

**BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY**

**HEARINGS: DAY 18**

(MONDAY 28 JUNE 2021)

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

**Before:**

**Commissioner Rt Hon Sir Gary Hickinbottom**

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

Counsel to the Commission Mr Bilal Rawat appeared.

Ms Sonia M Webster, Auditor General, gave evidence.

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Those present:

Mrs Jo-Ann Williams-Roberts, Solicitor General

Mr Bilal Rawat

Ms Sonia M Webster

Mr Andrew Gilliland, Martin Kenney & Co solicitors

Mr Steven Chandler, 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

P R O C E E D I N G S

1  
2 COMMISSIONER HICKINBOTTOM: Good morning, everyone.

3 Just before we start the evidence, can I deal with one  
4 or two short points. The first is this: Before I can make any  
5 adverse findings against anyone, I, of course, have to give them  
6 a proper opportunity to respond to any potential criticism. The  
7 Speaker's Position Statement on Governance personally criticized  
8 the former Police Commissioner, Michael Matthews. Mr Matthews  
9 has responded to that criticism in the form of a letter to the  
10 Commission.

11 Now, Mr Rawat, is it necessary to read that letter  
12 out, or can it simply be published on the website?

13 MR RAWAT: I'd suggest, Commissioner, that we publish  
14 it on the website, and that way it will be part of the record of  
15 the Commission.

16 COMMISSIONER HICKINBOTTOM: Yes. Well, what I'll do  
17 is I'll direct that it's put on to the website, but it will be  
18 treated as part of the record of the evidence that has been  
19 given to the Commission of Inquiry.

20 Secondly, again, for you, Mr Rawat, I think, I suspect  
21 you're going to be a little while with the Auditor General,  
22 perhaps all morning, and the stenographer requires a break after  
23 about a couple of hours. Can I just leave it to you to break at  
24 some point in the morning at a convenient moment. We'll just  
25 break for 5 or 10 minutes to give him a break.

1           Thirdly, and I think finally, quite a lot of documents  
2 that are in the bundle for the Auditor General are the Auditor  
3 General's published reports.

4           MR RAWAT: That's right, Commissioner.

5           COMMISSIONER HICKINBOTTOM: They are public and  
6 they're actually on the Web, but they're not very easy to find  
7 or at least I didn't find them very easy to find. But is there  
8 any reason why they can't simply be published on the  
9 Commission's website?

10          MR RAWAT: In my view, there is no reason, and there  
11 may be some benefit for those who are following these Hearings  
12 and reading the Transcript, to be able to access the Reports so  
13 they can properly understand the evidence of the Auditor  
14 General. We will be going through some these Reports in some  
15 detail, some of them, but I will necessarily, perhaps, be  
16 paraphrasing and publishing those Reports. It will give the  
17 view of the Auditor General in her words and all the material  
18 that she considered.

19          COMMISSIONER HICKINBOTTOM: It seems to me sensible  
20 that they're simply put onto our website. It will make it  
21 easier for people to find them, and it will make it easier for  
22 them to follow the evidence that we're going to hear this week,  
23 I think. Good. Thank you.

24          MR RAWAT: Thank you.

25          COMMISSIONER HICKINBOTTOM: Thank you very much,

1 Mr Rawat.

2 MR RAWAT: Commissioner, before I--may I just have a  
3 moment?

4 COMMISSIONER HICKINBOTTOM: Yes.

5 (Pause.)

6 MR RAWAT: Thank you, Commissioner.

7 Commissioner, before I continue, can I just deal with  
8 some matters of housekeeping. In terms of representation in the  
9 Hearing Chamber, the Attorney General and elected Ministers '  
10 representative are the Solicitor General, who is present here.

11 COMMISSIONER HICKINBOTTOM: Yes.

12 MR RAWAT: Ms Jo-Ann Williams-Roberts.

13 We do not have anybody here on behalf of the remaining  
14 Members of the House of Assembly, nor are they represented on a  
15 remote basis. Andrew Gilliland of Martin Kenney & Co. is  
16 present here as observer, and that's for the record.

17 The first matter I would like to deal with before  
18 asking that the Auditor General be sworn is to read into the  
19 Transcript record some parts of an affidavit of Dr Drexel  
20 Glasgow, and the reason I--with your leave, Commissioner, I'd  
21 like to do that is that it does give context not just to the  
22 evidence that the Auditor General may give today but the  
23 evidence that may follow in days to come.

24 COMMISSIONER HICKINBOTTOM: Yes, thank you.

25 MR RAWAT: I stress that what I'm doing is only

1 reading some parts of the Affidavit. So this is the first  
2 Affidavit of Dr Drexel Glasgow, and it begins: "I Dr Drexel  
3 Glasgow, Qwomar #2, 2nd Floor, Blackburn Highway, Tortola,  
4 British Virgin Islands, Director of Projects, make oath and say  
5 as follows:"

6 "Introduction: I'm the Director of Projects of the  
7 Ministry of Finance in the Government of the BVI. I have served  
8 in this capacity since 17th February 2014 and I make this  
9 Affidavit from facts within my own knowledge and are true or are  
10 without my own direct knowledge but are true to the best of my  
11 knowledge, information and belief, the sources of which are  
12 identified".

13 Dr Glasgow then produces a set of exhibits, and what  
14 he--those relate to are the legislative regime that govern the  
15 procurement of Government contracts, and if I just explain what  
16 that covers. At his paragraph 5, he says: "Procurement of  
17 Government contracts in the BVI is governed and guided by Public  
18 Finance Management Regulations of 2005";

19 "Public Finance Management (Amendment) Regulations  
20 2007";

21 "Public Finance Management (Amendment) Regulations  
22 2020";

23 "Policy on Procurement in Emergency, Disasters,  
24 Pandemics, and Catastrophic Situations (2020)";

25 "Caribbean Development Bank Guidelines for

1 Procurement";

2 And the "Recovery and Development Agency Procurement  
3 Handbook".

4 He continues at paragraph 6 under the heading "Public  
5 Finance Management Regulations, 2005", and he continues as  
6 follows:

7 "Part 27 ('Procurement of Stores and Services') of the  
8 Public Finance Management Regulations, 2005, (the  
9 "Regulations"), sets out the primary legal framework under which  
10 procurement of Government contracts is guided and governed.  
11 Regulations 170 through 189 make particular provision for the  
12 procurement of goods, services and construction works".

13 And then under the heading "Works Orders", at  
14 paragraph 7, the Affidavit continues as follows:

15 And I quote: "The requirements for the initiation and  
16 processing of Works Orders are dealt with in Regulation 189.  
17 Works Orders provide the option for engaging a contract for work  
18 or a service not exceeding \$10,000 in value without the need to  
19 execute a specific contract document. Works Orders are optional  
20 instruments as Regulation 189(1) provides that they 'may be  
21 entered into...' and he added an emphasis under the word "may".

22 The paragraph continues, and I now quote: "Works  
23 Orders are typically used where the works can be clearly defined  
24 and they allow the supervisory Ministry to manage the progress  
25 of the works that have been agreed with the contractor. This

1 offers Ministries a degree of leverage in keeping the contractor  
2 to account based on the agreed responsibilities and scope".

3           The next paragraph 8 reads as follows: "Works Orders  
4 are not the only instrument used to facilitate procurement of  
5 works and services that are valued at under \$10,000. The most  
6 widely-used instrument in this regard is the local purchase  
7 order, (see Regulation 172(2)", and that is continued to be  
8 described as 'Purchase Order'".

9           The paragraph continues: "Depending on the nature of  
10 the works or services, the selection of the contractor or vendor  
11 is generally determined either by inviting quotations or by  
12 direct selection. The scope of the works or services is  
13 delineated on the Purchase Order which is only signed by the  
14 Accounting Officer or an authorised officer on behalf of the  
15 Accounting Officer. Acceptance of the Purchase Order by the  
16 Contractor or service provider, and execution of the required  
17 scope of works or services, is an indication of the agreement by  
18 the contractor or service provider to perform the scope in  
19 accordance with any terms and condition, including the price".

20           Under the heading "Petty Contracts", the Affidavit  
21 continues at 9: "The term 'petty contract' is not specifically  
22 defined in the regulations. In the local context, a petty  
23 contract is generally referred to as the instrument required to  
24 authorise the procurement of goods, services, and works where  
25 the resulting contract amount exceeds \$10,000 dollars but does



1 not exceed \$100,000. In practice, a supplier, service provider  
2 or contractor (collectively referred to as 'supplier[s]') may be  
3 selected in the following manner".

4 "a. A shortlist of suppliers is invited to submit a  
5 quotation" or case--"or bid as the case may be. A supplier is  
6 selected following evaluation of the submissions".

7 "b. A supplier is invited to submit a price proposal.  
8 Once the proposal is assessed and determined to be reasonable,  
9 the supplier is selected through direct selection".

10 "In all cases, the Minister of Finance, (the  
11 'Minister'), signs the contract unless it has been delegated in  
12 accordance with Regulation 182(b)".

13 The next heading in the Affidavit is Contracts of More  
14 Than \$100,000". And this continues, and I quote: "This  
15 category of contracts is referred to locally as 'major  
16 contracts'. The procurement process typically begins with a  
17 request from the funding Ministry to the Financial Secretary,  
18 the Director of Projects, or the Procurement Coordinator to  
19 issue a tender for the procurement of the goods, services or  
20 works. If the tender document has not been drafted by the  
21 funding Ministry, the Ministry of Finance through the Projects  
22 Unit develops an appropriate tender document to facilitate the  
23 procurement. Once the draft tender document is approved by the  
24 funding Ministry, it is finalised by the Procurement Coordinator  
25 who then issues a tender in accordance with Regulation 173".

1 "Tenders are received and evaluated by the Central  
2 Tenders Board in accordance with the tender documents and  
3 Regulations 174 through 177. Regulations 175(2) and (3) provide  
4 that the Central Tenders Board shall evaluate all tenders deemed  
5 to be responsive and submit its recommendations to the Minister,  
6 who shall forward the same to Cabinet. According to Regulation  
7 175(3), quote "'Cabinet shall consider the recommendations of  
8 the Central Tenders Board and make such decision as it thinks  
9 fit'", end quote.

10 The next paragraph 13 reads as follows, and I quote:  
11 "Cabinet has discretion to waive the open tender process to  
12 facilitate procurement. For example, where expediency is  
13 required, pursuant to Regulation 170(2). A Ministry may seek  
14 approval pursuant to Regulation 170(2). Waivers may be sought  
15 for procurement of goods, services and works (collectively  
16 referred to as 'services') where for example; a. There are  
17 limited supplies available locally for the particular goods or  
18 services; b. The services required are time sensitive; The  
19 services are a natural continuation of a previously contracted  
20 assignment"--that's c.--"and/or d. The services required as a  
21 matter of national security or otherwise required to be  
22 delivered with a high degree of confidentiality".

23 The next paragraph 14 reads as follows: "In such  
24 cases, approval may be sought for the following mechanisms: a.  
25 soliciting quotations or bids from a shortlist of experienced,

1 resourceful and competent supplier, which are then evaluated and  
2 a recommendation is made to Cabinet of the funding Ministry to  
3 select the winning bidder; or b. inviting a supplier in a direct  
4 selection process to submit a proposal to the funding Ministry,  
5 who will evaluate the proposal and once an advantageous bid is  
6 found that offers value for money, make a recommendation to  
7 Cabinet for approval".

8           At 15, the Affidavit reads: "The funding Ministry  
9 then prod to finalise the procurement process in accordance with  
10 the Cabinet decision".

11           "On occasions the Financial Secretary would issue a  
12 Financial Circular to articulate and reminding Accounting  
13 Officers of the requirements of the Regulations relative to the  
14 procurement of public goods, services and works".

15           Then under the heading "Public Finance Management  
16 Amendment Regulations, 2007"--this is at paragraph 17--the  
17 Affidavit explains as follows, quote: "The purpose of this  
18 amendment was two-fold:"

19           a. "to revise the wording in respect of Regulation  
20 172(1) such that it better aligns with the intent of the  
21 Regulations, and b. to revise the thresholds required for  
22 approvals regarding procurement of services and construction  
23 works. Thresholds of \$50,000 and \$75,000 were revised to  
24 \$75,000 and \$100,000, respectively".

25           Under the heading "Public Finance Management Amendment

1 Regulations, 2020"--and this is at paragraph 18--the Affidavit  
2 reads as follows, and I quote: "The purpose of this amendment  
3 was to revise and further expound on Regulation 170(2). This  
4 amendment afforded Cabinet to dispense with the (open) tender  
5 process in the procurement of goods and services for such  
6 reasons as a period of public emergency, epidemic or pandemic,  
7 or any other exceptional circumstances. This amendment further  
8 paved the way for the use of the Cabinet approved Policy on  
9 Procurement in Emergency, Disasters, Pandemics, and Catastrophic  
10 Situations".

11 And this is given the acronym "PEDPCS".

12 At the next paragraph, Dr Glasgow says as follows in  
13 relation to the PEDPCS, and he quotes from that document, and  
14 the quote is: "The PEDPCS", quote, "sets out the requirements  
15 and procedures for the procurement of goods, works, and services  
16 during and/or as a consequence of ongoing impacts associated  
17 with an emergency, disasters, (natural or manmade), epidemic,  
18 global pandemic, earthquakes, floodings, riots, war or any other  
19 event that may have adverse effects on the social, economic, and  
20 physical infrastructure, which may result in a major disruption  
21 to the" economic--"economy of the Virgin Islands which gives  
22 rise to unforeseen and extraneous circumstances".

23 The Affidavit then continues: "The PEDPCS establishes  
24 a framework to deliver procurement of goods, services and works  
25 that promotes speed in implementation without compromising

1 quality and value for money and opportunities for boosting the  
2 economy during periods of economic hardship".

3 The next paragraph reads as follows: "The PEDPCS,  
4 which was authorised under financial instructions No. 1 of, 2020  
5 requires ministries to seek the approval of Cabinet to procure a  
6 project using the requirements and special waivers under the  
7 PEDPCS".

8 That's the point, Commissioner, I propose, to stop  
9 reading from the Affidavit. If I can, just for completeness,  
10 confirm that the Affidavit is affirmed by Dr. Drexel Glasgow on  
11 the 10th of June 2020.

12 COMMISSIONER HICKINBOTTOM: Yes, thank you.

13 MR RAWAT: I now ask that the Auditor General,  
14 Ms Sonia Webster, be invited to either affirm or take the oath.

15 COMMISSIONER HICKINBOTTOM: Thank you.

16 COMMISSION SECRETARY: Would you like to make an oath  
17 or take an affirmation?

18 THE WITNESS: Affirmation.

19 COMMISSION SECRETARY: Please go ahead.

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

23 BY MR RAWAT:

24 Q. Good morning, Ms Webster.

25 A. Good morning.

1 Q. Thank you very much for coming to give evidence to the  
2 Commission today. I'd like to start with some formalities,  
3 please. Could you give the Commissioner your full name.

4 A. Sonia Webster.

5 Q. And your professional address?

6 A. Road Town, Tortola, British Virgin Islands.

7 Q. I do try, as I tell all the Witnesses that come to  
8 give evidence to the Commission, to keep my questions short and  
9 simple, and it doesn't always work out that way. So, if at any  
10 time you have difficulty with understanding one of my questions,  
11 please do stop me and ask me to repeat or rephrase it.

12 There are a number of bundles in front of you, which  
13 contain various documents, primarily reports that have been  
14 issued by your office. We don't need to look at them for the  
15 time being, but we will go to some of those Reports as we go  
16 through your evidence today.

17 Can I also just ask you to keep your voice up, to  
18 speak slowly. The microphone that's in front of you will not  
19 amplify your voice. It's there to record, and so it's very  
20 important that we hear you so that your answers and your  
21 evidence can be clearly recorded on the Transcript.

22 Again, if I ask you a question that I've asked of  
23 other witnesses and that is can we begin by you giving an  
24 outline of your professional background to the Commissioner  
25 before you were appointed Auditor General?

1           A.    Good morning.  Thank you, sir.

2                    I began my professional career in audit after leaving  
3 the University of the West Indies with a degree in Accounting.  
4 Back in 1988, I was appointed as an Assistant Auditor in the  
5 Department at that time.  Two years later, I was promoted to  
6 Deputy Auditor General.  At the time, it was called a Chief  
7 Auditor, Deputy Chief Auditor, and six years after that to  
8 Auditor General.

9                    I served in the position of Auditor General for 10  
10 years before going into the private sector to work in a  
11 corporate administration capacity.

12                   I returned two years later to the Audit Department as  
13 Auditor General and served for a further seven years before  
14 retiring, in 2015, I believe.

15                   I again returned to the Audit Office in 2018 after the  
16 two hurricanes to assist the office and the staff with the work  
17 that needed to be done I've been working in Audit since then.

18                   In addition to my degree in accounting, I also have a  
19 degree in law from the University of London and a qualification  
20 in financial crime prevention.

21                   COMMISSIONER HICKINBOTTOM:  Just so that I can put  
22 that into context, so when did you first become the Chief  
23 Auditor, the Auditor General?

24                   THE WITNESS:  The actual year?

25                   COMMISSIONER HICKINBOTTOM:  Yes.  It's not a sort of

1 test. You can look at anything you need to look at.

2 THE WITNESS: It not be a test...(voice trails off)

3 THE WITNESS: Actually, before I served substantively  
4 in a position, I acted in the position for, I think, a period of  
5 almost a year, but just a minute, let's have the record straight  
6 on this.

7 1996 was the first time I was appointed, then again in  
8 2007 and again in 2018.

9 COMMISSIONER HICKINBOTTOM: But since 1996, you've  
10 been the Auditor General except there's been a couple of gaps.

11 THE WITNESS: Yes.

12 Since 1996, when I left for two years to work in the  
13 private sector, actually we had someone who acted in that  
14 position for three years, Ms "McNamruly" (phonetic) was Acting  
15 Auditor General during that period.

16 When I left--when I retired in 2015, we had an  
17 individual who was appointed Auditor General, and he commenced  
18 work in August 2017.

19 In 2017, we had Hurricanes Irma and Maria, which  
20 devastated the Territory and destroyed his homes and belong--his  
21 home and his belongings, and he returned to the UK. So I came  
22 back in January of the following year to help.

23 COMMISSIONER HICKINBOTTOM: Thank you very much.

24 Thank you.

25 Yes.



1 MR RAWAT: Thank you, Commissioner.

2 BY MR RAWAT:

3 Q. First off, I'd like to go through with you, Ms  
4 Webster, is the "constitutional role" of the office, if I can  
5 put it like that.

6 Now, if I understand the position correctly, I can  
7 take you to the Constitution if you need to look at it, but your  
8 office was established or is established under Section 109 of  
9 the Constitution of 2007, but it also existed, didn't it, under  
10 the earlier 1976 Constitution? Is that right?

11 A. That's correct, yes.

12 Q. And what Section 109 does is to create the Office of  
13 Auditor General as an independent office; do you agree with  
14 that?

15 A. Absolutely, sir, yes.

16 Q. And so, as Auditor General, who are you accountable  
17 to?

18 A. That's a question that's always been a little bit  
19 challenging to answer.

20 As Auditor General, we report to the House of  
21 Assembly. My Reports go to the House of Assembly, and they get  
22 there through the Minister of Finance.

23 In terms of administratively, I report to the  
24 Governor, so--the Governor and, in some instances, through the  
25 Deputy Governor, but ultimately the Governor.

1 Q. And your role is also--or the work of the Auditor  
2 General is also set out not just--it's set out in statute and  
3 specifically that's the Audit Act of 2003, isn't it?

4 A. Yes, it is.

5 Q. If you could--you should have, I think, two bundles,  
6 labeled Part 1 and Part 2.

7 And if I could explain, Commissioner, for the  
8 Transcript, these bundles contain various reports that have been  
9 issued by the Auditor General's Office, including Annual Reports  
10 that you have issued, Auditor General.

11 What I would like to do is just take you, please, to  
12 one page in your 2016 Annual Report, which you'll find at 469.

13 Sorry, 467.

14 This is page 8 of your 2016 Report, and you have a  
15 section of the Report which you've headed as "Audit Mandate",  
16 and you explain there that under Section 109 of the Constitution  
17 and the Audit Act of 2003, one of the tasks that the Auditor  
18 General has to do is to carry out an Annual Audit of the  
19 accounts of the Government of the Virgin Islands, and you set  
20 out your--the statutory duties that apply on you as Auditor  
21 General under Sections 11 and 14 of 2003 Act.

22 But, if we distill that down, could you explain just  
23 exactly what the role of Auditor General covers?

24 A. Of course.

25 All right. Over the past few weeks, we've heard a lot

1 about good governance, and in--at its very basic form, good  
2 governance speaks to openness, fairness and integrity within the  
3 Public Service, and we look at their policies, rules and  
4 institutions that provide and support the structure of good  
5 governance. My office is one of the institutions that support  
6 good governance.

7           How we do this? I don't know how specific you want.  
8 Do you prefer if I go through provisions of the Act or in  
9 general terms?

10           (Overlapping speakers.)

11           Q. Sorry to interrupt you, but let's just take a look at  
12 the Constitution. If--you should have on the table in front of  
13 you, if you need it--and Commissioner, it's at page 52 in that  
14 bundle--if we start with, first of all, with just the obligation  
15 to carry out an Annual Audit. Do you need me to take you to  
16 Section 109, or do you have that?

17           A. That's fine.

18           The Constitution and Audit Act specifies the type of  
19 audits that we perform, and the Constitution and both the Audit  
20 Act and the Constitution actually require that we do an Annual  
21 Audit. And the Constitution provides independence, the Auditor  
22 General with independence to get information she needs in order  
23 to do this job. That independence is also stipulated within the  
24 Audit Act.

25           In addition to the Annual Audits that we perform, we

1 actually can only perform an audit--I mean to say that we can  
2 only perform an Annual Audit if we actually do get the  
3 statements from the Treasury Department, and the last one that  
4 has been performed, regrettably, has been for 2016. We are  
5 still awaiting 2017 to 2020 in order to complete--to complete  
6 those.

7           The Audit Act goes a bit further than the Constitution  
8 in prescribing other types of audits that we can perform.

9 Section 6--Section 12 of the Audit Act speaks to audits, and  
10 Special Audits are those that require--that I consider  
11 sufficiently important to be issued directly to the Governor,  
12 and we have done those in the past.

13           Section--I'm sorry. Section--

14           Q. Are you thinking of Section 20--  
15           (Overlapping speakers.)

16           A. I'm looking for section--I'm sorry. Going back a  
17 little bit, Section 11 talks--speaks to financial audits, which  
18 I just discussed. Section 20, Special Audits, and  
19 Section 12--this is what I was just looking for--speaks to  
20 supplementary audits, which we call "value for money" audits  
21 because the focus--for the most part, they focus on whether the  
22 economy, efficiency, and effectiveness have been achieved in a  
23 particular project or programme.

24           We also have oversight over statutory audits, but most  
25 of these are actually done in the private sector. We tend to

1 tender these out and have them done by firms who are hired to  
2 carry out the work.

3 Q. Thank you for that.

4 If I try and break it down a little bit, so as you  
5 pointed out, the Constitution not only creates your post but  
6 also says that you have to do an Annual Audit, and then says  
7 that, for that purpose, "the Auditor General or any person  
8 authorised by him or her shall have access to all books,  
9 records, returns and other documents relating to such accounts".

10 So, from your perspective of--as Auditor General, is  
11 it your view that the Constitution mandates that you must be  
12 provided with the information that you need to carry out an  
13 audit?

14 A. Yes, sir. It is my view that that's exactly what the  
15 Constitution does, and the Audit Act supports that.

16 Q. And what--before we leave the Constitution, what it  
17 also says is that, "in the exercise of his or her functions  
18 under this section, the Auditor General shall not be subject to  
19 the directions or control of any other person or authority".

20 So, does it follow that in carrying out audits or  
21 in--and in carrying out functions under the Audit Act of 2003,  
22 you are entirely independent?

23 A. That's correct, sir.

24 Q. You mentioned statutory boards and trust, and I'll  
25 come back to those later on in my questions, if I may, when we

1 look at some of your Annual Report. But looking at the Annual  
2 Audit aspect, what Government bodies does that Annual Audit  
3 cover? Who does it have to cover by law?

4 A. The Annual Audit actually covers Central Government.  
5 The Constitution speaks to the House of Assembly--accounts of  
6 the House of Assembly, the accounts of Public Service  
7 Commission. All of those are part of Central Government, and  
8 that's what we focus on. That's what we give our priority to  
9 when we actually have those statements.

10 Q. And when you produce your Annual Report, that is then  
11 submitted to the Premier; is that right?

12 A. Yes. The Minister of Finance.

13 Q. The Min--as Minister of Finance rather than as  
14 Premier. So it's presented to the Minister of Finance. And is  
15 it for the Minister of Finance to then put that Report before  
16 the House of Assembly?

17 A. It is, sir, yes.

18 Q. And once that Report has gone before the House of  
19 Assembly, is it then a public report?

20 A. That's correct, sir.

21 Q. You've mentioned Section 12, and again I can take you  
22 to it if you need, to Ms Webster, but under Section 12, I think  
23 Section 12 refers to a supplementary report, but I think you  
24 call them "value for money" reports; is that right?

25 A. That's correct.

1 Q. Could you develop a little bit more or say a little  
2 bit more about the circumstances in which you would provide a  
3 Section 12 report?

4 A. A Section 12 actually provides a little bit more  
5 information than a report--under Section 12 provides more  
6 information about a particular issue, and we would normally do  
7 such a report on a project or programme that we consider has  
8 certain risk factors.

9 At the beginning of every year, we would do a review  
10 of the Government budget and the Government spending, and we  
11 would identify areas that we consider should be subject to a  
12 Section 12 review. And the challenge with those, though, is  
13 that it would take--tend to take a longer period of time to  
14 complete, and they do involve a lot of back and forth with the  
15 entities that are being audited, but basically it's where we  
16 consider there's a high risk of something going wrong that we  
17 would go in and do a Section 12 report. And based on the  
18 outcome, we can determine whether it should then become a  
19 special report or a report that is issued directly to the  
20 Minister as prescribed under that section.

21 Q. And is it down to you as Auditor General to decide  
22 whether or not to do a Section 12 report?

23 A. It is, yes.

24 Q. Can a Minister or the Governor ask you to do one?

25 A. They can. Anyone can suggest to us that we should

1 look at a particular area, and that has happened.

2 Q. But whether you do or not is your decision.

3 A. It's my discretion, yes.

4 Q. And again, once you've produced a Section 12 report,  
5 what happens to it after that? Who does it go to?

6 A. In draft form, it would go to the Ministry or  
7 Department that has--that was being audited, and then waited to  
8 respond with their remarks. When it's finalised, it goes to the  
9 Minister, and the Minister has to arrange for this to be tabled  
10 before the House.

11 Q. And again, once a Section 12 report gets tabled, it  
12 becomes a public report.

13 A. That's correct.

14 Q. You mentioned Section 20, which is where you deal with  
15 a special report. Now, in what circumstances would you be  
16 producing a Section~20 report?

17 A. A Section~20 report, typically, if, His Excellency has  
18 indicated or has requested that we look at a certain area and we  
19 have done a review and decided that we will pursue that  
20 particular area, when the report is completed, it will then be  
21 forwarded to him. But we can also, as I indicated previously,  
22 upon auditing another area without a request from His  
23 Excellency, we can actually forward that as a Section 20 report.  
24 The section actually says that gives me discretion to determine  
25 what goes to His Excellency as a special report.



1 Q. Is it, in terms, is it only the Governor that can ask  
2 you to do a Section~20 report?

3 A. Only the Governor receives a Section~20 report. But  
4 in terms of asking us, I think anyone can make a request to the  
5 Audit Office. If the contents are such that we consider it  
6 should go in as a Section~20 report, then we can submit it as a  
7 Section~20 report.

8 COMMISSIONER HICKINBOTTOM: So, is the difference  
9 between a Section 12 report and a Section 20 report, as I  
10 understand it, the difference is not who decides to do the  
11 report, because that's always you. People may request a report,  
12 but you decide upon what you report. But Section 20 goes to the  
13 Governor--

14 (Overlapping speakers.)

15 COMMISSIONER HICKINBOTTOM: --and Section 12 goes to  
16 the Minister.

17 THE WITNESS: That's correct.

18 COMMISSIONER HICKINBOTTOM: Thank you.

19 BY MR RAWAT:

20 Q. But again, with the Section 20 report, does it  
21 ultimately end up before the House of Assembly and then being  
22 made public?

23 A. Yes, it does, sir.

24 Q. Now, whilst we're on the Audit Act, I wanted to just  
25 ask you about Section 15. Commissioner, you'll find that in the

1 bundle at page 230.

2 Ms Webster, if you want me to take you to the Act, do  
3 ask, but there is a--it is available in one of the other bundles  
4 that's in front of you but you may have it already.

5 A. Yes.

6 Q. What Section 15 says is if in the course of carrying  
7 out his duties it appears to the Auditor General that an offense  
8 has been committed, he shall report that fact to the Financial  
9 Secretary and the Attorney General.

10 Now, that seems to be a reference to if a criminal  
11 offense has been committed.

12 A. It is, yes, sir.

13 Q. Do you have, within the Audit Office, any policies or  
14 guidance that assist in identifying whether an offense has been  
15 committed?

16 A. Not direct policies per se. We apply the standards,  
17 INTOSAI standards generally, and there are definitions for the  
18 various activities--fraud, misallocation of funds--but we are  
19 also guided by the BVI laws as to what is and what isn't a  
20 crime.

21 But no, I would have to say that we don't have direct  
22 policies for an individual to say, "Oh, this hits this box, so  
23 we need to report it".

24 Q. But--I mean, you've mentioned the INTOSAI standards,  
25 and I'll come back to that a little later on.

1           Taking sort of the last 10 years, have you in the last  
2 10 years made a report to either the--to the Financial Secretary  
3 and the Attorney General under Section 15?

4           A.   Not to my recollection. The report--one of the  
5 reports has actually been forwarded to the Police.

6           And what I would say on this, though, is the Act  
7 refers to the Attorney General, and at the time this legislation  
8 was passed, the position of DPP did not exist, and really and  
9 truly the audit, that needs to be amended so that this could be  
10 changed. The reference here should actually be DPP, and we have  
11 actually, I think in the past, made references to DPP on issues  
12 that we considered needed to be reviewed by them.

13          Q.   And when you say "in the past", that's in the last 10  
14 years you've made referrals to the DPP? You don't need to go  
15 into the specific details--

16          A.   I would need to check my records on that.

17          Q.   Right.

18          A.   I couldn't answer that right now.

19          Q.   We may need to ask you to do that.

20                The--what Section 21 of the Audit Act also does is  
21 that it provides that the Auditor General may be appointed to  
22 audit the accounts of a body corporate or other body established  
23 by such enactment.

24                Which body corporates or other bodies established by  
25 enactments does that section cover?

1           A.    I like to interpret it very broadly, and I would like  
2 to say it covers all of them.  But specifically, some Statutory  
3 Boards have within their legislation that their accounts will be  
4 audited by the Auditor General; some of the older ones the Chief  
5 Auditor.  Others have that they will--that the Board will  
6 appoint an Auditor of their choice.

7                    What actually happens in practice is that we--we do  
8 tender out these audits; most of them are tendered out.  A  
9 couple of the smaller ones are done in office, but we don't have  
10 the resources to actually do this.  So, rather than having the  
11 audits being held up, we prefer to actually put them to tender  
12 and have them done over a period of time.

13                   When they appoint auditors to do the work, it's  
14 normally for three to four years, between three and five  
15 years--normally three--and again, the process is repeated after  
16 that period ends.

17           Q.    One section of the Audit Act of 2003, Section 19,  
18 which says the Auditor General has all the powers necessary to  
19 enable him to perform his functions, and then it sets out--you  
20 have in particular a number of powers, that you can require a  
21 public officer to conduct on behalf of the Auditor General, an  
22 inquiry, examination, or audit and to report its findings to  
23 you, to give acc--the public officer can be required to give  
24 access to property that's in the public officer's possession or  
25 under his control as a result of the officer's duties; can be

1 required to search and provide extracts from Government records  
2 or records to which the Government has access, or can be  
3 required to give or provide to the Auditor General any  
4 explanation or information the Auditor General considers  
5 necessary to enable him to perform his duties.

6 And subsection 3 mandates that a public officer shall  
7 comply with the requirement under subsection 2.

8 So, in broad--so, in basic terms, what do you  
9 understand to be your powers under this section? What does it  
10 allow you to do?

11 A. It allows us to request information from any public  
12 office and for that information to be received by us, and there  
13 is no discretion in here for refusing to send that information.

14 Q. Thank you.

15 Can I turn now to the Annual Reports, just in a little  
16 more detail. Just what I'd like to do, if I may, Ms Webster, is  
17 just pick up some themes that run across the reports.

18 What you have provided to the Commissioner--and this  
19 starts at page 1 in that bundle--are your Annual Reports from  
20 the Audit Office covering the Years 2008 to 2015.

21 Now, I can take you through the detail, if you need  
22 it, but when one goes through the dates--or starting with the  
23 year-end of the financial year you have to audit and the date on  
24 which you submit your Report, there appears to be quite  
25 significant delays so--and the time span is between two and six

1 years. If I give you two examples, please.

2 If you take your audit of 2010, if you go, please, to  
3 page 129 in that bundle. So, this is the "Report of the Auditor  
4 General For the Year-Ended 31st December 2010", and if you look  
5 at page 137, what you say at paragraph 3 is: "The complete  
6 accounts and related schedules for 2010 were received for audit  
7 on 16th July 2011. The final revised copies were received on  
8 1st March 2012".

9 A. That's right.

10 Q. And then if you go back to 135, you as Auditor General  
11 certified the accounts on the 15th December 2012, which is also  
12 the same day that you submitted it to the then-Premier, The  
13 Honourable Dr Orlando Smith.

14 A. Right.

15 Q. If you look at your 2012 Report, which you will find  
16 at 283...

17 A. 283?

18 Q. 283, please, Ms Webster.

19 A. Okay.

20 Q. That's the first page of the "Report of the Auditor  
21 General for the year ended 31st December 2012.

22 A. That's correct.

23 Q. But if you go to page 293, which is page 2 of your  
24 Report, but you explain at paragraph 3: "The complete accounts  
25 and related schedules for 2012 were received for audit on

1 12 January 2017. The final revised copies were received on 21st  
2 of August 2017".

3 And if you go back to page 289, you were able to  
4 certify--this was in fact not you, it was the Acting Auditor  
5 General, but the--Amoret Davies--the Audit Office certified the  
6 accounts on the 15th of January 2018, and then they were  
7 submitted to, again, Dr Orlando Smith on the 15th of  
8 January 2018, the same day.

9 So, we have a range across these Annual Reports of two  
10 years, if you take, for example, 2010 and almost six years if  
11 you take the example of 2012.

12 First question is: Is a time span between the year  
13 end and the Audit Office certifying the accounts a time span of  
14 two years a standard or common?

15 A. It has become common, unfortunately.

16 The Public Finance Management Regulations actually  
17 require the Accountant General to send us the Financial  
18 Statements within a certain period. The Audit Act isn't  
19 specific on when we need to submit them.

20 But what I can say to clarify the ranges that you are  
21 seeing here is that we do get the accounts. When we do get the  
22 accounts, normally, we have to refer them back to the Accountant  
23 General because there are significant issues that need to be  
24 addressed. So, even though we make reference to getting the  
25 final version on such-and-such a date, the first version, the

1 second version and the final version on such-and-such a date,  
2 normally there is a back and forth between us and Accountant  
3 General's Office at Treasury, the Treasury--sorry, I just said  
4 it was needed--to actually make modifications in order to bring  
5 the Financial Statements up to standards, and normally these  
6 involve omissions that we think should be in--items that should  
7 be in the statements are not there, for instance, or there might  
8 be a matter of classification error, something that has been put  
9 in the wrong place, and these are things that should be easy to  
10 fix, but it takes time to actually get these back from the  
11 Treasury.

12 COMMISSIONER HICKINBOTTOM: Did you say that the BFMRs  
13 do have a time by which Financial Statements should be sent to  
14 you?

15 THE WITNESS: That's correct, sir.

16 COMMISSIONER HICKINBOTTOM: And what is that time?  
17 Can you remember? Again, if you can't, we can--it can be  
18 checked in the regulations at some point.

19 THE WITNESS: I believe it's three months, but I would  
20 have to check and reply. Three months at the end of the year.

21 COMMISSIONER HICKINBOTTOM: No, thank you very much.  
22 It can be checked.

23 THE WITNESS: Yes.

24 BY MR RAWAT:

25 Q. And so, you've explained that even--and correct me if



1 I'm wrong--even having a time span of two years is not, in your  
2 view, appropriate?

3 A. No, it's not appropriate.

4 Q. I wonder if also if you could just keep your voice up  
5 a little, please, Ms Webster.

6 A. Okay.

7 It is not appropriate.

8 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat.

9 Again, we've seen at least a couple of examples of when  
10 the--when the accounts come in to you and when you issue the  
11 Audit Certificate.

12 THE WITNESS: Um-hmm.

13 COMMISSIONER HICKINBOTTOM: So, how many months do you  
14 think that should take, once you've got all of the documents  
15 which you say takes sometimes a little while.

16 THE WITNESS: I think the standard is three months.  
17 Once we receive the documents, we should have the three-month  
18 period before we actually issue those.

19 The Audit Act is actually a little bit vague on this.  
20 I think the three months is mentioned, but it's not clearly  
21 defined what that three months actually means, but I believe  
22 it's three months.

23 COMMISSIONER HICKINBOTTOM: No, thank you very much.

24 BY MR RAWAT:

25 Q. But what appears to have happened after 2012 is that

1 your office--there was an even more substantial delay in  
2 submitting accounts even before they were revised accounts to  
3 your office, and if you need me to, I can take you to the pages  
4 but you may be able to take this from me.

5           So, we've looked at 2012. You received the accounts,  
6 firstly on the 12th of January 2017, and you submitted your--you  
7 were able to certify by the 15th of January 2018.

8           In 2013, for the 2013 Report, you received the  
9 accounts in April 2017. You were able to certify by the 15th of  
10 March 2018.

11           2014 Report, again you received the accounts in  
12 April 2017, and you were able to certify and submit in September  
13 2018.

14           2015, again you received the accounts in April 2017.  
15 You submitted your Report on the 25th of October 2018.

16           And then, in 2016, you again received the accounts on  
17 the 1st of October 2018, and you submitted your Report on the  
18 21st of March 2019.

19           I'm not making any criticism of your office, but--and  
20 what I haven't set out is the detail of the back and forth that  
21 you explained, but there appears to have been, after 2012--in  
22 fact, after your 2011 Report that a much more substantial delay  
23 in getting accounts to the Auditor General in order for you to  
24 do your work, do you know the reason for that?

25           A. The 2013, '14, '15 and '16 were all done within a

1 relatively short period of time. That's my recollection. And  
2 in fact, they were almost done concurrently. Because the  
3 Financial Statements we received were very late, and at that  
4 time much of our background work would have been completed, so  
5 we were actually able to look at these almost concurrently, at  
6 the same time, whether the Schedules were already done, and I'm  
7 trying to follow your timeline.

8 But even the explanation that you just went through,  
9 you will notice that all of those came through almost back to  
10 back consecutively.

11 Q. I mean, that was--I'm sorry to interrupt you. Please  
12 finish.

13 A. During that period, I think we had--the Treasury was  
14 actually able to generate the accounts because there was a  
15 consultant there working and helping the Treasury as we produced  
16 the accounts. And at that time, we focused, and you will notice  
17 that, for that period, they had very many BFM audits being done  
18 because our focus was actually on just working on the Financial  
19 Statements and trying to get those out. There was a certain  
20 urgency because, after the hurricanes, we needed the Financial  
21 Statements in order for the Government to secure funding to do  
22 repairs and recovery for the Territory.

23 So the focus was actually on producing Financial  
24 Statements, and that was actually one of the reasons why I  
25 returned to the office to help produce these Financial

1 Statements.

2           And my recollection--and, of course, we're right now  
3 in the process of refreshing my memory--is that these were all  
4 done in a relatively quick period.

5           Q.    I wouldn't disagree with you, Ms Webster, because your  
6 office, once you've received the information, did--it does look  
7 on the timeline that you'd worked on Years 2012-2016 almost in  
8 parallel, and you produced your final report and your Audit  
9 Certificate in a relatively short period of time, particularly  
10 compared to the time it took to actually get the information to  
11 you. My question was really directed, not at the internal  
12 workings of the Audit Office, but why or whether there was a  
13 reason why the Accountant General could not get information to  
14 you, for example, in relation to 2012, until 2017?

15           A.    I cannot speak to that. The Accountant General would  
16 have to speak to that.

17                   And as I just mentioned, at one stage, the Government  
18 actually had to recruit a consultant to come in and help the  
19 Treasury Department get their accounts up to date.

20                   One other issue that the Treasury has been having, and  
21 is still having, is that the legislation was passed in 2012, I  
22 believe, which requires the Treasury to upgrade its standard,  
23 move the standards to its INTOSAI standards, and I think the  
24 responses within the Treasury at that time were simply not  
25 capable of actually doing that. That may have impacted

1 their--the delinquency in getting the statements to us. In  
2 fact, I can recall before I left in 2015 receiving a set of  
3 statements that were purported to be INTOSAI standards, but fell  
4 way short and could not be certified. And when I left in 2015,  
5 it was a great disappointment that I wasn't able to actually  
6 audit the statements and we had to refer them back to the  
7 Treasury because they were just not up to standards.

8 COMMISSIONER HICKINBOTTOM: But looking at it broadly,  
9 what from the Annual Report, it seems that, as you said,  
10 Ms Webster, for the Years 2012 to 2016, 5 years, the Financial  
11 Statements were sent to you not quite at the same time but  
12 within a short time period, and then you produced all of the  
13 Annual Reports in sort of 2018, just going, I think, into the  
14 first couple of months of 2019. So, as you say, you worked on  
15 those more or less in parallel. So, all of these five reports  
16 were prepared in that year, and that's what you remember? Yes?

17 THE WITNESS: Yes, that's what happened, sir.

18 COMMISSIONER HICKINBOTTOM: And the other two things  
19 you mentioned, firstly a consultant assisted in preparing the  
20 Financial Statements for you. And secondly--

21 THE WITNESS: For the Treasury.

22 COMMISSIONER HICKINBOTTOM: For the Treasury.

23 THE WITNESS: Yes.

24 COMMISSIONER HICKINBOTTOM: And secondly, the Audited  
25 Certificates, the Audited Accounts were needed to enable

1 financing for the recovery after Irma and María?

2 THE WITNESS: That's correct, Commissioner. Yes.

3 COMMISSIONER HICKINBOTTOM: Thank you. Thank you very  
4 much.

5 BY MR RAWAT:

6 Q. Now, in circumstances--and you've spoken about the  
7 regulations providing that the Financial Statements should come  
8 to you within three months, and as we've looked at it now,  
9 Financial Statements are coming to the Auditor General with a  
10 span of two years to over five years. You have, as we've  
11 looked, a constitutional and statutory duty to complete an  
12 annual audit. That's what the Auditor General is required to  
13 do.

14 A. That's correct.

15 Q. In circumstances where you're getting the information  
16 so late, how does that delay impact on your ability as Auditor  
17 General to meet that constitutional duty?

18 A. Well, to use the words I have been hearing a lot in  
19 these session, it puts me in breach of my requirements but we  
20 actually--I have been spending a lot of time following up with  
21 the Accountant General and requesting the accounts, and I have  
22 also spoken to the former Financial Secretary and asked them to  
23 provide resources for the Treasury because we needed to get the  
24 accounts. The current Financial Secretary, I have spoken to  
25 him, and he has actually taken some solid steps to make sure

1 that these are provided, and I'm aware that we now have another  
2 person in the Treasury who will be working on this, and there's  
3 a consultant who will be coming in to assist with doing those  
4 accounts.

5 In effect, the audits are behind because we cannot get  
6 the Financial Statements, and we cannot produce Audited  
7 Financial Statements unless we get them from the Treasury. And  
8 people--we come under a lot of criticism for this, but we cannot  
9 do anything without the Financial Statements.

10 COMMISSIONER HICKINBOTTOM: You have nothing to audit?

11 THE WITNESS: Precisely--

12 (Overlapping speakers.)

13 COMMISSIONER HICKINBOTTOM: --the Financial  
14 Statements.

15 BY MR RAWAT:

16 Q. And section 19 doesn't help you, does it? Because you  
17 still need someone to produce the Financial Statements for you?

18 A. That's correct.

19 Q. And the position in relation to--well, after 2016, is  
20 that you're not in a position or you have not been in a position  
21 to produce annual reports for 2017, 2018, 2019, or 2020; is that  
22 right?

23 A. That's correct.

24 I should--I should modify that a bit. We actually did  
25 get the 2017 statements, and we looked--we got them twice

1 actually--we got the first set of statements. We reviewed  
2 those, and then required corrections. And we--well, we referred  
3 them back to the Accountant General, and it took a while to get  
4 them back, and they still required attention, we referred them  
5 back to the Accountant General again, and we have not heard from  
6 the--we have not heard from her with respect to the statements  
7 despite following up and asking for them, when are we going to  
8 get these.

9 I should point out that, for 2017, the 2017 was  
10 submitted to us while the consultant was here, and after he  
11 left, we have not been able to get anything further from that  
12 office, regrettably.

13 Q. So, until the more recent steps taken by the current  
14 Financial Secretary, in effect, the Treasury Department has not  
15 been resourced in such a way as to be able to produce Financial  
16 Statements that would allow you to do your job?

17 A. That's correct.

18 Q. And you're then in a position that you simply can't,  
19 as Auditor General, fulfill your obligations?

20 A. That's correct, sir.

21 Q. And does it not follow that--I mean, you've spoken  
22 about good governance, but if you are--if the Audit Office is  
23 put in the position where, as has happened with reports since  
24 2012, that they are being submitted late, they become  
25 historical, that in effect that undermines transparency and



1 accountability, doesn't it?

2 A. It does, yes, sir.

3 COMMISSIONER HICKINBOTTOM: Ms Webster, this may not  
4 be a point for you, but it may be a point for someone else at  
5 some other time, but just as you said, the 2012 to 2016 Audited  
6 Accounts were needed to enable the Government to get financing  
7 per recovery, the absence of--the absence of Audited Accounts  
8 from 2017 to date must to an extent disenable the Government  
9 from doing things? It must hamstring the Government from, for  
10 example, raising finance? Is that a question to someone else?

11 THE WITNESS: It's a question that can be answered  
12 here.

13 What was required for us to actually get finance after  
14 the hurricanes was the Audited Financial Statements up to 2017.  
15 To date, we have not been able to receive the statements, and to  
16 date the Government has not been able to acquire that financing  
17 because of the outstanding 2017 statements.

18 COMMISSIONER HICKINBOTTOM: Yeah, now--well, I see  
19 that.

20 BY MR RAWAT:

21 Q. Could you turn, please, to page 359 in the bundle, so  
22 at the moment we're going to be jumping around the Annual  
23 Reports a little bit.

24 I'm taking you to your 2013 Report. If you then turn  
25 through the report to page 369. This is a section of the

1 report, Ms Webster, which--this was a report that you signed,  
2 you certified as Auditor General, but it's headed "audit  
3 independence", and you set out at paragraph 5 the INTOSAI  
4 independent standards and code of ethics. I will come back to  
5 those later on in my questions. I just wanted to draw your  
6 attention to what's said at paragraph 6.

7           You say: "The areas which present challenges to the  
8 office's independence include full access to information (the  
9 office at times encounters resistance when information or  
10 documents are requested) and the absence of adequate staffing".

11           I can take you to the pages if you need to see them,  
12 but the same point is made in the Annual Reports of 2014, 2015,  
13 and 2016.

14           Could you help the Commissioner with this: What did  
15 you mean by the phrase "encounters resistance"?

16           A. I think we just looked at the Audit Act and the  
17 Constitution which provides for the Auditor General to have  
18 access to information, have access to documents, and there has  
19 been a trend, I would say, of late--it hasn't always been this  
20 way, but over the past 10 years coming forward, where Ministries  
21 and Departments, but mostly Ministries, are resisting providing  
22 information that is required for audit.

23           The most recent case, which I shall not name, the  
24 office did not provide the information, and the office then  
25 tried to use the fact that they did not provide information to

1 delay the issue of the report, which I find is completely  
2 unsatisfactory, and I do intend to make a report to the Governor  
3 with respect to that particular case--to the Governor and the  
4 Public Service Commission and Financial Secretary--because it  
5 was a blatant attempt at manipulating the entire process.

6 Have I forgotten your question?

7 Q. It was what you meant by "encountering resistance",  
8 but I think you've answered the question.

9 And you've said that it's a trend that you've seen  
10 over sort of the last 10 years and then going forward.

11 A. Moving forward, yes.

12 Q. This question might be a little unfair, but because  
13 that time period spans more than one administration and  
14 different public offices but--

15 A. The complaints ends more than one administration.

16 Q. Are you able to point to reasons for this reluctance  
17 to allow you to comply with your constitutional and statutory  
18 obligations?

19 A. Public Servants are concerned about offending their  
20 Ministers, and in a number of cases, it's individuals who are  
21 afraid to offend either the Permanent Secretary or the  
22 Ministers, ultimately it is the Minister that they are trying to  
23 protect or to cover. And a lot of times, it seems that the  
24 information is actually--the instructions actually come down--I  
25 know of a couple of cases where the instructions come from the

1 Minister to not provide the information.

2 Q. And without giving detail, are you able to say, in  
3 terms of those couple of cases, how recent were they?

4 A. Not--well, not within the past five years, not since  
5 I've been back. I can't say with certainty since I have been  
6 back, but prior to that.

7 Q. Obviously--and we've taken or you've referred to the  
8 Constitution, and we've looked at section 19 and the powers that  
9 you have as Auditor General. If there is now this trend not to  
10 assist--not to comply with the Auditor General's requests, is  
11 there anything that you think can be done to improve that  
12 situation?

13 A. I think the Act needs to--it needs to be amended for a  
14 number of reasons, and I noticed the Deputy Governor has a list  
15 of legislation that he has implemented--and I didn't see the  
16 "audit tack" (phonetic) on that. We actually sent a copy of the  
17 audit bill to the Attorney General's Chambers a couple of years  
18 ago, was it last year, the former Attorney General, and I had  
19 discussions with one of his staff on this.

20 But the Act needs to be amended, and there needs to be  
21 some sort of penalty, for want of a better word, for people not  
22 complying, whether this is a surcharge, whether it's some sort  
23 of disciplinary letter, whether it's more than that suspension,  
24 but there needs to be some sort of penalty when Permanent  
25 Secretaries and Department Heads fail to comply. Otherwise, it

1 doesn't really--it has no--it does not carry any we can continue  
2 to do this.

3 Q. Do you think an Auditor General would benefit from  
4 different powers under a new Audit Act?

5 A. I definitely think the independence aspect of it would  
6 benefit.

7 And when I make reference to the possibility of a  
8 surcharge, it doesn't have to be the Auditor General doing a  
9 surcharge. Surcharges are normally done by the Financial  
10 Secretary. He basically determines that there was a breach that  
11 warrants this action, and he determines the amount. The ability  
12 to make a recommendation that this person be surcharged, even if  
13 it's not us doing the surcharge, and having the Treasury have no  
14 audit sent to the Treasury to actually deduct from the  
15 individual salary a certain amount because they failed to  
16 comply; the ability to make reference to the public Civil  
17 Service Commission that this person is in breach of the  
18 Constitution, may not comply by not--by failing to send the  
19 information.

20 But I think it needs to have a hard look at because  
21 we've seen the trend, and we've seen it continue. I think a lot  
22 of the Permanent Secretaries know the rule, they know the rules,  
23 and they have figured that, if you don't comply, then, you know,  
24 nothing will happen, so...

25 And it's more comfortable for us to offend the Auditor

1 General than it is for us to offend the Minister. We don't work  
2 on a day-to-day basis with the Accountant General. We do with  
3 the Minister.

4 Q. But in terms of your section 19 powers, leaving aside  
5 the sanction element which is a different thing, but your  
6 section 19 powers, do you think they are adequate for a modern  
7 Auditor General?

8 A. They're absolutely adequate. There is nothing in  
9 there that's discretionary. There's nothing to say that a  
10 person can avoid sending information because of X, Y, and Z.  
11 It's says straight forward that the Auditor General shall ask  
12 that this information be provided, the information she needs to  
13 do her job.

14 COMMISSIONER HICKINBOTTOM: What's lacking, I think,  
15 on the basis of your evidence, not the powers--the powers are  
16 there--it's the enforcement?

17 THE WITNESS: That's correct, sir. Commissioner.

18 BY MR RAWAT:

19 Q. And the other issue that's raised on this page, and  
20 it's again repeated in subsequent reports but it's the absence  
21 of adequate staffing. Is that still an issue for the Audit  
22 Office today?

23 A. Absolutely it is, sir.

24 And this goes back to the audit bill that I referenced  
25 earlier. One of the things I'm hoping to get is more

1 independence in being able to hire staff, and I can--the--for  
2 instance, we would advertise for a position, and it would get no  
3 applicants or we might get applicants that are not suitable, and  
4 then later on--I can just draw an analogy. A couple of years  
5 ago we were approached by an individual who had worked with us  
6 before as an Auditor, and he was interested in rejoining the  
7 office as a Senior Auditor, so I made a recommendation--this is  
8 a position that had been advertised before and we hadn't gotten  
9 anyone--I made a recommendation to HR that we should hire this  
10 person on contract so that he can help in the BFM section which  
11 I was trying to rebuild at the time. And I was told oh, we  
12 can't just hire people like that, we would have to readvertise  
13 it. So, it was readvertised, it was put out for a couple of  
14 months, and in the end, we got no suitable candidates. I don't  
15 think we got any candidates, an individual who had come to us  
16 had already moved on. He had another job. That was the Senior  
17 Auditor position.

18           Only recently--this is a lower level position--we  
19 asked HR, could you please hire this person on a temporary  
20 first. This is a young lady who worked with us for two years.  
21 She's home from college because of the COVID situation and  
22 because of some other issues, and she asked--she wanted to  
23 rejoin the office, and I asked HR could we hire this individual  
24 who worked with us and who knows our systems and who can  
25 actually help us bring this aspect of the office work up to date

1 because this is what she was doing, can we please hire her for  
2 the year? And we were told no, we can't do that. We have to  
3 advertise this position.

4 So, we advertised the position, it took about six  
5 months, and when we finally--she actually did apply, recommended  
6 her for the position, she had already gotten another job. Who  
7 waits for six months for a job. I mean, this is how the  
8 Government system works in terms of recruitment, and it just  
9 doesn't work well for us. If we have someone who is suitable,  
10 we consider suitable, we should be able to hire them.

11 Recruiting for the Audit Office is not an easy thing.  
12 And in fact, a few years ago, when I was trying to get some  
13 professional Auditors, we had to hire from outside the  
14 Territory, and that was how we were able to bring our staffing  
15 up to standards. Right now, since the hurricanes, we are  
16 functioning at almost half--almost half of the authorized staff.  
17 The Senior Auditor positions, both of them, are currently  
18 vacant, because one person was promoted upwards and because the  
19 other Senior Auditor that we had--I think there are four  
20 vacancies--he actually moved into other Ministries, he got a  
21 promotion and moved out.

22 And I do have challenges with staffing. I believe my  
23 colleague over at internal audit also has challenges, which she  
24 will speak to that herself when she's here.

25 Q. What--so, you're presently at 50 percent capacity?



1           A.    About 50 percent, yes.

2           Q.    And in terms of your budget, what has happened to your  
3 budget since 2016?

4           A.    In speaking of my budget, I think I probably can't  
5 complain too hard because I think the cuts are across the board,  
6 but right now our budget consists primarily of fixed charges  
7 which would be personal emoluments and rent. We have a small  
8 amounts to pay for stationery and so on. It's a very bare  
9 budget. And in order to get funding for staff, we have to go  
10 through a long process, we have to go through finance, HR. I  
11 think the Premier has to get involved in every staffing issue,  
12 so it's a challenge to actually bring in individuals.

13                    If your question is whether we have money to hire  
14 people, no, we don't have money to hire people. In order to get  
15 that, we have to get approval from the Premier to add to a  
16 budget so that we can hire people.

17           Q.    And in terms of training and staff development, do you  
18 have any--does any part of your budget cover that?

19           A.    All of that was taken away.

20                    But what I would say about training and staff  
21 development is that one of the benefits of INTOSAI is that it  
22 does provide training. It provides training practically free  
23 and ongoing training.

24                    We also benefit from training from UK overseas  
25 Territories that have an auditors group, which is aligned with

1 the National Audit Office in the UK, and they have ongoing  
2 training that the staff benefits from.

3 We are also a member of CAROSAI, and CAROSAI, which is  
4 the Caribbean Organization of Supreme Audit Institutions, and  
5 CAROSAI also has a programme of ongoing training.

6 So, for auditors, ongoing training is important  
7 because the standards are evolving because for instance, we just  
8 had a pandemic, and there would be new rules on how to treat the  
9 spending that's related to that, so the standards do change, and  
10 because of that, the Auditors, in the private sector and in the  
11 public sector, have to maintain professional training throughout  
12 the year. So, it's good that we have access to CAROSAI and  
13 INTOSAI and that level of training. And it's something that I  
14 can't complain about because after the pandemic, everybody  
15 tended to shift online, and actually training became more  
16 accessible, we didn't have to travel to get there, so it's one  
17 of the benefits that has come out of this, I would say.

18 Q. I mean, you said that your budget for training  
19 development was taken away.

20 A. Yes.

21 Q. When was it taken away?

22 A. Right away it was taken away.

23 Every year, as during the budget process, you would be  
24 asked to cut certain things out of your budget because there  
25 isn't enough money to pay for everything. And because training

1 is one of those things that, if I don't do train, my lights are  
2 not going to go off. It doesn't affect basic needs, so to  
3 speak, wind, light, water, it's one of the things that would  
4 suffer through those cuts.

5 MR RAWAT: Commissioner, I'm going to move on to a new  
6 topic, but we've been going for an hour-and-a-half, so I  
7 wondered if we could have a short break at this point.

8 COMMISSIONER HICKINBOTTOM: Yes. We'll have a five  
9 minute break or so. Yes, thank you, Mr Rawat.

10 MR RAWAT: Thank you.

11 (Recess.)

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

13 MR RAWAT: Thank you, Commissioner.

14 BY MR RAWAT:

15 Q. Thank you, Ms Webster.

16 The issue I would now like to ask you some questions  
17 about, please is--and it's one that appears in the Annual  
18 Report--it's about Government Contracts and the use of petty  
19 contracts.

20 If I could ask you just to go to page 311 in the  
21 bundle.

22 Do you have the page?

23 A. Yes.

24 Q. If I explain, this is a page from the Annual Audit  
25 report for the year ending 31 December 2012. And in this

1 section you have a section headed "government contracts", and  
2 you explain the report. This is a report which was not signed  
3 off by you, it was signed off by Amoret Davies as Acting Auditor  
4 General, but you explain that the Government does much of its  
5 development activity through contracts and which can take the  
6 form of a major contract valued in excess of \$100,000 or a petty  
7 contract usually between 5,000 and \$100,000.

8           You continue, major contracts are required to be put  
9 to public tender in accordance with the provisions of the Public  
10 Finance Management Regulations. These regulations also make  
11 provision for tendering requirements to be waived by the  
12 Cabinet. Some large undertakings on projects may require  
13 several major contracts because of their size and complexity.  
14 On executed major contracts, the public document which is  
15 launched at the Registry and accessible to Members of the  
16 public, albeit for a small fee.

17           The next paragraph requires--refers to petty contracts  
18 and says this, that they are: Issued for goods and services  
19 with the upward limits of \$100,000. They do not require public  
20 tender but Departments must get competitive quotations before  
21 engaging a contractor or vendor. And then the report says: "In  
22 2012, more than 540 petty contracts and agreements were executed  
23 by the Government representing a commitment in excess of  
24 \$19,923,099. Approximately 29.28 percent of this was for petty  
25 contracts and agreement under the Administration of the Public

1 Works Department".

2           What the report goes on then to consider, under the  
3 heading "Splitting", it says: "The practice of splitting major  
4 contracts into smaller parts to facilitate issuing petty  
5 contracts was again pervasive in 2012. This was seen on several  
6 projects and across Ministries. The rationale provided for  
7 contract splitting is to allow for work to be shared and promote  
8 development of skills among local contractors. The result is  
9 frequently works that is of inconsistent quality or engagement  
10 of individuals who are not sufficiently qualified or experienced  
11 to perform the contract".

12           The report then says: The selection of contractors on  
13 a split contract is particularly susceptible to cronyism,  
14 nepotism and favoritism and has to a large extent become heavily  
15 politicized. This is all made easy by the fact that no formal  
16 competitive bidding is required and the works are now divided  
17 and costed in the budget by District. More needs to be done to  
18 regulate and monitor petty contracts if the Government is to  
19 achieve value for money on these agreements.

20           Now, this is a point, and I can take you to them if  
21 you want to see them, Ms Webster, but it's a point that's made  
22 in earlier reports going back to 2008 or 2009 about this concern  
23 being raised about the use of splitting for contracts.

24           If you go through to 445 in the bundle, I think it was  
25 in either 2013 or '14 that the format of the Audit Report

1 changed, and the Auditor started identifying audit issues, and  
2 I'm showing you the Audit Report for the year ending 31st  
3 December 2015, and under audit Issue 6, you refer--you have a  
4 heading "procurement weakness", and it reads as follows: "The  
5 issues relating to procurement weaknesses have been reported in  
6 previous Audit Reports and were again present in 2015. One  
7 extreme example of the procurement regulations being  
8 circumvented was observed in the Ministry of Communications and  
9 Works where a contract valued in excess of \$1 million,  
10 \$1.5 million, was split into 12 petty contracts varying in  
11 amounts from \$72,960 to \$97,200, which were all issued to the  
12 same Contractor. There was no tendering for this project or  
13 waiver from the Cabinet. The regulations in place for public  
14 procurement are insufficient to ensure transparency and value  
15 for money is achieved in contract letting. Soft provisions  
16 allow for circumvention of regulations which can be bypassed or  
17 otherwise disregarded with the splitting of contracts and waiver  
18 of tender. The regulations for public tender need to be  
19 reviewed for improved management transparency and economy in  
20 public procurement".

21 Now, this was--and I hope you will take it from me  
22 that it's a point that is made in Auditor General's reports and  
23 going, in fact, back to 2008 and through into the 2016 Report.

24 Why was the issue of contract-splitting so significant  
25 for the Auditor General?

1           A.    It's significant because it circumvents the rules for  
2 procurement, and in circumventing the rules for procurement, it  
3 creates a risk that a number of things can go wrong. Some of  
4 those risks were highlighted in the earlier text that you read,  
5 cronyism, favoritism, not get value for money, inexperienced  
6 contractors, and essentially not being comfortable or  
7 comfortably aware of exactly what is happening with the  
8 Government money, the Government spending, insufficient  
9 transparency.

10                 So, contract-splitting is the very basic form of  
11 circumvention of the tendering requirements, and it's not being  
12 regulated, and it's continuing as we speak.

13           Q.    The point that's made about--in the 2012 Report that I  
14 took you to, was firstly, that it's pervasive. Does it remain  
15 your view that it remains a pervasive practice?

16           A.    After the hurricanes, we had to make some changes  
17 simply because we don't have the level of funds that we used to  
18 in order to perform projects. So, in that respect, we're not  
19 seeing it as much, but it continues.

20           Q.    And what you say is that the selection of Contractors  
21 on a split contract has, to a large extent, become heavily  
22 politicized, and that term "heavily politicized" again, appears  
23 in more than one report.

24                 What did the audit office mean by "heavily  
25 politicized"?

1           A.     The Ministers determine who gets the contracts.

2           Q.     Now, linked to the section of the Report is the use of  
3 petty contracts, and if I take you to 2.25 in the bundle, I'm  
4 taking you back, Ms Webster, to the 2011 Report, and it's a page  
5 which again deals with Government Contracts and splitting, but  
6 at the bottom there is a section headed "petty contract usage",  
7 and the report says: "The issue of using public funds to  
8 develop private property was first reported in the 1997 Audit  
9 Report. The Government has a policy whereby retaining walls and  
10 roads are constructed on private property for the purpose of  
11 one, compensating persons who give up land for accommodating  
12 expansion or improvement of public roads; two, preventing  
13 erosion of soil on to public roads; three, preventing the  
14 erosion of private property after the construction or widening  
15 of a public road.

16                     And if you look at 66 on the next page, the Report  
17 continues: "During 2011, the Government continued to issue  
18 petty contracts with those in private and state roads and  
19 retaining walls which did not qualify under the above criteria.  
20 This type of activity is commonplace and a substantial amount of  
21 the Public Works Department's time and resources is consumed in  
22 performing assessments, costing, preparing petty contracts and  
23 monitoring works carried out on private property. There is now  
24 a widespread expectation by citizens that the Government will  
25 carry out work on their private roads, while the public roads



1 are often left in disrepair".

2 Now, this is, again, as I said, a point that you make  
3 more than once.

4 Do you consider that petty contracts being used in  
5 this way amounts to an abuse of the system?

6 A. It does. I do consider that is, in fact, the case.

7 And this is a practice that continues even as we  
8 speak. And I'm sitting here with the knowledge that I can  
9 witness a retaining wall that was done on private property close  
10 to where my home is, and this was something that happened this  
11 year. So, it's a practice that continues basically.

12 And in my view, the public deserves to have  
13 priority--the public expects and deserves to have  
14 priority--priority given to public roads which are generally in  
15 disrepair, and it's beyond comprehension how we can be spending  
16 money on private property when we are, in fact, ignoring the  
17 main obligations of the Government, which is to ensure that  
18 infrastructure is up to standards, and this is what--this  
19 actually speaks to the priority needs to be given to public  
20 roads as opposed to spending on public property.

21 In fact, I'm of the view that Government money,  
22 Government funds should not be used on private property, and I  
23 think that is the acceptable, good standard practice locally.  
24 Public funds are for public purposes.

25 Q. And the point you make--and it's at paragraph 65--is

1 that there are three criteria that you set out there, but your  
2 view as Auditor General is that--the state of affairs is that  
3 those criteria are ignored now?

4 A. The criteria still apply, but they have gone outside  
5 of those and are actually using the funds to do otherwise.

6 That's my--

7 Q. The report spans 2008 to 2016.

8 A. Yes.

9 Q. Would you say that there was an upward or a change in  
10 the trend of using petty contracts? Over time, have petty  
11 contracts become more popular, or has it been always the same?  
12 Can you comment?

13 A. I think over time they have become more commonplace.  
14 We've seen fewer and fewer major contracts for substantial work.

15 And the practice is that it's relatively easy to get a  
16 Cabinet waiver, and even where you don't have a Cabinet waiver,  
17 we can within the Ministry--the example that you--about--I  
18 actually have it here because I found it to be so appalling  
19 where there were several petty contracts totaling over  
20 \$1 million that went to one person. This was just done within  
21 the Ministry. It was basically something, they're going to do  
22 this, and it was done.

23 Q. That wasn't something that even needed to get to  
24 Cabinet?

25 A. It should--it should have gone to Cabinet, and it

1 didn't go to Cabinet, not to my knowledge. We asked for  
2 information on the Cabinet paper to which this was approved, and  
3 we got nothing back.

4 Q. And we can track it through the reports, if necessary,  
5 but the issues of contract-splitting and of pretty contract  
6 usage, are issues that on the Reports, the Audit Office has  
7 raised for a substantial period of time. What was the response  
8 of the governments, and it spans more than one Government? What  
9 was the response of the Government to those concerns?

10 A. We haven't gotten any significant response to those  
11 concerns.

12 The Governor, I know--more than one Governor--several  
13 of them, actually, would raise it from time to time in Cabinet,  
14 to my knowledge with my discussion with them, but we haven't  
15 seen any changes with respect to the usage of petty contracts.

16 And to be clear, there are instances where petty  
17 contracts are relevant and can be useful, but the extent to  
18 which we see the Contract splitting, the types of projects that  
19 are being brought in and being used for petty contracts, it  
20 basically amounts to an abuse. It's a circumvention of the  
21 regulations, it's a convention of transparency, that the  
22 regulations that prescribe transparency and in some cases it's  
23 nothing short of an abuse of the system.

24 Q. If you go to 478 in the bundle, please. Taking you to  
25 the most recent report we have for year ended 31st of

1 December 2016, and it's again an audit issue that the report  
2 raises on procurement weaknesses, and the report says: "The  
3 issues relating to procurement weaknesses have been reported in  
4 previous Audit Reports and were again present in 2016. At the  
5 time of writing, the Ministry of Finance was advancing draft  
6 legislation to update the public procurement process and address  
7 related issues".

8 Do you know what progress was made on that draft  
9 legislation?

10 A. No, I cannot speak to that.

11 Q. So, after 2016, you didn't hear anything further about  
12 that?

13 A. No, I have not. I have not received an update on  
14 this.

15 Q. If you stay in the same report, please, and go to page  
16 483, this part of the Report that deals with statutory  
17 authorities and trusts.

18 Would I be right saying that these are the sort of  
19 bodies where you might, in statute, be expected as the Audit  
20 Office to carry out an audit but you, in fact, put it out to  
21 tender; is that right?

22 A. Most of these, yes.

23 Q. And so you've listed them in the table that we see on  
24 this page, and I think you say--so, for example, at 43, you say:  
25 "The Financial Statements of the British Virgin Islands

1 Electricity Corporation, H Lavity Stoutt Community College and  
2 The British Virgin Islands Social Security Board were audited by  
3 accounting firms on behalf of the Auditor General".

4 And whereas, for example, the Ports Authority  
5 appointed and sought approval of the Minister in accordance with  
6 the British Virgin Islands Ports Authority Act of 1990.

7 For those bodies that can appoint their own Auditor,  
8 is there a role for you, as Auditor General, in terms of--is  
9 that information that you would need in order do the Annual  
10 Audit?

11 A. We don't need--no, we do not need information from  
12 them in order to do the Annual Audit. Except if there is a  
13 contingent liability, the Government has sponsored a loan with  
14 respect to those particular entities, then we would need  
15 information about that, and we would have to verify that  
16 information independently.

17 But we do follow up with all the agencies, all of  
18 them, and we do request the Financial Statements after they are  
19 audited. And if they are delinquent, we inquire as to why  
20 they're delinquent. We ask for reasons as to why they haven't  
21 been audited.

22 Q. I think--your voice is dropping a little again,  
23 Ms Webster, if you could keep it up a little bit. But if you go  
24 to the next page, page 47--paragraph 47, I'm sorry. One point  
25 the report makes--and it's a point that's made in earlier

1 reports--is this, and I quote: "Of particular concern are the  
2 agencies that have never undergone any audit review, and those  
3 that are three or more years delinquent with audits". And then  
4 you set out in a table the last confirmed audits for various  
5 boards and trusts.

6 Now, I can take you, if you want to--let me take you  
7 to page 236, please. This is a 2011 report. What you say at  
8 Paragraph 130 is a similar point, and that you say a particular  
9 concern of the agencies that have never undergone any audit  
10 review, those that have received disclaimer opinions from their  
11 auditors and those that are three or more years delinquent with  
12 audits.

13 And in the table below, for example, if I draw your  
14 attention to it, you list the BVI Tourist Board which was last  
15 audited in 2002, and this is at 2011.

16 How often should these bodies be audited?

17 A. They should be audited annually.

18 I believe the Tourist Board--well, I know the Tourist  
19 Board had some issues with their Financial Controller, and  
20 subsequently would turn the accounts out, but they should be  
21 audited annually. All of them.

22 Q. And so, given that we've looked now at your 2011  
23 Report, and we were looking at your 2016 Report, has this been a  
24 long-standing concern for the Auditor General?

25 A. It is, and I can recall the smaller entities actually

1 have issues compiling Financial Statements, and I can recall  
2 sending to the Financial Secretary a proposal where Government  
3 engages an accountant, so to speak, responsible for helping  
4 these entities compile their Financial Statements, and so that  
5 they can be submitted for audit, and I don't think that went  
6 anywhere. That was some years back.

7 For instance, Wickham's Cay was having issues  
8 compiling their statements. Prospect Reef, actually this is an  
9 entity that was never audited and we did an audit on that and  
10 attempted to get the financials. Eventually we did actually get  
11 Financial Statements, but those were not submitted for audit.

12 I'm trying to follow through--follow up on some of  
13 these.

14 The bottom line is this. Entities like the Fiscal and  
15 Affairs Committee, the exist for a very short period of time,  
16 although they function for a very short period of time during  
17 the year. This Committee is functioning mostly between, I  
18 think, June and--June and October and then again in the early  
19 year for the Virgin Gorda Festival. So, it's not an ongoing  
20 entity throughout the year. It's not functioning throughout the  
21 year. And there's this heavy activity and you have all these  
22 documents and nobody knows what to do with them, and what we get  
23 is the documents and the financials. And it's difficult to do  
24 anything with that, except complain about the fact that we don't  
25 have financials, and certain things were not adhered to, and

1 that's what--the only thing we can do with this.

2 Q. Do you consider that it's still an issue today?

3 A. It's still an issue.

4 It's primarily an issue with the smaller ones.  
5 Electricity, Health Services Authority. Those--they are  
6 entities--actually do--they have functioning Boards that demand  
7 accountability, so you will get them actually doing their audits  
8 and trying to get them done on time and get their Reports out on  
9 time, it's normally the smaller entities that have challenges  
10 and actually complying with the Financial Statements, having  
11 Financial Statements and having these audited.

12 Q. And is that--is that a problem with these smaller  
13 entities, or does it simply come down to that they just don't  
14 have the resources to produce a Financial Statement?

15 A. In some cases--in some cases, they don't have the  
16 resources, and in other cases when we get the statements, they  
17 are incomplete or require additional information or something to  
18 that effect.

19 Whenever we get statements that are incomplete, are  
20 not within the standards, that will actually result in the audit  
21 being drawn out because they have to be referred back to the  
22 individual: "We know that you have a bank account over here,  
23 why isn't it in the Financial Statement", sort of thing.  
24 "According to our confirmations, the electricity for this entity  
25 is a lot more than what you have stated in your accounts. Why



1 haven't you actually included this?"

2           So, things like that--the option of course is when we  
3 don't--we actually do refer them back to the entities to correct  
4 them, to make changes. And if those changes aren't made, then  
5 we have no choice but to do an adverse or a disclaimer opinion  
6 on the statements, and I think that's a place where nobody  
7 really wants to be, so...

8           Q. And apologies if I've already asked this, but is it  
9 still for the Audit Office an ongoing issue?

10          A. It is, yes.

11          Q. If you go just please, now, to 226 in the bundle.  
12 This is a section of the 2011 Report, which is headed  
13 "ministerial portfolio infringement". And you say at 67, "a  
14 practice has developed whereby ministerial budgets are adjusted  
15 to allow Ministries to undertake work on projects falling  
16 outside of their defined portfolios".

17                You give the example of the Premier's Office which is  
18 charged with coordinating Government activities and implementing  
19 policies and programmes to promote the Territory's sustainable  
20 development, executed contracts for laying water pipes, paving  
21 roads, extending an airport runway, school maintenance, and  
22 maintaining a basketball court.

23                And then you talk about the Ministry of Natural  
24 Resources and Labour engaging contractors for work on ghut  
25 training and road pavings which properly fall under the purview

1 of the Ministry of Communications and Works.

2           And you say the Ministry of Natural Resources and  
3 Labour has infringed on the Ministry of Health and Social  
4 Development's portfolio by undertaking construction of a  
5 community center in the Sixth District. And what you say, those  
6 sort of the examples, you give others but if we go to  
7 paragraph 71, you say, or the report says: "Amending the  
8 ministerial portfolios in the manner described gives the  
9 appearance of a ministry that has shifted focus from addressing  
10 the needs of the Territory to catering to the needs of an  
11 electoral District, where the Minister is also the District  
12 representative".

13           And then you go: "When the Ministry of Finance  
14 becomes involved in the execution of projects, the  
15 accountability principle of separation of functions is eroded.  
16 In this instance the executing agency for the project is also  
17 the body that reviews, assesses, recommends funding requests to  
18 the Cabinet. This practice compromises the accountability  
19 process and should be discontinued".

20           Now, that's in 2011. If you go to 312 in the bundle,  
21 the report for 2012 which we're looking at, makes exactly the  
22 same point, in that the practice is developed where Ministries  
23 are undertaking work on projects outside their defined  
24 portfolios, and as we look it at 71--70 and 71, that it gives  
25 the appearance of a ministry shifting focus from addressing the

1 needs of the Territory to catering to the needs of an electoral  
2 District; and in relation to the Ministry of Finance, it blurs  
3 or erodes the accountability of the principles of separation of  
4 functions.

5           If you now go to 378 in the bundle, we're now in 2013,  
6 and as I said earlier, the format of the Annual Report changes,  
7 and the Audit Office sets out as a set of audit issues. Audit  
8 Issue 6 is headed "Ministerial Portfolio and Infringement" and  
9 it records as follows: "Several instances have been observed  
10 where ministerial budgets adopted allow for ministries to  
11 undertake work on projects falling outside of their defined  
12 portfolios. This gives the appearance of a ministry that has  
13 shifted focus from addressing the needs of the Territory to  
14 catering to the needs of an electoral District, where the  
15 Minister is also the District representative". It then  
16 concludes: "This practice needs to be discontinued". That was  
17 in 2013.

18           Was the practice discontinued after 2013?

19           A. We have a new government in place, and I'm trying  
20 to--allow me to collect my thoughts here.

21           I need to go back a bit.

22           The 2013, '14, '15. To my knowledge--and I would have  
23 to verify this--I don't like to speak without information--but I  
24 don't know that this has been discontinued. I would have to  
25 verify and get back to you on this.

1 Q. Thank you.

2 A. And the reason why it's repeated, we tend to repeat  
3 the recommendation in the statements if they're not addressed.  
4 When we discontinue that, in the reports, it gives the  
5 impression that an issue has been corrected. So, this is why  
6 you see the same thing being said from one year to the next.  
7 But I would need to go back and consult the records to give you  
8 a correct response to this, rather than trying to guess whether  
9 or not it has, in fact, been discontinued.

10 Q. Your point about repeating points is you say it's a  
11 way of increasing the pressure to get something done?

12 A. It is, yes, hopefully.

13 Q. If you now go to--if we stick to 378, the page we  
14 should be on, if you look at the next issue that's down there  
15 which is headed "ministerial development projects", and it's  
16 audit Issue 7, it records: "Under the new chart of accounts, a  
17 general development expenditure account is provided for each  
18 Ministry. Expenditure in these accounts are not categorized by  
19 project, but by objects (materials, payroll, utilities). The  
20 object categories combine the activities of different projects,  
21 thereby presenting difficulty in establishing: What projects  
22 are being undertaken; the budgeted amount and actual expenditure  
23 for individual projects; and the legitimacy of related payments  
24 requests (an actual expenditure) as required by section 14 A of  
25 the Audit Act. There is a need for subledgers to be introduced

1 to enable each project undertaken under these subheads to be  
2 properly and transparently accounted for".

3           If you look now to 414, your 2014 Report, again audit  
4 Issue 7 is ministerial development projects, and you set out  
5 exactly the same point. The only difference is that you act in  
6 addition the Ministry of Communications and Works overspent its  
7 provision of 1.3 million by 1.8 million for total development  
8 projects expenditure under this Ministry of 3.2 million.

9           If you look, please, at 445, we're now in the 2015  
10 Report and you make the same point again of the need, which is  
11 the need for subledgers to be introduced to enable each project  
12 undertaken under these subheads be properly and transparently  
13 accounted for. And you again note that: "In addition, the  
14 Ministry of Communications and Works overspent its provision of  
15 3.7 million by \$.1 million for total development projects  
16 expenditure".

17           If you now go, please, to 478, we see the same point  
18 being made in 2016, and the point begins, and it's worth  
19 repeating: "The developing project's subheads provided to the  
20 ministry continue to present issues of non-transparency", and  
21 you repeat the point about the need for subledgers.

22           So, firstly, you were proposing over the course of  
23 four years the use of subledgers to be introduced so that each  
24 project undertaken is properly and transparently accounted for.  
25 Why was that change so important for transparency?

1           A.   Essentially, we were seeing money being spent, and we  
2 did not know what it was being spent on. And without the  
3 subledgers and being able to tie in the spending to a particular  
4 project, essentially, the expenditure could be for anything or  
5 anybody or for any progress.

6           So, what it means is that we cannot verify or  
7 ascertain that the spending under these ministerial subheads was  
8 actually for government contracts because we don't have the  
9 information, we didn't have the subhead to be able to trace the  
10 amounts back to any particular government projects. We do not  
11 know what the funds was spent for, basically.

12           COMMISSIONER HICKINBOTTOM: So, as I understand it,  
13 what would happen is materials would be bought and they would be  
14 put into a heading "materials".

15           THE WITNESS: Right.

16           COMMISSIONER HICKINBOTTOM: But you wouldn't know  
17 whether the materials were for project A, B, C, D or E?

18           THE WITNESS: Right, that's correct, sir.

19           COMMISSIONER HICKINBOTTOM: That's what happened?

20           THE WITNESS: Yes.

21           COMMISSIONER HICKINBOTTOM: Thank you.

22           BY MR RAWAT:

23           Q.   But what we see is that the Auditor General is making  
24 a recommendation, here the need for subledgers, four years in a  
25 row, and it doesn't seem that there is any positive response to

1 it.

2 Now, can you explain why--I mean, it goes back to your  
3 point about needing are repeat things to increase the pressure,  
4 but why do you need to repeat things? And in this instance, why  
5 were you not being listened to?

6 A. Well, frankly, I would like someone to explain to me  
7 why they would set up these subheads without having subledgers  
8 within them. It makes absolutely no sense for a Public Sector  
9 system.

10 Why wasn't it being adhered to? I cannot answer you  
11 that. I think the Ministry of Finance might be in a better  
12 position to actually address that question. The Ministry of  
13 Finance sets up the various subheads for the various projects,  
14 and they would be the ones that would be responsible for doing  
15 this.

16 COMMISSIONER HICKINBOTTOM: But we can assume, as I  
17 understand, from your previous evidence, that because you  
18 repeated more or less in the same words the same concern for  
19 four years running that it hadn't been addressed by 2016?

20 THE WITNESS: No. It was not addressed by 2016.

21 BY MR RAWAT:

22 Q. If you go in the bundle, please, Ms Webster, to 421,  
23 this is your 2014 Report, and you have a section headed "Public  
24 Accounts Committee".

25 A. Okay.

1 Q. And you say: "The Public Accounts Committee (PAC) is  
2 a Select Committee of the House of Assembly which is constituted  
3 under Standing Order no. 73 of the House of Assembly rules. Its  
4 functions are (a) to consider the accounts of government in  
5 conjunction with the Auditor's Report; (b) to consider any  
6 special report submitted by the Auditor General under  
7 Section 20(3) of the Audit Act; (c), to report to the House of  
8 Assembly in the case of any excess or unauthorized expenditure  
9 funds, the reason for such expenditure; (d), to report to the  
10 House of Assembly in the case of any short-fall of revenue, the  
11 reason for the shortfall; (e), to report to the House of  
12 Assembly any case of apparent extravagance or waste of public  
13 funds; (f), to propose any measure it considers necessary to  
14 ensure the public funds are properly brought to account and are  
15 economically spent".

16 You then set out at 55 in the Report the Membership of  
17 the House of Assembly, which is essentially three Opposition  
18 Members and two back-benches from the Government side, but the  
19 leader of the Opposition serving as Chairman. And you conclude:  
20 "Meetings were convened during the course of the year and a  
21 report was completed and forwarded to the House in 2014.

22 Now, so, I take it from there that, as Auditor  
23 General, you would be required to appear in front of the Public  
24 Accounts Committee to address matters arising out of your Annual  
25 Report?



1           A.    As Auditor General, I normally serve as adviser to the  
2 Public Accounts Committee and not necessarily appear before  
3 them, but I would discuss and advise them on the contents of the  
4 report, and they would take the decision on whether or not they  
5 will seek witnesses to answer to the contents of the report.

6           Q.    If you look at 453, we have just been looking at,  
7 2014, so we're going now to 2015, you're again, this is the  
8 section of the report that deals with Public Accounts Committee,  
9 and if you look at paragraph 51, it concludes that no meetings  
10 of the Public Accounts Committee were convened during the course  
11 of the year.

12                    So, in that case, I mean, this is 2015, the Public  
13 Accounts Committee would have been considering as with the 2014  
14 Report, but if no meetings were convened during the course of  
15 the year, does that mean that they didn't consider the Annual  
16 Report at all?

17           A.    As a general rule, the Public Accounts Committee tends  
18 to consider value from Annual Reports as opposed to the Annual  
19 Reports and, in fact, we tabled several reports recently, and  
20 those have not really been addressed in the Public Accounts  
21 Committee as yet.

22                    But going back to your earlier statement, this  
23 happened in 2015, and 2014 statements would not have been  
24 available at that time because we would not have gotten them  
25 from the Treasury, and they would not have been audited.

1           So, the focus would have been on value for money  
2     audit.

3           And also within the Public Accounts Committee, the  
4     Committee has in the past, even as I speak, the Committee, as we  
5     performed investigations on topical matters and prepare reports  
6     which are taken to the House, I'm trying to--normally, when that  
7     happens, our office acts as a support center where we provide  
8     information, if the Committee has decided it's going to look at  
9     something because it's topical and it's a risk to value for  
10    money, for instance, we would provide the information that they  
11    need and help to respond to certain information--documents,  
12    individuals--that might be necessary in order to help the  
13    Committee accomplish its task.

14           In 2015, I'm trying to recollect why. And again, I'm  
15    going to have to verify this, but I think in 2015 we had an  
16    issue with the composition of the Public Accounts Committee, and  
17    as a result they were unable to get a quorum to satisfy their  
18    obligations and meet.

19           Q.    When was the last time that you appeared in front of  
20    the Public Accounts Committee?

21           A.    I think the next time will be next week. The  
22    Committee is meeting next week. And in fact, the Chairman  
23    wanted to meet this week, but this week is a little bit  
24    challenging for me, so he's graciously agreed to do it next  
25    week.

1           The last time was probably a couple of months ago. I  
2 would have to go back and check.

3           Q.    Has the Committee raised the fact that you have not  
4 been able to submit Annual Reports since 2016?

5           A.    It's raised occasionally, but as I said, the focus  
6 tends to be more on the value for money audits and the financial  
7 audits which are probably not as interesting as the value for  
8 money audits.

9           Q.    Could you go to 468, please, again, we're looking at  
10 2016.

11           What I would like to do is focus on the points you  
12 have made this morning just to gather in the context of the  
13 INTOSAI Independence Standards and Code of Ethics. So, INTOSAI,  
14 if I've got it right, stands for the International Organization  
15 for Supreme Audit Institutions?

16           A.    That's correct, sir.

17           Q.    And what you've set out is what the standards  
18 postulate, and you say they postulate the existence of an  
19 appropriate and effective Constitution and statutory legal  
20 framework.

21           So, from your perspective as Auditor General, what is  
22 that standard pointing to?

23           A.    Basically, it is saying that the position, the office  
24 of the Auditor General should, in fact, be established within  
25 the Constitution and given the greatest protection because of

1 its importance to transparency and accountability, which are two  
2 of the main principles of good governance.

3 Q. You then--the next point is independence. And if you  
4 look at the next two points are independence of SAI heads, so  
5 that's the supreme audit institution head, and then three is  
6 sufficiently broad mandate and full direction in the discharge  
7 of functions.

8 Now, do you consider that, under the Constitution and  
9 under the Audit Act, the Office of Attorney General is  
10 sufficiently independent?

11 A. Auditor General.

12 COMMISSIONER HICKINBOTTOM: Auditor General.

13 BY MR RAWAT:

14 Q. Auditor General, yes. I knew I'd make that mistake at  
15 one point.

16 Do you think that under the Constitution, and bearing  
17 in mind the Audit Act of 2003, which, as you've said may need  
18 updating, but keeping it in mind, do you think that there is  
19 sufficient protection for an Auditor General?

20 A. I think there is the Constitution and the Audit Act  
21 actually do provide sufficient provisions for independence and  
22 discretion to perform the functions. I don't have a problem or  
23 issue with independence provided in the Constitution. I believe  
24 it is sufficient.

25 Also, I would say that the provisions of the Act allow

1 me to perform my functions independently, and anyone who comes  
2 into the position, again, they can perform the functions  
3 independently, but a lot of what you're going to get from this  
4 position, I think, would depend on the individual you have, and  
5 it has to be someone who is willing to stay with the  
6 Constitution and stay with the Audit Act and not be influenced  
7 by what other pressures there might be in terms of what the  
8 office should be doing, what the office should be looking at.  
9 But the provisions are there, and I'm satisfied that they're  
10 strong enough to keep us independent.

11 Q. And what three asks for is a sufficiently broad  
12 mandate and full discretion in the discharge of functions. As  
13 presently constituted, does the Auditor General have a  
14 sufficiently broad mandate and full discretion?

15 A. I think so. I believe that, yes.

16 Q. So, you would, I assume, be concerned if your office  
17 came under ministerial control?

18 A. The Audit Office should never be under ministerial  
19 control.

20 Q. And if there were an attempt to constrain what you  
21 could audit, do you think that would be a step backwards?

22 A. That would be a major step backwards, yes.

23 Q. The Commissioner has heard evidence about the  
24 potential interplay between different offices, so if I give you  
25 a specific example, it's the Commissioner has taken evidence

1 about the Registrar of Interests, and the Registrar of Interests  
2 is another constitutional public officer, but some witnesses  
3 have given evidence about integrating the work of the Registrar  
4 of Interests with a proposed Integrity Commission.

5 From your perspective as Auditor General, do you see  
6 any difficulties if there was an overlap between your function  
7 and the function of any other public office?

8 A. I don't see there being any difficulty--well, let me  
9 just--I tend to speak from a position--from my personal  
10 position. For me, there would be no difficulty because once the  
11 Act gives me authority to do something, then that's what I would  
12 go by, but I can see that there might be some interpretation  
13 issues, and I think it's important to--where there's a potential  
14 conflict, a potential overlap to define the rules of--properly  
15 define the rules of the respective officers.

16 And there is some overlap between us and Internal  
17 Audit, for instance, and I think some offices try to  
18 misuse--abuse that overlap. And I know the Contractor General  
19 legislation is coming out, and there will be some overlap with  
20 what they do and what we do, and there's an effort to try to  
21 make sure that that does not present a conflict or present a  
22 problem, but from where I sit, the Attorney General will have to  
23 comment on this.

24 But from where I sit, once I have the authority within  
25 Audit Act of the Constitution, then that's what I use in

1 performing my duties.

2 Q. The fifth standard is the right and obligation to  
3 report on work. Could you just explain to the Commissioner what  
4 that standard goes to, please.

5 A. That Standard goes to accountability and transparency.

6 In performing our work, the audits--in performing  
7 financial audits, for instance, upon completion of those, there  
8 is an obligation to ensure that those financial audits make it  
9 into the public because ultimately--and I think I was asked  
10 earlier where I report to, and I said the House of Assembly.  
11 Ultimately, I report to the people of this Territory, and they  
12 have a right to know what the Government has been using the  
13 resources, public resources for and what progress has been made  
14 during the course of a year. So, there is an obligation on us,  
15 to, after we finish our audits to ensure that this gets into the  
16 public.

17 The right is also--it's important to have that there  
18 because, again, there may be certain things within audits, and  
19 this would be more in Special Audits or "value for money"  
20 audits, that may make individuals uncomfortable--the words are  
21 there, but are words that I probably shouldn't use them--and  
22 there may be attempts to stymie or to keep a report from going  
23 public, and I think the right is to actually put this out there  
24 is important so that again, people should know--can know what  
25 happened within a project, within a programme.

1           And what happened with money that we know that the  
2 Treasury and there was no result. We have seen no result of  
3 what was the process that led to where we are, for instance, in  
4 a project that we already spent \$7.2 million and don't have a  
5 result.

6           So, again, people have a right to know how their money  
7 is being spent, how their public officers are performing, and  
8 that's part of our duty. That's our primary duty,  
9 accountability and transparency. That's the work of the Audit  
10 Office. And because this is so important, it has been enshrined  
11 in the Constitution.

12           And without those two things, it's very easy to--for a  
13 Government to slide into poor practice and poor governance.

14           Q. The next one--

15           A. If I'm talking too much, you can let me know.

16           Q. No, no. Please, it's very helpful. Thank you.

17           The freedom to decide the content and timing of Audit  
18 Reports and to publish and disseminate them is point 6 on the  
19 INTOSAI independent standards.

20           Do you have under the present arrangements the freedom  
21 to decide the content and timing of Audit Reports?

22           A. Yes, yes, sir, I do. I believe that the Constitution  
23 and Audit Act allows me discretion on what audits I will  
24 undertake and again, what the content of those Reports will be.

25           And it is a responsibility that we take seriously, and



1 we--whenever we do a report, we try to bring in the Ministry and  
2 have their input as well in the finance.

3           So, Ministries will get a draft report and they will  
4 get an opportunity to address what is in that draft report, and  
5 when we get their responses we then go through and see what  
6 needs to be changed, what needs to be addressed and whether  
7 anything can be modified.

8           So, with that right and obligation, there's also a  
9 responsibility to make sure that whatever goes out is, in fact,  
10 representative of the activities of the Government is, in fact,  
11 reliable and something that people can look to and make  
12 decisions based on.

13           Q.   Seven is the existence of effective follow-up  
14 mechanisms on recommendations. If we break that down--I mean,  
15 we've already--I've already asked you some questions about that,  
16 but whilst your Annual Reports don't sort of end with a  
17 recommendation section, the Auditor General does raise points,  
18 for example, we were looking at the practice which you  
19 said--which concluded in 2016, "this must be discontinued".

20           What is your experience of how easy it is to persuade  
21 recipients of your Report to respond positively to  
22 recommendations?

23           A.   In all fairness, we have some Departments that  
24 actually do attempt to--that do actually adopt recommendations,  
25 but we have many that do not. How easy is it to get them to do

1 this? It's not an easy task.

2 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,  
3 and this requires an effective follow-up mechanism. There is no  
4 mechanism, as I understand it. You, as it were, say in one  
5 report X, you say in next report X, you say in next report X,  
6 and then you hope that actions is taken. Some ministries, you  
7 say, take on board recommendations better than others but there  
8 is no mechanism, is there, other than repetition?

9 THE WITNESS: Yes, there is a follow-up mechanism.  
10 And we actually do have a follow-up procedure because in terms  
11 of mechanism, that might not be sufficient, and maybe it's  
12 something that needs to be developed.

13 But the follow-up is simply checking to see how far  
14 the Department has gone in implementing the recommendations that  
15 were made and reporting on those, and that is really actually  
16 the mechanism, the whole thing. We get a list of the  
17 recommendations, you would visit the office or we visit the  
18 project and see whether or not those recommendations were, in  
19 fact, implemented.

20 And our findings have been that a few offices do  
21 actually adopt the recommendations. Most of them do not, and I  
22 would have to be able to quantify that when I say "most of  
23 them", but at the moment I don't have those in front--I don't  
24 have that information in front of me.

25 But what I would say is insufficient, an insufficient

1 number adopts the recommendation, the vast majority probably do  
2 not, do not.

3 BY MR RAWAT:

4 Q. And again, as the Commissioner says, there is no  
5 sanction there. You can't--

6 A. There is no sanction, that's correct.

7 Q. You can't force them to accept your recommendation or  
8 implement it?

9 A. No, we cannot.

10 Q. The--your reference to updating you're--well, having a  
11 follow-up mechanism, was a point that I don't need to take you  
12 to it unless you want to see it, but it was a point that was  
13 made in the 2014 Report.

14 Commissioner, for your note it's at page 404 in this  
15 bundle.

16 You say--it said that the office is in the process of  
17 updating its follow-up procedures to enable a more complete  
18 assessment of audit results.

19 A. Okay.

20 Q. Is that the mechanism that you were just referring to  
21 now?

22 A. It is, yes.

23 Q. Now, when you implemented that update, did it--did it  
24 lead to any improvement in recipient government departments  
25 implementing recommendations, the fact that you had a follow-up

1 mechanism?

2 A. No, it has not.

3 Q. The last standard is financial and  
4 managerial/administrative autonomy and the availability of  
5 appropriate human material and monetary resources.

6 We've asked you questions, Auditor General, about your  
7 resourcing, and you've answered that, but perhaps there is one  
8 additional question that could be put to you, and it is this:  
9 You said that you are 50 percent below capacity in terms of  
10 staffing?

11 A. Yes.

12 Q. Does that have any impact on your ability to maintain  
13 independence as the Auditor General?

14 A. It doesn't have an impact on our ability to maintain  
15 independence, but it does have an impact on our ability to  
16 adequately cover the subjects that we would like to--and I  
17 mentioned earlier that when we were focused on doing the  
18 financial audits, in an attempt to bring those up to date, no  
19 BFM audits were being performed because the other staff had to  
20 be participating in this process.

21 I am very aware of the fact that we need to build a  
22 BFM section so that we can actually cover more ground on various  
23 topics because it's important to have a presence on those  
24 projects, even if, as you're pointing out now, a lot of the  
25 recommendations are not implemented? At least the public is

1 aware of what is happening, so it's something that I would like  
2 to see happen in that I would like to see more staffing of the  
3 BFM section. And I know that my audit manager is sitting there  
4 looking at me and thinking, hey, you know we need staff in the  
5 financial audit section, too, and that is, indeed, the case.

6           So, basically I think last year I did a proposal to  
7 Human Resources where I would like to change the organization's  
8 structure where we have more higher level auditors and possibly  
9 even made some of the lower levels because more and more we are  
10 finding that we have to change the way we audit, and it requires  
11 a greater level of competence. So, I am willing to give up some  
12 of the lower levels if I can get a change at the higher levels.  
13 I the last time I spoke to someone from HR, I was told that  
14 someone was assigned to assist us with this process but it  
15 hasn't yet moved forward.

16           Q.    Just so that we can be clear on the Transcript, and  
17 with respect to your audit manager, but which is the section  
18 that you would prioritize in terms of--I didn't quite catch the  
19 name of it?

20           A.    The "value for money" section.

21                   The staff is decided into two sections. One section  
22 deals with financial audits which would look at Statutory  
23 Boards, and the Treasury accounts and anything that has to do  
24 with a lot of numbers.

25                   The other section deals with value for money, which

1 looks at projects and programmes, and special audits usually are  
2 "value for money" audits, so I was basically saying that we need  
3 more staffing for "value for money" sections so that we can do  
4 more of those types of audits. And also aware that we need more  
5 staff in a financial audit section because I think my audit  
6 manager is a little overworked.

7 Q. If we could go, if you're still in the 2016 report, if  
8 you go to page 469 in that Report, please. If, Ms Webster, I  
9 could just draw your attention to paragraph 13. You say: "The  
10 Accountant General's submissions did not include an Abstract  
11 Statement with traditionally records the revenue and expenditure  
12 activity of the consolidated and development funds along with  
13 the changes in the other Balance Sheet items. The current  
14 legislation needs to be updated to adopt the more modern format  
15 of the statements. My transmission of the 2016 accounts  
16 includes signed copies of the statements of assets and  
17 liabilities, statements of operations and statement of changes  
18 in fund balance".

19 Now, this is a point that's made in earlier reporters,  
20 going back to your 2013 Report. Could you just clarify for the  
21 Commissioner, firstly, what's the current legislation being  
22 referred to?

23 A. Am I allowed to read this?

24 The current legislation would be the public finance  
25 management regulations.

1 Q. And you say it needs to be updated to adopt the more  
2 modern format of the statements. What is meant by adopting the  
3 more modern format of the statements.

4 A. In 2012, there was legislation passed that requires--I  
5 think a motion was earlier--the Accountant General to adopt more  
6 such type statements. In preparation for that, the format of  
7 the statements were changed to a more commercial type. If you  
8 look at the statements from 20--I think it's from 2012 moving  
9 forward, they actually look different from the prior years.

10 In preparation for that change, the statements were  
11 moved into a more commercial type format that did not include  
12 what we call the "Abstract Statement".

13 The Abstract Statement is almost a consolidation of  
14 the Statement of Assets and Liabilities and the Balance Sheet  
15 together in one document, pretty much. And what it is saying is  
16 that we have changed the way we do things, we have changed the  
17 way we prepare the statements, and we need to change the  
18 legislation, and frankly if we don't change the legislation,  
19 then we really should be producing an Abstract Statement to  
20 ensure compliance with what the law provides.

21 Q. And just help me with this, what is an Abstract  
22 Statement?

23 A. It's a combination--especially a combination of the  
24 Income Statement and the Balance Sheet. But instead of showing  
25 assets on the bottom of it, it shows a change from one year to

1 the next. For instance, if the cash changed from 1 million to  
2 5 million, the Abstract Statement would show the 4 million, the  
3 difference between the two on the bottom of it in the Balance  
4 Sheet section.

5 It's an old type of statement--it's a very old format  
6 for public Financial Statements.

7 Q. So, you mentioned--if we go in this report to  
8 page 471. In this report, and again we don't need to bring it  
9 up, but one of the points you've made--and this is your 2016  
10 Report--was that the financial section and Accountant General  
11 were responsible for preparing a fair presentation of Financial  
12 Statements in accordance with IPSAS Standards, so IPSAS stands  
13 for "International Public Sector Accounting Standards"?

14 A. That's correct.

15 Q. And for implementing and maintaining a system of  
16 internal controls to provide reasonable assurance that assets  
17 are safeguarded, transactions are properly authorized and  
18 recorded in compliance with legislative and regulatory  
19 requirements.

20 Now, at 23 you make the point that there has not been  
21 a full adoption of IPSAS, which requires consolidation of Public  
22 Sector account across all government-owned entities, and I think  
23 your evidence to the Commissioner has been that this change was  
24 brought in in 2012. Here we are in 2016. What's the present  
25 position?



1           A.    The present position is the same.

2                    The 2017 statements that we received was actually an  
3 attempt to move into IPSAS, and those are the ones that have not  
4 been satisfied, and those are the statements that we had some  
5 issue with, and we wrote it back to the Accountant General.

6                    So, there is an effort to actually move towards IPSAS  
7 standards.

8                    The comment here that I have is that it requires  
9 consolidation of Public Sector accounts across all government  
10 entities. That is relevant for Accrual Basis accounting, and  
11 what I have noted in the last set of statements, the 2017  
12 statements that were submitted to us, is that those were  
13 prepared on a Cash Basis and that would not then require this  
14 consolidation that has been mentioned here.

15           Q.    But stepping back from that, when did you get the 2017  
16 Financial Statements sent to you?

17           A.    I would have to check the date, but I believe it was  
18 2019.

19           Q.    So, as of 2019, although there had been an attempt to  
20 produce IPSAS-compliant statements, in your view, it still  
21 hadn't been fully adopted?

22           A.    No, it has not yet. I would have to wait--what I  
23 would say is that the efforts are actually being made now as we  
24 speak to implement IPSAS standards.

25           Q.    So, we're now in 2021, the legislation came in in

1 2012, and your expectation--you would be able to check that when  
2 you get the 2018 Financial Statements sent through to you?

3 A. The 2017.

4 Q. When the 2017 gets returned back to you?

5 A. And--the legislation was passed without consideration  
6 as to whether or not the Treasury was in a position to produce  
7 IPSAS standard statements, and that there should have been some  
8 period of time to allow the Treasury to perhaps go through the  
9 training, get the resources and everything in order to be able  
10 to implement IPSAS standards, which is no small thing.

11 Q. And without Financial Statements that meet IPSAS  
12 standards, you can't complete your audit?

13 A. Without Financial Statements period I cannot complete  
14 my audit.

15 Because we were attempting to get the Financial  
16 Statements done and get them ready--available to assist with  
17 more financing, my recommendation at the time, when I was doing  
18 the earlier ones, is that we should do to 2017 with the prior  
19 standards, and then in--so that we can actually get those  
20 finished and move forward.

21 And then from 2018 forward, we can then or into IPSAS  
22 because, as I mentioned earlier, moving into IPSAS is not--is  
23 not a directly--it's not an easy process. We anticipated that  
24 there would be hiccups, so my thinking was that we could get  
25 those out of the way and then we can deal with the IPSAS

1 standards because we know that we're going to have some teething  
2 issues moving into those.

3 I think at the time the Treasury wanted to--was eager  
4 to get started with IPSAS, and the consultant who was there at  
5 the time, his contract was coming to an end, and he also wanted  
6 to present his last set of statements with the IPSAS  
7 certification, and what resulted is that we got statements that  
8 were not sufficiently developed, not sufficiently complete.

9 Q. I see.

10 MR RAWAT: Commissioner, I've come to the end of a  
11 particular topic. I've obviously got a new topic to go on to,  
12 but I wonder whether this might be a convenient time to stop for  
13 lunch.

14 COMMISSIONER HICKINBOTTOM: Yes, for about half an  
15 hour?

16 MR RAWAT: Yes, that will be fine. Thank you.

17 COMMISSIONER HICKINBOTTOM: We will stop there and  
18 come back at about half past one. Thank you, Ms Webster.

19 THE WITNESS: Thank you.

20 (Recess.)

21 COMMISSIONER HICKINBOTTOM: Good. Thank you,  
22 Mr Rawat. I think we're ready to resume. Thank you.

23 MR RAWAT: Thank you, Commissioner.

24 BY MR RAWAT:

25 Q. Ms Webster, thank you for coming back.

1 I've asked you all the questions I have in relation to  
2 your Annual Reports. What I'd like to do now is to turn to the  
3 other types of reports that the Auditor produced, the Section 12  
4 reports, the "value for money" report, and also the Section 20  
5 reports.

6 Could I begin, though, by asking one general question:  
7 I think on the information that you've provided--that you  
8 provided to the Commissioner, and that's in terms of publicly  
9 available information about the work of your office. The Audit  
10 Office submitted 12 "value for money" reports between 2010 and  
11 2015, and no Section 20 reports and, since 2015, it's issued two  
12 Section 20 reports and, I think, no Section 12 reports. Is  
13 there any reason for that shift from Section 12 to Section 20?

14 A. The two--or rather the four reports that were issued  
15 on a Section 20 were actually issued as 20 Section--Section 20  
16 reports because the then-sitting Governor expressed an interest  
17 in those topics and actually made a specific request that these  
18 areas be looked at.

19 Q. I see. So, where it becomes a Section 20 report, it's  
20 at the instigation of the Governor.

21 A. No. It's at my discretion. I could still issue those  
22 at--as--Section--as "value for money" audits but--

23 COMMISSIONER HICKINBOTTOM: You said that you sent  
24 them to the Governor--

25 THE WITNESS: I sent them to the Governor.

1           COMMISSIONER HICKINBOTTOM: --because he'd made the  
2 request.

3           THE WITNESS: Yes, because--

4           COMMISSIONER HICKINBOTTOM: But it was your decision  
5 to investigate--to audit?

6           THE WITNESS: It was my decision to follow through  
7 with the investigation.

8           In fact, when it was brought to me, what I said is  
9 that I'd have a look at it and do a preliminary review to see  
10 whether or not it was an area that we could actually look at,  
11 that we would want to look at it. That was my...

12           BY MR RAWAT:

13           Q. And is there ever a situation where you will begin,  
14 for example, a "value for money" investigation and then  
15 ultimately decide not to submit your report?

16           A. At all?

17           Q. Yes.

18           A. Only where the report doesn't contain sufficient  
19 evidence, in my view, to make it public.

20           Q. I see.

21           A. Yeah.

22           Q. Because what you do--I suppose what you know is that,  
23 once it leaves your office and you've submitted it to the House  
24 of Assembly or a Minister or the Governor, ultimately it will  
25 end up public.

1           A.    Ultimately, it ends up public, yes.

2           Q.    I'd like just to look at some of the reports in some  
3 detail and just take you through some of them as examples of the  
4 work that you do.  If I explain, what I'd like to do is just  
5 summarise the content of the report and perhaps ask you a few  
6 questions as we go through.  But if at any point you feel that  
7 my summary is inadequate or you would like to add some detail,  
8 please do so.

9                    The first one I'd like to take you to is at your--it's  
10 page 632, which is probably in the second bundle that you  
11 received from the Commission.

12                   If you have the right page, you should see the first  
13 page, the front page of a report from your office on the Virgin  
14 Islands Neighbourhood Partnership Project.

15           A.    That's right, yes.

16           Q.    And that, I think, was produced in--or published in  
17 January 2013.

18           A.    Correct.

19           Q.    Now, if I take you to 633--

20           A.    That date that you mentioned--as a matter of fact, I'm  
21 not seeing the date on the report.

22           Q.    I wasn't able to find a date on the report itself.

23           A.    I think the date might have been a little earlier than  
24 that, so let me verify that date.

25           Q.    Thank you.

1           Just to give some background--and we can do that, and  
2 if you'll confirm this is right--if you look at paragraph 7 of  
3 your--of the report and cross-refer it to paragraph 1, what's  
4 said there is that: "In an effort to address increasing  
5 incidences of poor student performance and delinquency within  
6 the education and juvenile criminal-justice systems, the  
7 Ministry of Education and Culture undertook an initiative geared  
8 towards assisting young people who have been identified as 'at  
9 risk'". And that initiative was the Virgin Islands  
10 Neighbourhood Partnership Project.

11           And so, what the Ministry did was to enter into four  
12 contracts with Claude Ottley Consulting Ltd, which you des--you  
13 then refer and I will adopt this as--the nomenclature as "the  
14 Consultant".

15           A. That's right.

16           Q. And what the report explains was that the first  
17 contract was dated the 31st of October 2008, and the requirement  
18 under the contract was to "establish a neighbourhood partnership  
19 between key stakeholders of the community such as churches,  
20 schools, parents and organizations to work for the common good  
21 of the youth and to guide them in holistic, wholesome approach  
22 to life".

23           And under the contract, "the Consultant was tasked  
24 with training volunteers, managing the project, providing  
25 technical support for capacity-building projects, and

1 strengthening the resiliency skills of youth at the primary and  
2 secondary schools levels".

3 That contract was for--and I think we can see that on  
4 the next page at 10 that, first contract with the contractual  
5 period of one year, was for \$98,400; is that right.

6 A. That's correct.

7 Q. But then what happened was that, in August 2009--and  
8 this is at your page--your paragraph 11, "the Ministry executed  
9 a second contract with Claude Ottley Consulting Ltd. for an  
10 additional \$250,000".

11 A. That's correct.

12 Q. And what that did was that the Consultant would "act  
13 as a coordinator of the Virgin Islands Neighbourhood Partnership  
14 Project and undertake the responsibility to bring together key  
15 stakeholder in the community, ie churches, schools, parents and  
16 community".

17 And what you say--or the report says: "It appears  
18 that the initial contract was intended to engage the consultant  
19 as director of the programme and the second was to provide  
20 funding to resource the implementation and operation of the  
21 programme in the form of professional support, training,  
22 monitoring and to provide necessary education and recreational  
23 resources to the participating centers".

24 Now, what you--if we look at paragraph 14, you've  
25 recorded there that "The programme was intended to be territory



1 wide and inclusive". So it was intended to operate in Tortola,  
2 Virgin Gorda, and Anegada; is that right?

3 A. That's correct.

4 Q. And then in December 2009, and in January 2010, each  
5 of the two contracts were renewed for a further year for the  
6 same contract sums, and, therefore, that meant the total  
7 contract sums paid to Claude Ottley Consulting Ltd. for two  
8 years was 698,800.

9 A. That's what our contract sounds awarded. I think the  
10 last contract wasn't fully paid out for various reasons.

11 Q. Yep, can I come back to that as we go through your  
12 report.

13 But just sort of to understand how the contracts  
14 operate together, so the first contract, which is the 98,400  
15 one, that would be a petty contract?

16 A. Yes, it would be.

17 Q. But when it comes to then the second contract, which  
18 obviously is over the 100,000 threshold, is there--would  
19 there--if a--if there is already a petty contract in place,  
20 would there be a need to go through a tender process for the  
21 second contract?

22 A. The second contract for \$250,000 should have been  
23 taken to Cabinet and had the process waived, if it were not put  
24 to tender; failing that, it should have been put to tender.

25 We can see how the two things are tied in together,

1 and, in fact, when you look at the project as a whole, the  
2 contract is actually 98 plus 250, which is 300--almost  
3 \$300,000-plus, and together those should have been tendered.  
4 The Government should have tendered this as a--needed a  
5 consultant to do these various tasks throughout the Territory,  
6 and that would have been the proper way to go about this  
7 particular issue.

8           As it stands, we don't exactly know how the contractor  
9 was reported, and we don't know how the amounts were arrived at.

10           Q.    If we look at paragraph 3, you set out there the audit  
11 purpose, scope, and methodology, and at (paragraph) 3 you say  
12 that the object of the audit was to determine whether value for  
13 money was achieved in both the consultancy and the operational  
14 contracts issued for the programme.

15           And in terms of your methodology, you held interviews  
16 with relevant persons in the Ministry. You also have  
17 interviewed those who participated in the programme at various  
18 centers. You looked at the files, and you then looked at those  
19 who had--at centers and churches who had been listed as  
20 beneficiaries, some of whom could not be used for interview.

21           The last point you make in that paragraph at 4, you  
22 say: "Additional information was requested in writing from  
23 Mr Claude Ottley Cline, the Consultant, but no response was  
24 received".

25           So is your approach, in terms of methodology or just

1 in general that you give everybody an opportunity to contribute  
2 to your report and to feed into it?

3 A. That's correct, yes.

4 Q. And do--does everybody--or at least those directly  
5 affected, would they see a copy of this report before it's  
6 finalised?

7 A. It goes to the Ministry, and it's for the Ministry to  
8 share it with the relevant persons.

9 Q. Because probably is that because you're primarily--or  
10 one of the primary role of an audit is to look at how public  
11 officials have spent public money?

12 A. Yes. It's a part of the transparency process,  
13 transparency and accountability process.

14 Q. Can I just take you now to the findings that you made  
15 in this report. And if we start at paragraph 8 with--or--yes,  
16 on 633.

17 At paragraph 6, we see the first finding that you  
18 make, and that is that "The Ministry was unable to present  
19 verifiable details of achievements under the first contract or  
20 to provide explanation as to the need for a second contract with  
21 the same terms".

22 Now, we've looked at the details of the contract  
23 already, but if you go to page--the next page, on paragraph 12,  
24 what you say at paragraph 12 is "The second contract"--which is  
25 the \$250,000.00 contract--"was issued without receiving any

1 formal progress reports, written strategy or implementation plan  
2 from the Consultant. It is unclear how the amount of  
3 \$250,000.00 was determined as no proposal was provided in  
4 support of the amount".

5           So, just clarify that or expand on that a little.  
6 What were you expecting to find as the Auditor and what did you  
7 find?

8           A. We were expecting to find within the Ministry's file a  
9 proposal that would outline how a consultant would work out  
10 setting up these programmes, what resources would be used in  
11 these programmes, how these people would be paid, and what other  
12 responses, for instance, that--I think there's reference made to  
13 a curriculum that never materialised, reference made to actual  
14 assets like computers that should have been put in the centers  
15 that didn't materialise.

16           So, basically, you would have expected to see a  
17 proposal listing all the things that the consultants would be  
18 doing and related costs, and there was nothing--nothing that  
19 could support the \$250,000 or any other amount, for that matter.

20           Q. If you go, then, to 13 on the same page, you have  
21 recorded there under "PERFORMANCE ON CONTRACT 2009-2010" the  
22 following: "The information received indicates that performance  
23 was either non-existent or lacking in a number of the areas  
24 stipulated under the contract".

25           Now, you say--and this is a 14--we've already touched

1 on this that "The programme was intended to be territory wide  
2 and inclusive. This meant that churches, schools and  
3 communities on the three largest islands were to be mobilized  
4 and actively involved".

5 You then say: "An annual progress report submitted by  
6 the Consultant for the period November 2008 - October 2009  
7 discussed the activities of VINPP in general terms but omitted  
8 important information that would allow for an assessment of the  
9 programme's effectiveness. The report failed to provide  
10 information about:

11 The names of the participating" and "churches;  
12 The number of volunteers at each center;  
13 The number of students attending each center;  
14 Other resources used", like guidance counselors;  
15 And the "results of benchmarking and research  
16 performed at other similar programmes abroad".

17 So you seem to be saying that this progress report,  
18 the annual progress report, was inadequate and not fit for  
19 purpose. In terms of the information that you list as being  
20 absent, why was it that you expected such information to be  
21 present?

22 A. When you consider the value of the contracts, the  
23 amount of money that the Government was putting into this  
24 programme, we would have expected a more detailed report, more  
25 regular reports, and, frankly, better follow-up from the

1 Ministry itself on what was happening with all this money,  
2 rather than just sending it out and not knowing exactly how it  
3 was spent.

4 Q. Would you have expected--this is the reference at 12  
5 to formal progress reports, this is a contract that, in the  
6 first instance, lasts one year and then is extended into a  
7 second year, would you have expected the Ministry to have wanted  
8 regular progress reports from the Consultant?

9 A. Yes, definitely.

10 Q. And how regular would you see as good practice?

11 A. As good practice, it should be monthly, but quarterly  
12 would also work.

13 As it stood, we weren't able to find any progress  
14 reports, any kind of progress reports aside from this one t that  
15 came in, I think, at the end of the year or at the end of the  
16 period, and that publicly was only submitted so that the  
17 programme could continue.

18 But in between, throughout the year, there was nothing  
19 on file to indicate that the Ministry knew what was going on  
20 with this programme.

21 Q. And so, the Ministry, in your view, wasn't exercising  
22 sufficient oversight under this contract.

23 A. No. It's insufficient oversight, yes.

24 Q. At 15 you look at--you begin to look at the  
25 performance of the contract by looking at--and so, for example,

1 what you say is that "Four centers were confirmed as operating  
2 in 2009 with an estimated forty-one registered students as shown  
3 in the table that follows". Now, the four centers that you  
4 listed, those are on Tortola?

5 A. The churches are on Tortola.

6 COMMISSIONER HICKINBOTTOM: I think the middle two are  
7 Virgin Gorda--does VG mean Virgin Gorda?

8 THE WITNESS: VG is Virgin Gorda, yes.

9 BY MR RAWAT:

10 Q. So, you've got--so what you have is the New Testament  
11 Church in Tortola that had a summer programme in 2009 at which  
12 six students attended but then none attended in 2010.

13 A. I don't believe there was a programme in 2010.

14 Q. So, there's no programme at that church in 2010.

15 The New Life Baptist Church was the only active center  
16 in 2010, then, and that had 18 students in 2009 but that had  
17 dropped to 10 students in 2010.

18 A. That's correct.

19 Q. And then in terms of Virgin Gorda, there was the  
20 Church of God of Holiness, which had 11 students in 2009, but  
21 nothing in 2010.

22 A. I believe they discontinued the programme in 2010.

23 Q. It discontinued in 2010.

24 And then you had the Sanctuary of Hope, which had six  
25 students in 2009 but then only three in 2010.

1           So, in the first year, 41 students in total because,  
2 in Anegada--the programme wasn't even commenced in Anegada, was  
3 it?

4           A.    No, it was not.

5           Q.    So--and then in 2010, when the contracts were renewed,  
6 so you had again a contract sum for \$348,000, 13 students were  
7 dealt with. Is that how to understand your report?

8           A.    I'm sorry?

9           Q.    Is that--have I understood the report correctly?

10          A.    Yes, you have.

11          Q.    So there's a--in the year, second year, there is a  
12 substantial dropoff of the numbers of students that are actually  
13 being involved in the programme in any event.

14          A.    That's correct.

15          Q.    You--I mean you make the point, and this is at  
16 paragraph 24, "Despite receiving funding for 2010, the Virgin  
17 Islands Neighborhood Partnership Project (VINPP) did not  
18 organize or host any programmes during the 2010 summer break".  
19 That was in Tortola. And-- "but instead it assigned college  
20 aids", its "(college students who had assisted in the 2009  
21 summer programme) to assist with the Elmore Stoutt High School  
22 summer programme".

23                So, it put its resource, in terms of its human  
24 resource, into an existing other programme.

25          A.    That's correct.



1 Q. You also make a note about feedback from centers on  
2 that island and you say: "The comments from persons who worked  
3 with the New Life Baptist Church detailed the need for materials  
4 and tools to facilitate teaching" and "learning. There was also  
5 a suggestion that the resource person who worked with the  
6 students should be compensated for their time and effort with a  
7 stipend" And you conclude: It should be noted that the  
8 Consultant had been awarded two contracts totaling \$500,000 for  
9 the sole purpose of ensuring that the participating centers were  
10 adequately resourced".

11 And was the feedback from those centers that they  
12 weren't adequately resourced?

13 A. The feedback was that they were not adequately  
14 resourced.

15 Q. And we've gone through the Virgin Gorda, which you say  
16 in relation to that "lack of support and structure prevented the  
17 programme from achieving its greater objectives".

18 And again, if we look under your heading "Feedback  
19 from Virgin Gorda Centers", which is at 31, you say: "[The]  
20 feedback received from church leaders on Virgin Gorda indicated  
21 a lot of enthusiasm initially for the initiative by the churches  
22 and parents. This however waned after financial and other  
23 support needed to make it viable was not received".

24 You continue: "The main comments received from the  
25 centers in Virgin Gorda had to do with the insufficient support

1 by the Consultant in terms of resources, oversight and guidance.  
2 The participating centers were promised funding of \$5,000.00  
3 each which would assist in defraying the cost of running the  
4 programme and a standardized curriculum. They were also told  
5 there would be regular oversight, guidance and follow up by the  
6 Consultant".

7 "One of the pastors commented that the financial  
8 support received came late in the programme [and] was a fraction  
9 of the amount promised, the standardized curriculum was never  
10 received and the programme was largely unstructured. The  
11 resource persons used their initiative and resorted to reviewing  
12 the children's daily work and assisting them in weak areas while  
13 reinforcing other areas in which they did well".

14 "After the programme commenced the centers on Gorda  
15 reported they were visited by VINPP once. This visit spurned  
16 some displeasure with the church leaders because it was felt  
17 that the Consultant and VINPP had not delivered on their  
18 promises and were now seeking to take credit for work that had  
19 been done".

20 And so, was--to summarise it, and correct me if you  
21 don't accept the summary, but the views from Virgin Gorda, from  
22 leaders on Virgin Gorda, was that the--frankly that the  
23 programme just did not deliver.

24 A. In summary, yes. That was the feedback that we  
25 received.

1           COMMISSIONER HICKINBOTTOM: I mean, I certainly  
2 understand that as a conclusion, just on the information that  
3 you set out. But given there that was no proposal, it's quite  
4 difficult to assess the performance because there is nothing to  
5 assess it against. One would expect a proposal to set out some  
6 performance criteria.

7           THE WITNESS: Exactly.

8           COMMISSIONER HICKINBOTTOM: There's nothing here.  
9 We're sort of trying to assess--or you were assessing the  
10 performance in a sort of vacuum.

11          THE WITNESS: That's true. There are certain  
12 standards that you would expect to be present in a programme  
13 such as this.

14          COMMISSIONER HICKINBOTTOM: In any event, yes.

15          THE WITNESS: In any event, yes.

16          COMMISSIONER HICKINBOTTOM: I see that. Thank you.

17          BY MR RAWAT:

18          Q. And in terms of those standards that you would expect  
19 in a programme such as this, would you expect that the Ministry  
20 would be aware of those standards?

21          A. Yes. The Ministry should be aware of those standards.  
22 In fact, those standards should be brought out up front so that  
23 the Ministry could assess the programme and whether or not it  
24 was suitable for the needs of the Territory. Those would have  
25 been a starting point.

1 Q. If we go to paragraph 37, please, and it's a point  
2 you've already made, Ms Webster, but it--we'll just get the  
3 finding on the Transcript. You say: "The programme was largely  
4 unsupervised by the Ministry throughout the crucial  
5 implementation phase and thereafter". And you make the point  
6 that the contracts did not require the Consultant to provide  
7 regular progress updates to the Ministry.

8 And so, the entire year--is--when you referred to the  
9 "entire year", you were referring to 2009, "was allowed to lapse  
10 without any verification that the programme had been fully and  
11 adequately implemented and was being performed in accordance  
12 with the contracts".

13 Is that right?

14 A. That's correct, yes.

15 Q. And so, in 2009, the Ministry just simply--it just  
16 extended the contract without looking in any way at whether  
17 contract performance had been up to scratch.

18 A. Well, at the end of the first contract, they did  
19 receive that summary report that we looked at, that we discussed  
20 earlier, and based on that, the contract was extended. The  
21 programme was extended.

22 Q. That summary report, did you think that was an  
23 adequate basis to extend the contract?

24 A. I think that was an immediate reason to discontinue,  
25 suspend the programme. It didn't show sufficient results,

1 sufficient outcomes to carry on.

2           And we could see where, even with the extension, the  
3 number of--attendance dropped with the students in 2010 and  
4 eventually have to spend an additional, substantial amount of  
5 money, the programme, a decision was made to discontinue  
6 eventually by the Ministry. So I would say that there was  
7 insufficient assessment by the Ministry before they extended  
8 this programme. They didn't actually go out and talk to the  
9 institutions, the churches, the schools to find out whether or  
10 not the programme was working for them.

11           Q. If we go now to 41, please, on 637, another finding in  
12 this report was: "A number of the payments reported by the  
13 Consultant either conflicted with information presented by other  
14 sources or were without any verifiable association to the  
15 programme". And you say at 41 that: "The Treasury records show  
16 that at 30 September 2010 a total of \$571,800.00 were paid to  
17 Claude Ottley Consulting on" the "four contracts".

18           And if we look at the spending that you--I think what  
19 you then did was looked through the various spendings that were  
20 undertaken by the Consultant. If you go to 44, what you say is  
21 that: "An expenditure spreadsheet submitted by the Consultant  
22 shows spending of \$242,406.99--

23           A. Point 99.

24           Q. --and an unapplied balance of just over 7-and-a-half  
25 thousand during 2009". You could not find any documents "or

1 records in support of this expenditure". And you conclude with:  
2 "We are therefore unable to verify the validity of the amounts  
3 reported".

4 And so, was that a surprise that you couldn't find any  
5 records whatsoever?

6 A. No. That was not a surprise, even the way the  
7 programme was being run and given the lack of oversight.

8 Q. And was it down to the Ministry to ensure that the  
9 Consultant submitted appropriate records to justify how money  
10 was being spent?

11 A. It was, yes.

12 Q. And what you say about specific sums of money was--and  
13 this is, if you look--if we take it in turn, there were grants  
14 of \$27,200 made. I think this must be by the Consultant, and  
15 you say that: "The grant amounts stated in the Consultant's  
16 report appear overstated".

17 I was wondering if you could just explain to the  
18 Commissioner a little bit more detail of that finding. What was  
19 the basis for that conclusion?

20 A. We--after receiving the amounts submitted by the--from  
21 the Ministry on the programme spending, we actually contacted  
22 the various churches and institutions to verify. Since we had  
23 no other information from the consultant, no checks to verify  
24 this against, no statements, nothing signed off by the  
25 institutions. We contacted them personally and asked them

1 whether they had received money from the Consultant, and when  
2 they received this and how much they received.

3 And consistently, all of the institutions that we  
4 contacted said that they received substantially less than what  
5 was reported in the Consultant's report.

6 For instance, the Consultant, in a number of cases,  
7 said he had given \$2,000 to various institutions, and when we  
8 contacted them, they said, "No, we only received \$1,000, and we  
9 received it very late. And, in fact, he had promised us \$5,000.  
10 We don't know what happened with that".

11 In another case, the Consultant said he had given  
12 \$5,000 to one entity, and they said, "No, we received two. Why  
13 do you think it was five?" And that was consistently the  
14 response that we got back from the institutions that we  
15 contacted.

16 Q. Another item of expenditure that you looked at was a  
17 curriculum support system, which was valued at \$10,000, and the  
18 finding that the report makes is: "There was no evidence that a  
19 curriculum support system was supplied to any of the  
20 participating centers". And that was the basis that--or what  
21 you say is that "The Consultant's report shows that an amount of  
22 \$10,000.00 was invested in a curriculum support system purchased  
23 from Mifflin Computer Support". But: "The churches interviewed  
24 reported that neither a curriculum nor support material was  
25 provided". And so, was that the basis on which you called into

1 question this sum as a piece of expenditure?

2 A. Yes.

3 And the institutions that we contacted all said that  
4 they did not receive any such resource. They did not  
5 receive--they were promised a curriculum but never received it.

6 Q. What you then also go on to is look at is setup and  
7 operation, which came to \$38,000, and the finding you make is  
8 that: "Setup and operation costs appear to represent a  
9 duplication of payment to the Consultant". Again, could you  
10 just explain to the Commissioner why there was a duplication of  
11 payment?

12 A. I'm attempting to refresh my memory on this particular  
13 section.

14 Essentially, this money was being paid directly to the  
15 Consultant, the \$38,000. So it was we paid to him for services  
16 that he had been contracted to perform under the initial  
17 contract, the first contract, for \$98,000. The Government gave  
18 him \$98,000 to set up and run the programme, and then he was  
19 paying himself an additional \$38,000 to set up and run the  
20 programme. And that's why we say that it appears to be a  
21 duplication.

22 Q. I see. So because the first contract, the \$98,000  
23 contract, was renewed, wasn't it?

24 A. It was.

25 Q. So, the consultant effectively got \$98,000 each year--



1 A. That's correct.

2 Q. --to run as effectively his payment for running the  
3 scheme.

4 A. The programme.

5 Q. The programme. Let's call it "programme", then.

6 Whereas the second contract was actually for funding  
7 the programme--the resources, the curriculum, et cetera. But  
8 what you found--is this right?--is that there was an additional  
9 38,000 on top that was paid to the Consultant?

10 A. Yes.

11 COMMISSIONER HICKINBOTTOM: The consultant paid  
12 himself out of the second contract for services already covered  
13 by the first contract.

14 BY MR RAWAT:

15 Q. If we then go to the next item that you highlighted in  
16 the report, and that is "Technical Support Programme Design" for  
17 \$43,000, and you say there: "Charges appear unsupported and  
18 unexplained in relation to the programme". And you explain that  
19 "the Report--and this is the Report from the Consultant--shows  
20 monthly payments of 3,500 to a company called MNP Technical  
21 Support for a total of \$43,000. There was no information on the  
22 purpose of these payments and how they benefited the programme".  
23 And without that information, you called that payment of 43,000  
24 into question; is that right?

25 A. That's correct.

1 Q. You then highlighted a sum of money which was "field  
2 coordination \$19,000", and you say: "Although regular payments  
3 were made for field coordination, the information received  
4 indicated there was insufficient follow-up with a few  
5 participating centers".

6 And so, how that 19,000 broke down, if you look at  
7 your paragraph 56, was that there were monthly payments of 1,500  
8 to God Folks Media Group who therefore received a total of  
9 \$18,000 during the year, and a payment to one of the  
10 facilitators/volunteers for \$1,000. That's how the money broke  
11 down.

12 But what you then go on to say was that: "One of the  
13 major complaints made by participating Pastors on the Virgin  
14 Gorda was the lack of coordination, follow-up and follow-through  
15 by the consultant. Churches on Virgin Gorda reported receiving  
16 only one visit for the duration of the after school programme.  
17 No programme on Anegada. On Tortola, the only churches actively  
18 participating were New Life Baptist Church, where the programme  
19 was based, which caters to less than 20 students and the New  
20 Testament Church of God for a few weeks in the summer of 2009".

21 So, does it come down to this, that on the information  
22 that you had as the Auditor, you couldn't correlate the sum  
23 money, the total of 19,000 with any evidence to show that there  
24 had actually been any actual field coordination?

25 A. That's correct.

1 Q. The next item that you picked up was  
2 "travel/airfare/car rentals", which came to \$19,062 odd. And  
3 the finding there was: "There was no information or reports  
4 with respect to the extensive travel undertaken on how this  
5 related to the development of the programme". What you say is:  
6 "The contract provided that the consultant would visit other  
7 institutions abroad with a view to collecting information on the  
8 best system to be adopted and implemented in the Virgin Islands.  
9 And the expense information submitted by the consultant shows  
10 travel expenses each month, does not provide any detail of where  
11 and for what purpose the expense was incurred. The report  
12 issued by the consultant does not include any discussion of  
13 fact-finding or benchmarking excursions. No reference to travel  
14 or mention of sites visited".

15 And so, does it come down to this, that you had no  
16 evidence of how this amount of travel costs had been incurred at  
17 all?

18 A. That's correct. We couldn't see how this travel, this  
19 expenditure, tied into the programme because there was no  
20 evidence presented to show that it was, in fact, related to this  
21 particular programme.

22 Q. And again, is this a failing of the Ministry, that  
23 should the Ministry have been demanding this sort of detail?

24 A. The Ministry should be asking for this detail, yes.

25 Q. But also would you expect a competent consultant

1 experiencing this sort of provision of this kind of service to  
2 also be aware that they have to provide that kind of detail?

3 A. I would imagine any professional would know that they  
4 have to provide detail of their travel expenses, yes.

5 Q. There was also a charge of \$6,566 for facilities and  
6 personnel costs. And you say in relation to that that "training  
7 of volunteers was restricted the first few weeks of the  
8 programme".

9 So, is the reason that it was queried as a charge,  
10 that given that it was just for the first few weeks, that you  
11 thought the charge--it was too large a figure?

12 A. The reason it was queried is that we had no  
13 information as to what this applied to \$6,566 for training.  
14 There was no supporting information to say that training  
15 actually occurred beyond initial meetings with the various  
16 entities. And I think there was a--one of the institutions on  
17 Virgin Gorda said that there was a training that lasted part of  
18 a day, like a couple of hours, two to three hours--I'm not sure  
19 exactly--and that was the extent of that training.

20 And it's entirely possible that you can hire a  
21 training resource person and pay them that amount of money, but  
22 there was no receipt, there was no kind of record to show that  
23 this amount was actually spent on training. And from what we  
24 knew, the training that was--that actually happened was being  
25 done mostly by the Consultant. I mean, I can go back and check

1 the records on this, but it was a consultant and I think another  
2 person who accompanied him on Virgin Gorda.

3 Q. The next point that the report picks up on is that  
4 there were computer supplies which were said to be allocated to  
5 various centers where the programme was being delivered, and the  
6 cost of that was \$34,000. But does it come down to this,  
7 that--I mean, these computers were supposed to be allocated to  
8 17 sites; and, in your audit, you could not identify any of the  
9 17 sites. None of the centers, which you did interview or speak  
10 to, reported receiving computers.

11 A. That's correct.

12 Q. The only one was the New Life Baptist Center, did  
13 report receiving two refurbished computers, one of which had  
14 stopped working.

15 And so, does it run again to this, that there was no  
16 evidence to show how \$34,000 had been spent on computer  
17 supplies?

18 A. That's correct. And there was no evidence that  
19 computer supplies were actually purchased with this money.

20 Q. The next thing is an allocation of \$29,800 to  
21 FaithBasedComm.Org., and again, is it again just another example  
22 of something where there was no evidence as to what this cost  
23 was for?

24 A. There was no evidence as to how this entity was  
25 related to this programme, for what purpose they were being

1 paid.

2 Q. And then you conclude in your expenses review that the  
3 remaining, and it was for \$15,778, was expenses for overheads,  
4 and charges such as rent, telephone, et cetera, was there any  
5 issue with those expenses at all?

6 A. Aside from the fact that we had no invoices or any  
7 statements that would support the payments, that would have been  
8 our issue, the absence of supporting information in all of these  
9 expenses.

10 Q. This is the point you've made already, but you say at  
11 paragraph 70. "There's no comprehensive Financial Report  
12 provided for 2010", so that's the second year of the contract  
13 running of the programme running.

14 A. That's right.

15 Q. You say: "Despite the sums involved, the VINPP did  
16 not prepare and present a Financial Report on its activity for  
17 2010. Instead, the below unsupported summary (excerpted) was  
18 received from the consultant in October 2010 with many of the  
19 amounts slated as allocations".

20 Now, first question is in terms of good practice,  
21 given the sums involved, should the Ministry have been  
22 requesting a comprehensive Financial Report?

23 A. Yes, sir, they should have been.

24 Q. And should the consultants have been preparing  
25 appropriate financial reports?

1 A. Without being requested by the Ministry, yes.

2 Q. Now, you say "many of the amounts are slated as  
3 allocations". Could you just explain what's meant by an  
4 "allocation"?

5 A. An allocation, and I'm interpreting what he has here,  
6 what I know an allocation is is money set aside for a particular  
7 purpose.

8 Q. And so, the largest sum allocated is \$110,000, and  
9 it's just distributed to "Faith base organization". Do you  
10 think given the size of that sum of that allocation that is an  
11 adequate explanation for how the money has been allocated?

12 A. No, it is not.

13 Q. Looking at any of those entries, including--do you  
14 think any of the detail there is sufficient either for an audit  
15 or for a ministry to understand how public money is being spent?

16 A. No. It is not because it adds all the way up to  
17 \$250,000.

18 Q. And you say at 72: "The only supported expenditure  
19 for 2010 were payments totaling \$4,462".

20 So, aside from that, in 2010, you could not find any  
21 supporting evidence for any other sum of money?

22 A. That's correct.

23 Q. And in 2010, that would be--I mean, leaving aside the  
24 first contract would have continued, that's \$4,462 justified out  
25 of a total sum of \$250,000?

1           COMMISSIONER HICKINBOTTOM: Well, no--well, looking at  
2 this on the mathematics, there is the total of \$250,000 which  
3 was the contract sum plus, I think, another 97,000 for the  
4 consultancy contract, so that was about £350,000 pounds.

5           Looking at paragraph 73, of that, the consultant  
6 received £82,000 on the smaller contract and £125,000 that is  
7 half of the main contract. So, the consultant seems to have  
8 received £207,000 of the total contract sum of about \$350,000,  
9 sorry, but the only supported expenditure were \$4,462; is that  
10 right as a sort of matter of mathematics, Ms Webster?

11           THE WITNESS: Yes, that is correct. That's a fair  
12 summary.

13           BY MR RAWAT:

14           Q. If we go to 642, please, Ms Webster, what you've said  
15 in your conclusion is this: "The Virgin Islands neighborhood  
16 partnership programme was a ministry initiative to mobilize and  
17 organize the community in an effort to provide assistance and  
18 guidance to some of the most fragile and volatile youth in the  
19 system. The consultant engaged to implement this initiative was  
20 able to generate initial public enthusiasm for action and  
21 mobilize churches in the community toto get involved in the  
22 effort but ultimately fell short on a number of the  
23 contractually stipulated deliverables. Significantly, the  
24 capacity-building aspect which was required for sustainability  
25 and long-term impact was severely lacking. As a result, the



1 initial confidence and goodwill developed with the volunteers  
2 and centers was eroded. Additionally, the funding provided by  
3 the Government to finance this initiative has not been fully  
4 accounted for by the consultant".

5           You then go on to make a number of recommendations.  
6 You say at 75: "The following are recommended for an improved  
7 approach to contract management and the achievement of better  
8 value for money.

9           "(1), for all major projects and programmes to have  
10 been administered via contract, the Ministry should require a  
11 detailed proposal for implementation, execution and reporting  
12 (including resources to be applied, support systems and costing)  
13 before issuing a contract.

14           "(2), programmes such as this require regular  
15 oversight. This should be done by an officer within the  
16 Ministry who has a clear understanding of the contracts' terms,  
17 programme milestones and expected outcomes.

18           "(3), consultants must be required to submit  
19 comprehensive reports which relate directly to the objectives  
20 and outcomes stipulated in their contracts. This should include  
21 verifiable data. A required level of quality and standards  
22 should be communicated to the consultant and regular reviews  
23 undertaken to ensure that these are maintained.

24           "(4), interim reports should be required for  
25 independent projects/programmes of this magnitude. This will

1 allow the Ministry to see the programme's progress, challenges  
2 and results on an ongoing basis. It would also lead to improved  
3 accountability and reduce the risk of value for money for the  
4 Government.

5 "(5), the Ministry should verify and assess the  
6 progress and achievements of the programme it sponsors prior to  
7 issuing subsequent contracts.

8 "(6), full accounting for the funds advanced under  
9 contracts two of 2009 and one of 2010 demonstrating how these  
10 were applied for the purposes of project should be submitted.  
11 Amounts that were either not applied for the purpose of the  
12 programme or cannot be supported by verifiable documentation  
13 should be reimbursed to the Government.

14 "(7), all documents relating to the contracts issued  
15 by the Ministry, from point of inception to current, should be  
16 maintained on the same file".

17 Now, taking these together, your recommendations are  
18 not just directed to this one contract, are they?

19 A. No, they're not.

20 Q. They're directed to trying to improve practice in the  
21 Ministry.

22 And in terms of a threshold sum of money at which  
23 these sort of measures should be implemented, for example,  
24 having an officer overseeing the contract or requiring regular  
25 updates from a consultant, at what level of sum should the--any

1 Ministry be starting to implement those measures?

2 A. Nothing to venture to try to put a value on that, I  
3 believe once Government money is being spent and people are  
4 being engaged to perform service to the Government on a contract  
5 or an agreement has been made, there should be some oversight.  
6 There should be some regular oversight. There should be (drop  
7 in audio) at the end of the day that the money that we spent for  
8 a particular programme that we were able to get that outcome,  
9 and somebody should be monitoring it throughout the period to  
10 ensure that what we are paying for we are actually getting.

11 And what has happened here was that we were paying  
12 money with the assumption that something was happening, and  
13 nobody was actually checking to make sure that something was  
14 happening.

15 So, without putting an amount on that, I would say  
16 that once the Government is engaging someone to perform a  
17 service, there should be someone within the Ministry who has the  
18 responsibility to make sure that that individual understands  
19 what is expected of them and they're actually following through  
20 on that particular purpose. And if those two things don't mesh,  
21 we shouldn't be paying that person, we should not be paying out  
22 money to an individual who does not understand what he's  
23 supposed to be doing and who is not delivering on what is  
24 expected of him.

25 Q. And when we spoke earlier, you made the point that you

1 can't enforce recommendations--they're either accepted or  
2 they're not--but looking at the more general recommendations  
3 that you made to the Ministry of Education and Culture, from  
4 your recollection, was there a positive reaction to the  
5 recommendations that you made in this Report?

6 A. I don't recall there being a positive reaction. I do  
7 recall the report actually--I think this was one that was in the  
8 public.

9 And I can recall from outside, for instance, one of  
10 the institutions--somebody from one of the churches who ran into  
11 this, and she actually contacted us after the report went  
12 public, and he was pleased to see that it was being made public,  
13 that the programme hadn't done what it was supposed to do, and  
14 he wanted to know whether the Ministry was going to continue  
15 with somebody who was actually going to do the job, and they  
16 told him to contact the Ministry, they might have an answer for  
17 him.

18 But the reaction from the Ministry, I don't recall  
19 there actually being yes, we're going to fix that, and we're  
20 going to moving forward you are going to see these things are  
21 implemented, and I think there were other contracts that were  
22 being done at the same time where we had similar issues with the  
23 oversight from that particular Ministry.

24 Q. And leaving just that Ministry, not just based on just  
25 that Ministry, but is that a more widespread problem that

1 contracts are entered into for substantial sums of money but  
2 there is insufficient oversight?

3 A. It's a common problem, yes.

4 Q. Could I just take you to a different report, please.  
5 And this is at page 748.

6 It should be the "Auditor General Office report on the  
7 Customs Department-import duty partial payment plan", and we can  
8 see that there is a date on that at the bottom of the page,  
9 18 April 2015.

10 And just again to set the scene for this Report, if  
11 you go to page 751, you will see at paragraph 8 that the report  
12 sets out and explains that there was a system of partial payment  
13 for import duty which was introduced in 1998 by the Customs  
14 Department, and its purpose was to assist those who had  
15 difficulty in meeting the full amount of duty to be paid on an  
16 imported item. What you found was that it was an unofficial  
17 scheme, but that it had flowed from directives that had been  
18 issued to the Customs Department from the Financial Secretary  
19 and from elected representatives; is that right?

20 A. That's correct, yes.

21 Q. And what you did was to conduct an audit of this  
22 scheme because, as you note--and this is at your paragraph 9 and  
23 also it's in your Executive Summary, this was a scheme that had  
24 grown in popularity even though it had not been advertised, and  
25 it was at the time of your audit being used by individuals being

1 used by private companies and even being used by Government  
2 employees; is that right?

3 A. That's correct, yes.

4 Q. And I think what--in order to implement a process to  
5 monitor the collections and safeguard against losses, the  
6 Customs Department initiated a scheme, and that was the focus or  
7 one focus of your audit, wasn't it? And you set out the process  
8 that the Customs Department used at your paragraphs 10 to 16,  
9 and if I could just summarise that and tell me if I've got  
10 it--misunderstood it.

11 The first step is that an importer would make a verbal  
12 request to the Customs Commissioner.

13 The Internal Audit Unit of Customs would then prepare  
14 a written agreement, which was a Request for Duty Amortization  
15 agreement, and that would set out the amount of duty to be paid,  
16 the monthly payments, other terms of the arrangement, and that's  
17 at your 11.

18 The importer then needed to make a down payment of the  
19 assessed duties, and you would say 50 percent requested, so was  
20 the way the process worked that the down payment would be a  
21 50 percent or would be up to 50 percent?

22 A. I believe the standard was 50 percent but in practice  
23 it was probably up to 50 percent.

24 Q. And then the balance was paid under the agreement over  
25 a six to 12-month period; is that right?

1           A.    Yes, that's correct.

2           Q.    And then once that paperwork was in place and this  
3 Agreement was in place and the deposit paid, the importer would  
4 then be able to have the goods released to him or her?

5           A.    Yeah.

6           Q.    And what you say--and this is at paragraph 15--was  
7 that this facility, this partial payment facility was being used  
8 for identifiable items like vehicles and heavy equipment but  
9 also was used for other large or expensive items like elevators  
10 and walk-in freezers.

11                    So, was it primarily focused on expensive, heavy  
12 pieces of equipment?

13           A.    Yes, it was basically forecast on items that the  
14 Customs Department could have confiscated if the importer  
15 defaulted. I'm not sure how that would work with an elevator  
16 but that was the intention.

17           Q.    And at the time of the audits as you say at  
18 paragraph 16, there was approximately 115 customers on the  
19 import duty partial payment plan, including Government  
20 employees. And the way it worked for Government employees was  
21 that they would sign a salary deduction consent form, so that  
22 the sums could then be deducted from their salary on a monthly  
23 basis.

24                    Now, in terms of your finding, if we go to  
25 paragraph 18, the Customs Internal Audit Unit had, as we have

1 seen it, they instituted a sort of system to collect the money  
2 owed, and what you say at 18 was that there was a debt  
3 monitoring system which was initially an Excel data sheet, but  
4 then the unit was using a module of the JDE Government's  
5 computerized accounting system, but whilst also maintaining an  
6 Excel spreadsheet. When your audit examined the two systems and  
7 you found discrepancies between the two systems, between what  
8 was recorded on the Excel spreadsheet and what was being  
9 recorded on the Government's computerized accounting system.

10 Was it your conclusion that this debt monitoring  
11 scheme was inadequate and not fit for purpose?

12 A. It was our opinion that a better system was needed if  
13 they were going to continue with this--if they were going to  
14 have this system and what was being used was not adequate. It  
15 was difficult to determine which of the two documents was  
16 actually accurate.

17 Q. On what you notice, as well, in terms of delinquent  
18 accounts was that there was a number of delinquent accounts and  
19 the reason for that was that you would have importers refusing  
20 to pay the balance or importers who only partially are repaid  
21 the balance.

22 You also found instances of importers with existing  
23 delinquent accounts who were still granted additional credit  
24 terms for other imports without being required to pay a fee of  
25 outstanding sums?



1           A.    That's correct, yes.

2           Q.    And what you noted was that at that time of your  
3 audit, the Customs Department had not pursued any court action  
4 to recovery sums.

5                    If you go to 23, and 24, the one difficulty you  
6 highlighted at 23 was that: "The difficulty in securing  
7 collection was at times compounded by importers selling the  
8 items", so effectively going back to the point you made that, it  
9 was intent to be focused on goods that could be seized by  
10 Customs, if they had been sold on, a seizure was no longer an  
11 option; was it?

12          A.    That's correct, yes.

13          Q.    And what you say at 24 was: "The pervasiveness of  
14 client non-payment suggests that the programme is being abused  
15 and possibly being used as a method to evade paying full duty".  
16 And then you say: "At the time of the audit examination, there  
17 was more than \$300,000 owed on delinquent accounts".

18                   Now, you also go on at 26 to say that: "The programme  
19 began as an initiative to accommodate individuals and small  
20 businessmen by facilitating payment of substantial import costs  
21 via installment payment. It now includes a number of  
22 established businesses. In some of these cases outstanding  
23 balances are so substantial that the Customs Department can be  
24 said to be financing business activities rather than securing  
25 Government revenue". And you gave examples in the appendices to

1 the report.

2           What was it that--what's the basis of the conclusion  
3 that the Customs Department was now financing business activity  
4 rather than securing Government revenue? Can you expand on that  
5 a little bit.

6           A. We had a number of established businesses, and I think  
7 some of those included companies that imported vehicles that  
8 would actually rent the vehicle and not pay duty. Bring them in  
9 under this programme and not pay duty or pay duty over time.  
10 And because they were paying duty over time, these companies  
11 always had a substantial balance owed to Customs, and what this  
12 meant is that money that the Government should have had was  
13 actually being used by these companies to run their business,  
14 and in that way the Government was financing them, and I don't  
15 believe there was--I would have to go back and check. I don't  
16 know what the interest rate was at that time.

17           But in any event, the programme was not set up for  
18 that purpose, and it certainly was not set up for companies that  
19 could afford to pay their duty.

20           In that sense, we felt that it looked--it appears--it  
21 appeared--and I smile because I know one of my staff Members  
22 hates that word--that the government was actually financing  
23 these entities, and this is why we have this here. That aspect  
24 of the programme--I'm trying to remember another audit was done  
25 on this, and I'm trying to remember their recommendation, but

1 our recommendation was that that aspect should be completely  
2 taken off and the entire programme should be with them. If they  
3 wanted to keep it, they needed to have another relook.

4 Q. If you go to your recommendations at 755, and I will  
5 summarise it. What you said about the partial payments is  
6 consistent was that it needed to be reviewed, and if considered  
7 beneficial, developed and standardised with respect to, and then  
8 you set out aspects of it, including procedures for recovery of  
9 delinquent balances: Do you know whether that step was actually  
10 taken?

11 A. I do not know.

12 Q. You say it should be regularized through the Ministry  
13 of Finance with the guidance and assistance of the Attorney  
14 General. Do you know whether as a result of your  
15 recommendation, any further steps were taken by the Ministry of  
16 Finance?

17 A. I do not know any significant changes to the system.  
18 If there is, then I would have to refer to you on that. To my  
19 knowledge, there wasn't any--neither change made to the system  
20 as we saw it.

21 Q. And--

22 A. As I said, I would have to go back and check. This  
23 report, I believe, is a little over two years ago, but in terms  
24 of the recommendations that we have down here, I do not--I  
25 cannot speak to whether or not they were implemented because

1 when we actually did the follow-up some years back, nothing had  
2 changed.

3 Q. So, this is in 2015. You then did a follow-up on the  
4 scheme?

5 A. Yes.

6 Q. When was that? Do you remember broadly when it was  
7 that you did the follow-up?

8 A. It would have been shortly--it would have been within  
9 the year, I think.

10 And again, I would have to go back and check this, but  
11 when we did the follow-up, nothing had changed, and I believe  
12 all counterparts at internal audit also did an audit on this,  
13 which was a little bit more detailed than this. And their  
14 recommendation was that this programme needed to be shut down, I  
15 think, at the time because they felt it was being abused. But  
16 when she comes here, she can speak to that. The recommendation  
17 was that it needed to be fixed.

18 I do not know that any of these recommendations were  
19 implemented, and what I can do is I can actually get information  
20 and send it to you. When we did look at it, I think within a  
21 year, the initial follow-up is normally six months. When we did  
22 a look at it, nothing had changed.

23 Q. Thank you.

24 Can I take you to a different report now, please, and  
25 that is at 721, which is The Sea Cow's Bay Harbour Development

1 Project, a report submitted by the Office of Auditor General on  
2 the 27th of August 2014, so this is a Section 12 report. And  
3 again, I'm going to try and summarise some of this, Ms Webster,  
4 but if I'm cutting the detail out that you think's necessary,  
5 please do add detail.

6 So, in terms of the background, and this we find at  
7 your paragraphs 1 through 6, The Sea Cow's Bay Harbour  
8 Development was initiated in the early 1990s, and in  
9 November 1991 a steering committee was established, which, in  
10 July 1993, recommended that the development should be limited to  
11 the Western side of the bay, reclamation should be prohibited on  
12 the Northern and Eastern side, and all reclamation should be  
13 bulkheaded with land-based fill. And there was--and we see this  
14 at paragraph 6, in 2000--a scoping exercise recommended that the  
15 development be carried out in a technically proper and  
16 environmentally sustainable way.

17 Now, you and your office then conducted an audit, and  
18 we see the detail of that at 7, where you say the purpose of  
19 this investigation is to provide independent information and  
20 advice and whether efficiency, economic and--economy and  
21 effectiveness were achieved in the development and  
22 implementation of this project.

23 You dealt with it in a number of parts, and if I can  
24 just take you through those. Part 1 was headed "establishing a  
25 project" and it begins at paragraph 12.

1           Now, again, to summarise that, the Steering Committee  
2 established the need for bulkheading, and there was a--because  
3 the cost of that was considered prohibitive for local  
4 development, there was a compromise reached whereby the  
5 Government would work with developers to ensure that a bulkhead  
6 would be constructed to protect the environment and ensure  
7 uniformity.

8           And if we see at paragraph 16, the Ministry of Natural  
9 Resources and Labour in September 2001, which is then under the  
10 leadership of The Honourable Julian Fraser, engaged a firm of  
11 architects called Smith Arneborg to produce a development plan  
12 of The Sea Cow's Bay Harbour. And that was then presented by  
13 the Honourable Fraser, who had by then been appointed Minister  
14 of Communications and Works, to what was then the Executive  
15 Council in October 2002. And the Executive Council then adopted  
16 the plan as the way forward.

17           In your paragraph 18 of your report, you record that  
18 the Executive Council made four decisions. The first was that  
19 the tendering process was to be waived so that the Ministry of  
20 Communications and Works could engage Contractors to procure  
21 material for bulkheading the harbour. The second was that the  
22 Ministry of Communications and Works would proceed to carry out  
23 further dredging and bulkheading of the harbour through a series  
24 of petty contracts. The third was that work was to commence on  
25 the Project immediately by use of funds already appropriated to

1 the Ministry of Natural Resources and Labour.

2 And the second was that further development of the  
3 harbour would be done through funds to be provided under the  
4 Ministry of Communications and Works.

5 What then happened was in February 2003, a firm called  
6 A.L. Potter & Associates, as you record here, were contracted  
7 and did submit design development drawings, but as you note at  
8 your paragraph 21, this was for the purposes of bulkhead design  
9 and use. It didn't go much further because a full geotechnical  
10 study was required. That's at 21. If we go to 22?

11 A. Can we take a brief break, please?

12 Q. I'm sorry?

13 A. Can we have a brief break?

14 COMMISSIONER HICKINBOTTOM: Yes, of course.

15 (Recess.)

16 COMMISSIONER HICKINBOTTOM: Good. Are we ready?

17 THE WITNESS: Yes, thank you.

18 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.

19 MR RAWAT: Thank you.

20 BY MR RAWAT:

21 Q. And thank you, Ms Webster.

22 Just--we were looking at the Auditor General's Report  
23 on the Sea Cows Bay's Project, and I'm just trying to set some  
24 of the background we are seeing in your Report in summary so  
25 that we know where we're going.

1           Now, the point I've got to was in paragraph 20 of the  
2 Report, and I was referring to there--this was in 2003, that a  
3 firm called A.L. Potter & Associates were asked to prepare  
4 design development drawings which were submitted and assessed,  
5 but ultimately things didn't go further because, as you look at  
6 paragraph 21 of the bottom, what was required was a full  
7 geotechnical study.

8           But then the next event that happens in the chronology  
9 we see at 728, when you have a heading that is headed  
10 "Developing a Plan", and the summary is: "The absence of a  
11 completed plan resulted in deferral of the project in 2006. An  
12 eight step outline was developed for the structured  
13 implementation of the project". So, what happened was that  
14 there was a change of administration in June 2003 after general  
15 election. The Sea Cows Bay Development Plan was essentially  
16 deferred until 2006.

17           And then, as we see at paragraph 25, there was a  
18 meeting with the Ministry of Communications and Works in  
19 July 2006, and eight steps were identified as a way forward for  
20 the project, which included securing approval for the project  
21 from the Planning Authority; engaging a consultant to prepare  
22 detailed plans and specifications for the works; preparing plans  
23 in accordance with the Planning Authority's approval; submitting  
24 plans for approval to the requisite authorities; having a  
25 project manager to oversee implementation; engaging contractors;



1 executing the works; and then closure and handover of the  
2 completed project.

3           So, by 2006, we had these eight steps which were  
4 designed as Note 2 a plan from start to finish. You note that  
5 then no further progress was made; and, in fact, 265,000 audit  
6 of the funds assigned for the project was used on other works in  
7 the Third District. But the next stage of your Report deals  
8 with project implementation, and this is at 28, where you find:  
9 "Implementation of the projects controlled and advanced in a  
10 manner which provided little transparency in the government  
11 records. Contracts were issued for implementation of  
12 bulkheading phase which was set to commence in 2011 without  
13 planning approval".

14           What you explain is there was another change of  
15 administration in 2007. The representative of Third District,  
16 The Honourable Julian Fraser, was then admitted--appointed,  
17 rather, to the position of Minister of Communication and Works,  
18 and you point to petty contracts being issued for a total of  
19 \$123,000 to a firm called Systems Engineering.

20           And then if I take you to your paragraph 33--we are  
21 now in December 2010 to November 2011--and your report records  
22 two events occurring: The first was an application from Mr Earl  
23 Fraser of Hannah Reclamation Limited to lease the seabed on the  
24 Western end of the harbor adjacent to a particular parcel of  
25 land; and the second was the Government's engaging of seven

1 petty contracts to provide bulkheading for the West side of Sea  
2 Cows Bay Harbour, and that was at the request of the  
3 Minister/Eighth District Representative The Honourable Julian  
4 Fraser.

5 A. That's correct.

6 Q. And what you set out then is that the application to  
7 lease the seabed was one that had to go before Parliament--not  
8 Parliament--before Cabinet, forgive me, and that did do so. And  
9 the area in question was next to or on reclaimed land which had  
10 been leased to A.L. Fraser by the Government on the 21st of  
11 October 2008. So, the application was made; cabinet approved it  
12 with conditions; and ultimately, Mr Fraser was informed of the  
13 decision and the conditions as of the 15th of September 2011.

14 As to the petty contracts, the System Engineering was  
15 the engineer on those contracts. The work was started  
16 September 2011 and concluded three months later, and you list at  
17 paragraph 41 the seven contractors: Ira and Akeem Smith; Kenneth  
18 Fraser; Sugar Apple Group; No Limit Construction; Fraser  
19 Incorporate, which is owned by Earl Fraser; Shane Winter; and  
20 E&K Concrete Pumping. And you note that all seven contractors  
21 were paid initial 10 percent deposit of their respective  
22 contract sums, but only two completed the job and were paid in  
23 full; and that the task was to fabricate bulkheads, and that was  
24 overseen by Systems Engineering. And the contract amounts that  
25 were paid to these seven contractors were between 96,000 and

1 97,000 odd; is that right?

2 A. That's correct.

3 Q. What you also say is that a total of--and this is at  
4 your 43--was that total of 335,700--well, \$335,700 was spent on  
5 contractors and dayworkers to prepare the staging area, and that  
6 included fencing the reclaimed land owned or leased by Earl  
7 Fraser and James Fraser in Hannahs, where the bulkheads were  
8 fabricated.

9 What you noted, though--and I take you--this begins at  
10 your paragraph 44--was that the way in which the project was  
11 being implemented had important omissions in the planning and  
12 approval process contrary to the eight-step plan we looked at,  
13 and which had been set out at the meeting in 2006.

14 So, there was, for example, no effort made to secure  
15 approval for the project from the Planning Authority;  
16 preparation of the plans in accordance with Planning Authority's  
17 approval was not done; submitting plans for approval to the  
18 requisite authorities was not done; engaging a Project  
19 Engineer--Project Manager to oversee implementation was not  
20 done.

21 Now, these were, I assume from your Report, points  
22 that you thought were key and essential aspects of making sure  
23 that the proper planning and approval for process was being  
24 followed. Was that--would that be right?

25 A. That's correct, yes.

1 Q. What you say--and this is at 50 under a heading called  
2 "Reclamation Approval and Compliance", you say that "the  
3 Ministry's ongoing challenges in securing conformity with  
4 developers will likely impact the Government's ability to  
5 recover sums invested". And what that was was issues over  
6 seabed reclamation and compliance with the requirements of  
7 leasing the seabed, and you make the point that a developer has  
8 to be granted permission to reclaim seabed. Once reclaimed, the  
9 developer then enters into a lease with Government.

10 You note that there had been no new approvals for  
11 seabed reclamation between February 2003 and May 2011, when  
12 Mr Fraser of Hannah Reclamations Limited's application was  
13 approved. And what you say is that there were inadequate  
14 controls over development of the seabed, which is if we look at  
15 paragraph 57 you say that there.

16 And that was--you point to a lack of adequate  
17 management and control; is that right?

18 A. That's correct.

19 Q. Because you're saying that persons were able to  
20 reclaim areas before securing approval. After having reclaimed  
21 the area, they did not enter into leases with Government. There  
22 was a failure to register--to report and register the size of  
23 the area claimed, so that that meant there was no official  
24 record of the area reclaimed.

25 A. That's correct.

1 Q. So, in effect, some individuals were reclaiming a  
2 greater size area than they were, in fact, allowed to--given  
3 permission to reclaim; is that right?

4 A. That's correct.

5 Q. And they were exceeding that without any penalty or  
6 correction or--well, yes.

7 A. That is also correct.

8 Q. And then what you also point to is that applications  
9 to reclaim the seabed were being allowed to languish without  
10 adequate information and feedback, and you give one particular  
11 example of someone who applied for permission reclaim two acres  
12 in 2001 and was granted permission to reclaim .357 of an acre in  
13 2014, so 13 years later, and that was following a complaint to  
14 the Complaints Commissioner?

15 A. Yes, that's correct.

16 Q. Now, what the conclusion you make here is that,  
17 without effective management and controls, the development will  
18 continue to have issues and the Government is unlikely to  
19 recover amounts invested. Which amounts invested should you  
20 have in mind?

21 A. The amounts that were planned to develop the bay, the  
22 Sea Cows Bay. And I believe the budget had been--I'm looking  
23 for the budget. The budget spanned multiple periods, so the  
24 budget was changed in each period. Right.

25 Initially, the process made for this project was

1 \$643,000, and it moved from that up to 1.2 million. That was  
2 the actual expenditure, and that would be the amount that's been  
3 referred to being able to recover the amount.

4 Q. I see.

5 So, the increase in the total budget for the  
6 development?

7 A. 1.2 million isn't actually increase in the total  
8 budget. That was the actual amount that was spent on this  
9 particular project, which was never completed.

10 Q. I see.

11 COMMISSIONER HICKINBOTTOM: That's right, isn't it? I  
12 mean, you're looking at value for money, but these costs to  
13 spend, as Mr Rawat has gone through them, but there was no  
14 benefit in that the project was never completed. It was never  
15 completed.

16 THE WITNESS: No. It's still not completed.

17 BY MR RAWAT:

18 Q. If I take you to 66, and that conclusion that the  
19 finding that you make there, Auditor General, you say there was  
20 insufficient transparency in the management and execution of the  
21 project. And you point to--you say that the audit exercise was  
22 severely hampered by the absence or complete information  
23 regarding this project.

24 And at 68, you say that: "For the period 2007 to  
25 2011, the Ministry of Communications and Works' files reflect

1 little to no information regarding the development", so this is  
2 a development that was under the auspices of Ministry of  
3 Communications and Works; is that right?

4 A. That's correct.

5 Q. And what you say was that the auditors were advised by  
6 the Ministry staff that the project was handled by the subject  
7 Minister, and would that have been The Honourable Julian Fraser  
8 at the time?

9 A. That's correct, yes.

10 Q. Who liaised directly with the consultants, contractors  
11 and the Public Works Department on plans, contracts and  
12 progress.

13 And although it was assigned to a contractor  
14 consultant in the Ministry, the information you received was  
15 that the Minister just took personal responsibility for this  
16 project?

17 A. That was the information coming out of the Ministry.

18 Q. But nonetheless, as you go on to say, notwithstanding  
19 an absence of information, the Finance Officer and the Permanent  
20 Secretary in the Ministry approved payments in excess of  
21 \$300,000 in 2011.

22 A. That is correct, yes.

23 Q. Would you have--or is it the responsibility of a  
24 public officer who is the accounting officer in a ministry,  
25 before paying out sums of that size, to require justification

1 and documentation?

2 A. Absolutely, yes.

3 Q. You point also to the fact that the file you reviewed  
4 from the Public Works Department was also similarly lacking in  
5 detail; is that right?

6 A. That's correct.

7 Q. You then say that the Report generated by the--by  
8 Systems Engineering could not be found and could not be produced  
9 to your audit. That's at 71.

10 A. That's correct.

11 Q. And that the timing on--the question that I just asked  
12 you, that there was no significant involvement of the accounting  
13 officer who had ultimate responsibility and can be held  
14 responsible for public expenditures that applied from accounts  
15 under his control.

16 And so the Permanent Secretary in the Ministry is the  
17 accounting officer; isn't that right?

18 A. That is correct.

19 Q. But in this case, the Permanent Secretary was in no  
20 position to account for how monies from the Ministry were being  
21 used?

22 A. In this case, the Permanent Secretary was making  
23 reference to the Minister who we were told was the one managing  
24 the project, and she was facilitating the payments.

25 Q. And what you conclude at 73 was: "The manner in which



1 the project was implemented, with the general absence of  
2 information in the Government's record and the substantive  
3 exclusion of the accounting officer from the process, created  
4 the impression of a private undertaking that was being financed  
5 by the Government. This is further exacerbated by related party  
6 issues that were present in the development". I will come to  
7 those in a moment, but just about the impression that's created,  
8 from the point of view of accountability and transparency, if  
9 such an impression is created, what is the consequence?

10 A. There is no consequence. There is none that I know  
11 of.

12 I think in matters such as this--and a great deal of  
13 reliance is placed on an individual's integrity, the sense of  
14 what is right and what is wrong, and the person in a position of  
15 trust to actually perform projects on behalf of government,  
16 there is an expectation that you would know where to draw the  
17 line.

18 And from our view on this particular project, there  
19 were signs here that appeared to show conflict, and there was  
20 no--there was no recourse, none that I could see, actually.

21 COMMISSIONER HICKINBOTTOM: I mean, this is one of  
22 the--the main purposes of governance is to uphold and maintain  
23 public confidence in Government decision-making, and if this, as  
24 you suggest it may have done, created the impression of a  
25 private undertaking that has been financed by the Government, it

1 seems to me that that would undermine public confidence in the  
2 way in which Government's being conducted.

3 THE WITNESS: And--absolutely, Commissioner. I agree  
4 with that.

5 COMMISSIONER HICKINBOTTOM: And that's the purpose of  
6 governance.

7 THE WITNESS: That is the purpose of governance.

8 The entire issue here was the absence of information,  
9 the lack of transparency. We actually don't have information on  
10 a lot of what happened on this project because the files that we  
11 received from the Ministry did not contain that information.  
12 Payments were being made without that information. It certainly  
13 wasn't sent to us.

14 The Public Road Department was involved in that they  
15 issued the contracts, but beyond that, there was no  
16 further--there appeared to be no further involvement. They were  
17 not involved in the project. They were not monitoring the  
18 project. They were not seeing that what was being done was not  
19 up to standard. There was nothing.

20 There was an engineer who was brought on as the  
21 project manager, and who apparently did issue a report of some  
22 kind, but for some reason that was not submitted to us. We  
23 asked for it; it was not submitted to us. But the contracts  
24 were being issued on this Report. That was a secret to the  
25 Government.

1 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

2 BY MR RAWAT:

3 Q. And what you say about the related party issues makes  
4 the point that you develop in the last part of the Report, and  
5 you point to International Public Sector Standard no. 5, and you  
6 make the point, firstly, that--and this--if we go to  
7 paragraph 74, but firstly the project was adopted and progressed  
8 under the direction of The Honourable Julian Fraser, who was the  
9 Third District representative but also the--who headed the  
10 Ministry of Communications and Works from May 2002 to July 2003  
11 and August 2007 to November 2011, and was also--headed the  
12 Ministry of Natural Resources and Labour at an early stage, so  
13 that's the first point you make.

14 You then point to the fact that, because all the funds  
15 applied in 2011 were focused on the Western end of the harbour,  
16 and that included an area that was owned and leased by Earl  
17 Fraser of Hannah's Reclamation Limited, and because--and then  
18 you point to the fact that two of the petty contractors engaged  
19 to provide bulkheads included Kenneth Fraser and Fraser  
20 Incorporate, a company owned by Earl Fraser, and both of those  
21 contractors were brothers of the Minister.

22 That created, did it not, a potential conflict of  
23 interest?

24 A. It did.

25 And I'm trying to remember whether it's stated in this

1 Report, but when the project was being considered, the first  
2 time, I believe, Honourable Fraser removed himself from Cabinet  
3 so that it could be considered. And I think that was the only  
4 instance I can recall.

5 Q. If we go to paragraph 78.

6 A. Yes.

7 COMMISSIONER HICKINBOTTOM: Yes.

8 BY MR RAWAT:

9 Q. I thin, to try and fairly summarise what you point to  
10 is that you had identified two prior instances when Cabinet had  
11 considered applications by Hannah Reclamation Limited and  
12 Mr Earl Fraser for leasing the seabed, and that was both in  
13 2008, The Honourable Julian Fraser declared his interest and  
14 recused himself. But looking at the Cabinet Extract for the  
15 18th of May 2011, when the application came back before  
16 Cabinet--and this is the reclamation to lease land, the claimed  
17 seabed, and when it was considered and it was approved, the  
18 Cabinet Extract did not indicate the same; is that right?

19 A. That's correct.

20 I should--just to clarify, the Cabinet Extract did not  
21 indicate that he actually recused himself, but it didn't  
22 indicate that he did. So, basically, we don't know whether he  
23 did or not because there is no mention of that that we could  
24 recall--that I can recall in this particular instance.

25 Q. Yes, that's a fair point. But the point is, I

1 suppose, that the example--the points to take from it is the  
2 importance of identifying conflicts of interest and declaring  
3 them.

4 A. That's correct.

5 Q. Now, what you say in your conclusion about the Sea Cow  
6 Bay Harbour Development Project was it was never approved by the  
7 Planning Authority, nor was Government's role in the project  
8 fully or adequately defined, and that led to expanding project's  
9 costs that have neither been approved nor approved by Cabinet.

10 Did you see that particular failing, the failure to  
11 get approval by the Planning Authority or to define Government's  
12 role in the project, those two factors, did you consider them to  
13 be very significant in terms of the project costs increasing?

14 A. I considered them to be very important in terms of  
15 whether or not this is, indeed, a government project, but yes,  
16 it contributed to the cost increase. The absence of that  
17 oversight could have contributed. In fact, it's said here that  
18 expanding project costs.

19 Q. You then go to say: "An attempt to implement the  
20 project without satisfying preliminary planning requirements  
21 resulted in public expenditure in excess of \$300,000 and  
22 incomplete works, and at the time of writing the project was a  
23 standstill. Sheet piles that had been prepared in 2011 remained  
24 on the property owned/leased by Hannah Reclamation Limited.  
25 There is no record that the deposits paid to the five petty

1 contractors who did not provide bulkheads were recovered".

2           So, by 2014, the project had just ground to a halt,  
3 had it?

4           A.    Yes, it had.

5           Q.    And it's never been completed?

6           A.    No, the project has not been completed.

7           Just going back to check the amounts that are here,  
8 yes.

9           Q.    Yes.

10           If I take you just to your recommendations, there is  
11 one recommendation that I would like to ask you about. You set  
12 out in there 11 recommendations, but there is one general one  
13 which is at 8: "Permanent Secretary should not accept  
14 responsibility for projects that they have not been involved in.  
15 This means refusing to cover costs of the projects that are  
16 executed outside of their control".

17           Do you know whether that recommendation was  
18 taken--adopted or accepted and taken forward?

19           A.    No, I do not know whether it was adopted or taken  
20 forward?

21           Q.    From your general experiences as Auditor General, do  
22 you think there are instances where Permanent Secretaries who  
23 are the accounting officers are placed in a similarly difficult  
24 position?

25           A.    Yes, I do.

1 Q. I can jump a little forward in time and just take you,  
2 please, to page 862.

3 This is an audit report which is dated 21st of  
4 June 2021, and it's the "COVID-19 Stimulus Grants to Farmers &  
5 Fisherfolk". Is that right?

6 A. That's correct.

7 Q. In terms of this is the final version of the Report,  
8 isn't it?

9 A. It is.

10 Q. Now is this--now it's in final version form, where  
11 does it go to now?

12 A. This report goes to the Governor, who will then  
13 arrange to have it tabled before the House.

14 Q. I see.

15 If I can just ask you some questions about the Report,  
16 please. If we go to--again, just to set the scene, if you go to  
17 page 866, and that's your Executive Summary, and the first  
18 paragraph E-1 explains what the purpose of the audit examination  
19 was, and that's "to assess the implementation and application of  
20 the Government's stimulus programme for farmers and fishermen  
21 that was launched as part of the COVID-19 recovery initiative".

22 If we go, please, Ms Webster, to 867 and look at  
23 paragraphs 5 and 6 in particular, you've set out there the  
24 purpose of your audit, which you explain is to provide  
25 independent information and advice. And then at 5 and 6, under

1 the heading "Restriction and Scope", you say:

2 "The Auditor General's Office was unable to obtain the  
3 relevant files and information from the Premier's Office  
4 pertaining to the COVID-19 stimulus grants which were repeatedly  
5 requested by e-mail and telephone. This includes access to  
6 databases, documents, reports and other information relevant to  
7 policy development and implementations of the programme".

8 "The refusal to present this information is in direct  
9 contravention of the Virgin Islands Constitution and the Audit  
10 Act, which provides for this office to have access to Government  
11 documents and records. No public officer expending public funds  
12 has the authority to deny information requested for audit  
13 purposes".

14 Now, the reports we've looked at and your Annual  
15 Reports, whilst referring, for example, to resistance or perhaps  
16 a lack of assistance don't go as far as what you have written at  
17 5 and 6 in this Report, was the response from the Premier's  
18 Office just entirely negative?

19 A. So, initially, there was no response from the  
20 Premier's Office; and, subsequent to that, we were told that  
21 information could not be sent to us because Internal Audit was  
22 performing a similar exercise. My response was that, if  
23 Internal Audit has the records, then we need access. We could  
24 have access to the databases and other information that Internal  
25 Audit would not be using, and even that did not meet with their



1 requirement.

2 In effect, we were--we had to undertake this exercise  
3 without getting information from the Premier's Office. And I  
4 think there was a--I believe there was a deliberate attempt to  
5 prevent the office from getting information in order to do this  
6 exercise, and I say that because we made several "concessions",  
7 for want of a better word, being, you know, if you can't get us  
8 the files, you will work with the database for now and look at  
9 the files later, and that was not satisfactory.

10 In addition to that, another aspect of this COVID  
11 audit is the trade--COVID plans that were issued to companies,  
12 we were granted access to that database, and then told that the  
13 Premier's Office had instructed that that access be removed.  
14 So, from where we sit, there was a deliberate effort to prevent  
15 the office from having access to that information.

16 Q. And under the Act that we looked at this morning,  
17 there is no basis for a public officer to refuse the Auditor  
18 General access?

19 A. Under the Act, there is no basis for refusal.

20 Q. And any public official, elected or appointed, that  
21 takes such a step would be undermining the audit process  
22 entirely?

23 A. They would be undermining the Constitution, to begin  
24 with, and audit process. And I often have to say to individuals  
25 that we are not asking for your personal information. This is

1 government spending, public spending. You do not have a right  
2 to withhold information where it respects government processes  
3 and government activities.

4 And with that in mind, our job is actually to look at  
5 those documents. That is our job. Our job is accountability  
6 and transparency, and reporting when there is no accountability  
7 or transparency. And in this case, there was absolutely the  
8 absence of transparency coming out of that Ministry.

9 Q. Can we just look at the background to the need for the  
10 audit, which you've set out at paragraphs 7 to 12; and if I may,  
11 I will try and I hope fairly to summarize it, but if you want to  
12 add any more detail, please do so, Ms Webster.

13 The starting point--and this is paragraph 7--a  
14 decision was made that \$2 million from the Social Security Board  
15 Grant was going to be allotted to assist farmers and fishermen,  
16 and that was--and this is at 10--ultimately increased in total  
17 to 3.5 million; is that right?

18 A. That's correct.

19 Q. The eligibility or the basis on which the programme  
20 was opened was it was going to be opened to any commercial  
21 farmer or fisherman who was a BVI islander, belonger,  
22 naturalized citizen, or permanent resident who registered with  
23 the Department of Agriculture and Fisheries and in the case of  
24 fishermen licensed commercial fishers as defined under statute.

25 The programme was advertised to run--or the

1 application period was advertised to run from the 5th of June to  
2 the 10th of July, and then payments commenced in October 2020.

3 And what you'd noted--and this is under the heading  
4 "actual to date" was that against the budget of 3.5 million,  
5 Treasury records indicate that the total amount paid under the  
6 farmers and fisherfolk stimulus programme was 5,140,000.

7 Have I understood that right?

8 A. That's correct.

9 Q. If we--if you deal with--and you looked at both  
10 farmers and fisherfolk. If we deal with farmers, first of all,  
11 if we go to paragraph 13 of the Report--and this is the first  
12 finding you make in relation to farmers stimulus grants--and it  
13 is that 49 percent of the amount paid in farmers' stimulus  
14 grants totaling \$1,437,000 was awarded to persons who were not  
15 recorded in the agriculture database of registered farmers.

16 And if we look at 16, what you explain there--and it  
17 is as at 20th of May 2021, you say that there were 203 payments  
18 issued in farmers' stimulus grants; and as we've said, of that  
19 amount, 49 percent were paid out to persons who were not  
20 registered with the Department of Agriculture. And you say:  
21 "No information was provided on how these individuals qualified  
22 for grant award.

23 Where did you try and seek your information from?

24 A. The Premier's Office.

25 The information we got from the Agriculture Department

1 indicated that these people were not registered, so the next  
2 step is to find out, "Well, if they're not registered, how did  
3 they qualify as farmers?" And we asked the Premier's Office to  
4 send us the information regarding all of the farmers and  
5 fishermen, and got no response.

6 So, in the end, the most we can say about those  
7 individuals is that there is no information to show that they  
8 were, indeed, farmers.

9 Q. What you did see was what you described as the Cabinet  
10 Farmer's List, and that is at paragraph 17, and so that was a  
11 schedule of 95 persons who were recorded to be commercial  
12 farmers registered for economic stimulus. And I think, as I  
13 understand your Report, what the audit did was to compare those  
14 on that list, on the Cabinet's list, against the Agriculture  
15 database.

16 A. That's correct.

17 Q. And we see the second finding that's made in the  
18 report at paragraph 19, where the Audit Report records almost  
19 half of the persons on the Cabinet list of commercial farmers  
20 were not registered in the Agriculture database of registered  
21 farmers.

22 Were you able to find out where the Cabinet list had  
23 come from?

24 A. No, we were not.

25 Q. And I think what you say--and this is at

1 paragraph 21--was that the total amount paid out to individuals  
2 on the Cabinet Farmer's List was \$636,000; and of that--and tell  
3 me if I've misunderstood the table at paragraph 21, but \$154,500  
4 went to individuals who did not appear on the Agriculture  
5 database list?

6 A. That's correct.

7 The qualification, as you mentioned, though, the  
8 qualification to qualify for the grant is you either had to be  
9 registered with Agriculture or present an affidavit indicating  
10 that you are, indeed, a farmer for the past three years. There  
11 is internally the possibility that there are hundreds of  
12 affidavits that were received by the Premier's Office indicating  
13 that these people were, indeed, farmers; but, at the end of the  
14 day, the Agriculture Department did not know who they were.

15 Q. And--

16 A. And this, I should add, these are supposed to be  
17 commercial farmers, not just farmers, commercial farmers,  
18 meaning that the farming is actually a part of their livelihood,  
19 not people who simply have a garden in the backyard and growing  
20 tomatoes and giving some to their friends, actually growing  
21 stuff to sell in a commercial--on a commercial basis.

22 Q. What you say, then--and this is the third finding that  
23 you make--is that you say: Similarly, 57 percent of other  
24 persons who received farming grants were not listed in the  
25 Agriculture database of registered farmers".

1           So, in addition to the payments made to the  
2 individuals on the Cabinet list, there were 164 other payments  
3 made in stimulus grants to these people, and that totaled  
4 \$2,286,000, of which, as I understand your paragraph 23,  
5 \$1,282,500 went to people who were not registered.

6           A.    That is correct.

7           Q.    And you say that there is no information or evidence  
8 that's been provided to you, as the Auditor General, to indicate  
9 how these unregistered persons received over \$1 million, how  
10 they were assessed as qualifying for the grant award. The  
11 Department of Agriculture and Fisheries indicated to you that it  
12 was not involved in the process of assessing these individuals;  
13 that this was handled by the Premier's Office.

14           So, as you understand it, did the responsibility to  
15 assess--from the information you have been given, Solicitor  
16 General, but the responsibility to assess applications under  
17 this scheme and to decide how much people would get paid lay  
18 entirely with the Premier's Office?

19           A.    That's correct.

20           Q.    The fourth--

21           A.    If I--

22           Q.    Sorry, please finish.

23           A.    In that regard, though, the Cabinet requirement in  
24 terms of assessing who would be paid, based on the Cabinet's  
25 requirement, this should have been done by the Agriculture

1 Department, but that role was apparently assumed by the  
2 Premier's Office.

3 Q. And in terms of the investigations that you conducted  
4 in trying to identify whether people were legitimately on or  
5 legitimately entitled to the stimulus grant, did you--and  
6 looking at your paragraphs 26 and 27, did you undertake  
7 inspections to try and verify the existence of sample of people?

8 A. We did, yes.

9 Q. And that was with the assistance of the Department of  
10 Agriculture and Fisheries?

11 A. That is correct.

12 COMMISSIONER HICKINBOTTOM: So, you took a sample of  
13 these people, and as it were, did an on-the-ground investigation  
14 as to whether they were farming?

15 THE WITNESS: That's correct, yes.

16 COMMISSIONER HICKINBOTTOM: Thank you.

17 BY MR RAWAT:

18 Q. And you selected 22 properties for site visits, 11 of  
19 which could not be located by the Department of Agriculture and  
20 Fisheries.

21 A. That's correct.

22 Q. And so, you were not able to confirm whether those  
23 properties were, in fact, commercial farms?

24 A. That's correct.

25 Q. And what you say, then, is that the remaining farms

1 were located, seven located on government property farmers in  
2 Paraquita Bay, four others on private land, two of the farms  
3 visited on private land showed farming activities which did not  
4 meet the scale of operations criteria for commercial farming.

5 So, is there actually criteria in place to define what  
6 is a commercial farm and what isn't?

7 A. Yes.

8 Q. The next finding you make, Ms Webster, is at your  
9 paragraph 28, and you say: "The amounts requested by farmers  
10 were inflated by the Ministry prior to payment. This resulted  
11 in payments that were substantially greater than the amounts  
12 requested". When you're referring to the "Ministry" there,  
13 which particular Ministry were you referring to?

14 A. This would be the Premier's Office. The Premier's  
15 Office.

16 Q. I see.

17 And what you explain was that you performed an audit  
18 examination on a sample of requests made by 70 farmers. The  
19 requests in that sample totaled \$351,730.83, so that was the--of  
20 those 70, that was the total amount that 70 people were asking  
21 from the stimulus grant system?

22 A. Yes. That is correct.

23 Q. And what you say is that the amounts actually paid to  
24 those 70 individuals totaled just over \$1 million; is that  
25 right?



1 A. That is right.

2 Q. So, that's, as you record, almost three times the  
3 value of the requests.

4 And what you found was that, in effect, irrespective  
5 of the request, irrespective of need, there was a standard  
6 payment being made of either \$13,500 or \$22,500. And what you  
7 conclude is that the amounts requested by farmers were modified  
8 by the Ministry and increased dramatically, resulting in  
9 significantly larger payouts; is that right?

10 A. That's correct, yes.

11 Q. And you have given an example. You've given an  
12 example, and you've also given examples in the appendix to your  
13 Report, but--

14 COMMISSIONER HICKINBOTTOM: Yes, there is certainly no  
15 need to refer to the names of any of the applicants.

16 MR RAWAT: Yes.

17 BY MR RAWAT:

18 Q. But one applicant requested for a roll of barbed wire  
19 \$50.99 and received \$7,828; is that right?

20 A. That is correct, yes.

21 Q. And the person also asked, for the purpose of a fence,  
22 \$371 and received \$5,671.

23 So, the difference between what was requested which  
24 comes to 422--well, just short of \$423 was--and what was  
25 received, which was 13,500, that difference is \$13,077; is that

1 right?

2 A. That is right.

3 Q. What you've then said--and this is your fifth finding  
4 in relation to the funds for farmers grants at 35, is that:  
5 "There is no accountability of how the grant amounts were  
6 applied despite the excessive amounts awarded".

7 You point out that the policy had been approved by  
8 Cabinet with certain controls, which was to make sure that grant  
9 funds were applied within the intentions of the programme and  
10 that value for money was pursued, and the approved controls  
11 were, firstly, as you've already pointed out, assessment and  
12 verification of applicants by the Department of Agriculture and  
13 Fisheries or by any other entity determined by the Premier's  
14 Office; assessment by either Public Works Department or  
15 contractor or quantity surveyor approved by the Premier's Office  
16 where repairs to structures or physical works were requested;  
17 direct payments to suppliers and contractors with presentation  
18 of a proforma invoice; and monitoring of produce by the  
19 Agriculture and Fisheries Department to record growth and  
20 progress of the local industry after the programme.

21 Now, what you say is that, on the 29th of July 2020,  
22 the Premier's Office submitted a log of applications to the  
23 Education, Culture, Youth Affairs, Fisheries and Agriculture  
24 Ministry to be reviewed by the Department of Agriculture and  
25 Fisheries to ascertain which of the applicants were active. The

1 individuals recorded in the submitted log accounted for less  
2 than half of persons receiving stimulus grants, indicating that  
3 the assessment process was therefore assumed by the Premier's  
4 Office.

5 COMMISSIONER HICKINBOTTOM: Sorry, "thereafter  
6 assumed".

7 MR RAWAT: "Thereafter assumed", yes.

8 BY MR RAWAT:

9 Q. So, the programme was implemented and payments made  
10 without any further involvement with the Department of  
11 Agriculture and Fisheries or its resources.

12 So, the first control that Cabinet wanted put in,  
13 which was--which involved the Department of Agriculture and  
14 Fisheries, that Department was not involved in that first  
15 control. Is that the conclusion?

16 A. They were involved to a limited--to a limited extent  
17 in that the Ministry, the Premier's Office actually did send a  
18 log to the Department of Agriculture, but the small group that  
19 was in that particular log, the Department of Agriculture  
20 actually went through their records and indicated who was active  
21 and who wasn't, so a small--for the numbers that were on that  
22 particular log, those were sent to the Department, and those  
23 were vetted; and, beyond that, the Department was not involved.

24 Q. Nor, you conclude, was the Department Works Department  
25 involved in assessing the programme?

1           A.    That's correct.

2           Q.    And that in terms of monitoring the produce, the  
3 Department of Agriculture and Fisheries hasn't been able to  
4 undertake any substantial monitoring?

5           A.    Correct.

6           Q.    Now, you say that's resource restrictions, can you  
7 elaborate on that, what particular resource restrictions did the  
8 Department suffer from?

9           A.    Well, the Department indicated that the whole thing  
10 was put together, and these obligations were outlined without  
11 consideration of the actual resources, the resources that they  
12 have at the moment, and the individual at the Department--well,  
13 in his opinion, the Department--the staff would have to be  
14 expanded for him to be able to do any kind of meaningful  
15 monitoring of the industry. There isn't sufficient staff in  
16 short, which is generally the issue with a number of  
17 departments.

18          Q.    And what you also--or it appears to have happened--is  
19 that the payments were made directly to applicants?

20          A.    That's right.

21          Q.    So, there were no payments made to suppliers or  
22 contractors as--which was one of the controls that Cabinet had  
23 put in. And your conclusion is that 203 payments were made to  
24 farmers of which 182 were of 13,500. One was of 15,000, and 20  
25 were of 22,500; is that right?

1           A.    That is correct.

2                    And I should point out that there is a modification to  
3 this schedule that there were two additional payments that may  
4 need to be on this list, two additional payments issued for  
5 \$11,000, and we're looking into whether these people were  
6 actually fishermen or farmers, but because of the amount, they  
7 were classified as fishermen, this is probably a little bit of  
8 detail that you don't need for this, it's not material, but if  
9 you are the auditors and are waiting to see that the figures are  
10 right, so I'm just bringing this to the attention that this  
11 schedule, this amount could be modified by 22,000 and thereby  
12 increased.

13           Q.    I see.  Because it could encompass people who fell  
14 into both categories?

15           A.    Yes.

16           Q.    But what you say is the end result was a programme  
17 implemented without controls resulting in significant threats to  
18 the Government receiving value on the monies distributed into  
19 the industry.

20           A.    That's correct.

21           Q.    So, the payments that were made to farmers under this  
22 scheme don't appear to have been driven by need but rather it  
23 evolved into a system where people were getting some sums of  
24 money irrespective of what they were claiming for?

25           A.    Yes.

1 Q. And they don't--doesn't appear to have complied with  
2 the controls that Cabinet put in, and doesn't appear to have  
3 been adequately assessed in terms of being able to verify  
4 whether applicants were, in fact, eligible?

5 A. That's correct.

6 Q. The second half of the Report deals with position of  
7 fishermen stimulus grants, and the first finding you make in  
8 relation to that is that--it's at 43, and it's that more than  
9 half of the persons receiving fishermen stimulus grants were not  
10 registered on the fishermen licence database.

11 Now, you've explained that those who are going to fish  
12 in territorial waters have to obtain a fishing licence which  
13 allows them permission to fish, and that allows the Agriculture  
14 and Fisheries Department to regulate and moderate the industry.  
15 If you don't have a licence, you could be subject to conviction  
16 and substantial fines; is that right?

17 A. That is correct, yes.

18 Q. So, what any fishermen who wanted to apply for a  
19 stimulus grant had to do was to be either licensed as a  
20 commercial fishermen or to have held such a licence within the  
21 past three years, and what the audit found was that, as at 20th  
22 of May 2021, there were 208 payments to fishermen totaling  
23 \$2,002,018. And approximately 44 percent of those were made to  
24 persons licensed with the Department of Agriculture and  
25 Fisheries.

1           So, looking at that, and it's at your 43, the table  
2 that you put at paragraph 46, the greater amount of fishermen  
3 stimulus payments were made to unlicensed individuals; is that  
4 right?

5           A.    That is correct.

6           Q.    So 983,000 odd went to licensed individuals whereas  
7 \$1,235,000 went to unlicensed individuals, a total of 120 of  
8 them.

9           Now, you again referred to a Cabinet list as well as a  
10 list of farmers, there was a Cabinet list in relation to  
11 commercial fishermen which were submitted to Cabinet; and, of  
12 those, there were 36 people on those. You found 32 of them were  
13 on the, if you like, the Register of licensed fishermen and four  
14 were not; is that right?

15          A.    That's correct.

16          Q.    Now, the other--next finding you make is under the  
17 heading "Other Fishermen Payments", and it's at paragraph 50.  
18 You record there 62 percent of other persons receiving fishermen  
19 stimulus grants were not registered in the conservation and  
20 fisheries database as licensed fishermen".

21                And so, again, is the effect that in terms of  
22 receiving other payments over 1.--or 1.2 million was paid to  
23 individuals who were not registered on the appropriate database;  
24 is that right?

25          A.    That is correct, yes.

1 Q. The next finding you make is at paragraph 52, and it's  
2 under the heading "Fishermen Designation". And what you say is  
3 that multiple members on the same vessel received fishing  
4 stimulus grants, so no distinction was made with respect to a  
5 "Master/Owner and Crew".

6 You continue: "The payments issued to licensed  
7 fishermen were for the most part made to the Master/Owner of the  
8 vessel. We were, however, unable to determine designation for  
9 most of the persons receiving payments as these were issued to  
10 unlicensed individuals".

11 So, what you recorded was that you were able to,  
12 dealing with all fishermen who received payments, you were able  
13 to confirm that 63 Masters/Owners were paid receiving \$685,000,  
14 25 crew received payments, and that came to \$298,000, but then  
15 unlicensed individuals, which was 120 payments, that came to  
16 \$1,235,000; is that--have I understood that correctly?

17 A. Yes, that is correct.

18 Q. And what you point to, and this is at paragraph 57,  
19 Ms Webster, is that as part of the audit, you found instances  
20 where the crew received more than the Master/Owner of the  
21 vessel?

22 A. That is correct.

23 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,  
24 Mr Rawat, you conclude--again, without referring to particular  
25 names--that in respect of the same vessel, the master and the



1 crew may claim in respect of the same vessel.

2 THE WITNESS: That's correct, yes, yes, sir.

3 BY MR RAWAT:

4 Q. And you give an example there that in one instance the  
5 master was awarded \$9,000 whereas one of the crew received  
6 20,000?

7 A. That is correct.

8 Q. The next point you make, the next finding you make,  
9 and this is for--under heading "Application for fishing grant",  
10 was that applications were noted where master and crew applied  
11 for the same objects, and each received payments.

12 And so, what you point out is the application process  
13 required submitting a completed application form directly to the  
14 Premier's Office together with proof of status, estimate of  
15 materials, works to be done or equipment required, and a copy of  
16 the fishing licence or a notarized letter verifying engagement  
17 in fishing for the past three years.

18 You then sampled an analysis of 82 applicants for the  
19 fishermen stimulus aid, funding requests were made by 40  
20 masters, and they requested \$782,000, and received \$367,000. 12  
21 crew made applications and received \$304,000--or requested  
22 \$304,000 but received \$137,000. And in terms of unlicensed  
23 applicants, whose designation--these are people you could not  
24 designate either as a Master/Owner or a crew member; is that  
25 right?

1 A. That's correct.

2 Q. They received--their requests came to \$874,000 and  
3 they received \$243,000.

4 A. This information is, as you're indicating, this is  
5 just a sample. This isn't everyone.

6 Q. Yeah.

7 What the--the examination, and this is, as you say,  
8 you're using a sample here, but you found instances where both  
9 Master and Owner, the Master/Owner of the vessel and the crew  
10 apply for the same equipment, and you give one example where  
11 three individuals, Master/Owner and two crew members on a boat  
12 applied separately for engines and material and all three were  
13 awarded grants.

14 The next finding you make was that no vetting was  
15 performed to assess the legitimacy of requests, especially given  
16 the range of costs submitted for the same needs.

17 So, is it your conclusion that there was no assessment  
18 of the applications to ascertain the genuine need or to verify  
19 the value of the amounts that were being claimed?

20 A. That was our assessment, yes.

21 Q. And did it come back down to that there was an  
22 approach as there had been with the farmer stimulus grants, that  
23 payments were being made in fixed amounts?

24 A. Yes. Payments were made in fixed amounts.

25 Q. And the amounts that you identified were amounts of

1 9,000, 15,000, and \$20,000 per fisherman?

2 A. That is correct, yes.

3 Q. And you were not given any information on how those  
4 levels were determined; is that right?

5 A. We were not, no.

6 Q. But what you were told was that the Agriculture and  
7 Fisheries Department was not involved in that process?

8 A. Aside from vetting--well, it's the same with the  
9 farmers where they were given a Schedule of a limited number of  
10 names, and I believe they were given a Schedule of the initial  
11 applicants and they vetted those and their involvement in their  
12 activity. They vetted them to see whether or not they were  
13 active and send that information on to the Ministry. But beyond  
14 that, they were not involved.

15 Q. The next finding you make is at paragraph 68.

16 COMMISSIONER HICKINBOTTOM: Just before you go on to  
17 that, only for the purposes of the record, Mr Rawat, there is at  
18 paragraph 59, which I think is a distinct point--Ms. Webster,  
19 you say payment of the grant--this is in relation to the fishing  
20 grant--payment of the grant amounts to crew members appears  
21 inconsistent with the policy that states that the funds are  
22 intended for equipment and material purchased and more in line  
23 with a gratuitous payment to persons working on fishing boats.  
24 That's another finding in relation to the crew.

25 THE WITNESS: That is correct, yes.

1 COMMISSIONER HICKINBOTTOM: Thank you.

2 Sorry, Mr Rawat.

3 BY MR RAWAT:

4 Q. If we go to paragraph 68, please, Ms Webster. This  
5 was the next finding that appears in the report, which is that  
6 the audit noted instances where individuals received more than  
7 one stimulus payment under this programme. And so, what you  
8 found were instances where--and individuals, and at 71 you say  
9 that there were 18 individuals that received both fishing and  
10 farming stimulus grants, and the total for these varied from  
11 22,500 to 42,500 to each person.

12 In some instances there were duplicative payments that  
13 were reversed, and so there was no duplication, but for those  
14 that you identify and give as examples, no such reversals were  
15 seen; is that right?

16 A. That is correct.

17 COMMISSIONER HICKINBOTTOM: And there was some  
18 duplications of farmer's grants and fishermen's grants that you  
19 listed in Paragraphs 69 and 70, so as well as individuals  
20 receiving both fishing and farming grants. Some individuals  
21 received two farmer's grants or two fishermen's grants.

22 THE WITNESS: I would modify that to say that checks  
23 were issued to these individuals. I don't know whether they  
24 received them or not.

25 COMMISSIONER HICKINBOTTOM: Right. Okay. Fair point.

1 Yes. Thank you.

2 BY MR RAWAT:

3 Q. The next point you make is at your paragraph 73, and  
4 it's about the registration databases, and what you say is  
5 databases are maintained by the Department of Agriculture and  
6 Fisheries for fishermen and farmers. One is required by the  
7 Fisheries Act and fisheries regulations, that's for fishermen,  
8 and the other is maintained for registered farmers, either  
9 commercial or non-commercial.

10 And what the Audit Office did was to in assessing the  
11 eligibility of individuals who received grants, you used those  
12 registration databases provided by Agriculture and Fisheries.

13 A. Yes.

14 Q. What you say some challenges were encountered as the  
15 databases at times did not record complete information, in  
16 particular the registration dates and the agriculture dates were  
17 often missing.

18 And then you go on to say that the records list 579  
19 registered farmers from 2007 to 2020. Between 2007 and 2009,  
20 the log identified 58 registered farmers.

21 When you're referring to a "log" there, what are you  
22 referring to?

23 A. The same Register.

24 Q. So, you had in 2020 a total of 159 persons registered  
25 as farmers. And that's--is that registered as commercial

1 farmers or is it just farmers in total?

2 A. Just farmers.

3 This was one of the challenges we had with the log, it  
4 doesn't actually identify whether the individual is a commercial  
5 farmer or not. And in fact, myself growing tomatoes in my  
6 backyard could actually register as a farmer because there are  
7 certain benefits to actually registering.

8 Q. So, what you're saying is, in 2020, a total of 159  
9 persons registered as farmers. Of these, 143 did so in the  
10 seven-month period after the stimulus programme was announced,  
11 from May to November 2020.

12 And you've dealt with the next one, which is that  
13 there is an absence of classification into commercial and  
14 non-commercial which was a challenge obviously for the audit?

15 A. Right.

16 Q. Your conclusion, Ms Webster, is at paragraph 77, and  
17 what you say is: "The objective of achieving food security is  
18 one that should be pursued. This should however be done in a  
19 strategic and holistic manner that allows the public agencies  
20 and resources charged with the responsibility of overseeing and  
21 managing the Territory's Agriculture and Fisheries industries to  
22 take the lead and manage the process".

23 The failure to adopt Cabinet's mandated procedures for  
24 implementation and monitoring of this programme has resulted in  
25 the disbursement of a substantial amount of public funds without

1 effective means of assessing how these were applied and  
2 measuring the impact, if any, on the agricultural and fishing  
3 industries.

4           The exclusion of the two key agencies (the Ministry of  
5 Education, Culture, Youth Affairs, Fisheries and Agriculture,  
6 and the Department of Agriculture and Fisheries) from this  
7 process demonstrates an absence of interest in achieving any  
8 real outcome with the payments, which for some served as needed  
9 assistance to advance their commercial fishing and agricultural  
10 undertakings, but for many were simply gratuitous, meritless  
11 awards at the expense of the public.

12           You made a number of recommendations which include  
13 that the persons responsible for administering this programme  
14 should account for the absence of transparency and  
15 accountability. The Ministry, the Premier's Office, should  
16 provide full information on how decisions on determination of  
17 grant award and distribution was arrived at. Fishermen who had  
18 been operating unlicensed in territorial waters should be made  
19 to licence, a programme should be implemented by the Department  
20 of Agriculture and Fisheries in conjunction with the Ministry of  
21 Education, Culture, Youth Affairs, Fisheries and Agriculture to  
22 follow up on, and monitor how the funds have been used by  
23 recipients. An assessment should be made as to whether there  
24 has been a breach of public finance management regulations \*\*\*  
25 73(b) (i) and (ii) in the administration of public funds,

1 especially as it relates to falsifying the requests made by  
2 farmers that resulted in excessive payouts.

3           The sixth one, the sixth recommendation is to maximize  
4 potential impact and outcome, programmes with long-term  
5 prospects should be undertaken and managed by the oversight  
6 Ministries. This allows for improved efficiency and long-term  
7 monitoring.

8           Seven, where Cabinet, when rendering a decision,  
9 prescribes controls for management of public funds, these should  
10 be adopted.

11           I won't ask you the question I've asked about earlier  
12 reports which is whether there has been any response to the  
13 recommendations because it might be a little premature, but can  
14 I ask a couple of questions arising out of your recommendations,  
15 Ms Webster? The breach of Public Finance Management  
16 Regulations, who are you saying may have breached those  
17 regulations?

18           A. Ultimately, it's the accounting officer for the  
19 Ministry that is responsible for all the funds that are being  
20 spent, and that would be the Permanent Secretary.

21           Q. And your seventh and last recommendation was about  
22 Cabinet rendering a decision prescribing controls for management  
23 of public funds, these should be adopted.

24           Stepping back from this report and accepting that your  
25 conclusions are only based on the information that you were



1 provided with, and in this instance you were not provided with  
2 some information that you wanted, but is it your view that the  
3 controls that Cabinet had put in place were not followed in this  
4 case?

5 A. That is my view. And that is the evidence that we saw  
6 within this examination.

7 Q. Thank you.

8 MR RAWAT: Commissioner, may I have a moment?

9 COMMISSIONER HICKINBOTTOM: Certainly.

10 (Pause.)

11 MR RAWAT: Commissioner, I have noticed the time, and  
12 perhaps it's been a very long day for Ms Webster, and she's been  
13 very patient, certainly with me, and I wonder if we could  
14 adjourn for the day. There is still--there are still some more  
15 questions that we need to put to Ms Webster. She has kindly  
16 agreed to come back tomorrow.

17 COMMISSIONER HICKINBOTTOM: Yes, thank you,  
18 Ms Webster. Thank you for your very interesting evidence today,  
19 and thank you for agreeing to come back tomorrow at 10:00 to  
20 finish off your evidence.

21 And I think the only other thing is to say, as I said  
22 at the beginning, that each of the Reports that has been  
23 referred to in this open hearing. Most of them are public, in  
24 any event, no one has objected to them being published. Each of  
25 those Reports will be put on the website.

1           Anything else, Mr Rawat?

2           MR RAWAT: Not at the moment, sir.

3           COMMISSIONER HICKINBOTTOM: Good. Thank you. Until  
4 tomorrow, thank you very much.

5           (Whereby, at 4:30 p.m. (EDT), the Hearing was  
6 adjourned until 10:00 a.m. (EDT) the following day.)

## CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", is written above a solid horizontal line.

DAVID A. KASDAN