

## **BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY**

### **PRESS NOTICE**

#### **MINISTERS' POSITION STATEMENT: BREACH OF CONFIDENTIALITY**

The Commission of Inquiry (“the COI”) was issued on 19 January 2021 to look into whether corruption, abuse of office or other serious dishonesty may have taken place amongst public, elected and statutory officials in recent years; and to make appropriate recommendations as to governance and the operation of the law enforcement and justice systems in the BVI. The Rt Hon Sir Gary Hickinbottom is the sole Commissioner.

An article has been published in the Virgin Island News Online (VINO) today which refers to, and heavily quotes from a Position Statement on governance submitted to the COI by the BVI elected Ministers. The Position Statement contains personal data and other information which the Attorney General has rightly accepted are likely to be confidential. Although it is the Commissioner’s intention to publish all of the Position Statements, including that of the Ministers, as the Attorney General was aware, the COI team are currently in the process of ascertaining what rights of confidentiality might be asserted by, in particular, the Governor. As part of the exercise, with the Attorney General’s approval, the Ministers’ Position Statement has thus been shared with the Governor’s Office, of course on the basis that they maintain the duty of confidence for the time being. The duties of confidence arising in the COI are owed to the Commissioner.

The Commissioner addressed this apparent breach of confidence at the commencement of the COI public hearing this afternoon. A copy of the draft transcript is attached to this Press Notice, and the hearing can be viewed on the COI’s [YouTube channel](#). As Counsel to the COI and the Commissioner set out, as soon as the article was brought to their attention, the Commissioner caused enquiries to be made of the small COI Team here in the BVI (comprising five people including Counsel to the COI), and the Commissioner is fully reassured that the leak did not emanate from anyone in the COI team. To that extent, the VINO article is wrong.

However, the leak must have been made by someone else with access to the Position Statement; and, in relation to the Statement, all who have such access owe a duty of confidence to the Commissioner.

The Commissioner takes the breach of confidence which has occurred extremely seriously. As he emphasised at the hearing, the COI can only be conducted on the basis that those who owe a duty of confidence to the Commissioner ensure that it is kept.

The Commissioner directed during the hearing that the Attorney General and the Governor's Office provide by 9am tomorrow (Thursday 17 June 2021): (i) a list of every person who has had access to this document; and (ii) confirmation that enquiries have been made as to who has had access to the document, as to enquiries they have made to ascertain who from that list may have leaked this document. An Order to that

effect has been made. Once these have been received, the Commissioner will make any further enquiries that he considers appropriate.

Steven Chandler  
Secretary to the Commission

16 June 2021

## COI Hearing Day 12 (16 June 2021)

### Partial draft Transcript

COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

MR RAWAT (COUNSEL TO THE COMMISSION): Commissioner, our next witness due is Dr Hubert O'Neal. Before we call Dr O'Neal, may I raise one matter, which came to the attention of the COI just after we adjourned for lunch.

An article has been published online in Virgin Islands News Online, and its heading is "COI document reveals turf war between ex-Governor Jaspert and VI Government." The article refers to "a 33 page statement which was shared with our newsroom by senior sources within the Commission of Inquiry (COI). That 33 page document is a reference to the position statement that was filed and served with the COI on behalf of the elected Ministers on the 1st of June 2021. That followed on your invitation to a number of individuals and entities to file position statements on the question of good governance or governance and law enforcement and justice.

Prior to that date it had been shared with two Members of the House of Assembly who are represented by Silk Legal. The COI was informed of that on the 1st of June 2021. It has not yet been published by the COI, and save with one exception, which I will come to now, it has not otherwise been provided to any other participant or individual or body.

What has occurred--and this was with the agreement of the Attorney General--was that you directed that the position statement be shared with the Governor's Office, and the reason for that is something that I highlighted at the Directions Hearing on Monday which was that the content of the position statement had raised issues that, firstly, required obtaining further disclosure from the elected Ministers, but also putting those who are the subject of their criticisms on the notice of the content of the document. All those who receive documents from the COI in the accepted manner are bound by a duty of confidentiality to you as Commissioner. Insofar as it needs to be, that has been made explicit in the COI Rules, but it is in any way a convention by which all legal representatives are used to operating in any forum.

Since the article was drawn to our attention just as we adjourned for listen, you and I, Commissioner, have discussed the content of the article and its reference to the position statement emanating from senior sources within the Commission of Inquiry. If I make clear, that leaving yourself aside, Commissioner, the COI Team here numbers 5 people, including myself. Enquiries, therefore, have been made of all members of the COI Team over the lunchtime adjournment, and I am satisfied, and I believe, Commissioner, you are also satisfied, that this document did not emanate from within the COI or indeed from any source, however senior or junior. So I just wanted to set that out and put it on the record as to the steps we have taken in light of the article.

COMMISSIONER: Thank you, Mr Rawat. As you say Mr Rawat, this article has been brought to your attention and my attention during the short adjournment for lunch. Can I make make this clear that the substance of the leaked document will be the subject of this Inquiry. In the document, the Ministers make serious allegations that Governor Jaspert and

the United Kingdom Government have acted improperly, unconstitutionally, and illegally in the sense they have acted against international law in respect of matters of governance. Contrary to speculation in the media and, indeed, by some of the participants in this Inquiry, of course, I will investigate such criticisms.

But the criticisms that have been made have to be investigated in the proper way. The Attorney General lodged the Ministers' position statement on their behalf. The statement is signed by all seven Ministers. Both she and they have confirmed that they have no redactions that they would wish to make prior to its publication. I stress that this document will be published with any appropriate redactions as soon as I have received submissions in respect of what redactions need to be made.

The position statement contains various personal information which the Attorney General has a duty to protect, as do I as Commissioner. Furthermore, it contains information that the Attorney General has said may be confidential, and she has indicated that those who may have the benefit of that confidence include the Governor and the United Kingdom Government. That is why Mr Rawat as you have said, I have directed that the position statement and its appendices be sent to the Governor's Office so that he may make any submissions that he wishes to make in respect of redactions both of personal data and other confidential information that he considers should be made prior to a determination by me and then publication of this document.

Furthermore, I've also directed the Attorney General for legal submissions on the criticisms made which I have not yet received. Yet, further, as indicated in Monday's hearing, the Ministers have failed to disclose the documents they have which are, on any view, relevant to the criticisms which they make. I have directed them to make that disclosure to the Commission of Inquiry by tomorrow. They say that they will comply by Friday. These are matters which are due to be considered in the open hearings next week.

As you've said, Mr Rawat, over the course of the short adjournment that we had, you and I have caused enquiries to be made of the small COI Team here. They were relatively easy enquiries to make because the entire team save for the Secretary, who is working literally next door, are here in the hearing room. I've received comfort, as have you, that the leak did not emanate from anyone in this team. To that extent, this article is simply wrong.

But that means that the leak must have come from somewhere else, and it must have come from someone who owes a duty of confidence to me as Commissioner in this Inquiry. I take that extremely seriously. It's unfortunate that the Attorney General is not represented at the moment. I think this is the first time, this is pure coincidence. This is the first time she's not been represented at one of these hearings, but I direct the Attorney General and the Governor's Office to whom this document has been sent in the circumstances that you and I have outlined, to write to me by 9.00 am tomorrow with the list of every single person who has had access to this document and identifying enquiries they have made to ascertain who may have leaked this document.

I will, once I've received those letters, make any further enquiries that I consider appropriate, but this Commission of Inquiry will be conducted on the basis of a proper confidentiality with all of the participants and all of those who are engaged in this process complying with their obligations of confidentiality to the full. This Inquiry simply cannot be conducted on any other basis.

I know that the Attorney General is not represented; but, if a message could be sent through to her and to the Governor's Office immediately, that those are my directions. An order will follow later today.

MR RAWAT: Commissioner, can I, just in terms of your direction, can I invite you to consider whether a similar direction needs to be made to Silk Legal, given that two of those they represent had access to the position statement prior to its disclosure to the COI?

COMMISSIONER: The two individual members whom they represent who we know have had access to the position statement because they've referred to it in their own letters confirming their agreement with it indeed prior to us getting the position statement. In those circumstances is it sufficient that the Attorney General tells us who she has disclosed the document to under her duty of confidentiality?

MR RAWAT: Yes, that would satisfy the point that I have raised.

COMMISSIONER: And the direction of course will include any individuals to whom, any individuals who have had access to it have disclosed information. It will in that sense have a waterfall effect.

MR RAWAT: Thank you.