.

4 Q. --it's stamped June 27, 2017.

5 A. Correct.

6 Q. And if you go to the last page in this, you'll find
7 that 122.

8 A. Yes.

9 Q. 27th of June 2017, so this is your 2017 Declaration?

10 A. Yes, sir.

11 Q. Now, the date that it was due by was the 23rd of June,
12 so, in fairness to you, you were only four days out?

13 A. Yes, sir.

14 Q. So, I suppose, technically, you failed to comply with
15 the law but only by four days?

16 A. Yes, sir.

17 Q. Now, if you go to 101, this is your 2018 Declaration,
18 and you'll see stamped on it is the Registrar of Interests
19 stamp, and although it's faint, she appears to have written in
20 manuscript on it the date 2nd of June 2020.

21 A. I don't see it, but I will take--I can't make out the
22 date of it.

23 Yes.

24 Q. Now, if we go to the last page of that document, we
25 will find page 111.

1 A. Yes, sir.

2 Q. And this is where I might need help cipherring your
3 handwriting, but again that carries your signature, doesn't it?

4 A. Yes, it does.

5 Q. Now, written next to it are the words in manuscript
6 "for 23rd of June 2018".

7 Now, is that your handwriting?

8 A. The date is my handwriting. The signature and the
9 date are my handwriting. The note is not.

10 Q. Right.

11 A. The note, I believe, is--I would believe it comes from
12 the Registrar.

13 Q. Right.

14 Now, in terms of the date that you've written, my
15 copy's rather faint so can you just for the record just confirm
16 what date you wrote under your signature?

17 A. June 23rd, 2018.

18 Q. Now, she stamped that 2020.

19 A. Yes.

20 Q. You've put it as June 23rd, 2018, which would be the,
21 I think, the date that you would have had to comply by.

22 A. Yes.

23 Q. So, doing the best that you can, in terms of 2018,
24 were you on time, or were you, in fact, late?

25 A. I was, in fact, late.

1 Q. Thank you.

2 If you go to 90 now?

3 A. Page 90?

4 Q. We're now looking at your 2019 Declaration.

5 A. Yes, sir.

6 Q. The stamp for the Registrar of Interests has--I hope
7 can you can read that, but the manuscript date there looks to be
8 4th of May 2019?

9 A. Yes, that is correct.

10 Q. The last page of the document you will find at
11 page 100.

12 A. I'm sorry?

13 Q. I think it's the 4th of June?

14 A. 4th of June.

15 Q. 4th of June 1998. Sorry. That was my fault.

16 A. Yes.

17 Q. I apologise for adding confusion.

18 A. Not a problem.

19 Q. If you go to page 100.

20 A. Yes, sir.

21 Q. Now, that's the last page; again, that's your
22 signature, isn't it?

23 A. That is my signature, and the date is my handwriting.

24 Q. You have given the date of June the 4th, 2019?

25 A. That is correct.

1 Q. This is the now the Fourth House of Assembly?

2 A. Yes.

3 Q. And you got sworn in the Fourth House on the 12th of
4 March 2019?

5 A. Correct.

6 Q. So, again. In relation to this Declaration, you
7 accept that you were late in submitting it?

8 A. Yes, sir.

9 Q. If we go just to look at your 2020 Declaration, which
10 is at page 79.

11 A. Yes.

12 Q. Stamped by the Registrar, again the date may be
13 clearer on your copy, but as I read the date that she's written
14 in manuscript, it's 2nd of June 2020.

15 A. I can't make out the date on my copy.

16 Yes, it is.

17 Q. Thank you for confirming that.

18 The last page of that document is page 89?

19 A. Yes.

20 Q. Again, is that your signature?

21 A. It is.

22 Q. You've written the date March 12, 2020, underneath
23 that.

24 A. Correct.

25 Q. Which is the date that it's due, but again do you

1 accept that you, in fact, filed it late?

2 A. Yes, I do.

3 Q. Now, was there a reason that you wrote the Due Date
4 down rather than the date on which you completed and filed the
5 form?

6 A. When I had--when I had the conversation with the
7 Registrar, I asked what date I should put on there, and that's
8 what she would advise me.

9 Q. I see, so her advice was write the date on which the
10 Declaration is due?

11 A. Yes, sir.

12 Q. Thank you.

13 If I just take now you to your 2021 Declaration, which
14 I think we'll find at page--well, it's actually--it's actually--
15 (Overlapping speakers.)

16 Q. --for your help with this one.

17 If you go to 68--

18 A. Yes.

19 Q. --it would lead us to conclude that that's the 2021
20 Declaration?

21 A. Yes.

22 Q. But, if you go to 78--

23 A. Then the date is 2020.

24 Q. So, you've put your signature, but when you write
25 May 17, 2020, did you mean May 17, 2021?

1 A. May 2021, and I have erred on that one again.

2 Q. So again, that one is late?

3 A. Yes, sir.

4 Q. Now, just to now slightly, I'm afraid, we might be
5 jumping around between different forms, but I just want to move
6 on to the topic of how you approached filling in the form.

7 A. Okay.

8 Q. Now, if you go to--let's go to page 135, please.

9 A. Yes.

10 Q. The first question that you were asked is
11 Directorships, and you're asked to declare any remunerated or
12 unremunerated directorships in any company. We're looking at
13 your 2015 form?

14 A. Yes.

15 Q. And you've directed or you declared there a
16 directorship in a boutique?

17 A. Yes.

18 Q. And that was--was that the position in 2015?

19 A. That was in 2015 because the License for that company
20 was still in force up until 2015.

21 Q. Now, some Members have explained to me the difference
22 between a company and a d/b/a.

23 A. Yes.

24 Q. Was this a d/b/a?

25 A. This was a d/b/a.

1 Q. Now, for some Members, they would put their d/b/as
2 elsewhere on the form.

3 A. Yes.

4 Q. Was there a reason you chose to put it under
5 "Directorships"?

6 A. At that time, I am not completely sure why I put it
7 under "Directorship" at that time.

8 Q. Thinking about the forms, you obviously filled a
9 number of them.

10 A. Yes.

11 Q. Do you think there's a lack of clarity in terms of the
12 guidance that's given to Honourable Members as to how to fill in
13 the form?

14 A. I would say so.

15 Q. I'll take you to some of the categories that you have
16 to complete, but in relation to Directorships in a company can
17 you assist the Commissioner with whether you think there there's
18 any ambiguity or uncertainty for you as a Member of the House of
19 Assembly?

20 A. I believe given this is just about two weeks after
21 being sworn in, being excited to get busy for the work of the
22 people. In completing this form, I believe I may have just
23 filled in the form without proper clarity.

24 My wife and I own this particular boutique.

25 Q. I see.

1 And do you still own the boutique?

2 A. No, the boutique is no longer in business.

3 Q. Well, if we go to 124 in the bundle, if we're going to
4 your 2016 Declaration.

5 A. Yes.

6 Q. And Directorships is empty?

7 A. Yes.

8 Q. So, by 2016, had the boutique ceased trading?

9 A. I believe at the--probably within two months of--it
10 was probably around September of 2015 that the business had
11 ceased.

12 Q. Right.

13 Now, if you go to--keeping it in page--in 2016 at
14 page 132, under "Shareholders"--

15 A. Yes.

16 Q. --you make a reference to Gene's Bar & Grill.

17 A. Yes.

18 Q. You were declaring there that you owned some shares in
19 Gene's Bar & Grill.

20 A. Yes.

21 Q. Now, when you look at 122, which is now 2017?

22 A. Yes.

23 Q. That's the last category?

24 A. Uh-huh.

25 Q. Under "Miscellaneous", and you then refer there

1 to--you say partner Gene's Bar & Grill, so was there a reason
2 you moved it from Shareholders to "Miscellaneous"?

3 A. Yes, there was.

4 In 2017, the business opened in around April of 2017,
5 and then we were--the idea was to have an incorporated business
6 which then changed directly after we had to move locations
7 from--we were in Carrot Bay and then we moved to Manuel Reef.
8 And shortly thereafter we ended up with the hurricanes, and then
9 we changed the entire structure to being a simple company set up
10 from the incorporated structure to just ownership.

11 Q. If you go to 69--

12 A. Yes.

13 And if I may add, Commissioner, at that particular
14 time as well, the understanding was put it under "Miscellaneous"
15 because the understanding was made to me that it has--it had to
16 do with doing any business with Government, so I put it under
17 the "Miscellaneous" section because I wasn't or none of my
18 businesses that I have are doing business with the Government.

19 Q. So, what had been explained to you was that the
20 purpose of the form was to declare anything that could be
21 described as an association with Government?

22 A. Yes.

23 Q. And because Gene's Bar & Grill didn't have that
24 association, you put it under "Miscellaneous"?

25 A. Yes.

1 Q. It's now 2021, if you go to page 69.

2 A. Yes.

3 Q. You now put Gene's Bar & Grill under "Directorships".
4 Was that a reason for that change?

5 A. The reason for that change because I am now part
6 owner, partner of the business.

7 COMMISSIONER HICKINBOTTOM: Is it a d/b/a, then?

8 THE WITNESS: Yes, it is.

9 COMMISSIONER HICKINBOTTOM: Thank you.

10 BY MR RAWAT:

11 Q. But again, if it's a d/b/a, why do you decide to put
12 it under "Directorships"?

13 A. Because the partner that I'm associated with prior to
14 2019 did not have the--I want to make sure I coin it the right
15 way. In order to have a trade license in the Territory, you
16 need to have someone who is a national of the Territory,
17 belonging in the Territory, and the partner at that time was not
18 prior to 2019, so I acted as sole Director of the company, even
19 though they were my partners. Now that they are the partners,
20 it is, in fact, a joint partnership.

21 Q. So, in terms of actually this venture as you've gone
22 through your forms--

23 A. It has changed over.

24 Q. You put it in different parts of the form because the
25 nature or the framework of the business has changed?

1 A. Yes, sir.

2 Q. Its structure has changed?

3 A. Yes, sir.

4 Q. Right.

5 Now, if we go to paragraph 2--and we can look at this
6 if I take you to 103, this is your 2018 form.

7 A. Yes.

8 Q. Paragraph 2 asks you to declare whether you have any
9 employment, office, trade, professional, vocation other than
10 being a Member of the House of Assembly or a Minister for which
11 you are remunerated on which you have any pecuniary interests.

12 Now, you put there "Body Youth Fit Health Club
13 Limited"?

14 A. Yes.

15 Q. Now, that's the first time in your forms declare
16 remuneration?

17 A. Yes.

18 Q. That's when you started having remuneration from that
19 company?

20 A. And Commissioner, if I may, this company is solely
21 owned by my wife, so the section that deals with--for which you
22 are remunerated or which you are in particular interest, because
23 it's my wife, I held on to those two last words because it is my
24 wife's business and I think because she is my wife, I declared
25 it here.

1 Q. I see.

2 Now, we can take you shortly because you have again at
3 different points--and this is in your 2020 Declaration and your
4 2021 Declaration also referred--

5 A. Sorry, Commissioner, I believe--I believe there is, in
6 fact, an error in this particular submission as well, now that I
7 have time to review it, because the business in Fish Bay
8 actually started in 2020 right before the lockdown.

9 So, I believe because this submission, if I am not
10 mistaken, was done in 2020. I believe they were put there in
11 error.

12 Q. I see.

13 A. For 2018.

14 Q. I see. So, if you had been trying to accurately
15 record what your--the state of your interests were in 2018--

16 A. Yes.

17 Q. --you would have not put that in?

18 A. Correct, because the business--the business did not
19 come into force until 2020, March 2020.

20 COMMISSIONER HICKINBOTTOM: I think on page 103 by
21 Body Youth Fit Health Club Limited, somebody has written to
22 there--

23 (Overlapping speakers.)

24 COMMISSIONER HICKINBOTTOM: --that's not your writing?

25 THE WITNESS: That's not mine.

1 COMMISSIONER HICKINBOTTOM: Maybe the Registrar's?

2 THE WITNESS: Yes.

3 COMMISSIONER HICKINBOTTOM: So, that may explain that,
4 yes.

5 BY MR RAWAT:

6 Q. And just to support your conclusion, Mr Turnbull, if
7 you go to 92, which is your--I think your 2019 Declaration,
8 under "renumeration", you've only there made reference to Gene's
9 Bar & Grill, haven't you?

10 A. Yes.

11 Q. But when we look at your--and we can go to it, if you
12 want, but you may not need to, but when we look at your 2020
13 Declaration, you do then refer to Body Youth Fit.

14 A. Yes.

15 Q. Which would fit in with your timeline for the creation
16 of that company.

17 A. Yes.

18 Q. Now, we can do this by looking--if we look at page 93.

19 A. Yes, sir.

20 Q. Page 93, it refers to the third paragraph on the form
21 which is headed "clients", and you've always answered "no" to
22 that.

23 A. Yes.

24 Q. Now, looking at that, what do you think the purpose of
25 that paragraph is? What is it you're expected to declare there?

1 A. Well, if I may, for the record, just read it, "Does
2 any of the paid employment registered to categories 1 and 2
3 entail the provision of clients or services which depend
4 essentially upon or arise out of your position as a Member of
5 the House of Assembly, see Note 1 above. 'Yes' or 'no'".

6 So I believe I interpreted it to be, if I am
7 benefiting from my position as a Member of the House of Assembly
8 based on the businesses, and the answer to that is consistently
9 "no".

10 Q. So, if, for example--and it is a hypothetical--that
11 you were to introduce a Body Youth Fit Limited, your wife's
12 company, to a Minister--

13 A. Yes.

14 Q. --in order to promote its use in a health initiative,
15 you would have to write that you had done that in--

16 A. I would not only have to write that I have done it. I
17 would also have to make notice in the House of Assembly to
18 declare my Interests.

19 Q. Paragraph 4, if you turn over the page, there are two
20 aspects of paragraph 4 which is headed "Sponsorship", and I'll
21 take the second one first, it's at (b), and it asks whether you
22 benefit from any form of sponsorship or financial or material
23 support as a Member of the House of Assembly, and you've always
24 answered that no?

25 A. That's correct.

1 Q. Would you accept that what you're supposed to do there
2 is to set out if you receive any kind of assistance or benefit
3 to do your work as a Member of the House of Assembly?

4 A. Yes, that's the way I understand it to be.

5 Q. So, if someone offered you free accommodation,
6 that's--you would have to declare that?

7 A. Certainly.

8 Q. Now, the first question is: Did you benefit from any
9 sponsorship before election where, to your knowledge, the
10 financial support in any case exceeded in aggregate 2,500? I'm
11 just going to draw your attention but I won't read it out, just
12 to Point 2 at the bottom in italics which refers to Election
13 Campaign Committee. And I'm just going to ask you, please,
14 Mr Turnbull, if you could just explain to the Commissioner what
15 do you understand is meant by "sponsorship before election"?

16 A. Well, Commissioner, I believe in doing some research
17 and having conversations with Members of the House who were, at
18 the time, present when this Bill was drafted and passed, I
19 believe it is actually void of another piece of legislation
20 which should have come into force dealing with campaign
21 financing. But solely specifically to the question that you've
22 asked, sponsorships, I believe if you receive any sponsorship
23 for your campaign--and I believe I've heard you asked the
24 question--maybe you haven't asked it yet--the difference between
25 sponsorship and donations, which I believe there is, in fact, a

1 succinct difference between sponsorships and donations.

2 So, to put it to you, I have not received any
3 sponsorships prior to or knowledge of it before election.

4 Q. Again, to be fair to you, Mr Turnbull, you've always
5 answered this question "no".

6 A. Yes.

7 Q. But you've raised the issue of campaign financing?

8 A. Yes.

9 Q. And you've said that there is a difference between
10 sponsorship and donation.

11 A. Yes.

12 Q. Could you just expand on that? What do you see is the
13 difference between the two?

14 A. I believe when somebody sponsors you, they have part
15 ownership or entitlement to represent their needs, for example,
16 I will use a very simple example. If I sponsor a basketball
17 team, I would expect my logo or some sort of acknowledgment to
18 be--recognition to be displayed, whether it's on the teams and
19 the jerseys or whatever the case may be. If someone gives a
20 donation, it's simply a contribution that has, I would put it in
21 quotations, "no strings attached".

22 Q. But in the real world, someone might suggest that
23 sometimes donations do come with strings attached?

24 A. I do understand that interpretation, but that is not
25 the same as mine.

1 Q. In this case, then on your interpretation of this
2 form, you would not be required to record donations over 2,500?

3 A. On this form for specifically for 4?

4 Q. 4(a).

5 A. No, because it's asking for sponsorships.

6 Q. I see. So, if I came along and said, I would like to
7 sponsor you with a car which has my name on the side of it, that
8 would be sponsorship, but if I were to donate you a car, that
9 would be a donation?

10 A. Well, I understand--

11 Q. It's a hypothetical.

12 A. It's a hypothetical, but the reality for me, and
13 that's why I have consistently answered no--the reality for me
14 is, whatever I do, I try to do it within the boundaries of the
15 law, so anything that would question my integrity in that sense,
16 my answer usually simply and one of my favorite words is "no".

17 Q. But it's going back to the line you've draw between
18 donation and sponsorship.

19 A. Yes.

20 Q. Because and your point is as you read the form, you
21 don't have to declare donations?

22 A. Well, based on the question that's asked in (a), it
23 asks specifically about sponsorships, but I was only referring
24 to questions that I've heard posed and the difference between
25 sponsorships and donations.

1 Q. Now, you alluded a moment ago to--you said a law that
2 was void in relation to campaign financing. To your
3 knowledge--and this is a question that the Commissioner raised
4 with the Attorney General--are there any rules at present that
5 regulate campaign financing in the BVI?

6 A. I believe there have been discussions over the six
7 years that I have been sitting in the House. I know I can
8 recall in the reports from the Supervisor of Elections Office,
9 there have been recommendations made for the proposal of
10 campaign financial legislation.

11 Q. Have any of those recommendations been brought into
12 force?

13 A. Not since I have sat in the House of Assembly, not
14 since 2015, sorry.

15 Q. This allows me to jump forward a little bit to a
16 question I have put to other Members of the House of Assembly.
17 I'm going to do it to you as well, and that is that if there was
18 such regulation, that if you brought in legislation and policies
19 that governed candidate and party financing, it would require
20 that for financial-reporting purposes, a political party be
21 registered, would you agree that, taking that step, would
22 increase trust in the system and also reduce the risk of
23 corruption?

24 A. I--I would wholeheartedly agree with you because at
25 the end of the day I believe it's important to have

1 accountability and exercise prudence in terms of being a
2 representative of the people.

3 Q. Now, if you go just to 132, I think we may have
4 covered this, but it's the Shareholders point. In all your
5 forms with the exception of this form, which was your 2016 form,
6 when you were asked about whether you own any Shares--and there
7 is obviously thresholds.

8 A. Yes.

9 Q. It's shares above a certain value or a certain
10 percentage.

11 You said "no, I don't own any shares", but on 132 you
12 refer to Gene's Bar & Grill again.

13 Was this part of the fact that the structure changed?

14 A. The--

15 Q. The structure of Gene's Bar & Grill as an entity
16 changed over time and so--

17 A. If I'm looking at the form, Commissioner, this is
18 132(9)?

19 Q. It's page 132, paragraph 9.

20 A. Yes.

21 I'm seeing where "no" is crossed out and "yes" has a
22 checkmark.

23 Q. Yeah. And underneath you refer to Gene's Bar & Grill?

24 A. Yes.

25 Q. That's the only time you ever declare any Shares?

1 A. And if I may go back, Commissioner, that is at the
2 time we were planning on setting up the business, it was going
3 to be under the corporate--the corporate structure.

4 Q. But that didn't materialise?

5 A. No, it hasn't.

6 Q. I follow, thank you very much for clearing that up.

7 A. Yes.

8 Q. The last thing we need to cover just on your forms, if
9 we look at 140, please. I think we're going back to the 2015--

10 A. Yes.

11 Q. --form.

12 You're asked to declare land and what you were asked
13 is do you have any land other than any home used solely for the
14 personal residential purposes of you or your family? And you've
15 declared one property or one piece of land in Mount Sage.

16 A. Yes, sir.

17 Q. Now, was that your dwelling, or was that a separate
18 piece of land?

19 A. That was--that was a separate piece of land that I
20 have since developed and am now living in.

21 Q. I see.

22 So, if we go to 2016, which we will find at 131.

23 That's the same piece of land, is it?

24 A. Yes, sir.

25 And if I may, I may be jumping ahead of you, so you

1 will correct me.

2 On the 2nd of June after reviewing these files, I
3 noted and I wrote to the Registrar that there was an error in
4 the submissions of the parcel number. On most of them, I
5 believe I wrote 111 when it should be 110.

6 And the error was simply one that the initialed
7 parcels of land were purchased by my wife and I, and one has
8 been bought by my brother and his wife.

9 Q. I see. But as of 2016 it was still--

10 A. The block number, not the parcel number.

11 Q. Yes, you're right.

12 That's on the record now, so--and you say you notified
13 the Registrar--

14 A. That is what I submitted to the Registrar,
15 Commissioner.

16 Q. Now, that's still as of 2016, if you like, undeveloped
17 land?

18 A. Yes, sir. Up until 2020.

19 Q. I see. So, if we go to 120, then, and look at what
20 you've declared in 2017--

21 A. Yes.

22 Q. --now, you've now got--this is 2017, and you've
23 got--and you will have to tell me, if I'm making a mistake, but
24 you now declare an address, a Development Property in Windy
25 Hill, Tortola, but you don't make reference to the Mount Sage

1 property.

2 A. Well--well, the way it is written on the Registrar
3 lands, and this was around a time that I started--we started
4 preparing to develop property, they just list the block and
5 parcel number and the location is, in fact, Windy Hill, which
6 forms a part of the Mount Sage.

7 Q. So, it is, in fact, the same land?

8 A. Yes, sir.

9 Q. I see.

10 So, when we go to 109?

11 A. Yes, sir.

12 Q. You've now, it's the same property?

13 A. Yes.

14 Q. You've corrected the parcel number, but you've
15 described it as "dwelling".

16 A. Yes.

17 Q. Was it by now--and I think we're in 2018 now, was it
18 now your property? Were you living in it?

19 A. Just one minute. I just want to make sure.

20 Is this the date of 2020, Commissioner? This is the
21 date it was received in 2020, 2018?

22 Q. It's received on the 2nd of June 2020.

23 A. Yes, so, at that time we had broken ground for the
24 land.

25 Q. I see.

1 So, it was still something that you had to declare--

2 A. Yes.

3 Q. --because you weren't living in it?

4 A. Yes.

5 Q. If you go, then, to 98, you've left it blank in your
6 2019 Declaration?

7 A. Yes.

8 Q. You go to 87--

9 A. It's filled in there.

10 Q. It's filled in there.

11 Now, it's not necessary--this isn't about going into
12 the details of what's happened to one particular property, but
13 it's about your understanding of what you need to declare in
14 relation of landholdings that you have.

15 A. Yes.

16 Q. Is this an example of an area where, in your mind, as
17 a person who has to fill this form, there is any doubt or
18 uncertainty about what you have to declare?

19 A. Not at all.

20 Q. So, you're aware of your obligations in terms of
21 landownership; is that right?

22 A. Yes, I am.

23 Q. Stepping back from the form, two points that you've
24 made, Mr Turnbull, is firstly that it's--or the main point
25 you've made is that what you understood the purpose to be of

1 this form is--these are my words--to declare if you have any
2 links or associations with Government. So, for example, if you
3 have a business having a contract with Government, then that
4 should be something that you should be putting out in this form?

5 A. No, I believe those are--again, as you said, those are
6 your words. What I understood very early after being elected,
7 it was to do with things relating to Government. But as I
8 studied the legislation and understood what was being asked and
9 required of me, I understood that it was any interests that I
10 have as a sitting Member of the House of Assembly. And it
11 extends to my immediate family as well.

12 Q. What do you define as "immediate family"?

13 A. For the purpose of this regulation and this piece of
14 legislation, it would be for myself, my spouse and/or children.

15 Q. I see. And, you've said that it's your interest that
16 you have to declare?

17 A. Yes.

18 Q. If you go to 79, and just look at the Preamble to the
19 Register, that describes the main purpose of the Register of
20 Interests, and I quote, "is to provide information on any
21 pecuniary interest or other material benefit which a Member
22 receives which might be reasonably thought by others to
23 influence his or her or actions, speeches or votes in the House
24 of Assembly or action taken in his or her capacity as a Member".

25 A. Yes.

1 Q. Now, I would--now do not want to put words into your
2 mouth, so that's why I'm going to ask you an open question.

3 A. Yes.

4 Q. But it is, reading that and you filled in these forms
5 over a number of years now.

6 A. Yes.

7 Q. What do you take to be--with having that in mind, what
8 do you take to be is the central obligation being placed on you
9 as a Member of the House of Assembly?

10 A. I believe--I believe knowing the--the culture and the
11 society in the Territory of which we live, I believe it is
12 my--my position and my duty to report whatever businesses or
13 interests that I may have, and my family may have, as it relates
14 to me serving as a Member because in this society, in this
15 Territory, being a small knit society, there may be times going
16 on--going during my political career, depending on how long I am
17 allowed to be a representative, that some of my interests might
18 come into--into the position where we might do business with
19 Government or we may not.

20 So, for me, it is just going a step beyond what is
21 required on the form, but just making--making it available to
22 the persons or making it available to the Registrar the
23 interests that I have.

24 Q. Now, you've described it as it's focused on yourself,
25 your spouse, and your children.

1 A. Yes.

2 Q. Is there a benefit to having a wider focus, so that it
3 brings in other members of your family who may have links with
4 Government?

5 A. There could be. There could be. I have not--I have
6 not gone through all the details on that, but there could be.
7 It is possible.

8 Q. If I could briefly move on, Commissioner, just to
9 another topic?

10 A. Yes.

11 Q. And hopefully, we can take this shortly, Mr Turnbull.

12 A. No problem.

13 Q. Because it's been--the Commissioner has received
14 helpful evidence on this from a number of Members of the House
15 of Assembly.

16 A. Yes.

17 Q. I just wanted to confirm that your understanding of
18 the process is the same as theirs. And it is about allocation
19 of assistance grants.

20 A. Yes.

21 Q. As an elected Member of the House of Assembly.

22 Now, we have been provided yesterday--and this was, I
23 think it came via Mr Fligelstone Davies, but I think probably
24 the initial source may have been The Honourable Neville Smith,
25 but it's the guidelines for processing assistance grants.

1 A. Yes.

2 Q. Which is a two-page document that has 17 paragraphs to
3 it.

4 Have you been issued with those guidelines as a Member
5 of the House of Assembly?

6 A. Yes, I have, sir.

7 Q. And when were you first issued them?

8 A. I believe in 2015, when I was first elected.

9 Q. Now, I'm going to try and summarise--

10 A. Yes.

11 Q. --I hope, fairly, the process.

12 An applicant can come to you to seek assistance. It
13 is up to you to make and assessment of the merits of the
14 application; but, once you have done, if you approve it, it then
15 goes to the Clerk of the House of Assembly, ultimately it then
16 goes to the Treasury Department who will issue the money, if
17 necessary--if appropriate.

18 Is that the way it works for you?

19 A. I believe you have a good understanding of how the
20 process works.

21 Q. Now, there are instances, as we understand it, where
22 the Clerks of the House can effectively reject an application
23 and send it back to the Member or, indeed, that it could come
24 back with a query from the Treasury Department.

25 A. Yes.

1 Q. Has either of those two circumstances arose in your
2 case?

3 A. They have.

4 Q. And what is then--what's in the next step in that
5 situation?

6 A. But I must explain the circumstances.

7 Q. Please.

8 A. For at least one or a couple of the times, it has been
9 something simple as the date not being filled in or the required
10 documents, the identification or the complete submissions of
11 the--yeah, the additional supporting documents were not properly
12 attached in some cases.

13 Q. So, relatively technical errors--

14 A. Yes.

15 Q. --and sent back to you?

16 A. That's right.

17 Q. But does it fall to you, ultimately, as the Member, do
18 you have the burden of deciding on the merits of the
19 application?

20 A. Well, definitely, Commissioner, because I represented
21 a constituency, as I said earlier, about 3500 persons. We are
22 allocated as a back-bencher just about 123--\$25,000 per year to
23 deal with the needs of constituents, and those needs range from
24 education to all the other things that have been put before you
25 prior, especially after the hurricanes of 2017, and now

1 specifically in this COVID era, where the district that I
2 represent is specifically tourism-driven, and my constituency,
3 for a large portion, have been out of work for over a year, so
4 the requests are much more demanding.

5 So, it is a task--I won't call it a "burden" but it is
6 a task--trying to find ways and means to assist as many persons
7 as possible, while at the same time having those that you would
8 be unable to assist through the processes that are provided.

9 Q. Other Members have spoken about this or pay particular
10 difficulty, and that is that the amount--and you don't get the
11 full 125 at the beginning of the year, you get it in quarterly
12 lumps?

13 A. That's correct.

14 Q. But the amount that you have to work with is always
15 much less than the number of requests that you're going to
16 receive?

17 A. That is--that is correct.

18 My lawyer might challenge me on this one but I just
19 have to speak frankly. Because of my--because of my background
20 in finance and doing money management and budgeting, I started
21 in 2015 trying to assist persons within my community in
22 understanding trying to set up a budget, but the amount of
23 requests that you have and the needs in the majority of cases
24 are genuine needs that would not allow for me to continue that
25 in all the situations.

1 So, it has always proven difficult that, at the end of
2 a quarter, you might be out of--even before the end of a
3 quarter, you might be--you have exasperated your budget, and
4 then at the end of the year you basically tell the persons this
5 and that, I tried but my budget is depleted, and there is
6 nothing I can do. I have to wait until next year.

7 So, the needs and demands on us as representatives
8 trying to assist those needy persons in our community, those
9 persons who are going through educational benefits and
10 have--they're seniors in my community that I assist as well who
11 are unable to work and provide for themselves.

12 So, the needs are more than the resources provided,
13 but I believe it is incumbent on me to use my discretion, to use
14 whatever resources that I am allotted as to help as many persons
15 as possible.

16 Q. Now, you made the point that even before the quarter
17 that the balance may be zero?

18 A. That's correct.

19 Q. Now, if you reach the unenviable position where the
20 balance is zero and the next application is one that is
21 obviously deserving, is it open to you to refer that person to
22 another elected representative and to write a letter of support
23 to that elected representative?

24 A. That is the case.

25 Because I am, indeed, the district rep, there are four

1 at-large candidates on the system that we have here in the
2 Territory of the Virgin Islands that we try to get as much
3 assistance as possible. So, where my budget might be depleted,
4 I try to refer to another Member of that large team or if it is
5 a request that comes in from another constituency, I try to
6 refer it to that particular representative.

7 Q. Just to understand how the system works, is there
8 anything to stop an applicant making an application to you, as
9 the Member for one district, and an application to a different
10 Member representing a different district?

11 A. Yes.

12 In the--in the same guidelines that you have provided,
13 the checks and balances reside with the Clerk of the House of
14 Assembly and her team to ensure that there is not duplication or
15 if there's a need that arises that can be covered from the
16 Department of Social Development and other agencies that they be
17 referred there.

18 Q. And if someone in your district needs help, you can't
19 give it because your balance is zero, as well as the Territorial
20 candidates, could they go to another district representative?

21 A. The individual?

22 Q. Yes.

23 A. They can, once that--once that representative is in a
24 position to assist. They can. There is nothing stopping them
25 from doing so.

1 Q. Can I move on just to another topic, and that is
2 the--it's again, a question that we've asked of a number of
3 Honourable Members, but it's about how section 67 of the
4 Constitution operates.

5 A. Um-hmm.

6 Q. You will likely, Mr Turnbull, know it better than I
7 do, but section 67 provides that an elected Member of the House
8 of Assembly has to vacate his or her seat in the House in
9 certain circumstances, and one of those circumstances--and I'm
10 going to summarise it again, but it's essentially if they are in
11 some way connected to a contract with the Government of the
12 Virgin Islands?

13 A. Yes.

14 Q. Now, the Commissioner heard evidence, as I indicated
15 earlier, from The Honourable Neville Smith who explained the
16 circumstances in which he came to be exempted.

17 A. Okay.

18 Q. Because what the Constitution also provides--and I
19 quote this--"if in the circumstances it appears just to the
20 house of Assembly to do so, the House may exempt any elected
21 member from vacating his or her seat".

22 Now, I am very confident that I can predict the answer
23 that you will give to this question but I do think it is right
24 of me to ask it, and firstly it's this: Have you, yourself,
25 ever sought and/or been given exemption from vacating your seat

1 under section 67?

2 A. Absolutely not, sir.

3 Q. Now, I mentioned that the motion in relation to The
4 Honourable Neville Smith, and that has particular circumstances
5 to it, but in assessing how to vote on such a motion as an
6 individual Member of the House of Assembly, what information is
7 provided to you in order to decide how to cast your vote?

8 A. Well, I believe, Commissioner, what--I won't use the
9 specific Member, I will just speak in general terms--on two
10 occasions in this present House, maybe three, motions have come
11 before The Honourable House, so what is presented before us is
12 the circumstances surrounding the Members' involvement in a
13 particular contract with a government Department and Ministry or
14 entity. And we as Members are given the opportunity to debate
15 the merits of the position that is put before us, the motion
16 that is put before us, and then at the end of it a vote is
17 taken.

18 I remember on two occasions where I--and my position
19 is and always will remain--that the law--the Constitution
20 provides for it, but it is always to rely and walk on the side
21 of caution because--not because something is legal makes it
22 always right, so my debate and my contributions to the two or
23 three times that it has come up in this present House was just
24 to ensure that Members are aware of how perception is
25 interpreted, and we have to be mindful that there are persons

1 that view us as leaders, and it's just simple things sometimes
2 that make it seem that we might be taking advantage of the laws
3 and by and large the people are in certainty.

4 So, it is always a cautionary approach that I take,
5 what I know, and I know the law that it is, in fact, legal, and
6 I debate in that fashion, depending on the two circumstances
7 that I spoke about.

8 Q. At the moment you sit in opposition?

9 A. Yes, sir.

10 Q. As an opposition Member debating such a motion--

11 A. Yes, sir.

12 Q. --to what extent can you call for further information
13 about a particular contract that will be the subject of an
14 exemption?

15 A. Well, as--as an opposition Member, during the debate
16 or prior to the debate, I also sit as a Member on the Public
17 Accounts Committee, so I have the ability--we have the ability
18 through that Committee to call for additional information,
19 whether it's from the Auditor General or the specific Ministry
20 or Department, to understand the basis of the contract and how
21 long it's existing, just to ensure that what is presented is, in
22 fact, factual, and then we do the debate.

23 But for me, as I said before, it is about my principal
24 approach to what is being presented and how it appears--how it
25 looks to the public, as an elected representative.

1 Q. So, and this is just to understand the workings of the
2 House, but if there is going to be such a motion for exemption--

3 A. Yes.

4 Q. --and it's related to a contract, will that contract
5 have come before the Public Accounts Committee before the motion
6 gets to the House, or can the motion just be introduced
7 directly?

8 A. The motion can be introduced directly.

9 Q. In that circumstance, how would you have to ask for
10 more information?

11 A. We would ask for it at the time of the debate, yes.

12 MR RAWAT: Sir, may I have a moment?

13 COMMISSIONER HICKINBOTTOM: Certainly.

14 MR RAWAT: Those are my questions, Mr Commissioner.

15 Can I conclude by, first of all, thanking Mr Turnbull
16 for coming to give his evidence today and also thanking him for
17 the way in which he has given that evidence.

18 THE WITNESS: Thank you, Commissioner.

19 COMMISSIONER HICKINBOTTOM: And again, can I echo
20 that. Thank you for your time and thank you for your answers
21 and thank you for the way--the clear way in which you have given
22 your evidence.

23 THE WITNESS: Thank you, Commissioner. And thank you
24 to everyone.

25 Again, I stand by my statement earlier, that the

1 responsibility of what wasn't done in a timely manner is my sole
2 responsibility, and I accept it fully.

3 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

4 (Witness steps down.)

5 MR RAWAT: Mr Commissioner, can I ask that we perhaps
6 ask for a 20-minute lunch break and then we resume?

7 COMMISSIONER HICKINBOTTOM: Yes, as close to 5 past
8 2:00 as we can, Mr Rawat.

9 MR RAWAT: Thank you.

10 COMMISSIONER HICKINBOTTOM: Thank you very much.

11 (Recess.)

12 COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

13 MR RAWAT: Commissioner, our next witness due is
14 Dr Hubert O'Neal.

15 Before we call Dr O'Neal, may I raise one matter which
16 came to the attention of the COI just after we adjourned for
17 lunch.

18 An article has been published on line in Virgin
19 Islands News on-line, and its heading is "COI document reveals
20 turf war between ex-Governor Jaspert and VI Government". The
21 article refers to a 33-page statement which was shared with our
22 newsroom by senior sources within the Commission of Inquiry,
23 COI. That 33-page document is a reference to the position
24 statement that was filed and served with the COI on behalf of
25 the elected Ministers on the 1st of June 2021. That followed on

1 your invitation to a number of individuals and entities to file
2 position statements on the question of good governance or
3 governance and law enforcement and justice.

4 Prior to that date, it had been shared with two
5 Members of the House of Assembly who are represented by Silk
6 Legal. The COI was informed of that on the 1st of June 2021.
7 It has not yet been published by the COI, and save with one
8 exception, which I will come to now, it has not otherwise been
9 provided to any other participant or individual or body.

10 What has occurred--and this was with the agreement of
11 the Attorney General--was that you directed that the position
12 statement be shared with the Governor's Office, and the reason
13 for that was something that I highlighted at the Directions
14 Hearing on Monday, which was that the content of the position
15 statement had raised issues that, firstly, required obtaining
16 further disclosure from the elected Ministers, but also putting
17 those who are the subject of their criticisms on notice of the
18 content of the document.

19 All those who received documents from the COI in the
20 accepted manner are bound by a duty of confidentiality to you as
21 Commissioner. Insofar as it needs to be, that has been made
22 explicit in the COI Rules, but it is in any way a convention by
23 which all legal representatives are used to operating in any
24 forum.

25 Since the article was drawn to our attention just as

1 we adjourned for lunch, you and I, Commissioner, have discussed
2 the content of the article and its reference to the position
3 statement emanating from senior sources within the Commission of
4 Inquiry. If I make clear, that leaving yourself aside,
5 Commissioner, the COI Team here numbers five people, including
6 myself. Enquiries, therefore, have been made of all Members of
7 the COI Team over the lunchtime adjournment, and I am satisfied,
8 and I believe, Commissioner, you are also satisfied, that this
9 document did not emanate from within the COI or indeed from any
10 source, however junior or senior. So, I just wanted to set that
11 out and put it on the record as to the steps we've taken in
12 light of the article.

13 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.

14 Mr Rawat, this article has been brought to your
15 attention and my attention during the short adjournment for
16 lunch. Can I make this clear that the substance of the leaked
17 document will be the subject of this Inquiry. In the document,
18 the Ministers make serious allegations that Governor Jaspert and
19 the United Kingdom Government have acted improperly,
20 unconstitutionally, and illegally in the sense they have acted
21 against international law in respect of matters of governance.

22 Contrary to speculation in the media and, indeed, by
23 some of the participants in this Inquiry, of course, I will
24 investigate such criticisms.

25 But the criticisms that have been made have to be

1 investigated in the proper way. The Attorney General lodged the
2 Ministers' position statement on their behalf. The statement is
3 signed by all seven Ministers. Both she and they have confirmed
4 that they have no redactions that they would wish to make prior
5 to its publication. I stress that this document will be
6 published with any appropriate redactions as soon as I have
7 received submissions in respect of what redactions need to be
8 made.

9 The position statement contains various personal
10 information which the Attorney General has a duty to protect, as
11 do I as Commissioner.

12 Furthermore, it contains information that the Attorney
13 General has said may be confidential, and she has indicated that
14 those who may have the benefit of that confidence include the
15 Governor and the United Kingdom Government. That is why,
16 Mr Rawat, as you have said, I have directed that the position
17 statement and its appendices be sent to the Governor's Office so
18 that he may make any submissions that he wishes to make in
19 respect of redactions both of personal data and other
20 confidential information that he considers should be made prior
21 to a determination by me and then publication of this document.

22 Furthermore, I've also directed the Attorney General
23 for legal submissions on the criticisms made which I have not
24 yet received.

25 Yet, further, as indicated in Monday's hearing, the

1 Ministers have failed to disclose the documents they have which
2 are, on any view, relevant to the criticisms which they make.
3 I've directed them to make that disclosure to the Commission of
4 Inquiry by tomorrow. They say that they will comply by Friday.
5 These are matters which are due to be considered in the open
6 hearings next week.

7 As you've said, Mr Rawat, over the course of the short
8 adjournment that we had, you and I have caused enquiries to be
9 made of the small COI Team here. They were relatively easy
10 enquiries to make because the entire time save for the
11 Secretary, who is working literally next door, are here in the
12 hearing room. I've received comfort, as have you, that the leak
13 did not emanate from anyone in this team. To that extent, this
14 article is simply wrong.

15 But that means that the leak must have come from
16 somewhere else, and it must have come from someone who owes a
17 duty of confidence to me as Commissioner in this Inquiry. I
18 take that extremely seriously.

19 It's unfortunate that the Attorney General is not
20 represented at the moment. I think this is the first time; this
21 is pure coincidence. I think this is the first time that she
22 has not been represented at one of these hearings, but I direct
23 that the Attorney General and the Governor's Office to whom this
24 document has been sent in the circumstances that you and I have
25 outlined, to write to me by 9:00 a.m. tomorrow with a list of

1 every single person who has had access to this document and
2 identifying enquiries that they have made to ascertain who may
3 have leaked this document.

4 I will, once I've received those letters, make any
5 further enquiries that I consider appropriate, but this
6 Commission of Inquiry will be conducted on the basis of a proper
7 confidentiality with all of the participants and all of those
8 who are engaged in this process complying with their obligations
9 of confidentiality to the full. This Inquiry simply cannot be
10 conducted on any other basis.

11 I know that the Attorney General is not represented;
12 but, if a message could be sent through to her and to the
13 Governor's Office immediately, that those are my directions. An
14 order will follow later today.

15 MR RAWAT: Commissioner, can I, just in terms of your
16 direction, could I invite you to consider whether a similar
17 direction needs to be made to Silk Legal, given that two of
18 those they represent had access to the position statement prior
19 to its disclosure to the COI?

20 COMMISSIONER HICKINBOTTOM: The two individual Members
21 whom they represent who we know have had access to the position
22 statement because they've referred to it in their own letters
23 confirming their agreement with it, indeed, prior to us getting
24 the position statement; in those circumstances, it is sufficient
25 that the Attorney General tells us who she has disclosed the

1 document to under her duty of confidentiality.

2 MR RAWAT: Yes, that would satisfy the point that I
3 have raised.

4 COMMISSIONER HICKINBOTTOM: And the direction, of
5 course, will include any individuals to whom--any individuals
6 who have had access to it have disclosed information. It will
7 in that sense have a waterfall effect.

8 MR RAWAT: Thank you.

9 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

10 MR RAWAT: If we can return to the business of this
11 afternoon, our first witness of this afternoon is Dr Hubert
12 O'Neal, and if I could ask Dr O'Neal is now sworn, please.

13 COMMISSIONER HICKINBOTTOM: Yes, thank you.

14 DR HUBERT ROBINSON O'NEAL, COMMISSION WITNESS, CALLED
15 COMMISSION SECRETARY: Good afternoon. Would you like
16 to swear an oath or make an affirmation?

17 THE WITNESS: Swear.

18 COMMISSION SECRETARY: If you could take the Bible in
19 your right hand and read what's written on the paper. Thank
20 you.

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

24 COMMISSION SECRETARY: Thank you.

25 COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

1 MR RAWAT: Thank you, Commissioner.

2 BY MR RAWAT:

3 Q. Dr O'Neal, thank you for coming to give evidence to
4 the Commission this afternoon.

5 Can we start with some formalities that we need for
6 the record. The first question is to ask you to give your full
7 name, please.

8 A. Hubert Robinson O'Neal.

9 Q. Now, normally, I would ask, for example, a Member of
10 the House of Assembly to give their professional address, but
11 since you're now no longer in the House I won't ask you to do
12 that. What I will say is--and this is something I say to all
13 witnesses--in putting questions to you, I will try and keep them
14 short and simple.

15 A. Yes.

16 Q. It doesn't always work, but if you have any difficulty
17 understanding a question I have put to you, please don't
18 hesitate to ask me to rephrase it or to repeat it, and I will
19 then try again.

20 A. Certainly.

21 Q. There are a couple of bundles in front of you, and we
22 will need to go to them due course, but not immediately. I'll
23 take you to documents as we go along.

24 Can I ask as well, just keep your voice up and speak
25 slowly. The reason for that is because, as you will appreciate,

1 we will need to make sure that we have an accurate and clear
2 record of your evidence this afternoon.

3 A. Certainly.

4 Q. Now, as I alluded to, you were obviously, at one point
5 involved in politics, but you would have had a life before
6 politics?

7 A. Yes.

8 Q. And can I just start by asking you to just give an
9 outline of your professional background before you came into
10 politics.

11 A. I am an ophthalmologist by profession. I've been in
12 practice now for the last 28 years.

13 I own a medical practice in Road Town, and I also do
14 surgery at the Bougainvillea Clinic in Road Town, so that's been
15 my life before politics.

16 As a professional, as a doctor, an ophthalmologist.
17 Basically that.

18 Q. Thank you.

19 And turning to life as a politician, is it right that
20 you were elected as the Member for the Fifth District in 2015?

21 A. No, the Ninth District, of Virgin Gorda and Anegada.

22 Q. Sorry my fault. And which Party was that for?

23 A. The National Democratic Party.

24 Q. 2015, was that the first time that you had stood for
25 election?

1 A. No. It was not the first. I first stood for office
2 in 1999, and subsequently each four years after that I had stood
3 but became successful in 2015.

4 Q. I see.

5 And did you stand again in 2019?

6 A. Yes, I did.

7 Q. But you weren't successful at that election?

8 A. Correct.

9 Q. During the 2015-2019 period, the NDP was in
10 Government?

11 A. That's correct.

12 Q. Did you hold any ministerial office during that House
13 of Assembly?

14 A. Not initially. I was back-bencher at that time, but
15 towards the last six months of the administration, I was
16 promoted to Junior Minister of Tourism.

17 Q. One of the issues and one of the reasons that we've
18 not only called current Members of the House of Assembly to give
19 evidence to the Commissioner at this time, but also former
20 Members like yourself--

21 A. Right.

22 Q. --is that of the Register of Interests.

23 A. Yes.

24 Q. Now, that's governed by the Register of Interests Act
25 2006, which--

1 A. Yes.

2 Q. --you may be familiar with.

3 A. Um-hmm.

4 Q. One of the questions that I have been putting to
5 witnesses--and so far they've all been serving Members of the
6 House of Assembly--is the question of whether, in principle, it
7 is a good idea that the Register of Interests be available to
8 the public for inspection, and I wanted to ask you, as a former
9 Member of the House of Assembly, what your view is on
10 publication of the Register.

11 A. I think as it stands right now, it's not really
12 available to the public.

13 Q. That's right.

14 A. But in my opinion--it's just my opinion, really--I
15 really think it should be because, as a Member of the House of
16 Assembly, you have the obligation, you are charged with that
17 obligation to make certain decisions in the interests of not
18 only the Government, but of the country as a whole, and there
19 may be sensitive issues at times, and it could involve an
20 entity, a project or something that could involve some company
21 or something that you have interests in, you personally as an
22 elected Member of the House of Assembly.

23 So, I think it--I personally think it should be
24 published. I have no problems with that.

25 Q. How--

1 A. Personally, I wouldn't--if I had to make a decision as
2 a Legislator about something, I would like to know that the
3 public knows that I don't have an interest in whatever project
4 that is or decision where it could, in fact, affect my
5 decision-making.

6 Q. Now, you've expressed the view that your opinion is
7 that it should be public.

8 A. Yes.

9 Q. How long have you held that view?

10 A. Maybe it happened when--this was some years back.
11 This was a previous NDP administration, which was back in 2003,
12 I think it was, that an issue came up about the liberalization
13 of the telecommunications industry, and there were two companies
14 I know who are vying for--you know, for licensing and so on--it
15 was three companies, actually, that were vying for licenses--and
16 the issue came up where one of the companies was owned by the
17 BVI Investment Club, which happens to be a club mainly formed
18 and owned by local individuals here in the BVI.

19 And I think there were one or two of the sitting
20 elected representatives at the time had shares in the BVI
21 Investment Club, and it created a controversy because,
22 obviously, the decisions that were made then involved those
23 Members. And, from then, I really thought it was pretty
24 important that the public should know the interests that you
25 might have in whatever--where it directly affects your

1 decision-making.

2 Q. Was it an issue that whilst you were a sitting Member
3 of the House of Assembly, that you ever raised within the House?

4 A. No, I didn't raise it.

5 Q. Now, obviously the Register is a record of
6 Declarations of interests.

7 A. Correct.

8 Q. We've received evidence that the House of Assembly
9 operates by way of Standing Orders.

10 In your time, 2015 to 2019, was there a mechanism--if
11 something came before the House of Assembly, a debate, a motion
12 that came before the House either in total when it's sitting in
13 Committee, was there a mechanism by which you, as a Member of
14 the House, had to declare an interest in the topic, in the
15 agenda item?

16 A. As--I don't know of any specific mechanism. However,
17 I think it was on the discretion of the Member himself or
18 herself to make that disclosure to the House, but as to--as
19 there being a specific mechanism, I'm not sure that that
20 existed.

21 Q. Or, indeed, a specific requirement on the Members to
22 make disclosure?

23 A. Right. I don't know of that, no.

24 Q. Now, I think when I used the phrase "Register of
25 Interests Act 2006", you nodded towards me, so it may be that

1 you can still remember the obligations that were on you as a
2 Member of the House. If you don't, tell me, and I'll remind you
3 of it.

4 A. Okay.

5 Q. But the requirement under the Act is that, as a
6 Member, you are obliged to make a Declaration of your interests
7 on the date that you are sworn.

8 A. Correct, okay, yes.

9 Q. You agree with that?

10 A. Yes, I remember that.

11 Q. And then on any--every subsequent anniversary of that
12 date?

13 A. Correct.

14 Q. For the session to the House?

15 A. Yes.

16 Q. And so if you don't do it by that date, you're in
17 breach of the Act?

18 A. That's right.

19 Q. Now, the second aspect of the Act that bears
20 immediately on a Member of the House of Assembly is section 7
21 because that says--or 7(a) says that if three months after the
22 date, your Due Date, you still haven't filed your Declaration,
23 then you are again in breach of the Act?

24 A. Um-hmm.

25 Q. And the Registrar is obliged to write a report to a

1 Standing Select Committee.

2 Were you aware of that obligation?

3 A. Not--not directly. I was aware of the act of--you
4 know, I went through it, but I didn't--I must admit I didn't go
5 in detail as to the specifics of it; but, if it had come up,
6 obviously, I would pay attention then, yes.

7 Q. Now, I've referred to a committee. And during your
8 time as a Member of the House of Assembly, were you aware of the
9 Standing Select Committee charged with consideration of the
10 Register of Interests?

11 A. Yes, I'm aware of that.

12 Q. Can you remember when it was established during that
13 session?

14 A. Hmm. I can't say specifically what date, but I know
15 it was within the first year of the administration.

16 Q. Did you--were you ever appointed to be a Member of
17 that Committee?

18 A. Yes, I think I was on one Committee. To remember
19 which Committee now is the thing.

20 Q. So--

21 (Overlapping speakers.)

22 A. Select Committee.

23 Q. You were appointed to a Select Committee?

24 A. Yes.

25 Q. But whether it was a Select Committee concerned with

1 the Register of Interests is something that you're not clear
2 about?

3 A. Not sure. Not sure.

4 Q. All right. Well, I won't pursue that.

5 Now, you have indicated that you were aware of the
6 need to file Declarations?

7 A. Correct.

8 Q. Did you keep copies of your own Declarations?

9 A. No, I didn't. I just went to Registrar and filled out
10 the forms and left them with her. I didn't ask for copies. I
11 will assume that she kept the copies confidentially.

12 Q. If I could just show you--and it's probably taking you
13 back a bit in time--but show you the--take you through the
14 Declarations that you did file during your time as a Member of
15 the House of Assembly. Now, there should be to your left a file
16 with your name on it.

17 A. Which one now?

18 Q. Is it not there?

19 A. No, I don't see it.

20 I have mine here.

21 Q. You have your own?

22 A. Yes.

23 Q. Well, that's even better. That makes it a lot easier.
24 That's the file that was provided to you.

25 A. Okay.

1 Q. If you go in that file to page 77, the first thing
2 we're going to do, Dr O'Neal, just to help you, is just look at
3 the dates on the document. And if I explain that the reason I'm
4 going to ask these questions is because an issue that the
5 Commissioner is interested in is how the system worked.

6 A. Yes.

7 Q. And part of that will also be questions about your
8 experience when you were a Member in terms of how you approached
9 the form.

10 A. Okay.

11 Q. So, if we go to 77, if I've got the right page, it's,
12 in fact--although it's stamped at the top March 14, 2017--

13 A. Yes.

14 Q. --it is, in fact, your Declaration of the 2015
15 because, if you go to page 87, that's the last page of the
16 document. Can you just confirm to the Commissioner that that's
17 your signature?

18 A. Yes, that is.

19 Q. And underneath, is that your handwriting as well?

20 A. As well, yes.

21 Q. And what you've written is 14th of March '17.

22 A. Yes.

23 Q. And then you've added "This Declaration is for 23rd of
24 June 2015".

25 A. Yes.

1 Q. So, it would follow, wouldn't it, that the required
2 date was the 23rd of June 2015, but you had failed to make your
3 Declaration by that required date? Would you accept that?

4 A. Yes, I do.

5 Q. And remember I told you about the three months that
6 then follows thereafter.

7 A. Yes.

8 Q. Obviously, we're almost perhaps some 18-20 months
9 later.

10 A. Later.

11 Q. So, again, you were again way beyond three months,
12 weren't you?

13 A. Yes.

14 Q. Now, if you go--before I leave the document--now,
15 you've dated it on the date that you completed it?

16 A. Yes.

17 Q. But you've also said that it's for 23--for the 23rd of
18 June 2015.

19 Was there--did you receive any guidance or any advice
20 as to how you should date the document when it was being sent in
21 late?

22 A. The only guidance I got was from the Registrar
23 herself, and I think she--she's the one who suggested I do this,
24 as it's written there.

25 Q. Well, if you go now to page--I think it's 66.

1 This, again, is stamped, it's the first page of
2 another Declaration, stamped March 14, 2017?

3 A. Yes.

4 Q. But, if we look at page 76--

5 A. Yes.

6 Q. You've dated it--we confirmed that that's your
7 signature?

8 A. Yes.

9 Q. And you dated it 14th of March '17, and then you've
10 added this Declaration is for 23rd of June 2016". That's right,
11 isn't it?

12 A. Yes.

13 Q. And so, again, you were--you failed to file on the Due
14 Date, and you were beyond the three months, weren't you?

15 A. Yes.

16 Q. If I take you now to 55 in the bundle, this isn't
17 stamped?

18 A. Um-hmm.

19 Q. But, if we look at page 65, it's again carrying your
20 signature, isn't it?

21 A. Yes.

22 Q. And it's carrying the date 11th of March 2017?

23 A. July.

24 Q. 11th of July, you're quite right.

25 Now, 11th of July 2017, so this must be your 2017

1 Declaration?

2 A. Yes.

3 Q. And it is a--it's again not in by the date of the 23rd
4 of June '17.

5 A. Yes.

6 Q. It's a couple of weeks later, isn't it?

7 A. Yes, it is.

8 Q. Now, if we look at 45--excuse me, 44, please. Again,
9 it's not stamped, but I'm going to suggest you were--I think the
10 election was in, I think, January 2019, was it?

11 A. It was February.

12 Q. February. So, this was the last Declaration you made
13 which is actually for the year of 2018?

14 A. Yes.

15 Q. And if you go to 54. Again, this is the last page of
16 the document. Does it carry your signature?

17 A. Yes, it does.

18 Q. And the date underneath?

19 A. 22nd of January 2019.

20 Q. And so, it was due by the 23rd of June 2018.

21 A. Yes.

22 Q. So, again, you'd missed that date, hadn't you?

23 A. Yes, I did.

24 Q. And you were outside the three months.

25 A. Yes.

1 Q. Now, other evidence that the Commissioner has heard is
2 that when the dates came up each year, in your case when the
3 23rd of June approached, the Registrar would write to Members--

4 A. Yes.

5 Q. --reminding them of the date and sending them a form.
6 Is that your experience as well?

7 A. Yes. The Registrar was sending me notices.

8 Q. And that if you didn't, you file your Declaration in
9 on time, she would then send you, if you like, reminder letters
10 that you needed to comply, did you receive such correspondence?

11 A. She did so.

12 Q. Did you, yourself, have correspondence with the
13 Registrar at all?

14 A. Yes.

15 Yes, I spoke to her on several occasions.

16 I must--I must admit to you, though, that,
17 during--when I was first elected, during the orientation and all
18 of that, this Declaration of Interests was not a topic--was even
19 discussed during my orientation, so--it didn't--it didn't seem
20 to be something of great importance at the time. And I must say
21 I was tardy in following through with my Declarations and so on,
22 but I was aware the--I became aware after the Registrar kept
23 sending me notices and reminders and so on, so I sought then to
24 rectify it by--that's why you see those dates there that are
25 changed to rectify that, but if it was brought to my attention a

1 bit sooner, I think I would have been much more alert at doing
2 the right thing at the right time.

3 Q. It imposes a statutory obligation on you--

4 A. Yes, it does.

5 Q. --as a Member of the House of Assembly, and the
6 requirement to comply is on you as the Member, it's not on
7 anyone else?

8 A. Correct.

9 Q. Now, the Registrar was sending letters to, as you've
10 confirmed--

11 A. Um-hmm.

12 Q. --telling people each year you have to do this, by, in
13 your case, the 23rd of June?

14 A. Yes.

15 Q. Now, you've said that it wasn't something that, during
16 orientation or at any point, was considered to be important?

17 A. Um-hmm.

18 Q. Can you assist the Commissioner with this: Looking
19 back now, what assistance would you have welcomed when you were
20 starting out as a Member of the House of Assembly in terms of
21 obligations such as this?

22 A. Well, I think it's--it probably needed to be
23 emphasised much more at the beginning. I guess the Authorities
24 at the time, the Clerk and the Speaker of the House, we had
25 orientations with those individuals, but it simply was not

1 mentioned, to be honest. It was not mentioned. But I think if
2 some more importance was attached to it I think we would have--I
3 personally would have taken it a lot more seriously. I must
4 admit to you, too, that I wasn't aware of the three-month period
5 there, I didn't read that section of the Act to know that you'd
6 be in violation if you go three months over. I hadn't read that
7 portion. But if it was more emphasised during the orientation,
8 I think I would have been much better at it at being forthcoming
9 with it.

10 Q. The Act and why I asked you about the Standing Select
11 Committee, sets out a mechanism by which where you are, and
12 there are different things can lead to a report to the Select
13 Committee, but is it possible that--possible sequence of events
14 after the report is written, is that the mandatory one is that
15 the Committee meets to consider the report.

16 A. Yes.

17 Q. But also that could ultimately lead to the matter
18 being brought before the entire House of Assembly?

19 A. Correct.

20 Q. Now, evidence that has been given to the Commissioner,
21 was that in the session of where you were, a Member of the Third
22 House where you were a sitting Member, the Standing Select
23 Committee met once so far in this Fourth House of Assembly, and
24 the evidence is it has yet to meet. Again, reflecting on your
25 experience as a Member of the Third House of Assembly, would you

1 think that if your--your call that the matter be given more
2 emphasis could be achieved by the Standing Select Committee
3 being able to take a more proactive approach towards compliance?

4 A. It certainly needs to be more active. One sitting for
5 a whole term really is not good enough. And it's not just that
6 Select Committee, but other Select Committees suffer the same
7 fate. They're just--they're just tardy in a meeting and
8 discussing matters.

9 So, yes, I think it is a feeling of the House of
10 Assembly, really, that these committees are not more active in
11 the meeting, meet regularly and act accordingly. That is a
12 failing of the House, and it should be brought to the attention,
13 yes.

14 Q. Can I now just turn to the second aspect of my
15 questions, which is how you, as a Member, approached the form,
16 whether--really my questions are directed to your evidence as to
17 whether you considered the form to be something that was useful
18 and easy to complete. And if we do that by looking at one of
19 your forms. If we go to the 2018 one at page 45. Sorry, 44, if
20 we start there.

21 A. Yes.

22 Q. That's your 2018 form.

23 So, it has a Preamble, which if I direct your
24 attention to it, Dr O'Neal, it says: "The main purpose of a
25 Register of Interests is to provide information of any pecuniary

1 interest or other material benefit which a Member receives which
2 might reasonably be thought by others to influence his or her
3 actions, speeches or votes in the House of Assembly or actions
4 taken in his or her capacity as a Member". I'm going to stop
5 there.

6 Now, that's, if one likes, the opening sentences of
7 this form. It's from the Act itself. But the form is a
8 schedule to the Act.

9 A. Um-hmm.

10 Q. When you read that--and you would have read it in the
11 four occasions you had to fill in the form, but what did you
12 take from that to be the main purpose of the Register?

13 A. Exactly as it says. That it's important that the
14 Members' Interests be known before a vote or even giving
15 speeches for that matter. It is important that the Interests
16 has to be known.

17 So, yes, I take it at its value right now.

18 Q. If we--when you were completing the form--the form had
19 various parts, and I can take you to them if you need reminding
20 of it. They talk about your--it speaks of your Interests.

21 A. Yes.

22 Q. It also speaks of the Interests of your spouse?

23 A. Yes.

24 Q. And also your dependent children.

25 A. Yes.

1 Q. Did you think, in terms of the information that you
2 had to provide, that the form limited you in any way?

3 A. No, I don't think so because it was explicit in the
4 form. Not just myself. Yes, for family members as well.

5 Q. So--

6 A. So, there was nothing wrong with that.

7 Q. You're now speaking of family members.

8 A. Um-hmm.

9 Q. In your own mind when you were filling in the form,
10 what did you take family members to extend to?

11 A. Well, I take it to mean immediate family members, you
12 know, my spouse, my wife, my children. That's about it.

13 "Immediate".

14 Q. But would you take it as having extended to Interests
15 held by your adult children?

16 A. Yes, it does. I accept that.

17 Q. And, therefore, would it extend, if they had spouses,
18 would you think that would be a relevant matter to declare?

19 A. Would be as well, yes.

20 Q. Now, if we look at your approaches, there are 10
21 paragraphs in the Schedule. At page 45, you've set out there
22 your Directorships.

23 A. Yes.

24 Q. And this is in 2018. You're asked whether you have
25 remunerated or unremunerated Directorships in a company, and you

1 set out Island Optic Limited, and you said in brackets "d/b/a
2 Tortola Vision Center". Then you say Optical Retail and
3 Ophthalmology Practice, Medicure Limited, and then Robinson
4 O'Neal Enterprises Limited.

5 Now, were those all companies that you were declaring?

6 A. Yes.

7 Q. Now, when you came to remunerated employment which is
8 at 2 at 46, you referred to your private consultancy practice,
9 but also that you were an ophthalmologist consultant at Peebles
10 Hospital?

11 A. Yes.

12 Q. That was a public aspect of your work, was it?

13 A. That's correct.

14 Q. Now, having looked at 1 and 2, if you go to
15 paragraph 3 at page 47, what it asks is: Does any of the paid
16 employment registered in Categories 1 and 2", so that's
17 Directorships and remuneration, "entail the provision to clients
18 of services which depend essentially upon or arise out of your
19 position as a Member of the House of Assembly", and it directs
20 you to Note 1, which says: "The services covered by this
21 category include action connected with any parliamentary
22 proceeding, sponsored meetings or functions in the House of
23 Assembly's buildings or offices, making representation to
24 Ministers, Fellow Members or public servants, accompanying
25 delegations to Ministers and the provision of advice on

1 parliamentary or public affairs".

2 And what it also says is "where you receive
3 remuneration from a company or partnership engaged in
4 consultancy business which itself has clients, you should list
5 any of those clients whom you personally provide such services
6 or advice, directly or indirectly". Now, that's linking clients
7 back to, if you like, your work or any work that you did or any
8 activities you have which are not as a Member of the House of
9 Assembly.

10 When you read this and when you read it now, what
11 information is a Member of the House of Assembly, in your
12 opinion, being asked to provide?

13 A. I think it is asking you to provide information about
14 consultancies or any relationship that you have with these
15 companies and what remuneration are you receiving from it.

16 I guess it's important seeing that being a Member of
17 the House of Assembly, these companies that I've listed here
18 might have some--some connection with the public service or the
19 Government itself, and I did list here the consultancy with
20 Peebles Hospital, which is a public facility, as you know.

21 So, I think I was clear in declaring these
22 consultancies.

23 Q. If I can help with this, Dr O'Neal, not
24 particularly--my question is not particularly directed as to
25 whether you've said the right thing or the wrong thing on the

1 form.

2 A. Yeah.

3 Q. But how about the form was helping you to give
4 information.

5 A. Okay.

6 Q. Now, if one looks at that paragraph 3, I'm going to
7 suggest this to you, and tell me if you accept it or not, that
8 the purpose of it is to make sure that a Member of the House of
9 Assembly declares where they use their position as a Member of
10 the house to help a client.

11 A. Um-hmm.

12 Q. So, I'm going to give you a hypothetical, but if you
13 had--if, for example, you were the Director of a company that
14 wanted to do business with Government and you were to use your
15 position as a Member of the House of Assembly to facilitate an
16 introduction to a Minister, that's the sort of information you
17 should be expected to declare in this box, isn't it?

18 A. Yes, yes.

19 Q. And you've agreed with me, but was that--was that in
20 your mind, when you were filling these forms in, when you were a
21 sitting Member?

22 A. Yes, I would say so. It was.

23 Q. If we go to 48 and paragraph 4--excuse me. Again,
24 keeping it general, the first question--and if I make clear for
25 the record that, on your Declarations, in relation to

1 paragraph 4, your answer has always been "no", and was always
2 "no", paragraph 4 is headed sponsorship. The first question it
3 asks you is: "Did you benefit from any sponsorship before
4 election were to your knowledge the financial support in any
5 case exceeded in aggregate \$2,500?"

6 Now, this is a question I've asked of other Members of
7 the House of Assembly, but what did you understand "sponsorship
8 before election" to mean?

9 A. I guess it would mean persons who are interested in
10 your campaign and want to support your campaign by giving a
11 financial--making a contribution to your campaign. The amount
12 there of \$2,500 I understand is not to exceed that amount.

13 Q. So--but does it, in your view, encompass donations to
14 your campaign?

15 A. Well, during my campaign, I did not have donors
16 donating to my campaign of that magnitude. Smaller donations,
17 yes. And it was not a great amount of donations. It was mainly
18 from my own--my own personal financial assets that my campaign
19 was run.

20 The Party--the National Democratic Party, also
21 assisted with the financing of my campaign as well partially,
22 and the donations that I understand that came from the Party was
23 controlled by the senior Members of the Party. So, I really
24 can't say what those donations were, whether they were larger
25 than the 2,500 or not. I really can't say. But indirectly I

1 may have benefited from it because I was being funded partially
2 from the Party as well.

3 Q. Now, obviously I have been taking you back to the 2015
4 to 2019, so you had stood in two elections?

5 A. Yes.

6 Q. 2015 successful and 2019 unsuccessful.

7 On those two occasions, so far as you were aware, were
8 there any rules in place regulating campaign financing?

9 A. No. There were no rules.

10 Q. There are no rules, you say.

11 A. Not that I know of, no.

12 Q. And so I think--I hope I quote him accurately--but The
13 Honourable Member Neville Smith said when we were asking him
14 about this, you can spend \$2 and lose or \$2,000 and win. And is
15 it the case that there is no limit to how much you choose to
16 spend on your campaign?

17 A. No, there is no limit.

18 Q. I'm going to just quickly look through the other
19 paragraphs on form, and that's just so that we can have it on
20 the record.

21 In relation to--you were asked, as any Member of the
22 House of Assembly is asked, to declare gifts, benefits and
23 hospitality above a certain level that you receive within the
24 Virgin Islands. You have on your form said "no" to that.

25 You were asked--and this is page 50, Dr O'Neal--to

1 declare overseas trips, and these are trips as a Member of the
2 House of Assembly, which are not funded by yourself or from
3 public funds.

4 A. Yes.

5 Q. And again you've said "no", and you were asked about
6 overseas benefits and gifts at 7, which is 51.

7 Now--again there's a threshold but it's gifts or
8 benefits that you receive from or on behalf of a foreign
9 government, organization or person, which again is connected to
10 your membership of the House.

11 A. Um-hmm.

12 Q. Now, again, you've always said "no" to that on your
13 forms, but if we go to 8 at 52, you've set out interests in land
14 there, and you have given the same or similar details on
15 different versions of your forms which will go through the year.

16 But I've got sort of a wider question that I want to
17 put to you: What interest in land did you understand you had to
18 declare?

19 A. Well, the form is a general question here of what
20 lands you own, what properties, et cetera, that you own, so I
21 just listed practically all of the properties that I own in the
22 BVI.

23 Q. And did you include amongst them your own residential
24 home?

25 A. Yes, it is--I did.

1 Q. Because, if we look at the top, you were asked, do you
2 have any land other than any home used solely for the personal
3 residential purposes of you and your family, but is it right
4 that your approach was actually to go one step further and write
5 down your own home as well?

6 A. Well, in addition to my home, I listed the others
7 which are really not developed. They're just bare land.

8 Q. Yes.

9 So, if we refer to it, you put Bath South Valley,
10 Princess Quarters. I can't quite read your handwriting. A
11 mountain in Tortola?

12 A. Batu Mountain.

13 Q. Batu Mountain.

14 A. That's where my home is at.

15 Q. Then Hope Estate, you put two properties in Hope
16 Estate. But effectively--

17 A. Undeveloped.

18 Q. Undeveloped plots of land that you own?

19 A. That's correct.

20 Q. Then, if I ask you at page 53, if we go to the next
21 point, which is paragraph 9, "shareholdings", now you've put
22 there shareholdings in three entities, but they were entities
23 that if we looked earlier you'd also recorded in under
24 "Directorships".

25 A. Yes.

1 Q. So, was it your understanding and approach that you
2 might need to put the same information in different parts of the
3 form or refer to the same company or entity in different parts
4 of this form?

5 A. No. Shareholdings was, to me, meant holdings in
6 companies, which is what I listed there, those three companies
7 are my shareholdings. There was nothing different or otherwise
8 that it meant, I think.

9 Q. But my point is that you could have--if you take, for
10 example, a company--

11 A. Yes.

12 Q. Your Interests could have different aspects to it,
13 couldn't it? You could be a Director of the company--

14 A. And not be a shareholder.

15 Q. And you could have substantial shares in the company?

16 A. Well, in this case I was both Director and
17 Shareholder.

18 Q. And so, from your perspective, you had to make sure,
19 did you, that that information was properly recorded in
20 different parts of the form?

21 A. Yes, correct, yes.

22 Q. Where did that--did that understanding come from the
23 form itself, or did you receive any advice about what you needed
24 to put in the form?

25 A. No, I didn't get that advice. I just took it upon

1 myself to list it and declare that, yes, I'm shareholding in
2 these companies and also Director.

3 Q. The last part of the form is at page 54. It's headed
4 "miscellaneous", and it reverts back to the Preamble that I read
5 out to you earlier when we started looking at the form, but it
6 says: "If bearing in the mind the definition of purpose set out
7 in introduction to this form you have any relevant Interests
8 which you consider should be disclosed but which do not fall
9 within the nine categories set out above, please list them".

10 Now, you've left that blank, and again, I'm not asking
11 about your particular Interests, but it's more general than
12 that. But when you read that and when you read it now, what
13 information did you think you would be required to disclose?
14 What did you think it was targeted at?

15 A. I think they were looking for information, say
16 something they didn't ask for previously and specified in the
17 question that if there is anything that I thought would be
18 relevant to my Interests that I should list them. I obviously
19 didn't think of anything that was relevant here, so that's why I
20 didn't list anything.

21 Q. Now, you remember what I asked you earlier about what
22 do you--what did you mean by "immediate family", but do you
23 think that question is directed at you alone and what Interests
24 you have or does it encompass your family?

25 A. Well, how it's worded, I take it to me it was me

1 alone. I wasn't thinking of family, to be honest.

2 Q. Yes.

3 A. I wasn't.

4 Q. Thank you.

5 Can I just move on to another topic, and, it's again a
6 question I've asked of more than one Member of the House of
7 Assembly now, but it's about the operation of section 67 of the
8 Virgin Islands Constitution, and if I can try and summarise it
9 for you, Dr O'Neal.

10 A. Sure.

11 Q. What section 67 governs is the tenure of seats of
12 Members of the House of Assembly, and it also prescribes that
13 certain circumstances in which an elected Member has to vacate
14 his or her seat, and one of those circumstances is in
15 subsection 3(e), where it requires the seat to be vacated
16 if--and this is a reference to the Member--if he or she becomes
17 a Party to any contract with the Government of the Virgin
18 Islands for or an account of the public service or if any firm
19 in which he or she is a partner or any company of which he or
20 she is a Director or Manager becomes a Party to any such
21 contract or if he or she becomes a partner in a firm or a
22 Director or Manager of a company, which is a Party to any such
23 contract.

24 A. Yes.

25 Q. Now, there is an exception to that, which is in

1 subsection 7, that if in the circumstances it appears just to
2 House of Assembly to do so, the House may exempt any elected
3 Member from vacating his or her seat.

4 A. Yes.

5 Q. Now, in your time as a Member of the House, from 2015
6 to 2019, were you ever exempted from vacating your seat under
7 section 67?

8 A. Not me specifically, however, being a medical
9 practitioner, I think on my team anyway, there were two other
10 medical practitioners on my team, namely the Premier then,
11 Dr Smith, and also Deputy Premier Dr Pickering. We were sort of
12 given an exemption because of our practice and our involvement
13 in Peebles Hospital, the public hospital, so that exemption was
14 extended to all of us as being consultants at Peebles Hospital.

15 I think even in the past there were other doctors who
16 were elected as well. I can remember Dr Scatliffe was another
17 one. I think he got special exemption as well but yeah, just on
18 that we were given special exemption.

19 Q. Was that an exemption necessary so that you could
20 continue working in a public service?

21 A. Essentially, yes.

22 We're a small Territory. We have a number of
23 professionals. However, take, for example, I'm the only
24 ophthalmologist here in the Territory, and my services would be
25 needed in the Territory, both public and private, so I think it

1 naturally follows through that I would have special exemption.

2 Q. Leaving aside that exemption, were you, or did you,
3 during your tenure, as a Member of the House--Third House of
4 Assembly, were you ever asked to vote on a motion exempting
5 another Member from vacating his or her seat because they had a
6 contract with Government?

7 A. I'm thinking back.

8 No. I don't remember being involved in that, no.

9 MR RAWAT: Commissioner, may I have a moment?

10 COMMISSIONER HICKINBOTTOM: Certainly, yes.

11 MR RAWAT: Commissioner, those are my questions. Can
12 I conclude by thanking Dr O'Neal for coming to give evidence,
13 and also for the way that he has given his evidence this
14 afternoon.

15 COMMISSIONER HICKINBOTTOM: And again, can I add my
16 thanks, Dr O'Neal, for your time and your evidence and the clear
17 way in which you've given it. Thank you.

18 THE WITNESS: My pleasure. Thank you very much.

19 (Witness steps down.)

20 COMMISSIONER HICKINBOTTOM: I think the next witness
21 is not due until 4:00.

22 MR RAWAT: That's right. We will--our last witness of
23 the day is Dr The Honourable Natalio Wheatley, so if I could ask
24 you, Commissioner, to raise until Dr Wheatley is here and we're
25 ready.

1 COMMISSIONER HICKINBOTTOM: Will do. Thank you very
2 much.

3 (Recess.)

4 COMMISSIONER HICKINBOTTOM: Just before we begin, I
5 know that the Attorney General wasn't represented at the first
6 part of this afternoon, and I think an e-mail is on its way to
7 her and IRU, but have you discussed this, Mr Olimpitis?

8 MR OLYMPITIS: No, we haven't.

9 COMMISSIONER HICKINBOTTOM: Right.

10 An article's appeared in Virgin Islands' on-line
11 media, which indicates--which says that the Minister's position
12 statement on governance has been handed to them by a senior
13 source--

14 MR RAWAT: Senior sources.

15 COMMISSIONER HICKINBOTTOM: Senior sources in the COI.
16 It's widely referred to in the article. That position statement
17 is, of course, confidential. And I've made inquiries--and
18 Mr Rawat has made inquiries--of the COI team, all of whom are
19 here, except for the Secretary who is next door. The link did
20 not emanate from us. Consequently, it must have emanated from
21 one of two other sources, both of whom are covered by the duty
22 of confidence: One is the Attorney General/the IRU, and the
23 other is the Governor's Office because, of course, with the
24 Attorney General's permission, we sent the position statement to
25 the Governor's Office because of the issues of confidentiality

1 raised by the Attorney General herself when sending us the
2 position statement because others may have the benefits of the
3 duty of confidentiality, including the Governor and Members of
4 the UK Government.

5 So, I directed at the beginning of this afternoon
6 that, by 9:00 a.m. tomorrow, both the Attorney General and the
7 Governor's Office make inquiries as to where this leak came
8 from, and identify every single person who has had access to the
9 document, list them; identify the inquiries that have been made
10 of them as to this leak to identify the perpetrator of the leak.
11 I take the breach of the duty of confidentiality extremely
12 seriously.

13 An e-mail may have already gone to the Attorney
14 General--it has--but as you're here representing the Attorney
15 General, I should mention that to you as well, Mr Olimpitis.

16 Thank you, Mr Rawat.

17 MR RAWAT: Thank you, Commissioner.

18 Our next witness is Dr The Honourable Natalio
19 Wheatley, and he's here, and if I could ask The Honourable
20 Wheatley be sworn, please.

21 THE WITNESS: Hand on the Bible?

22 COMMISSION SECRETARY: Would you like to swear an oath
23 or make an affirmation?

24 THE WITNESS: Affirmation.

25 COMMISSION SECRETARY: And if you could turn--

1 THE WITNESS: I turned it around already.

2 COMMISSION SECRETARY: Just repeat that.

3 THE WITNESS: Okay. I don't have to have my hand up
4 or anything like that?

5 COMMISSIONER HICKINBOTTOM: Not for an affirmation.

6 THE WITNESS: Okay.

7 I solemnly, sincerely and truly declare and affirm
8 that the evidence I shall give shall be the truth, the whole
9 truth, and nothing but the truth.

10 COMMISSION SECRETARY: Thank you.

11 COMMISSIONER HICKINBOTTOM: Dr Wheatley, thank you
12 very much.

13 THE WITNESS: Thank you.

14 MR RAWAT: Thank you, Commissioner.

15 BY MR RAWAT:

16 Q. Dr Wheatley, thank you for coming to give evidence.

17 A. My pleasure. My pleasure.

18 Q. We need to start off with some formalities, the first
19 of which is to ask you, for the record, to give the Commissioner
20 your full name, please.

21 A. My name is Natalio Dixon Wheatley.

22 Q. And your professional address?

23 A. Matariki Building in Road Town.

24 Q. Now, as we go through, what I hope to do is to keep my
25 questions short and simple, but if at any time you have

1 difficulty understanding a question, please do tell me if you
2 would like me to repeat or rephrase it. There are a number of
3 bundles on the desk in front of you. You don't need to open any
4 of them at this moment, but we will be looking at some of those
5 documents in due course.

6 A. Okay.

7 Q. This may not present you with any difficulty, but it
8 is something we tell all witnesses, and that to please remember
9 to keep your voice up and to speak slowly so that your answers
10 can be accurately and clearly recorded on the Transcript of this
11 hearing.

12 A. That's no problem.

13 Q. If we can start off with the questions I have put to
14 all Members of the House of Assembly who have come this week,
15 and that is if you could give the Commissioner, first of all, an
16 outline of your professional background before you came into
17 politics.

18 A. Immediately, before being elected to the House of
19 Assembly, I was a lecturer at H Lavity Stoutt Community College
20 for about 12 years. Before that, I was in London at school
21 doing my Ph.D.

22 Q. Now, is it right that it was in the 2019 Election that
23 you were first elected as the representative of the Seventh
24 District?

25 A. That is correct. Seventh. Seventh District, yes.

1 Q. And that was on behalf of the Virgin Islands Party?

2 A. Yes.

3 Q. Was that the first time that you had stood for
4 election?

5 A. I stood in for election in 2015 with the Party called
6 the People's Empowerment Party, and also in 2011 with the Party
7 called the People's Patriotic Alliance.

8 Q. Were you unsuccessful on those two occasions?

9 A. Yes, regrettably.

10 Q. Now, in the Seventh District, how many people live in
11 that district?

12 A. I don't know. It's one of the bigger districts.

13 Q. Now, you say "it's one of the bigger districts".

14 Minister Vincent Wheatley, who gave evidence yesterday, I
15 believe, explained to the Commissioner that there are boundary
16 adjustments that are intended to try and keep the population
17 within each district about the same.

18 A. Well, he would have been referred--referring to
19 registered voters. The boundaries would refer to registered
20 voters.

21 Q. I see.

22 A. But you have areas which have more people, and those
23 persons may not be citizens or belongers of the BVI, so the
24 district where I am is densely populated, and quite a number of
25 migrants live there.

1 Q. I see. Thank you.

2 So, you referred to registered voters.

3 A. Yes.

4 Q. How many registered voters were there as of the 2019
5 Election in District 7?

6 A. To my shame, I do not know. Being a politician,
7 that's something I should know.

8 Q. Well, can I try and help you?

9 A. Please.

10 Q. According to the official results that are published
11 on the website of the Government of the BVI, in that election in
12 District 7, there are 858 votes cast, and you received 384
13 votes, which is 44.76 percent. Your nearest opponent received
14 338 votes, which is 39.39 percent. Does that accord with your
15 recollection of the outcome of the election?

16 A. Well, I remember I won. I will try to do better next
17 time.

18 Q. Is that a "yes"?

19 A. Yeah, I remember that I won. I don't remember the
20 exact vote total, but I do remember that I had more than the
21 nearest competitor.

22 Q. Yes. I think that follows from, I think, remembering
23 that you won.

24 A. Yes.

25 Q. And you were sworn in on the 23rd of March 2019,

1 weren't you?

2 A. Yes, that sounds familiar. In March, yeah.

3 Q. And were you immediately appointed to your ministerial
4 position as Minister for Education, Culture, Youth Affairs,
5 Fisheries and Agriculture?

6 A. I believe we had our ministerial appointments before
7 we were sworn in to the House of Assembly.

8 Q. I see.

9 And were you--I'm sorry, I interrupted you. Please
10 finish.

11 A. Yeah, I think sometime early in March, I believe. But
12 I could be wrong.

13 Q. Was that at the same time you were appointed Deputy
14 Premier?

15 A. Well, we had an unconventional system for Deputy
16 Premier. Yes, I was the first Minister appointed as Deputy
17 Premier for a period of three months, and then other Ministers
18 followed. So, I don't remember the exact date when I was
19 appointed as Deputy Premier. I don't think it was the same date
20 I was appointed as a Minister.

21 Q. I see.

22 Are you still a Deputy Premier?

23 A. Yes.

24 I was appointed permanently as a Deputy Premier
25 sometime last year.

1 Q. Thank you.

2 Now, one of the--and you may not be aware of this, but
3 I believe you have been traveling, which is why we've moved your
4 date for which you had to come and give evidence.

5 A. Yes. I thank you for accommodating me.

6 Q. But one of the topics that we have been asking
7 questions about and asking questions of Members of the House of
8 Assembly is in relation to the Register of Interests Act 2006.

9 A. Yes.

10 Q. Now, the Act at the moment--and the Attorney General
11 confirmed this--makes the Register of Interests itself private
12 in the sense that a member of the public cannot turn up and
13 inspect it.

14 A. (Witness nods.)

15 Q. There are measures pending that may change that. What
16 I wanted to ask you was what your view is of publication of the
17 Register of Interests to the public?

18 A. Well, let me say firstly that I support transparency,
19 and I support having proper checks and balances. Now, the
20 question of whether the public has access to it versus another
21 body, I think, is one that needs to be discussed more. But
22 generally, I think, if you have a competent body who can
23 investigate possible conflicts of interest, that's something
24 that I would support.

25 Q. Can I ask you to develop that a little bit more. What

1 do you think are the risks associated with the public being able
2 to inspect the Register of Interests?

3 A. Well, I'm consistent on this, even as it pertains to
4 financial services. We've had proposals for registers of
5 beneficial ownership which are open to the public. And
6 certainly, I believe, even as Legislators, you do have a certain
7 level of privacy afforded to you, so same thing with beneficial
8 ownership. I do think that we have a certain level of privacy.

9 And if persons wanted to disclose certain things which
10 might be considered to be private to the public, that's their
11 prerogative. Me, for instance, I have no problem disclosing to
12 the public my private interests.

13 Q. Now, if you turn to the bundle--and it's page 1,
14 please, in the bundle--there should be a bundle with your name
15 on it, Dr Wheatley.

16 A. 108?

17 Q. No. 1.

18 A. Page 1.

19 Okay.

20 Q. Now, this was a letter dated the 19th of
21 February 2021, and it was addressed from the Commission to all
22 Members of the House of Assembly, so it went to you as an
23 representative rather than Minister, and it concerned details in
24 the Register of Interests and the operation of the 2006 Act.

25 If you turn over to page 2, the Commissioner asks that

1 each Member of the House of Assembly to produce three pieces of
2 information. The first was the date and content of each
3 Declaration of Interests you made at any time. The second was,
4 irrespective of any such declarations you may have made, the
5 information or documents--and documents that you would provide
6 in such a Declaration of Interests; and third, to confirm
7 whether if during your period of appointment you failed at any
8 time to comply with your obligation to make such a Declaration
9 pursuant to section 3(1), in respect of each such failure, a
10 full explanation as to why you did not make such a Declaration.

11 Now, focusing specifically on Requests 2 and 3, and
12 keeping those in mind, was there any reason you felt unable to
13 reply to that letter?

14 A. That's an oversight on my part. I do apologise for
15 not responding there.

16 Q. But again, speaking from your perspective, leaving
17 aside that you say it was an oversight, but in terms of
18 providing that sort of information to the Commission, you did
19 not have any difficulty, in principle in so doing?

20 A. No, I don't have any problem producing it. And if I
21 can share the information now, I would happily do so.

22 Q. Things may have moved on so it may be that we don't
23 need you to do that?

24 A. Well, that's convenient.

25 Q. It is.

1 But we can assess the level of convenience once we've
2 heard your answers to other questions.

3 A. Okay.

4 Q. Let's look at your obligations. I can take you to the
5 law if you want, but I just want to check your understanding of
6 the obligations that the Register of Interests Act places on
7 you--

8 A. Yes.

9 Q. --as a Member of the House.

10 A. Yes.

11 Q. Section 3 requires each Member of the House of
12 Assembly to make a Declaration on the date that they are sworn,
13 so in your case that was the 12th of March 2019.

14 A. Yes.

15 Q. Were you aware of that obligation?

16 A. 12th March.

17 Q. 2019.

18 A. When I was sworn into as a Minister?

19 Q. No, as a Member of the House?

20 A. Okay. So, the 12th was when we were sworn in?

21 Q. Yes.

22 A. Yes, I'm now aware of that.

23 Q. You say now aware of it. Were you aware of it on the
24 12th of March 2019?

25 A. I don't remember. I actually don't remember. And we

1 did not--I don't remember it being mentioned in any orientation
2 or any persons in authority telling me. What I do know that the
3 Registrar of Interests at some point--I don't remember the
4 dates--started writing to us, and reminding us of our
5 obligations.

6 Q. You're not the first witness to discuss the
7 correspondence with the Registrar, so can I come back to that in
8 a moment.

9 A. Sure.

10 Q. Now, that's the obligation that's imposed on you on
11 the day you're sworn.

12 A. I recognise that.

13 Q. Yes. Now, you say you weren't aware of it at the
14 time. When did you become aware of it?

15 A. I wouldn't be in a position to give you exact dates,
16 but when the Registrar of Interests began writing to me, I
17 certainly would have been aware at that point.

18 Q. That you had a statutory obligation to fulfill?

19 A. Yes.

20 Q. Now--

21 A. Forgive my ignorance on that.

22 Q. Can I take it in stages again. But the obligation is
23 also to make a Declaration on every subsequent anniversary.
24 Were you aware of that obligation?

25 A. Yes, I am aware of that.

1 Q. So, the obligation arises again on the 12th of
2 March 2020 and 12th of March 2021, doesn't it?

3 A. Yes.

4 Q. Again, when did you become aware of that obligation?

5 A. That it repeats?

6 Q. Yes.

7 A. Perhaps--perhaps it was--I was reminded of the
8 obligation when the Registrar of Interests began writing to me
9 in the subsequent year.

10 Q. Now, let's deal with the correspondence from the
11 Registrar. So, other Members have given evidence that they
12 would receive in advance of the date when they had to submit a
13 Declaration a letter from the Registrar reminding them of their
14 obligation?

15 Did you receive such correspondence.

16 A. I cannot confirm that I opened the letter and read it
17 before the date. I may certainly may have received it, but I
18 have a backlog. I can show you my desk at my office, if you
19 like, it's quite embarrassing, but I had quite a number of
20 requests dealing with a number of things under my very large
21 portfolio. So, it could have been the case that I did not open
22 the letter until after the date.

23 Q. And obviously, when you first opened it, that's when
24 you would have become aware of your obligations under the Act?

25 A. Yes, perhaps be reminded certainly because, you know,

1 with all the pressing issues that we have to deal
2 with--pandemic, hurricane recovery, everything else under the
3 sun--it's quite easy to forget.

4 Q. And other Members have also confirmed that they would
5 have received what may be described as chaser correspondence
6 from the Registrar reminding them that they may have missed the
7 Declaration date. Did you receive such correspondence from her?

8 A. I do remember receiving at least one letter saying
9 that I missed the date.

10 Q. Now, some of--have you retained the correspondence
11 that you received from the Registrar of Interests? I appreciate
12 some of it might be still be on your desk unopened, but have you
13 retained it?

14 A. I actually requested correspondence from the Registrar
15 of Interests.

16 Q. Is that copies of the correspondence--

17 A. Copies, yes.

18 Q. When did you make that request?

19 A. Recently when I--when I--when I declared my interest
20 this year.

21 Q. When you made your 2021 Declaration?

22 A. Yes.

23 Q. I think--and I'll be corrected if I'm wrong but I
24 think the date of your 2021 Declaration is the 13th of
25 June 2021.

1 A. That's correct.

2 Q. Was that at the time that you made the request for
3 correspondence?

4 A. Yes.

5 Q. Have you received the correspondence?

6 A. Yes.

7 I haven't really examined it too much in detail, but I
8 received it.

9 Q. And would you be willing to provide copies of what you
10 received to the Commissioner?

11 A. Absolutely.

12 Q. Thank you.

13 I'll pause there, Commissioner, and just make that not
14 necessarily a piece of homework for you, Dr Wheatley, but
15 perhaps Mr Olimpitis, if he could coordinate providing that
16 correspondence to the Commission, that would be helpful.

17 A. Absolutely.

18 Q. Now, another obligation that arises on
19 Members--firstly, if you don't provide your Declaration on time
20 under the Act, you are in breach, but a second way in which you
21 can be in breach is if within three months of that date you
22 still haven't filed the Declaration--

23 A. Right.

24 Q. --then you are again in breach?

25 A. Okay.

1 Q. That's Under section 7. Were you aware of that at
2 all?

3 A. No, I was not.

4 Q. And is that still the case today?

5 A. Well, I'm aware of it now.

6 Q. Yes, but this is something new that I've told you, is
7 it?

8 A. Yes. This is the first--well, I have to admit I
9 watched the Hearing before this. I'm not sure if that's
10 cheating, but I watched the Hearing before this, and I became
11 aware of it then.

12 COMMISSIONER HICKINBOTTOM: Did you not know about the
13 section 3 obligation to make--it's a mandatory statutory
14 obligation--to make a Declaration on the anniversary of your
15 taking up your appointment as a Member?

16 THE WITNESS: I think I answered that. The part that
17 I was not aware of is this three months you spoke about.

18 COMMISSIONER HICKINBOTTOM: Yes. Thank you. Yes.

19 THE WITNESS: The three months specifically you're
20 referring to.

21 BY MR RAWAT:

22 Q. Yes.

23 And if you're caught by that, the Registrar is
24 mandated to write a report to a Standing Select Committee.

25 A. Okay.

1 Q. Are you aware of the existence of a Standing Select
2 Committee charged with considering the Register of Interests?

3 A. Yes. I think through your question, and that has
4 become a hot topic.

5 Q. So again, is that something that you've learned
6 through watching the Commission's proceedings?

7 A. Yes, it's very interesting watching them, I might say.
8 Very informative.

9 Q. Now, on the--the other Members who have given evidence
10 have identified who they believe sit on that Committee, which is
11 chaired by the Premier. You're not a Member of that Committee,
12 are you?

13 A. No, I'm not.

14 Q. And if you are not a Member of a Committee in the
15 House, does that mean that you wouldn't necessarily be aware of
16 any of its activities?

17 A. Well, of course, if a Standing Select Committee makes
18 any reports to the House, I might know about it or perhaps maybe
19 if--if there is a notice of a meeting of a Standing Select
20 Committee to other Members, I might know about that.

21 Q. But otherwise, it would be just the committees in
22 which you are actively involved that you would be concerned?

23 A. Yes.

24 Q. Could we turn in the bundle that's addressed--that's
25 for you, Dr Wheatley, to--if you give me a moment--to page 54,

1 please.

2 A. Page 54.

3 Q. I just want to check some dates with you, if that's
4 all right.

5 Now, if we're both on the same page, that should be
6 the first page of a Declaration of Interests form, and it's got
7 a stamp from the Registrar of Interests at the top there, and in
8 manuscript is written the date 6 September '19.

9 Do you have that, Dr Wheatley?

10 A. 6 September '19, yes, I do see that.

11 Q. That's got your name at the bottom. Is that in your
12 handwriting?

13 A. That is my handwriting, regrettably.

14 Q. Yes.

15 A. Not that pretty.

16 Q. No.

17 If you then go, please, to page 64?

18 A. 64.

19 Q. Take you to the last page of the document.

20 A. Yes.

21 Q. Can you confirm that that page carries your signature?

22 A. That is my signature.

23 Q. And underneath in manuscript is the date 3rd
24 September 19. Is that your hand?

25 A. Yes, that is my handwriting there.

1 Q. Now, as I've explained, you would have, under the
2 Act--and you had an obligation to file this by the 12th of
3 March 2019?

4 A. Yes.

5 Q. And so, because you didn't do that on that date, do
6 you accept that you were in breach of the Act?

7 A. Absolutely in ignorance, yes, yes.

8 Q. And then as you learned from watching the Commission's
9 proceedings, there was also the requirement that you
10 provided--that the three-month deadline, additional deadline,
11 that we've been speaking about?

12 A. I missed that as well.

13 Q. You missed that as well?

14 A. Yes.

15 Q. So, again, you're in breach there?

16 A. Yes. It's not something I'm proud of.

17 Q. If you go to page 43, then.

18 A. Yes. 43, I'm here with you.

19 Q. Thank you.

20 If you look now, this is another Declaration form.
21 It's stamped again by the Registrar, in manuscript is the date
22 the 10th of June 20. Do you have that?

23 A. Yes. I'm getting better. Perhaps next year I'll be
24 on time.

25 Q. Well, let's take it in stages and see where we are.

1 A. Yes.

2 Q. If we go to 53, that's the last page of the document.
3 Again, is that your signature?

4 A. That is my signature.

5 Q. In typescript underneath is the date 2nd of
6 March 2020.

7 A. Yes.

8 Q. Can you explain the difference in dates because it
9 seems to have been dated 2nd of March, and that would be the
10 date when you signed it.

11 A. Yes.

12 Q. But then reached the Registrar on the 10th of
13 June 2020. Do you have any explanation for that?

14 A. It may be that I completed it on March 2nd, but did
15 not submit it for whatever reason. Perhaps maybe I thought I
16 submitted it and I didn't. That could be the case.

17 I'm just assuming--

18 Q. Right.

19 A. --because I can't quite remember.

20 Q. Yes. But what we can say is that at least it reached
21 the Registrar?

22 A. I accept that.

23 Q. If you go now--

24 A. But no--no intent to be dishonest.

25 Q. No one is suggesting that you have any such intent--

1 A. Just for clarity. I want to make sure no one has an
2 inkling in their mind.

3 Q. Let's go to page 65.

4 A. Okay, good.

5 Q. This has been produced today, and it's your 2021
6 Declaration?

7 A. Produced to the Commission today?

8 Q. Yes.

9 A. Yes.

10 Q. I think the reason is that the Commission had prepared
11 its bundle for you before the 13th of June--

12 A. Yes.

13 Q. --2021, which is the date that the Registrar stamps as
14 having received it on that first page?

15 A. I certainly understand. It's not been included in the
16 bundle before.

17 Q. If you go to page 75--

18 A. Yes.

19 Q. --again, and you confirm that that is your signature?

20 A. Yes.

21 Q. There's a manuscript date underneath, 13th of
22 June 2021. Is that in your hand?

23 A. That is certainly my handwriting.

24 Q. Now, again, you've missed the 12th of March date,
25 haven't you?

1 A. Yes, I have.

2 Q. And you are outside perhaps just by one day, the three
3 months, aren't you?

4 A. April, May, June--yes, you're quite right.

5 Q. Right.

6 A. Is it three months? Because some months have 31 days.
7 You're aware of that?

8 Q. Well, perhaps we don't need to--

9 A. 90-day, perhaps we can count 90-days.

10 Q. I will take you to the act if you wish. Would help
11 you?

12 A. Three months?

13 Q. Would you like me to take you to the Act?

14 A. Well, you know, I accept upon that since these have
15 been filed that I have been in breach of the date, anniversary
16 of my being sworn into the House--the House of Assembly. If
17 that's good enough.

18 Q. Well, let's go and take a look at the Act.

19 A. Okay.

20 Q. There should be another bundle there, "Constitution
21 and Legislation Bundle".

22 A. Yes.

23 Q. If you go to page 59.

24 A. Page 59.

25 Yes, I'm here, page 59.

1 Q. That's the first page of the 2006 Act.

2 A. Okay.

3 Q. If you go through to page 64--

4 A. Yes. Registrar's report.

5 Q. I'm going to read out to you 7(a): "Where a Member
6 fails to make a Declaration within with a period of three months
7 from the date on which the duty to make that declaration
8 accrued, the Member shall be in breach of the provisions of this
9 Act, and the Registrar shall within 14 days of the knowledge of
10 such breach submit a report of such breach to the Committee
11 which shall meet to consider the report within 21 days of its
12 submission".

13 A. Yes.

14 Q. Now, whilst I want to just be clear what you are
15 accepting you may be in breach of. Now, you said in relation to
16 certainly your 2019 Declaration in your 2021 Declaration that
17 you missed the 12th of March date; that's right, isn't it?

18 A. Yes, I missed--I missed that date.

19 Q. And you've also said in relation to your 2019
20 Declaration, which was signed on the 3rd of September 2019, that
21 you have missed the three months outlined deadline--

22 (Overlapping speakers.)

23 A. If three months is interpreted as how many--how many
24 days?

25 COMMISSIONER HICKINBOTTOM: It's three months. If

1 it's 90 days, I think you're out by more, but this says simply
2 "three months".

3 THE WITNESS: Three months. It depends on how we
4 interpret three months, but I don't want to get caught up on
5 that point.

6 BY MR RAWAT:

7 Q. Well, three months is just not six months, is it, and
8 that's what the problem was--I mean, you were six months?

9 A. Well, I'm talking about this last one that we had
10 here.

11 Q. I'm talking about 2019.

12 A. Yes.

13 Okay. 2019, yes, I was in breach of that, that's
14 clear.

15 Q. And then in 2021, it says "three months". Now, you've
16 filed it on the 13th of June 2021. Do you accept, then, that
17 you are in breach of section 7?

18 A. We'll have to check that. We'll have to check in
19 terms of, you know, how we interpret three months, but I don't
20 see it being necessary to get hung up on that.

21 Q. It's important, Dr Wheatley, for us to recall what
22 you're happy to accept as a breach and what your concerned to
23 accept as a breach. And if you're not comfortable in accepting
24 that you may be in breach of section 7, please do say so?

25 A. I can say to you very clearly that many Members,

1 including myself, have been in breach of the provisions of this
2 Act. In some instances ignorance and something that I would
3 endeavor to correct moving forward.

4 Q. Because if you are caught within the three months in
5 relation to your 2021 Declaration--

6 A. Yes.

7 Q. --your expectation should be, shouldn't it, that the
8 Registrar should now write a report about your breach to the
9 Standing Committee?

10 A. An important point that I'm pretty sure you're aware
11 of is that the Registrar of Interests was hospitalised. Are you
12 aware of that?

13 Q. The new Registrar of Interests has been hospitalised?

14 A. No, the one that preceded her. She only started
15 recently.

16 Q. Yes.

17 A. There is no one--she started after the date I was
18 sworn in.

19 COMMISSIONER HICKINBOTTOM: We did know that the
20 previous Registrar was unavailable for a time.

21 THE WITNESS: Yes. A significant portion of time.

22 COMMISSIONER HICKINBOTTOM: We understand that.

23 THE WITNESS: Yes.

24 COMMISSIONER HICKINBOTTOM: But that's not the point
25 Mr Rawat is making. Under section 7, section 7 is--this is a

1 statute of the House of Assembly.

2 THE WITNESS: I accept that.

3 COMMISSIONER HICKINBOTTOM: And so, the provisions
4 obviously are very important.

5 THE WITNESS: Yes. I do agree with that.

6 COMMISSIONER HICKINBOTTOM: Under section 7, Registrar
7 will have to work out what three months is. Because if you were
8 over three months in complying, she's mandated. She hasn't a
9 choice. She has to report to the Standing Committee.

10 THE WITNESS: Yes, yes, I accept that. I certainly do
11 accept that.

12 BY MR RAWAT:

13 Q. If I could just pause here just to ask you to do one
14 thing, Dr Wheatley, and that's just to speak a little bit more
15 slowly. It's very important that we don't get into a situation
16 where we're talking across each other, because otherwise, your
17 answers won't be recorded?

18 A. Okay. I can speak more slowly.

19 Q. Thank you very much.

20 Can we look just at what you did declare, and we'll
21 use your 2020 Declaration for that. So, if you go to page 45?

22 A. Page 45.

23 Q. Start at page 43, please?

24 A. Page 43. I'm there with you.

25 Q. Now, this was the seconds Declaration that you filled

1 in, and so by this time, you've had the experience of filling in
2 one declaration.

3 A. Yes.

4 Q. You will have had correspondence from the Registrar of
5 Interests; that's right, isn't it?

6 A. That's right.

7 Keep in mind 2020 is during the pandemic. I think
8 that's significant.

9 Okay. Go ahead. Sorry to interrupt.

10 Q. I think the questions I put to you are not
11 pandemic-based, so let's look at the main purpose of the
12 Register of Interests.

13 A. Okay.

14 Q. Now, the main purpose of the Register of Interests is
15 given in this form as--and this is also in the Act--is to
16 provide information of any pecuniary interest or other material
17 benefit which a Member receives which might be reasonably be
18 thought by others to influence his or her actions or speeches or
19 votes in the House of Assembly or actions taken in his or her
20 capacity as a Member". I stop there.

21 Now, when you've read that Preamble--you filled this
22 form in three times now--what did you understand to be the
23 purpose of the Register of Interests?

24 A. It seems clear there. It's states it right there: To
25 provide information of any pecuniary interests or other material

1 benefit which a Member receives which might reasonably be
2 thought by others to influence his or her actions, speeches, or
3 votes in the House of Assembly or actions taken in his or her
4 capacity as a Member. That seems pretty clear.

5 Q. And so, when filling it in, would you agree that the
6 Member has to have in mind what could reasonably be thought of
7 by others?

8 A. Yes. I mean, that's certainly subjective, but yes,
9 there has to be some type of interpretation there.

10 Q. Now, if we go through the form as you completed it,
11 and your answers are in greater part the same throughout, so you
12 have declared that you hold no Directorships; is that right?

13 A. That's correct.

14 Q. You've also declared--and this is at page 45--that you
15 have no remunerated employment, office, profession, et cetera,
16 other than your membership in the House of Assembly or
17 ministerial office; is that right?

18 A. That is correct.

19 My only job is to serve the people.

20 Q. At 46, which is linked to the question paragraph 3,
21 which is headed "clients" and is linked to the answers you give
22 in 1 and 2, you've again recorded that as "no"?

23 A. "No".

24 Q. Now, if you go to page--paragraph 4 on 47, you were
25 asked there: "Did you benefit from any sponsorship before

1 election where, to your knowledge, the financial support in any
2 case exceeded in aggregate 2,500?"

3 So, the question to you here--and you may wish to
4 remind yourself of the guidance that is given at the bottom
5 particularly at Note 2--

6 A. Note 2?

7 Q. Yes.

8 A. You should register money given to you by your
9 Election Campaign Committee and money spent by your Election
10 Campaign Committee in connection with your election with your
11 permission.

12 Q. Now, you've answered "no" to that question. What did
13 you understand the phrase "sponsorship before election" to refer
14 to?

15 A. A contribution towards my campaign, a financial
16 contribution or otherwise.

17 Q. When you say "otherwise", can you give some example of
18 what "otherwise" captures?

19 A. Perhaps in-kind, in-kind contribution.

20 Q. And when you say a contribution to your campaign, do
21 you mean donations?

22 A. Monetary donations or in-kind donations.

23 Q. And so, in terms of how the 2,500 operates, would your
24 understanding be that, if 10 people gave you \$2,000, then you
25 wouldn't have to declare those, but if one person gave you

1 20,000, then you would have to?

2 A. Can you repeat that again, please?

3 Q. Well, if you read 4(a), it says: "financial support
4 that exceeded in aggregate 2,500". So, if somebody gives you
5 2,600, you would have to declare that, wouldn't you?

6 A. That's my understanding there.

7 Q. But the example I was using is if one person gives you
8 20,000, you would have to declare it because it's over the 2,500
9 limit?

10 A. Yes.

11 Q. But if 10 people give you 2,000, you wouldn't have to
12 declare that, would you, because that's under the limit?

13 A. It says here "in aggregate", so, if there is a onetime
14 donation of 2,000, no.

15 Q. Yes.

16 If the same person comes along and gives you another
17 2,000--

18 A. Yeah, then I would have to declare that.

19 Q. But if 10 different people give you 2,000, you
20 wouldn't have to declare any of that?

21 A. No, a small--a small contribution. Wouldn't have to
22 be large.

23 Q. Now, this is a question the Commissioner raised first
24 with the Attorney General, but it's been asked of other Members
25 of the House of Assembly who've come to give evidence, and it's

1 indeed former Members.

2 Are you aware of any regulations that govern how much
3 money you can spend during a campaign?

4 A. No, but, you know, it's something that has been in
5 discussion in terms of election reform.

6 COMMISSIONER HICKINBOTTOM: Sorry. In discussion by
7 whom?

8 THE WITNESS: There was a committee for election
9 reform.

10 BY MR RAWAT:

11 Q. A committee established by whom?

12 A. Deputy Governor's office--no, I'm sorry, by Cabinet.

13 Q. Are you speaking of the current Cabinet?

14 A. Yes.

15 Q. Established the Committee?

16 A. Yes.

17 Q. So, since you came into office in 2019, you have now
18 established a committee to look at electoral reform?

19 A. Yes, we had a committee, and a report was made.

20 Q. Right.

21 So, the Committee is no longer in existence; is that
22 right?

23 A. The Committee has completed its work.

24 Q. Who sat on the Committee?

25 A. I sat on it. The leader of the opposition was on

1 there. We had the Elections Office Director, and there were
2 perhaps the Solicitor General, Member of private--Member of
3 private--of the community, Mr Jamal Smith.

4 There may have been some other persons who I can't
5 remember right now.

6 And the Deputy Governor was on there as well.

7 Q. And just so we're clear, it was a committee
8 established by Cabinet?

9 A. I want to say "yes".

10 Q. You to want say "yes", but--is there a "but" there?
11 Is it a "yes" or "no", or you're not sure?

12 A. I could check and be sure.

13 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat, to
14 whom does this Committee Report? Once the report was done
15 because you said the business was done, the report was prepared,
16 who was it--who was it--

17 THE WITNESS: Well, it's for the consideration in some
18 instances of the House of Assembly.

19 COMMISSIONER HICKINBOTTOM: But has it been given to
20 the House of Assembly to consider?

21 THE WITNESS: Yes. Presentation was made to the House
22 of Assembly.

23 BY MR RAWAT:

24 Q. When was that presentation made?

25 A. Sometime earlier this year, I believe.

1 Q. And so, how soon after you entered Government was the
2 Committee set up?

3 A. I cannot say.

4 Q. Can you remember attending meetings of it?

5 A. Yes.

6 Q. Were they in 2019?

7 A. I think it was after that.

8 Q. After that is 2020. Were they in 2020?

9 A. It was either in 2020 or 2021 or--

10 Q. So--

11 A. We had our multiple meetings.

12 Q. So, if it's either 2020 or 2021, does that suggest
13 that it began late 2020?

14 A. I would prefer to get the dates as opposed to giving
15 you incorrect information.

16 Q. Well, again, if we could ask you to confirm the date
17 at which the Committee was set up and the date at which it
18 issued its Report?

19 A. I can do that for you.

20 Q. Thank you.

21 I think Mr Olimpitis is making a note of that so he
22 can remind you of that.

23 A. Thank you. Reminders are important.

24 COMMISSIONER HICKINBOTTOM: Yes, they are.

25 And the report, too.

1 THE WITNESS: Yes. I don't have a difficulty with
2 that. I don't think anyone would have a difficulty with that.

3 COMMISSIONER HICKINBOTTOM: Thank you.

4 THE WITNESS: All of these matters are matters which
5 have been discussed in the society for a while, as they should
6 be. These are important issues.

7 COMMISSIONER HICKINBOTTOM: Thank you, Dr Wheatley.

8 BY MR RAWAT:

9 Q. If we then return to the form--we were on
10 page 47--going through it--and just record the Transcript for
11 your answers, and this is your answers across three years of
12 forms?

13 A. Yes.

14 Q. That you've recorded that you've received no gifts,
15 benefits or hospitality in the Virgin Islands, and there is a
16 threshold above which you would have to declare it but it
17 relates to receiving gifts, hospitality and benefits as a Member
18 of the House of Assembly from any company, organization or
19 person within the Virgin Islands. You said "no" to that.

20 A. "No".

21 Q. You also at paragraph 6, which is at page 49, in
22 relation to overseas visits, you say--you record that you've had
23 no overseas visits but if you look at, save for your 2021
24 Declaration--

25 A. Can I interrupt you?

1 Q. Of course.

2 A. Sorry about that. I didn't say that I had no overseas
3 visits but I had no overseas visits relating to or in any way
4 arising out of my membership of the House of Assembly where the
5 cost of the visit was not wholly borne by myself or by public
6 funds.

7 Q. Yes, that's what you're asked to answer--

8 A. And I said "no".

9 Q. You said "no" in 2020, you also said "no" in 2021. If
10 we look at--

11 A. No, actually, in 2021--

12 Q. You're right. You said "no" in 2019, "no" in 2020.

13 If we go to page 71--

14 A. Yes. Yes.

15 Q. --there, in your 2021 Declaration you disclosed a
16 visit to France in November 2019.

17 A. Yes.

18 Q. And that appears to have been partly funded from the
19 public purse. If it had been wholly funded, you wouldn't have
20 had to declare it, would you?

21 A. Well, actually, this provision was a bit unclear to
22 me. So, if you notice it's referring to 2019.

23 Q. Yes.

24 A. So, in 2020, that should have been in a Declaration.

25 Q. Should have.

1 A. But based on my interpretation, it did not need to be.
2 But I had a conversation with the Registrar General, and she
3 suggested I put it for safety, but now I believe I have a better
4 understanding of this provision, and I don't think it should
5 have been listed at all.

6 Q. It's helpful that you indicate you have a better
7 understanding but when you came to look at it, what is it about
8 the wording of paragraph 6 that, in your view, causes
9 uncertainty or doubt?

10 A. Well, I thought it was saying perhaps if I took a trip
11 and I used my own funds and I used public funds--for instance, I
12 was accompanied by my wife, so I paid for her plane ticket
13 myself and all her expenses myself, while my expenses, my plane
14 ticket, my hotel, all of that was taken care of by public funds,
15 so I thought I was referring to that. But now I understand that
16 this means whether I took an overseas visit that was funded by
17 someone besides myself and besides public funds. Like, for
18 instance, a friend of mine or someone who supported me
19 politically or something like that, that's now what I understand
20 this to mean, so it was a misinterpretation.

21 Q. And also what is important to record, isn't it, that
22 if you're taking an overseas trip in a way that arises out of
23 your membership of the House of Assembly, obviously if a
24 generous friend wishes to send you somewhere, that's a matter
25 between you and them, isn't it? But if somebody wishes to send

1 you as a Member of the House of Assembly and fund your trip
2 abroad, that's something you would have to declare?

3 A. Yes, that's problematic, and certainly would have to
4 be declared.

5 Q. Now--

6 A. I accept that.

7 Q. You've had further clarification about what you should
8 or should not put in this paragraph. You declared it in your
9 2021 Declaration having spoken to the Registrar.

10 A. Right.

11 Q. You now formed the view that you actually needn't have
12 done so?

13 A. Right.

14 Q. Where does your further clarification come from?

15 A. Speaking to a lawyer. Yeah, I spoke to a lawyer about
16 it.

17 Q. Any particular lawyer?

18 A. I don't want to disclose the lawyer I spoke to about
19 that. Do I have to mention that?

20 Q. No, not at all. That's all right.

21 A. Okay.

22 Q. If you go, then, to paragraph 7, we can stick with 72,
23 if that's more convenient to you. Because it's the same
24 paragraph, but you're asked there as a Member of the House of
25 Assembly to declare overseas benefits and gifts, and you've said

1 "no" on every Declaration, haven't you?

2 A. Yes.

3 Q. And then in relation to land, which for some Members
4 has caused some confusion. What do you think you're expected to
5 declare in--under paragraph 8?

6 A. Any land other than where I reside.

7 Q. So, are you quite--looking at it, do you think it
8 makes clear that you don't need to declare your personal home?

9 A. Yeah. I think that's clearly. Here it says "other
10 than any home you used solely", I think "solely" is an important
11 word there, "for the personal residential purposes of you and
12 your family".

13 Q. Now, in your 2021 Declaration, having previously said
14 "no" to this, you have said "yes", and what you were asked to do
15 is to indicate below the nature of the land and then give the
16 registration section block and parcel number and the street and
17 number, if appropriate, to the land in each case. What you've
18 written is intended to be commercial and then you've set out a
19 block and parcel of land in, is it Long Hook?

20 A. Long Look.

21 Q. Long Look?

22 A. Yes. Specifically, Long Look Bay.

23 Q. Now, just again, because of the way you've written it,
24 just so that we're clear, it refers just to one piece of land?

25 A. Just one piece, one small piece.

1 Q. Now, if I take you to para 9, we could stick with your
2 2021 Declaration 74, there is a requirement to declare
3 shareholdings, and you said "no", so you don't have any
4 shareholdings of any sort; is that right?

5 A. I don't.

6 Q. And neither does your spouse?

7 A. No.

8 Q. And you're also expected as a Member, if you have
9 dependent children, to declare if they have shareholdings?

10 A. They don't.

11 Q. And looking at this, are you--is it in terms of an
12 explanation or the request of what you have to provide, do you
13 feel that there is any uncertainty or ambiguity about the
14 wording?

15 A. Let me read it again, just make sure.

16 "Do you have, either yourself or whether on behalf of
17 your spouse or dependent children, Interests in shareholdings in
18 any company or body which has a nominal value (a) greater than
19 \$25,000 or (b) less than \$25,000 but greater than 1 percent of
20 the issued shares capital of the company or body, less than
21 25,000 but greater than 1 percent". I think that's clear.

22 Q. In your case you've always answered that "no", as you
23 just said.

24 A. Yes.

25 Q. The last paragraph in the form is headed

1 "Miscellaneous", and if you've got it, it's page 75.

2 A. I've got it.

3 Q. It says: "If bearing in mind the definition of
4 purpose set out in the introduction to this form, you have any
5 relevant Interest which you consider should be disclosed but
6 which do not fall within the nine categories set out above,
7 please list them".

8 A. Okay.

9 Q. What did you understand the purpose of paragraph 10 to
10 be?

11 A. To capture anything that the form might have missed
12 and someone thought perhaps the public should know about as it
13 pertains to a pecuniary interest.

14 Q. And who do you think it's directed at in particular?

15 A. I think it's directed at Members of the House of
16 Assembly.

17 Q. Well, there are various parts of the form that are
18 directed at a spouse or children, so I will ask you the question
19 again: Who do you think it's directed at?

20 A. I think this is directed at Members of the House of
21 Assembly.

22 Q. And so, it means that you don't feel an obligation to
23 declare any other sort of Interests that don't fit into the
24 other categories but are held by, for example, your spouse?

25 A. I do think you have to disclose Interests by a spouse.

1 I think that's clear from the purpose of this--let me read the
2 purpose again. "To provide any information on any pecuniary
3 Interests or other material benefit which a Member receives
4 which might reasonably be thought by others to influence his or
5 her actions, speeches or votes in the House of Assembly or
6 actions taken in his or her capacity as a Member".

7 So, this doesn't refer to spouse, so perhaps it's just
8 a Member of the House of Assembly.

9 Q. You say "perhaps", Dr Wheatley. Earlier, you were a
10 little bit more certain because you said twice that it's
11 directed at Members of the House of Assembly.

12 A. Yes.

13 Q. Does it follow that if a Member's spouse had an
14 Interest that did not fall into any of the other categories but
15 could lead someone reasonably to think that it might influence
16 the conduct of that Member, the Member wouldn't have to declare
17 it in paragraph 10?

18 A. Well, based on the purpose, no, but out of abundance
19 of caution, and adhering to the spirit of what this seeks to do,
20 it should be declared. But just in a strict blackened sense,
21 legal sense, no, because the registration form and the main
22 purpose of the Register of Interests it only mentions "Members".

23 Q. Now, you said abundance of caution. Of course,
24 different Members, individual Members, may act with a different
25 degree of caution, does it follow that this is an aspect of the

1 form that may be inadequate?

2 A. Well, if we want to make it clear that we want
3 spouses' Interests to be declared on a provision like 10, then
4 it would have to be revised.

5 Q. Do you think, having filled in this form three times
6 that--but also having voted for the amendment to the Act that
7 allowed a Commission of Inquiry to have access to the Register?

8 A. Yes.

9 Q. Looking at all of that, do you think that the format
10 of this form is something that needs to be revisited.

11 THE WITNESS: I think so. I would agree with that.

12 Q. May I move on to a different topic, please, which I
13 hope we can deal with briefly because we have had evidence on it
14 from other Members of the House of Assembly.

15 A. Certainly.

16 Q. The way that assistance grants are distributed by
17 elected representatives.

18 A. Yes.

19 Q. I'm going to try and summarise the process, and ask
20 you whether or not you agree with it, and that's based on the
21 evidence that's already been given.

22 As we understand it--and the evidence is that, as a
23 district representative, you would under normal circumstances
24 receive, through the course of a year, \$125,000, which can be
25 given in assistant grants.

1 A. Is it 125 or 120?

2 Q. 125.

3 A. Okay. Okay.

4 Q. Are you not sure of how much you are given each year?

5 A. I thought it was maybe about 30,000 a quarter, but I
6 will go back and check that.

7 Q. Do you actually keep records of how much you
8 distribute each quarter?

9 A. I distribute all of it. I guarantee you. Whatever it
10 is.

11 Q. Do you keep records of what you distribute?

12 A. The Clerk has the responsibility of keeping those
13 records.

14 Q. So, you, yourself, don't keep any records?

15 A. No, not outside of what the applications that go to
16 the Clerk.

17 You mean if I make my own copies, et cetera?

18 Q. Yes.

19 A. I don't make copies of the applications.

20 Q. And you don't keep a record of where a certain amount
21 of money goes to and to whom?

22 A. Just the Clerk. If I need information, I can request
23 it from the Clerk.

24 Q. So, you're--

25 A. Those are electronic--of course, all of these things

1 are handled electronically. And if I need any information, I
2 can always request it from the Clerk.

3 Q. Minister Wheatley told the Commissioner, and that's
4 Vincent Wheatley--he told the Commissioner--

5 A. I notice you have been referring to Minister Wheatley
6 a lot.

7 Q. Yes.

8 A. So, you have to distinguish between us.

9 Q. I can distinguish by calling you Dr Wheatley.

10 A. Okay, thank you.

11 Q. He hasn't had the benefit of that title yet, but what
12 he told the Commissioner when he gave evidence was that what he
13 does is publish on his website a list of how he has allocated
14 the money that he's been given to use by way of assistance
15 funds? Is that something that you do?

16 A. I wouldn't necessarily publish on a website, but I
17 usually have a meeting where I discuss all my programmes that I
18 have administered for the year.

19 And I may mention specifically the amount of grants
20 I've given. I will have to review my speeches, but I certainly
21 make reference to in a meeting that I seek to have at least once
22 a year reviewing the activities for the year.

23 Q. Now, you've referred to programmes.

24 A. Yes.

25 Q. The evidence that we've received is that the money

1 that you're given, you have to use for a range of purposes?

2 THE WITNESS: Yes.

3 Q. For example, immediate medical needs or welfare needs,
4 people can make applications to you as an elected
5 representative.

6 A. Yes.

7 Q. But also, you can, as an elected representative, use
8 some of the funds to promote programmes in which you are
9 interested. So which programmes are you particularly
10 interested?

11 A. I have a number of programmes in my district. I
12 started a pantry to feed hungry persons in the district,
13 something I'm proud of. I have had before seminars on health,
14 encouraging persons to be healthy. We've had programmes for
15 persons who are single mothers. We've had programmes--cleanup
16 programmes in the district. We've given assistance to persons
17 who have, as you mentioned, medical needs.

18 We just started recently a community garden
19 initiative. I do have funds that go towards my office. I have
20 an office in the district, and I do have funds that go towards
21 that.

22 Q. If you take the example of some of the
23 initiatives--you've mentioned for example, seminars on
24 well-being--does the funding for something like that come
25 entirely from the 125 that you're allocated, or do you work with

1 other agencies and bodies to fund programmes like that?

2 A. Thus far, most of it has come from my allocation, but
3 in some instances, we appeal to the Ministers for assistance for
4 particular programmes that fall within their remit.

5 Q. Fine.

6 So, one of the points that more than one Member of the
7 House of Assembly has made is that when one balances the amount
8 of money that you have--

9 A. Yes.

10 Q. --to assist with against the level of requests that
11 you will receive during the course of a year, the first is
12 always too small to meet the second. Is that your experience as
13 well?

14 A. That is a fact.

15 Q. Now, you have, therefore, an unenviable choice as a
16 Member of the House of Assembly and as a district representative
17 as to how to allocate that money?

18 A. Correct.

19 Q. Do you pray for guidance?

20 A. Yeah, we need to rely on God for faith and for
21 direction to make the right choices, choices consistent with our
22 moral and ethical obligations as well as our goal to help
23 people.

24 Q. Now, what we have been given--and I think this came
25 through The Honourable Neville Smith--was a document which is

1 headed "guidelines for processing assistant grants".

2 A. Yes.

3 Q. Are you given that as well?

4 A. I don't ever remember receiving that, but since these
5 discussions have come up, I've seen a copy of the guidelines,
6 but I must admit--most of the information there I learned--I
7 discovered just through the process and through speaking with
8 the Clerk or the accountant at the House of Assembly. They
9 would tell you this information.

10 Q. I see.

11 A. Hm-umm.

12 Q. So, until you watched this COI's hearings, you didn't
13 realise that a document existed headed "guidelines for
14 processing"--

15 A. I did not but actually most of it I knew already.

16 Q. But the information had come to you through your
17 approaching the clerks of the House and asking for information--

18 A. Yes, those--those Members who are more experienced,
19 and, of course the Clerk who was very experienced shared some of
20 this information with you.

21 Q. Now, one of the things that the guidelines permits is
22 district office expenses relating to rent, staff, and operating
23 expenses are allowed up to a maximum of \$24,000 per annum, so
24 that's something that you are aware that you can use the sum
25 towards, you can use it to help you with your office in the

1 district?

2 A. You know, I wasn't aware of it actually, but I do it
3 anyway. I wasn't aware of that provision, but I have an office.

4 Q. You have used some of the funding--

5 A. I used some of the funding.

6 Q. --for your office?

7 A. I have used some of my allocation for my office.

8 Q. I see.

9 As the evidence is that the process is that you will
10 receive an application as an elected representative. You have
11 to review it and make a decision. If you make a positive
12 decision, it then goes to the Clerks of the House of Assembly to
13 review, and then ultimately goes to the Treasury Department who
14 would issue the money, if you like.

15 A. Correct.

16 Q. Is that your understanding of how the process works?

17 A. Yes.

18 Q. Okay.

19 A. And in some instances, if there is a problem, either
20 the Clerk sends it back, and if the Treasury has a problem, the
21 Treasury might send it back, and that happens quite often.

22 Q. "Quite often".

23 A. I mean, at some point you get a lot better at
24 correcting the mistakes that they point out, and you'd hope you
25 wouldn't repeat those mistakes but every now and again there is

1 perhaps a difference in interpretation.

2 Q. Are some of the mistakes technical, someone may have
3 missed a date on a document or they may have not provided a
4 piece of paper--

5 A. Maybe they didn't sign the form or in some instances
6 they didn't provide the right form of documentation.

7 Q. I see.

8 And as well as an application to your district
9 representative, it's right, isn't it, that an applicant could
10 also approach the Territorial representatives?

11 A. Yes. And there must be some effort to coordinate
12 among us to ensure that persons don't double dip. That can
13 happen. But in some instances you have persons who require help
14 from more than one Member. Let's say, for instance, they have a
15 very expensive surgery that they have to do or some medical
16 expense. Multiple Members may choose to help that individual.

17 Q. Can I just deal with the next matter, and that is the
18 operation of section 67 of the Constitution.

19 A. Yes.

20 Q. If you have been watching the proceedings, you will
21 appreciate that this is a question that I have put to a number
22 of Members.

23 In brief--and we can go to it in more detail if you
24 need it, but section 67 deals with tenure of seats of Member of
25 the House of Assembly, but it does also provide for the

1 circumstances when an elected Member may have to vacate his or
2 her seat.

3 A. Yes.

4 Q. One of those circumstances is if, keeping it brief, he
5 or she becomes a party or associated with a contract with the
6 Government of the Virgin Islands. And in such circumstances,
7 the House of Assembly, if it appears to the House in the
8 circumstances to be just, may exempt the elected Member from
9 vacating his seat.

10 A. Yes.

11 Q. The Commissioner heard from The Honourable Neville
12 Smith who explained circumstances in which that had happened to
13 him?

14 A. Yes.

15 Q. So, I don't need to ask you about the detail of that.
16 I'm going to ask you first a question which I'm sure the answer
17 is likely to be "no", is that--is this: During your time as a
18 Member of the House of Assembly, have you been exempted from
19 vacating your seat?

20 A. I haven't had any contracts with the Government, so
21 there was no need for me to actually vacate my seat for that
22 particular--or to be exempted from vacating my seat for that
23 purpose.

24 Q. Now, at least certainly in the case of The Honourable
25 Neville Smith, there would have been the motion before the House

1 to exempt him. Can you just assist the Commissioner with this.
2 What information is given to you as a Member of the House of
3 Assembly in order to assess such a motion?

4 A. Before I answer that, if I could say in the case of
5 The Honourable Smith, that was out of an abundance of caution.

6 Q. That's exactly what he said as well.

7 A. Because it's a statutory body and it wasn't
8 necessarily required.

9 Q. That's why--

10 A. He did it anyway for transparency purposes.

11 Q. But that's why I explained to you a few moments ago
12 that The Honourable Neville Smith had fully explained the
13 circumstances of his motion to the Commission.

14 A. Right.

15 Q. So, there is no need for us to go over that ground
16 again.

17 A. Okay.

18 Q. We understand it.

19 A. I didn't watch Honourable Smith's hearing.

20 Q. If we go back to the point, are you given any
21 assistance or information or what assistance and information are
22 you given in order to determine a motion such to exempt?

23 A. In the case of Honourable Smith, that was for Festival
24 and Fairs, and that's under my Ministry, so I would be aware of
25 the details. And during the course of the debate, if persons

1 had requested of me any information, I surely would have
2 provided it as it's public funds and needs to be accounted for.

3 Q. How does that work, then, in terms of a debate? If a
4 Member raises a question where they want more information, do
5 you give it there and then or does the debate have to be
6 adjourned in order for you to get the information?

7 A. Well, if I have it there, then I can give it there and
8 then. If I do not have it, I can provide it after. And I think
9 that's standard practice.

10 Q. Right.

11 So, the debate may or the anticipated length of the
12 debate may change depending on whether more information is
13 needed?

14 A. Yes.

15 And we can also take a recess, if we like to give time
16 for the information to come, if we deem it necessary.

17 Q. Could you just give me one moment, please.
18 Commissioner, if I may have a moment.

19 COMMISSIONER HICKINBOTTOM: Yes, thank you.

20 MR RAWAT: Commissioner, those are my questions, so
21 can I conclude by thanking Dr Wheatley for coming this afternoon
22 and for the way in which he has given his evidence.

23 COMMISSIONER HICKINBOTTOM: Yes.

24 Dr Wheatley, can I echo that. Thank you for your
25 time. Thank you for your evidence and the clear way in which

1 you have given it.

2 Mr Olympitis has taken down notes of one or two
3 documents that you're going to look for, for us.

4 THE WITNESS: Yes, which is the report from the
5 Committee and the--

6 COMMISSIONER HICKINBOTTOM: And the dates for the
7 Committee.

8 THE WITNESS: And the dates, yes.

9 COMMISSIONER HICKINBOTTOM: Yes.

10 THE WITNESS: So, just those two points.

11 MR RAWAT: Your correspondence with the Registrar of
12 Interests that you recently sought from her.

13 THE WITNESS: Yes, I can provide that.

14 COMMISSIONER HICKINBOTTOM: Can I add one thing to
15 that and I will explain why.

16 THE WITNESS: Certainly.

17 COMMISSIONER HICKINBOTTOM: Could you, by noon on
18 Friday, we need it by the end of this week per the reason I will
19 give in a moment--let us know whether you accept the section 7
20 breach in respect of your 2021 return, that's the three-month
21 point.

22 THE WITNESS: Sure.

23 COMMISSIONER HICKINBOTTOM: I will tell you why, and
24 that's because on Monday afternoon, I'm going to hear
25 submissions on behalf of the Attorney General and the other

1 participants, those, effectively, the non-Minister Members of
2 the House of Assembly in respect of the breaches which have been
3 accepted by Members and former Members over the last few days.

4 THE WITNESS: Right.

5 COMMISSIONER HICKINBOTTOM: And it would simply be
6 very helpful to know whether you accept the breach or not. I'm
7 going to have to make a finding but, in fact, in respect of all
8 of the other House of Assembly Members, they've simply accepted
9 whatever the breaches are.

10 THE WITNESS: Just for clarity, I did express that I
11 accepted that we had a breach--

12 COMMISSIONER HICKINBOTTOM: Of section 3.

13 THE WITNESS: --of the March 12th.

14 MR RAWAT: Yes.

15 THE WITNESS: Yes. And it was just a question of--

16 COMMISSIONER HICKINBOTTOM: Section 7.

17 THE WITNESS: --whether that day or not in terms of
18 how you--

19 COMMISSIONER HICKINBOTTOM: In the scheme of world
20 affairs, it may not matter a huge deal.

21 THE WITNESS: Right.

22 COMMISSIONER HICKINBOTTOM: But it would simply be
23 easier if we knew exactly what breaches you accepted and what
24 breaches you didn't accept.

25 THE WITNESS: I can provide that, Commissioner.

1 COMMISSIONER HICKINBOTTOM: That would be very
2 helpful; no doubt with any advice from Mr Olympitis that you
3 need.

4 THE WITNESS: Okay.

5 COMMISSIONER HICKINBOTTOM: Anything else, Mr Rawat?

6 MR RAWAT: No, that's our business for today. We will
7 resume again tomorrow at 10:00 with a fresh set of witnesses.

8 COMMISSIONER HICKINBOTTOM: At 10:00. Yes. Thank you
9 again, Dr Wheatley.

10 THE WITNESS: Thank you.

11 (Witness steps down.)

12 (Whereupon, at 5:14 p.m. (EDT), the Hearing was
13 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", is positioned above a solid horizontal line.

DAVID A. KASDAN