

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 10
(MONDAY 14 JUNE 2021)

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

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

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

Mr Richard Rowe of Silk Legal, Mr Deniston Fraser of Silk Legal, and Mr Daniel Fligelstone Davies of Silk Legal appeared for those members of the House of Assembly who are not members of the Government.

Counsel to the Commission Mr Bilal Rawat also appeared.

Hon Mark H Vanterpool gave evidence.
Hon Julian Fraser gave evidence.
Hon Alvera Maduro-Caines gave evidence.
Hon Melvin M Turnbull gave evidence.

Hon Sharie B de Castro gave evidence.
Hon Shereen D Flax-Charles gave evidence.

Court Reporter:

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Those present:

Session 1 - Directions Hearing

Mrs Jo-Ann Williams-Roberts, Solicitor General

Mr Niki Olympitis, Withers LLP

Ms Sara-Jane Knock, Withers LLP

Mr Richard Rowe, Silk Legal

Mr Deniston Fraser, Silk Legal

Mr Fligelstone Davies, Silk Legal

Mr Bilal Rawat

Mr Steven Chandler, Secretary to the Commission

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

Session 2

Mrs Jo-Ann Williams-Roberts, Solicitor General

Mr Niki Olympitis, Withers LLP

Ms Sara-Jane Knock, Withers LLP

Mr Richard Rowe, Silk Legal

Mr Deniston Fraser, Silk Legal

Mr Fligelstone Davies, Silk Legal

Mr Bilal Rawat

Hon Mark H Vanterpool

Hon Julian Fraser

Hon Alvera Maduro-Caines

Hon Melvin M Turnbull

Mr Steven Chandler, Secretary to the Commission

Ms Juienna Tasaddiq, Assistant Secretary

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

Session 3

Mrs Jo-Ann Williams-Roberts, Solicitor General

Mr Niki Olympitis, Withers LLP

Ms Sara-Jane Knock, Withers LLP

Mr Bilal Rawat

Hon Dawn J Smith

Hon Sharie B de Castro

Hon Shereen D Flax-Charles

Mr Steven Chandler, Secretary to the Commission

Ms Juienna Tasaddiq, Assistant Secretary

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

P R O C E E D I N G S

1
2 COMMISSIONER HICKINBOTTOM: Good morning, everyone. I
3 think the delay this morning was not as a result of problems
4 here but problems with the traffic, I think; but, in any event,
5 we're now ready to start.

6 We're starting with the matters relating to
7 directions. And, Mr Rawat, would you like to open in respect of
8 that?

9 MR RAWAT: Hopefully everyone can hear me, but can I
10 first of all start by introducing the legal representatives to
11 all participants.

12 (Sounds interference.)

13 MR RAWAT: The Attorney General has participant status
14 in her own right and also appears on behalf of a number of
15 elected Ministers. She is represented today by the Solicitor
16 General--

17 (Sound interference and pause.)

18 COMMISSIONER HICKINBOTTOM: Thank you very much.

19 So, Mr Rawat, would you like to start again.

20 MR RAWAT: Yes, I shall.

21 To begin again, Commissioner, just by introducing the
22 legal representatives for the participants. As you know, the
23 Attorney General has participant status in her own right, but
24 also acts on behalf of a number of elected Ministers.

25 She and they are represented today by the Solicitor

1 General, Ms Joanne William Roberts; by Mr Niki Olympitis of
2 Withers BVI; and by Ms Sara-Jane Knock of Withers BVI.

3 You have also given elect--participant status to seven
4 Members of the House of Assembly, who are separately
5 represented, and their legal representatives today are
6 Mr Richard Rowe and Mr Deniston Fraser. There are, as you
7 indicated, sir, at the beginning, when you began this session, a
8 number of matters which we need to deal with before we can begin
9 to hear evidence, and I would propose, with your leave, that we
10 deal with those on an issue-by-issue basis.

11 COMMISSIONER HICKINBOTTOM: Yes.

12 MR RAWAT: The first issue arises from a letter which
13 was sent in incomplete form by Silk Legal on the 8th of June
14 2020. The complete letter was sent the following day. In that
15 letter, two points of principle are raised which, if right,
16 would have some impact on the way that hearings are conducted.

17 The first point is that the COI Rules, which are the
18 Rules that you have published relating to the conduct of your
19 investigation, the Rules on how witnesses will be questioned,
20 are inconsistent with Section 13 of the Commission of Inquiry's
21 Act 1880, which is the section in the Act which provides for the
22 examination of witnesses.

23 And the second point is that Section 13 is itself
24 incompatible with the Constitution of the Virgin Islands 2007.

25 Upon receipt of that letter, Silk

1 Legal were asked to provide written submissions on all the
2 matters that they raised, together with any documents and
3 authorities relied upon. They were directed to do so by 12 noon
4 on Friday, the 11th of June, 2021. At 5:43 p.m. on Thursday,
5 the 10th of June, Silk Legal sent an e-mail explaining that
6 because Friday was a public holiday, it was "impossible" to
7 provide any submissions. In reliance on the Interpretation Act,
8 they, Silk Legal, submitted that their written submissions would
9 only fall due today, Monday, the 14th of June.

10 The same argument was separately used to explain why
11 the position statement from the leader of the opposition, The
12 Honourable Marlon Penn, would also only be provided today. You,
13 sir, having twice extended the deadline for submission of that
14 position statement and Mr Penn having agreed to provide by no
15 later than Friday, the 11th of June, Mr Penn, in fact, submitted
16 his position statement yesterday only for it to be retracted
17 later in the day and then resubmitted.

18 Written submissions were received from Silk Legal at
19 8:00 p.m. last night, which were then withdrawn and then
20 resubmitted at 10:13 p.m.

21 I would now invite you, sir, to ask either Mr Rowe or
22 Mr Fraser, to address you on two matters. The first is why the
23 Interpretation Act permits noncompliance with the direction of
24 the Commission and specifically which section of the
25 Interpretation Act is relied upon.

1 And secondly, the argument that COI Rules and Section
2 13 of the Commission of Inquiry Act are unlawful.

3 (Pause.)

4 COMMISSIONER HICKINBOTTOM: Ready, Mr Rowe.

5 Mr Rowe, there are those two matters, and really the
6 second of those matters I would also put under that same
7 umbrella of the submissions that you made yesterday evening as
8 well, which fill out that, I think.

9 There are two other matters raised in the same letter
10 to which Mr Rawat has referred. One is revisiting a matter
11 which has been dealt with a number of times, a complaint over
12 the Foreign Commonwealth and Development Office being a data
13 processor, and secondly, a complaint over the tone of the COI's
14 correspondence.

15 But perhaps we can deal first with the Interpretation
16 Act.

17 MR ROWE: Indeed.

18 Section 16 of the Interpretation Act, Commissioner--

19 COMMISSIONER HICKINBOTTOM: Where do I find that?

20 MR ROWE: We don't have a copy here to produce it, so
21 before I begin, may I ask this question, and that has concerned
22 me a bit as a Judicial Magistrate in this Territory. The Legal
23 Professional Act requires that persons participating in this
24 Commission be called to the BVI Bar. It has come to my
25 attention that this may not be the case, and I ask,

1 Commissioner, if--certainly in the participants as Barristers
2 and Solicitors, whether they have been called to the Bar and if
3 for the purposes of our clients, they may satisfy us by
4 indicating--by providing through your permission copies of their
5 practicing certificates.

6 COMMISSIONER HICKINBOTTOM: For participants?

7 MR ROWE: Yes, right.

8 COMMISSIONER HICKINBOTTOM: Mr Olimpitis, I think this
9 is a matter for you. Are there any other participants here?

10 (Inaudible.)

11 COMMISSIONER HICKINBOTTOM: Just hold on a minute,
12 Mr Rowe.

13 You're the only participant here. There are three of
14 you here at the moment. The Solicitor General, I assume that
15 she's got a practicing certificate.

16 (Comments off microphone.)

17 COMMISSIONER HICKINBOTTOM: You and Ms Knock. Those
18 are the participants, Mr Rowe.

19 MR ROWE: With respect, Honourable Commissioner, we
20 have been subjects--Mr Rawat in particular has been
21 participating in this process, although it is inquisitional, and
22 who we can equate to be the main inquisitor that acts, is a
23 practice of an Attorney, of a Barrister in the Virgin Islands.
24 As I understand the Commission of Inquiry, which itself speaks
25 to the requirement that Attorneys be involved, and Attorneys

1 here will speak to Barristers and Solicitors, that that would
2 include the main inquisitor and his supporting staff.

3 One of the requirements, in going to answer your
4 second question, was that we provide six copies of the bundle
5 for the very brief submissions that we have.

6 COMMISSIONER HICKINBOTTOM: I'm sorry, have we moved
7 on from your first point, Mr Rowe?

8 MR ROWE: No, I'm still on it.

9 COMMISSIONER HICKINBOTTOM: Okay.

10 MR ROWE: And it is this: That we have been asked not
11 only to provide electronic copies of the submissions but six
12 physical copies, unless that is--and I'm sure it's not; I'm an
13 ecologist and don't like to waste paper--unless one can easily
14 presume or assume from that that there are six other
15 participants who need to be provided with copies of our legal
16 submissions. This Inquiry falls under the Constitution of the
17 Virgin Islands, British Virgin Islands. This Commission is
18 authorised by the Governor under powers given under the
19 Constitution of the Virgin Islands, and it's--it operates
20 according to the rule of law, something we all obtained, I
21 think, first in the Caribbean at--in St Nevis as the late
22 Archibald QC brought us to shore where it was received at the
23 Courthouse there.

24 And if it is so, there must be a presumption or we can
25 acquire elsewhere that those participating in this Commission of

1 Inquiry on this constitutional issue that they too should be
2 properly called to the Bar of the Virgin Islands, in accordance
3 with the Legal Profession Act, or if not, have committed a
4 criminal offense, the penalty of which is up to \$10,000. But
5 this is an Inquiry, and I ask it because it has been raised, and
6 I'm sure, Commissioner, this is something you would want to look
7 into, yourself, to determine if it is so.

8 COMMISSIONER HICKINBOTTOM: And which provisions of
9 the Legal Professions Act are you referring to, Mr Rowe?

10 MR ROWE: If I recall it's Section 16--17--Section 18.

11 COMMISSIONER HICKINBOTTOM: And have I got copies of
12 that?

13 MR ROWE: No, I don't have that in here because I'm
14 raising a question for eloquence obliged.

15 And then again--you see, Commissioner, those who are
16 coming to practice law in the Virgin Islands must be okay with
17 the law of the Virgin Islands, and as the law indicates clearly,
18 ignorance of the law is not a defense. It is expected that
19 anyone coming here to practice in these Virgin Islands research
20 the law, make themselves aware of it, and apply it. So that, I
21 presume--that I assume would have been the very first act before
22 anyone would dare come before this Commission and seek to hold
23 themselves out as Attorneys--as Barristers, Solicitors,
24 Attorneys--whatever.

25 No, it's just to deal with the second matter--

1 COMMISSIONER HICKINBOTTOM: Can I deal with the first
2 matter?

3 MR ROWE: Well, certainly, as you wish.

4 COMMISSIONER HICKINBOTTOM: As I understand it, you
5 haven't got anybody on notice that you were going to raise this?

6 MR ROWE: Do I need to, sir?

7 COMMISSIONER HICKINBOTTOM: Have you put anybody on
8 notice?

9 MR ROWE: No, sir.

10 COMMISSIONER HICKINBOTTOM: Okay.

11 MR ROWE: Do I need to raise it as a question
12 publicly?

13 COMMISSIONER HICKINBOTTOM: I'm aware of recent
14 decisions of the Court of Appeal and in the Commercial Court
15 here which concern the scope and effect of section 18 of the
16 Legal Profession Act in 2015, which is, I think, the section
17 that--

18 (Overlapping speakers.)

19 COMMISSIONER HICKINBOTTOM: And in particular, these
20 decisions concern the practice of BVI law by persons who are not
21 registered on the roll of BVI legal practitioners. I've
22 considered this, and I don't consider that the work being
23 undertaken in support of the Commission of Inquiry as opposed to
24 participants, to be practicing--to be the practice of BVI law,
25 or work caught by the provisions which are intended to protect

1 the public from the unlawful practice of BVI law.

2 Nevertheless, I do consider that it's appropriate for
3 those assisting the Commission of Inquiry who are eligible for
4 admission as BVI legal practitioners to be admitted and to
5 obtain practicing certificates; and, consequently, I will direct
6 that appropriate applications are filed.

7 I should say, Mr Rowe, that in terms of Mr Rawat, who
8 you particularly mentioned, he was, of course, appointed to his
9 role by the Attorney General.

10 MR ROWE: As I understand and read, Commissioner, by
11 your direction--I was not here, but certainly from what I
12 received in terms of the Order--that that was at your direction.

13 COMMISSIONER HICKINBOTTOM: What?

14 MR ROWE: His appointment by the Attorney General.

15 COMMISSIONER HICKINBOTTOM: Under the Act, as you'll
16 know--under the Act, as you'll know, the appointment is usually
17 made by the Attorney General, and the Attorney General appointed
18 Mr Rawat on my recommendation.

19 MR ROWE: You see, Commissioner, here is the--here is
20 the new problem, to put it simply. The Attorney General--and I
21 understand and sympathise greatly with the position in which
22 she's placed--the Attorney General's point has been recommended
23 by the Judicial Services Commission and appointed by the
24 Governor. Her role is to act as advisor to the Governor and
25 also advisor to the Legislature, two separate arms of--under the

1 separations of power.

2 Here it is, in essence, that the Governor is
3 investigating another arm of the Government, the Legislature.
4 Her position is an unenviable one because--

5 COMMISSIONER HICKINBOTTOM: Mr Rowe, we've dealt with
6 this before. We've dealt with the potential conflict of
7 interest, the Attorney General, and she has dealt with us that
8 in hearings before me.

9 What's the point, Mr Rowe, that you're trying to make?

10 MR ROWE: The point you're making, sir, is that even
11 the very appointment of Mr Rawat is something that we think
12 might be amenable to judicial review.

13 COMMISSIONER HICKINBOTTOM: But, I mean, with respect,
14 he's been appointed by the Attorney General. If you wish to
15 judicially review his appointment, first it may be--it may have
16 been something you could have done some time ago. And secondly,
17 you will have to judicially review the decision of the Attorney
18 General to appoint him.

19 MR ROWE: And here comes another problem: Who--if
20 actions in the Virgin Islands, whenever a government body,
21 Minister or otherwise, is instituted, automatically involves the
22 Attorney General. So, if we saw here--I'm not sure what they
23 practice in England--if we sue a government department for
24 negligence of a driver, say for the Public Works who involves
25 themselves in an accident, we have to, by course of practice,

1 also include within the six-month period, limitation period we
2 have, the Attorney General. And here it is: Wherever we find
3 ourselves turning to apply the rule of law within the course of
4 this inquisition, we find blockages regarding the Attorney
5 General.

6 COMMISSIONER HICKINBOTTOM: You made those points, but
7 more recently, having made those points, you've said that all of
8 your clients have full confidence in the Attorney General and,
9 indeed, you're cooperating with her.

10 MR ROWE: That is so in terms of operating through the
11 operation of this Commission, of this Inquiry.

12 COMMISSIONER HICKINBOTTOM: But are you saying that in
13 some way the Attorney General has, what? Has a difficult
14 constitutional role?

15 MR ROWE: She has an almost impossible constitutional
16 role, sir.

17 COMMISSIONER HICKINBOTTOM: And does that affect
18 governance?

19 MR ROWE: It affects governance, as I will go on.

20 COMMISSIONER HICKINBOTTOM: But why haven't you, when
21 given the opportunity by me, put in submissions that that is a
22 problem with governance in the BVI?

23 MR ROWE: That is a problem with governance.

24 I, sir, am not a witness in this inquisition. I'm an
25 Attorney acting.

1 COMMISSIONER HICKINBOTTOM: I'm sorry, I assumed the
2 submissions you're making were made on instructions.

3 MR ROWE: The submissions I'm making are made with
4 respect to law.

5 COMMISSIONER HICKINBOTTOM: But are there on
6 instructions?

7 MR ROWE: On instructions regarding witness position?

8 (Overlapping speakers.)

9 MR ROWE: Oh, yes. Oh, most definitely. In fact, in
10 fact, I've been raised by the Speaker at the conference with the
11 Commonwealth Association now.

12 COMMISSIONER HICKINBOTTOM: And so, can we take it
13 that any issues that the Speaker has with regard to this will be
14 found in his position statement on governance?

15 MR ROWE: His position statement on governance, I
16 gather that what you've asked, Commissioner, and I used the word
17 "asked"--because it is a request; it is not a demand--it is not
18 a summons. I would even act properly made under this Salmon
19 rules because you've asked a question which, frankly, to use
20 their terms, would be best directed at a lower form of high
21 school student. This is how they perceive it. What is your
22 views on governance? Such a general view.

23 COMMISSIONER HICKINBOTTOM: Sorry, that was not one of
24 the questions. The question is what is governance, what is good
25 governance, what is poor governance, and so on.

1 But in any event, Mr Rowe, we have had--I have had
2 responses to that request.

3 MR ROWE: Certainly, certainly.

4 COMMISSIONER HICKINBOTTOM: I've had response from the
5 Speaker.

6 MR ROWE: Yes.

7 COMMISSIONER HICKINBOTTOM: Did he raise an issue
8 about the role of the Attorney General in governance?

9 MR ROWE: That was not an issue raised there.

10 COMMISSIONER HICKINBOTTOM: Mr Rowe, we've got
11 witnesses waiting. We have quite a long list of matters to
12 determine in terms of directions. Where is this going, sir?

13 MR ROWE: Where it's going, sir, let's go further to
14 the second point. This submission--

15 COMMISSIONER HICKINBOTTOM: I'm sorry, my second point
16 or your second point?

17 MR ROWE: Your second point, sir, regarding these
18 documents, the directions.

19 COMMISSIONER HICKINBOTTOM: We haven't dealt with the
20 first point yet which is the Interpretation Act.

21 MR ROWE: Section 16, sir, requires--indicates--

22 COMMISSIONER HICKINBOTTOM: Where is section 16?
23 Where do I find section 16?

24 MR ROWE: We shall be happy to provide it to you, in
25 the same way that we would assume, and I think rather wrongly,

1 that those participating in your support are familiar with
2 British Virgin Islands laws.

3 COMMISSIONER HICKINBOTTOM: So, what does section 16
4 say, Mr Rowe?

5 MR ROWE: In a sense, what it says, it says this.
6 Where one--

7 COMMISSIONER HICKINBOTTOM: Not in a sense. What does
8 it say?

9 MR ROWE: It says that where one is directed to make
10 service on a public holiday, particularly when that following
11 that public holiday it's a weekend, a Saturday and a Sunday, the
12 document is due on the next day, if it, itself, is not a public
13 holiday, that in this case being today, Monday. That's what it
14 says, sir.

15 COMMISSIONER HICKINBOTTOM: Okay.

16 MR ROWE: If I may go further, sir.

17 COMMISSIONER HICKINBOTTOM: No, no, just one moment,
18 Mr Rowe.

19 Mr Rawat, can you help on this? Mr Rowe doesn't have
20 the section.

21 MR ROWE: Set up the section.

22 MR RAWAT: The Interpretation Act, as I understand it,
23 was introduced in 1991. There was an amendment in 2014 that
24 replaced the--section 16 of the principal act and section 16 as
25 replaced reads: "An enactment or provision of an enactment

1 shall commence or come into operation where a particular date of
2 commencement coming into operation specified by the enactment or
3 by a proclamation or notice made under the enactment on the
4 expiration of the previous day, or, B, where the day of its
5 commencement of coming or coming into operation is the date of
6 this publication in the Gazette on the expiration of the
7 previous day.

8 So, it doesn't appear that the section 16, as
9 introduced by the amending act in 2014, is the statute which--is
10 the provision on which Mr Rowe is relying.

11 COMMISSIONER HICKINBOTTOM: Because it relates to
12 enactments?

13 MR RAWAT: Yes.

14 MR ROWE: The communication to Mr--through your
15 Secretary, Commissioner, set out the provision of the Act. That
16 letter Mr Rawat has because he has quoted this morning--

17 COMMISSIONER HICKINBOTTOM: The letter of the 8th of
18 June?

19 MR ROWE: Yes.

20 Letter of the 4th of June.

21 COMMISSIONER HICKINBOTTOM: So, which is the section,
22 Mr Rowe?

23 MR RAWAT: Mr Commissioner, if it helps, I've just
24 looked at the 1991 statute, and section 16 there is--again still
25 refers to the coming into force of an act.

1 COMMISSIONER HICKINBOTTOM: Yes.

2 MR RAWAT: To assist Mr Rowe, the letter of the 8th of
3 June didn't refer to the section of the Interpretation Act
4 merely being an Interpretation Act.

5 MR ROWE: We'll happy to provide it to you
6 short--provide a section for you in short.

7 COMMISSIONER HICKINBOTTOM: For which section?

8 MR ROWE: The Interpretation Act and the relevant
9 section which outlines the points I raised.

10 COMMISSIONER HICKINBOTTOM: So, is it not Section 16?

11 MR ROWE: It seems not to be. I can't find here the
12 (unclear).

13 MR RAWAT: Perhaps if I could help.

14 COMMISSIONER HICKINBOTTOM: Yes.

15 MR RAWAT: If we go back to the 2014 Amending
16 Statute--

17 (Overlapping speakers.)

18 MR RAWAT: Just to help, perhaps, and to narrow the
19 searches, the 2014 Act amending the Interpretation Act of 1991
20 replaced section 39, so section 39 now reads, 39(1): "If in any
21 enactment or statutory instrument a period of time dating from a
22 given day, act or event prescribed or allowed for any purpose,
23 the time should be reckoned exclusive of that day or of the day
24 or that act or event. Two, if the last day of a period of time
25 prescribed or allowed by an act or statutory instrument for the

1 doing of anything false (a) on a Saturday or Sunday or (b) on a
2 day that is a public holiday, the thing may be done on the first
3 day following that is not a Saturday or Sunday or a public
4 holiday, as the case may be."

5 I pause there.

6 I'm looking to Mr Rowe to see whether that may be the
7 section which he has in mind.

8 MR ROWE: That is the section. That is the section.

9 COMMISSIONER HICKINBOTTOM: Which section is that?

10 MR RAWAT: It is section 39 of the Interpretation Act
11 1991 as introduced by the 2014 Interpretation Act Amendment.

12 COMMISSIONER HICKINBOTTOM: But does that only apply
13 to enactment?

14 MR RAWAT: On my reading of it, if a period of time is
15 prescribed by an enactment or statutory instrument, then that's
16 when the section bites.

17 COMMISSIONER HICKINBOTTOM: Quite. But my directions,
18 Mr Rowe, important as powerful as they are, are not an
19 enactment.

20 MR ROWE: Here, the practice, sir, they're obviously
21 you are Privy Councilor, as I understand it. The law in the
22 Virgin Islands ends with you in that capacity. The practice,
23 particularly for us--well, let me indicate firstly, on the
24 public holiday, having run with the paper, there is no way we
25 could have produced and served to you because no case was opened

1 to purchase paper for the six bundles.

2 COMMISSIONER HICKINBOTTOM: Just wait a minute. We're
3 not doing that at the moment, Mr Rowe.

4 MR ROWE: I'm saying--
5 (Overlapping speakers.)

6 COMMISSIONER HICKINBOTTOM: We will come on to--

7 MR ROWE: We will come to practical, the practical
8 thing, my Lord--Commissioner.

9 The directions are given. Directions are given,
10 particularly when Members of the House have on several occasions
11 advanced the necessity of a meeting to better coordinate the
12 activities of this Commission. It is only recently that a
13 meeting had been called with counsel, of the counsel involved,
14 so that there would be a coordination.

15 At this time, there are three matters that we have in
16 the High Court which are continuing now. They are those
17 matters--the six persons, that need these documents, surely
18 concentrate on this Commission. We are practicing counsel
19 within the Virgin Islands have directed to meet when the very
20 democratic practice in the courts here is that there is a
21 consultation with counsel as to whether you can meet these
22 deadlines. What we are receiving--

23 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rowe, what
24 you're saying is muddled thinking. The first issue is whether
25 the Interpretation Act meant that the submissions were not due

1 on Friday, they were due today.

2 MR ROWE: Our interpretation of the--

3 COMMISSIONER HICKINBOTTOM: My understanding is that
4 you accept that that's not what the Act says, but you says that
5 that's the practice in the Virgin Islands.

6 MR ROWE: Indeed.

7 COMMISSIONER HICKINBOTTOM: Okay, right. So, it's not
8 the Interpretation Act.

9 MR ROWE: It is interpreting--it's understanding of
10 the Interpretation Act and its application in the Virgin Islands
11 that we apply.

12 COMMISSIONER HICKINBOTTOM: Okay. Well, I'm going to
13 apply the Interpretation Act as opposed to what you said it
14 meant, and the Interpretation Act is clear.

15 The submissions were due on Friday. The submissions
16 were made at 10:13 p.m. last night.

17 MR ROWE: Indeed.

18 COMMISSIONER HICKINBOTTOM: That was not helpful. And
19 in the future, Mr Rowe, I expect directions to be complied with.
20 If you're not going to comply with them, then I expect an
21 application to be made for an extension of time. The Attorney
22 General has made many, many, many such applications. I think--I
23 think it's right that I have agreed all of them.

24 MR ROWE: Indeed, sir.

25 COMMISSIONER HICKINBOTTOM: But no application from

1 you in this instance. That, at the very least, was a
2 discourtesy.

3 But also, you are bound as a legal professional here
4 to assist the Commission of Inquiry, and to have submissions
5 sent to us late in the evening the day before a hearing is not
6 helpful.

7 That--

8 MR ROWE: May I apologise for the feeling, sir.

9 COMMISSIONER HICKINBOTTOM: Yes.

10 MR ROWE: May I ask, as in an instance last week when
11 more documentation has been sent to us at all for submissions,
12 that this discourtesy we are--that it--we were not the
13 recipients of the same.

14 COMMISSIONER HICKINBOTTOM: Which documents, Mr Rowe?

15 MR ROWE: The submissions made by
16 Ms Forbes-Vanterpool, which I was asked to respond to, which
17 were sent to me the morning of the Hearing.

18 COMMISSIONER HICKINBOTTOM: With respect--

19 MR ROWE: With--

20 COMMISSIONER HICKINBOTTOM: Mr Rowe, with respect,
21 they were sent to me the morning of the Hearing. They were sent
22 to us the morning of the Hearing, and she was trying to comply
23 with a very, very tight timetable. Those submissions, as it
24 happened, were extremely useful. You got them at the same time
25 as us.

1 MR ROWE: So what I'm raising, Commissioner, is that
2 for the smooth operation, it might be helpful if we coordinated,
3 if we consulted each other, we're open 24/7--

4 COMMISSIONER HICKINBOTTOM: Mr Rowe, I made a
5 direction. It was open to you under the Rules to apply for
6 extra time. You didn't. You should have done. You accept
7 that.

8 MR ROWE: Indeed.

9 COMMISSIONER HICKINBOTTOM: Had you done so, then we
10 may have been able to deal with the matter. You made no
11 application. That's the way the Rules work.

12 Now, can we go on to the next matter, which is the COI
13 Rules, which you say are unlawful, section 13, which you say is
14 counter to the Constitution, and also the recent submissions.
15 Can I just start with the recent submissions. In those
16 submissions, you referred to the Salmon principles, which were
17 set out in the report of the Royal Commission, chaired by Lord
18 Salmon, in 1966, and those principles were, as you've indicated,
19 approved by Justice Mitchell in a case from Antigua and Barbuda
20 in 2003, and you cited that case.

21 MR ROWE: Um-hmm.

22 COMMISSIONER HICKINBOTTOM: Now, I note that you refer
23 to that--you referred to that jurisprudence as "modern," but as
24 you'll know, the Salmon principles have been the subject of
25 considerable criticism in the last half century, and in any

1 event, they're only an expression of what we now call the
2 "requirement for procedural fairness."

3 And in any event, in those six principles, principles
4 two to six, do not bite until what you refer to as "allegations"
5 have been made in respect of a particular witness, and none as
6 yet have been made in respect of your clients, so they don't
7 bite. They're simply inapplicable.

8 But, Mr Rowe, it pains to emphasise from the outset of
9 the Commission of Inquiry that I'm not conducting a trial. I'm
10 conducting an inquiry, an investigation, and we're still in the
11 investigative stage of that process. That's a stage which no
12 doubt could have been done in private. I wish that process to
13 be done in public, and it is being done in public.

14 This week and next week, the focus of the Inquiry is
15 on governance, on State governance. That is the process whereby
16 public decisions are made and implemented. In terms of
17 registration of interests, which we're dealing with this week.
18 I'm interested in the system, what it is and how it works, but
19 that can only be done in the context of evidence from individual
20 Members of the House of Assembly current and past.

21 As you know, because you represent seven of them, they
22 have been asked a series of questions. Those who have
23 responded--not all have, but those who have responded--have said
24 generally--perhaps in every case but certainly generally--that
25 they have been compliant with the Declaration requirements at

1 all material times.

2 Now, if the evidence from them this week, however,
3 when we hear from them. Suggests that they are, in fact, in
4 breach, then there may be a stage where I will have to consider
5 the steps I take to make sure that the process in their regard
6 is fair. One way of doing that--just one way of doing that
7 would be to write to them setting out what the evidence suggests
8 and giving them an opportunity to add anything they wish to add
9 to what they've said this week, before we go further. They may
10 want further steps to be taken. They may want other witnesses
11 to be called, for all I know.

12 But what I propose to do is to hear submissions on
13 that from you and from the Attorney General at the end of the
14 week as to the best form, if appropriate, to the best form that
15 those steps may take, but we're not there yet. There is nothing
16 to put to any of your clients or, indeed, any of those of the
17 Attorney General. All we have at the moment is a set of
18 documents and their responses to the questions we've asked.
19 Their responses are, as I've said generally, we are compliant.
20 It's only if they're in breach of anything that we may have to
21 consider further steps. What those steps might be for now, I
22 certainly don't accept that they have to be rigidly in
23 accordance with the six principles that you've set out, but
24 what's important is that they're given a fair opportunity to
25 respond to any suggestions that may be made against them.

1 MR ROWE: I really appreciate this, Commissioner,
2 particularly if you look at the submissions line in this
3 paragraph that Mr Rawat has been very careful to say. I will
4 not at this stage be putting anything to you or accusing you of
5 anything. I have observed that fairness throughout this stage.

6 What it appears, sir--and I go back, you've indicated
7 earlier to me when I suggested that this was a fishing exercise,
8 that, in your words, if I quote them precisely, I was here to
9 see if there was any fish.

10 COMMISSIONER HICKINBOTTOM: But what am I supposed to
11 be fishing for? All I want to know is this week, how does the
12 system work.

13 MR ROWE: Yes.

14 COMMISSIONER HICKINBOTTOM: Does the system work?

15 MR ROWE: And you see, it is--it is in that regard
16 that number one the settlement principles concern us. Number
17 one reads, before any person becomes involved in an Inquiry, the
18 Commission must be satisfied that there are circumstances that
19 affect him and which the Commissioner proposes--

20 COMMISSIONER HICKINBOTTOM: Mr Rowe, we can't go
21 backwards. We've dealt with that. Your clients are
22 participants. You applied effectively under that paragraph.
23 You applied for participant status. You have been granted
24 participation status. And that's that.

25 MR ROWE: Indeed.

1 What that infers, Commissioner, is that there are
2 clearly--and I'm sure our Governor would not have instituted
3 this Commission and have appointed you had there not been
4 particular concerns with respect to our clients that they wish
5 to investigate.

6 COMMISSIONER HICKINBOTTOM: You applied--your clients
7 applied for participation status on the basis that they were
8 involved in governance, and that is the basis upon which they
9 were granted participation status. They are involved in
10 governance. Governance is central to paragraph 3 of my Terms of
11 Reference.

12 MR ROWE: And I note, Commissioner, and I note it
13 happily that the--in terms of the future that you're--you're
14 indeed going to be investigating errors which fell under the
15 purview of the Governor himself.

16 COMMISSIONER HICKINBOTTOM: Yes, because he's also
17 involved in governance.

18 MR ROWE: Indeed.

19 COMMISSIONER HICKINBOTTOM: But there was never any
20 doubt about that.

21 MR ROWE: Indeed.

22 That has only come to us with some satisfaction with
23 recent communications that the Commissioner of Police were
24 called the DPP, et cetera.

25 COMMISSIONER HICKINBOTTOM: They are centrally

1 involved in governance and the operation of the law-enforcement
2 and justice systems which are paragraphs 3 and 4 of the Terms of
3 Reference. But I don't know why anybody thought that they would
4 not be involved.

5 MR ROWE: Would that as well, Commissioner, involve,
6 and we wondered why it (unclear) of this Inquiry, whether that
7 would have involved calling the Chief Justice of the OECS as
8 well because, within the region, to use a colloquial term, the
9 buck ends with her.

10 COMMISSIONER HICKINBOTTOM: The Chief Justice, in my
11 view, has a role to play in governance, and she will be given an
12 opportunity to make her observations in relation to that.

13 MR ROWE: Indeed, indeed.

14 So, as I would then, sir, happily at this stage
15 provide them with our apology, make our application at the end
16 of the week, as you have suggested, with respect to these six
17 principles as you have quite, I think so, quite positively
18 indicated, we'll have an opportunity to put suggestions to you
19 as to how--

20 COMMISSIONER HICKINBOTTOM: But depending on the
21 evidence. We haven't heard the evidence yet. The evidence may
22 be that all your clients are compliant.

23 MR ROWE: Indeed, indeed. Indeed, indeed.

24 If I (unclear) as follows--

25 COMMISSIONER HICKINBOTTOM: Before we come on to

1 bundles, which really is a separate issue--

2 MR ROWE: Indeed.

3 COMMISSIONER HICKINBOTTOM: --can we just deal with
4 the two other matters that your letter raised. Firstly there's
5 this issue about the FCDO being a data processor. I thought we
6 had dealt with that. I thought we had dealt with it more than
7 once. It's certainly dealt with in a press statement.

8 MR ROWE: You see, we, as I indicated, sir, are
9 creatures of our clients' instructions, and we note and we
10 pointed them to the published discussions on the issue. There
11 is, there still remains amongst them some cause of concern, even
12 the closed society that this is. In fact, the true Virgin
13 Islanders may comprise no more than 15,000 people, all
14 interrelated, and it may open them to concerns about their own
15 safety and privacy.

16 COMMISSIONER HICKINBOTTOM: Yes.

17 MR ROWE: And it is that concern, I suppose we could
18 deal with it on Friday as well, but it has concerns about that
19 in this very closed society that they have concerns about.

20 COMMISSIONER HICKINBOTTOM: In terms of the FCDO being
21 a data processor, I have dealt with that in the past, it's dealt
22 with in the press notice, the data are secure.

23 MR ROWE: Thank you. We'll honor and express that
24 again to them. Thank you.

25 COMMISSIONER HICKINBOTTOM: Finally, there is a

1 complaint over the tone of the Commission of Inquiry
2 correspondence, and I assume that's come from your clients and
3 not from you.

4 MR ROWE: No.

5 COMMISSIONER HICKINBOTTOM: The tone is formal. It is
6 not intended to be discourteous, I don't consider that it is
7 possibly discourteous, but it is certainly not intended to be
8 discourteous. It is a formal term of correspondence that we
9 have maintained to whomever we have written, whether it's the
10 Premier, who has raised no complaint--the Deputy Premier, who's
11 raised no complaint, the Ministers, who've raised no complaint,
12 the Governor, who's raised no complaint, the Deputy Governor,
13 who's raised no complaint; so perhaps you can also give your
14 clients comfort that no discourtesy is intended.

15 MR ROWE: Indeed, sir. Indeed.

16 That, sir, would conclude, I think, the areas--

17 COMMISSIONER HICKINBOTTOM: Can we just deal with
18 bundles--

19 MR ROWE: Yes, bundles here--the submissions are very
20 short, two pages.

21 COMMISSIONER HICKINBOTTOM: Yes.

22 MR ROWE: And I think our--rather than quotations, the
23 points we submit on are less than a page, so we have six copies
24 here.

25 COMMISSIONER HICKINBOTTOM: Thank you.

1 You will appreciate that one reason for requiring hard
2 copies is the lateness of submission.

3 MR ROWE: No--it's impossible, sir, on Friday.

4 COMMISSIONER HICKINBOTTOM: Okay.

5 MR ROWE: Please appreciate that sincerely, on Friday
6 with no paper in office, no place to purchase, that would have
7 been impossible to produce as small as these were.

8 COMMISSIONER HICKINBOTTOM: Yes. But we've dealt with
9 this, it would have been possible to make an application.

10 MR ROWE: Indeed. Indeed.

11 COMMISSIONER HICKINBOTTOM: No application has been
12 made. You have apologised. I have accepted the apology. We
13 can move on, Mr Rowe.

14 MR ROWE: Okay.

15 COMMISSIONER HICKINBOTTOM: Mr Rawat, bundles, could
16 you perhaps--

17 MR RAWAT: Sir, if I could just raise the, again,
18 issues that have been raised in correspondence concerning the
19 provision of bundles--and these have been raised by both Silk
20 Legal and by the Attorney General--they fall under two heads.
21 The first is the provision of Witness Bundles in advance of
22 hearings, and the second is the question of documents within the
23 bundles referring to personal data and other potentially
24 Confidential Information.

25 As to bundles being provided in advance, there are two

1 matters that need to be mentioned:

2 First, the practicalities. Documents are being
3 provided late. Often, they're incomplete; and, as the BVI
4 Government has accepted, sometimes in very poor order.

5 To give an example, Commissioner, the next topic,
6 after the one that we are due to start today that the Inquiry
7 will focus on, will be the question of governance and the
8 operation of law-enforcement and justice systems. The Main
9 Documents that will inform that topic will be the position
10 statements that have been provided by those with a particular
11 interest in these matters. However, at present, several
12 position statements have yet to be lodged, applications for time
13 having been sought and granted.

14 Could I pause there just to echo the point that you
15 made earlier to Mr Rowe. Throughout the course of this
16 Commission of Inquiry, you have received multiple applications
17 for extensions of time. He's right that none have been refused.
18 Perhaps it may ease Mr Rowe's mind that these applications don't
19 have to be made in any great formality. They are often made by
20 e-mail, a short explanation is given, an alternative time is
21 offered. It is not always a date that you can accept that you
22 may extend time for a shorter period.

23 The COI has noted, however, that there is also recent
24 press reports of government departments being sent a request
25 from the Commissioner on a Friday afternoon and being asked to

1 deliver a response by Monday. That, to my knowledge, has never
2 happened. It is right that we do operate on short timelines,
3 and we do require the cooperation of those to whom we have made
4 requests, but that is an inevitable consequence of the overall
5 time scale within which we operate.

6 And as I've said, where those to whom subject requests
7 are sent have come back to the Commission and asked for more
8 time, it has been granted.

9 To turn to the position statements that have been
10 lodged--and again, this is to return to the practicalities
11 concerning bundles--the position statement that was submitted on
12 behalf of the elected Ministers does contain unredacted personal
13 information, and it also raises issues, notably criticisms that
14 the Governor and the UK Government have acted unconstitutionally
15 in respect of which full disclosure has not been given by the
16 Ministers. The Commission requested that that disclosure be
17 provided by Wednesday of this week. Those documents, when they
18 are received, will inevitably require analysis so that we can
19 identify any documents which may then need be disclosed to
20 others or to be put into a bundle for a witness.

21 But in any event, what I would make--a point I would
22 make is that--and this perhaps goes back to the submissions that
23 you received on the standard principles--there is no requirement
24 to provide witnesses with all documents in advance. What the
25 obligation is--and in my submission it's the obligation that

1 informs this entire Commission, and it's an obligation that you
2 have publicly reiterated time and time again--the obligation is
3 to ensure that each witness is dealt with fairly. And this was
4 raised at the start of the hearings. It has been raised in more
5 than one hearing. And you, sir, have made the point.

6 The reason for raising it now is because in relation
7 to bundles, we will have to act flexibly, and we will--what
8 needs to be disclosed to a witness. And it is not only so that
9 that witness is being treated fairly but so that we can get the
10 best evidence from the Witness, will have to be determined on a
11 topic-by-topic basis. So I've referred to the topic concerning
12 governance and law enforcement and justice. Obviously, the
13 position statements are at the heart of that topic.

14 But, by contrast, if we take the topic of interest,
15 which is our first topic, and the topic we are canvassing this
16 week, many of the documents to which witnesses will be referred
17 to are documents which have been provided by themselves. And so
18 whether or not they receive a bundle in advance isn't perhaps as
19 pivotal because ultimately we are asking questions and seeking
20 information from them about matters that are within their own
21 knowledge and about documents that at one time would have been
22 in their position and control.

23 And above all, perhaps the point to emphasise is the
24 point again, sir, that you have made, is that it falls to you,
25 and it is an obligation you have made clear you will adhere to

1 ensure that each witness is going to be treated with procedural
2 fairness, and we must all bear in mind that these witnesses are
3 your witnesses. They are not here to advance a particular case.
4 They are here to assist with your investigation.

5 To turn to the question of Confidential Information,
6 we have a redaction policy in place that is published, and it is
7 available on the Inquiry's website. Again, this will have to be
8 done, what material is provided to participants, to witnesses,
9 and to those who are not participants but against whom an
10 allegation may be made, will have to be determined on a
11 topic-by-topic basis, keeping procedural fairness in mind.

12 What I would remind all those involved with--and that
13 is not just the legal representatives--it is participants and
14 witnesses--and it is this--and this is found in the COI Rules:
15 Everyone owes the Commissioner an obligation of confidentiality.
16 If a document is provided to a participant or to their legal
17 representative, it is under that obligation, and they are bound
18 by that obligation until released from it by the Commissioner.

19 In terms of the use of Confidential Information, it is
20 unlikely that it will be necessary to refer to much, if any, of
21 material which is considered to be confidential. But if
22 reference needs to be made to it, that can be dealt with shortly
23 in private session--and you made the point at an early hearing,
24 that although the public hearings are going to be live-streamed
25 because of the importance that you have placed, sir, on the need

1 for transparency and for the working of the Commission to be
2 seen and followed by the BVI public, that is subject to a
3 three-minute delay. And that allows any legal representative or
4 any participant or even the Witness to raise a question which
5 can then be resolved by you as Commissioner in private session.

6 If the matter is one that can then be resolved such
7 that information can be considered publicly, then when we resume
8 public session, that can be explained for the purposes of the
9 Transcript so that any members of the public following have a
10 full awareness of what has been determined and what direction is
11 to be taken. That's all I wish to say in relation to bundles.

12 I don't know whether there are matters that you may
13 wish to raise, Commissioner.

14 MR ROWE: If I may add, Commissioner.

15 COMMISSIONER HICKINBOTTOM: No, no.

16 MR ROWE: One supporting point.

17 COMMISSIONER HICKINBOTTOM: No, no, we will hear all
18 supporting points that you want to make, Mr Rowe.

19 I just want to crystallise that into two propositions,
20 I think. Firstly, each topic that we deal with, we will have to
21 deal with bundles, the arrangement for bundles in respect of
22 that particular topic because the criteria--the circumstances
23 will be different.

24 And, secondly, there is material in the bundles for
25 this week and certainly in the bundles that are likely to be

1 prepared for next week, that will be confidential either because
2 they contain personal data or for other reasons, but if they are
3 given--just sticking with the participants for the moment--if
4 they're given to participants, under their obligation of
5 confidentiality, then any issues that arise during the course of
6 a hearing in relation to a particular element of Confidential
7 Information, if it arises, can be dealt with then, if necessary
8 using the three-minute delay.

9 Sorry, Mr Rowe.

10 MR ROWE: Yes, this indicates that's certainly the
11 topic for this week. The information is public and bend them to
12 the law, even more so. So we can understand that with respect
13 to these to support the submission.

14 COMMISSIONER HICKINBOTTOM: Yes, thank you.

15 Mr Olimpitis, any observations at this stage?

16 MR OLYMPITIS: I've got a couple of comments, sir.

17 In relation to bundles, it's good practice for
18 participants to have as much advance evidence as possible and
19 that the point that the Attorney General made in her letter of
20 the 10th of June in order to get bundles for this hearing. And,
21 fortunately, we were supplied with the COI's bundles. and we are
22 grateful for that.

23 COMMISSIONER HICKINBOTTOM: I agree with that point,
24 Mr Olimpitis, but there are practicalities. Why having prior
25 notice of bundles, you say it's good practice, it is helpful

1 because it may shorten hearings because the witnesses will be
2 better acquainted or may be better acquainted with the bundles
3 as it is.

4 But there are real challenge, and this at the moment
5 is not a complaint. I may complain about it on another
6 occasion, but documents are coming in very late. For example,
7 for next week, we can't put the bundles together for next week
8 because we haven't had full disclosure yet from you. So, it's a
9 real challenge.

10 Just--I know you have a second point but just taking
11 up the point about this week, Mr Rawat, the individual bundles
12 for this week, they are available and can they be made available
13 to Mr Olimpitis for those the Attorney General represents?

14 MR RAWAT: May I have a moment, sir?

15 COMMISSIONER HICKINBOTTOM: Yes.

16 (Pause.)

17 MR RAWAT: I'm grateful to those who sit behind me,
18 Mr Commissioner.

19 The bundles, as I understand it, for Mr Olimpitis'
20 clients have already been provided to him. There are bundles
21 here for Mr Rowe in relation to his clients.

22 COMMISSIONER HICKINBOTTOM: In relation to his
23 clients.

24 Are there any of Mr Rowe's clients today?

25 MR ROWE: Yes.

1 MR RAWAT: That's a matter that we need to deal with
2 later on. We will come back to that.

3 COMMISSIONER HICKINBOTTOM: We will come back to that,
4 but Mr Rowe, you can have those files.

5 MR ROWE: I appreciate it.

6 COMMISSIONER HICKINBOTTOM: They are files, as Mr Rowe
7 had said, of documents emanating from your clients or going to
8 your clients.

9 MR ROWE: I'm talking about--

10 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Olimpitis,
11 you had a second point?

12 MR OLYMPITIS: The second point was really an
13 observation. Mr Rawat had said that all requests for extensions
14 had been granted; whereas, in fact, our request for an extension
15 in relation to Order 11 topics and extending the timetable for
16 providing submissions on those issues, that was refused on the
17 7th of June. We're trying to do our best to provide
18 submissions, but because we were planning on doing these at the
19 end of the month, so we're trying to bring their work forward
20 and get--but the point that I make--the request was refused.

21 COMMISSIONER HICKINBOTTOM: Just remind me,
22 Mr Olimpitis, was that the order in respect of issues and
23 witnesses for the topics?

24 MR OLYMPITIS: That's right. Yes.

25 And you had given--I don't have it with me but you had

1 given us a deadline, I think, of the 7th of June for that?

2 COMMISSIONER HICKINBOTTOM: Yes.

3 MR OLYMPITIS: And we offered a different framework
4 and timetable, and the response came back no.

5 COMMISSIONER HICKINBOTTOM: Yes, because it would have
6 rendered the timetable--

7 MR OLYMPITIS: Our suggestion, sir, is that we do a
8 rolling--try and provide it to you on a rolling basis. Again,
9 I'm not sure that that's been accepted.

10 COMMISSIONER HICKINBOTTOM: But the point you make is
11 a fair one. There is that one circumstance.

12 Just looking forward to next week, Mr Olimpitis. Can
13 you help me on a couple of matters in relation to the bundles.
14 The direction was that the position statements and appendices be
15 restricted to 50 pages, the position statement of the Ministers,
16 from recollection, was 32 pages under an enormous bundle of
17 appendices, I mean several hundred documents.

18 Two things about that: Firstly, why was--why did you
19 not comply with the direction or, alternatively, not come back
20 to raise the issue with me, with the COI Team, because the
21 length of the whole submission and appendices was far over
22 the--I mean, far over the limit?

23 And secondly, that although the appendices included
24 some disclosure on the matters raised in the position statement,
25 as Mr Rawat has said, some serious criticisms of the Governor

1 and the UK Government in terms of governance that they've acted
2 on unconstitutionally and unlawfully, you've disclosed a few
3 documents relating to those issues but clearly not given full
4 disclosure. That full disclosure is now due on Wednesday, but
5 it would have been helpful to have had the disclosure earlier.

6 MR OLYMPITIS: Sir, we took the view that this was a
7 position statement. It wasn't a full disclosure exercising in
8 the litigation sense. And we provided our position now. We've
9 been asked to provide further documents. We are writing to you,
10 and I'm hoping that that letter will be before you today. And
11 we will be providing further documents. I can't promise that we
12 can provide you with the full A to Z of the correspondence or
13 what it is that you particularly would like to see, but we will
14 do our best to provide you with some more documents.

15 COMMISSIONER HICKINBOTTOM: Well, the documents I
16 would like to see are the documents which I might consider
17 relevant to the issues that you have raised, but, we look
18 forward to seeing that.

19 MR OLYMPITIS: Some of the correspondence, sir, may go
20 over a period of two or three years or even longer.

21 COMMISSIONER HICKINBOTTOM: Yes.

22 MR OLYMPITIS: And we will do our best to get that
23 together.

24 COMMISSIONER HICKINBOTTOM: Yes.

25 The second point that I would like to raise with you,

1 Mr Olimpitis, is I think it was at the Hearing of the 2nd of
2 June this issue is raised, and Mr Haeri said that instructions
3 will be taken on it, and that's the position of the Governor in
4 Cabinet and this does bear upon his position statement.

5 The Governor is not a Member of Cabinet, although he
6 chairs Cabinet. He's not a Member. He can't vote on Cabinet
7 matters, but it is, of course, open to him to express concern
8 about a particular proposal that Cabinet can and does vote on,
9 and it's whether those expressions of concern would be the
10 subject of any confidentiality.

11 MR OLYMPITIS: Right. We haven't come back to you on
12 it, and I think what we must do is write to you on the subject.

13 COMMISSIONER HICKINBOTTOM: Again, before this is for
14 next week.

15 MR OLYMPITIS: I understand, sir.

16 COMMISSIONER HICKINBOTTOM: It means that at the
17 moment we couldn't publish the Governor's position statement.

18 MR OLYMPITIS: Hopefully we can get something to you
19 pretty quickly, and then perhaps it can be quite short as well.

20 COMMISSIONER HICKINBOTTOM: Yes. Good. Thank you
21 very much.

22 Anything else on bundles, Mr Rawat?

23 MR RAWAT: Can I just come back to the points that
24 Mr Olimpitis has made. I'm quite happy for the purposes of the
25 Transcript to correct what I said about extensions of time and

1 say that there has been one instance since the inception of the
2 Inquiry that an extension has not been allowed, although I would
3 say that was for good reason because of the potential impact on
4 the timetable.

5 To touch upon the issue you raised, Commissioner,
6 about why the position statement didn't comply with your
7 direction that it be limited to 50 pages, with respect to
8 Mr Olimpitis, he didn't actually answer the question. He made
9 the point that, in limiting disclosure, it was done because it
10 was deemed to be a position statement. Of course, I think there
11 are two matters to remind you of, Commissioner.

12 First of all, if one looks at the Rules and the
13 Protocols, they reiterate, and indeed it's your public statement
14 that anybody who believes that they have material relevant to
15 your Terms of Reference should act proactively to provide it to
16 you.

17 And the second point to make is that on the 10th of
18 March you wrote to Members of the House of Assembly, for
19 example, which include, of course, the elected Ministers, and
20 you wrote to them with an open invitation to provide you with
21 any information or document that they have in their control and
22 possession which they might consider to be relevant to your
23 Terms of Reference, though that letter did not prompt from any
24 recipient a detailed response or the provision of further
25 documents, but I think it is right to say that from the very

1 beginning you have made clear that you were to receive material
2 from anybody that may be relevant.

3 And it's particularly, in my submission, an important
4 point for all participants to take on board, and that is because
5 we are now in substantive hearings, and we are working to a
6 tight timetable.

7 COMMISSIONER HICKINBOTTOM: Yes.

8 Mr Olimpitis, just to say two things: Firstly, save
9 for that one extension, time extensions have been given, but
10 certainly participants and anyone else in respect of whom
11 directions are made should not assume that extensions will be
12 given in the future, given the tightness of the timetable that
13 we have. That, I think, is the main point.

14 In relation to Mr Rawat's second point, I don't think
15 there is anything else I need to add to that.

16 Next point, Mr Rawat.

17 MR RAWAT: The next point--we've touched on it, but
18 it's perhaps for the purposes of the Transcript and those
19 watching worth reiterating--and that is that it remains your
20 intention, Commissioner, to publish position statements that are
21 sought on governance and law enforcement and justice, but for
22 the reasons that have already been explained, we are not yet in
23 a position to do that.

24 The next topic, if I may to move on to the question of
25 witness scheduling for this week. It has not been possible, and

1 the Commission issued a press notice on the witness schedule to
2 issue as yet a full witness list for the week. Just to set out
3 some chronology, for the Hearing starting today, witness summons
4 or letters inviting those who had previously given evidence, in
5 particular that was the Premier and Minister Wheatley. Those
6 summons and letters were issued on Monday the 31st of May 2021.
7 In the usual way, witnesses were all summoned to attend on
8 Monday the 14th of June--that is today--at 10:00 a.m. on the
9 basis that a timetable for the week would then be worked out
10 with input from the Witnesses themselves. They were all asked
11 to accept service by e-mail. Generally those represented by the
12 Attorney General did so. Those represented by Silk Legal did
13 not.

14 On Tuesday, the 1st of June, after the summons had
15 been sent out and unbeknownst to the Commission, it seems that
16 sittings of the House of Assembly were scheduled for several
17 days in the week commencing the 14th of June. On Wednesday, the
18 2nd of June, when we had a hearing, you, Commissioner, announced
19 that hearings would begin on the 14th of June with sittings on a
20 four-day basis, and that the first topic to be considered would
21 be the interest held and declared by Members of the House of
22 Assembly and elected Ministers. No legal representative present
23 at that Hearing mentioned that the House might be sitting that
24 week or if it were sitting the days on which it would be
25 sitting.

1 Mindful that those--that you were asking to attend to
2 give oral evidence may have other commitments because to do
3 their duties as Members of the House of Assembly or as
4 Ministers, they were each written to and offered dates during
5 the week beginning Monday the 14th.

6 The last two serving Members of the House of Assembly
7 to be formally served their summons were The Honourable Speaker
8 Willock and Honourable Neville Smith who were each served
9 personally at 5:20 p.m. on Friday the 4th of June and at 10:20
10 a.m. on Wednesday the 9th of June, respectively.

11 On Friday, the 4th of June, Silk Legal wrote to inform
12 the Commission that they were, in fact, sittings of the House
13 scheduled for 15th, 16th, and 17th June. They confirmed on the
14 7th of June that Members of the House had been informed of the
15 sitting dates on Tuesday the 1st of June. The situation is
16 somewhat confusing as those acting for the Attorney General were
17 as of that date only aware of sitting schedule for the 15th and
18 16th of June.

19 And further, although we were informed by Silk Legal
20 on the 7th of June that the sitting dates are communicated to
21 the public via Facebook and the BVI Government's website, the
22 only such communication that we have been able to find was a
23 Facebook post on 9th of June, saying that the sitting schedule
24 for Thursday 10th of June had been rescheduled for Tuesday 15th
25 of June and that the sitting would continue in Committee

1 deliberating the contractor general bill.

2 I refer to Monday the 7th of June. That was a
3 counsel-to-counsel meeting which was held between Members of the
4 AG's team, members of Silk Legal, and Members of the COI Team to
5 work out a practical solution to listing evidence this week.
6 Unfortunately, Silk Legal did not have instructions as to when,
7 if at all their clients, or those that they represent, were able
8 to appear.

9 If I pause there, I just want to touch on a point that
10 Mr Rowe made earlier because he suggested that there be an
11 element of consultation between legal representatives of the
12 participants and the COI to work out practical solutions to
13 matters that would ensure the smooth running of the Inquiry.
14 That is, of course, something that is routine in inquiries, it
15 is a point that I have made at earlier hearings, and that is
16 that we are available to speak to anyone who wishes to speak to
17 us. But it only works if people turn up to the meetings armed
18 with instructions so that we can resolve a particular problem.

19 I should also add that what Mr Rowe has been able to
20 say today is an evolution of the stance that was adopted on the
21 7th of June. On the 7th of June, the Silk Legal's position was
22 that there should be Chambers meetings, and by that I take to
23 understand that there should be private hearings or meetings in
24 front of you, possibly involving different clients, at which
25 these issues are resolved. In my submission, that is not a

1 practical way forward, firstly because it moves us back to doing
2 private hearings, which you have made clear is something that
3 you will only now entertain in certain circumstances.

4 Secondly, these are matters that are eminently
5 solvable on a counsel-to-counsel basis and they are not ones
6 that need routinely involve you as Commissioner.

7 Most of the witnesses that have been offered
8 alternative dates have accepted them, and that was the basis on
9 which were able to publish the witness schedule that we have
10 done. With the cooperation of the Attorney General, all of
11 those who she represents have now been scheduled on different
12 days this week. Of those represented by Silk Legal, two have
13 over the weekend accepted the alternative slots that have been
14 offered, so there is a need to resolve the Scheduling of the
15 evidence of the following witnesses: The Honourable Alvera
16 Maduro-Caines, The Honourable Mark Vanterpool, The Honourable
17 Julian Fraser and The Honourable Melvin Turnbull. We have been
18 informed by Silk Legal that those four Members will be attending
19 at 10:00 today, and I see Mr Rowe nodding towards me.

20 Now, what I would suggest is that perhaps the most
21 programmatic way forward, Commissioner, is that you call each of
22 those four witnesses briefly to seek to understand if we can
23 resolve the issue of when later this week they can give their
24 evidence.

25 The other person that remains to be resolved is that

1 of the Speaker, The Honourable Julian Willock, and perhaps if
2 that's something I could return to in due course.

3 COMMISSIONER HICKINBOTTOM: In relation to the Members
4 who are here, Mr Rowe, it sounds to me the best course.

5 MR ROWE: Commissioner, parts of counsel's duty is to
6 be persuasive, and Members of the Legislature who we represent,
7 notwithstanding their duties, took the Legislature on those days
8 have generally agreed to accept themselves save one exception,
9 save the Speaker, who has to be there, and he can make himself
10 available, as I think our correspondence said at 1:30--

11 COMMISSIONER HICKINBOTTOM: Mr Rowe, I think there is
12 a misunderstanding. The four Members who are here who you
13 represent, Mr Rawat suggests that--

14 MR ROWE: No, agree, agree, agree.

15 COMMISSIONER HICKINBOTTOM: And then we can work out
16 the Schedule.

17 (Overlapping speakers.)

18 MR ROWE: Agree. We can confirm that Mr Mark
19 Vanterpool--not sure whether he is here--Mr Vanterpool, if you
20 could call him first because it may be that the others have
21 already agreed to come on suggested dates, which we can confirm.

22 COMMISSIONER HICKINBOTTOM: Well, you're their
23 representative.

24 MR ROWE: Certainly.

25 COMMISSIONER HICKINBOTTOM: So you will know.

1 MR ROWE: If we could call Mr Vanterpool.

2 COMMISSIONER HICKINBOTTOM: Shall we call
3 Mr Vanterpool first?

4 MR ROWE: Yes, Mr Vanterpool, please.

5 COMMISSIONER HICKINBOTTOM: Mr Rawat?

6 MR RAWAT: I'm perfectly agreeable with that step.

7 COMMISSIONER HICKINBOTTOM: Let's see Mr Vanterpool.

8 Thank you, Mr Rowe.

9 MR RAWAT: Commissioner, I wonder if we could just ask
10 for a short break of five minutes just so that we could set
11 things up for the Witness.

12 COMMISSIONER HICKINBOTTOM: Certainly. I'll come back
13 in five minutes' time. Thank you.

14 (Brief recess.)

15 COMMISSIONER HICKINBOTTOM: Good. The four Members of
16 the House of Assembly, I think, are here. Thank you very much
17 for coming this morning.

18 If I can just explain, all of this has been explained
19 earlier this morning, but obviously you weren't here for this.
20 But we have this week, I think, 22 witnesses coming this week,
21 and in the usual way, all are put on notice at the start of the
22 Hearing, 10:00 today with a view then to organising a schedule
23 for the witnesses during the course of the week. In respect of
24 all but five witnesses, that has been done. You four, and The
25 Honourable Speaker, it's been impossible to arrange scheduling

1 of your hearings. We have tried. We've corresponded with Silk
2 Legal. We've had a meeting with Silk Legal, but they had no
3 instructions, and so I think the only way, but certainly the
4 best and most pragmatic way of dealing with scheduling, is for
5 you to be sworn in. We'll organise slots for hearing your
6 evidence this week.

7 But I'm sorry, this has meant that this morning you've
8 spent some time here which otherwise you may not have spent
9 here, you may have spent dealing with something else.

10 Good. Thank you very much.

11 And I think first Honourable Mark Vanterpool, I think,
12 is first.

13 MARK H. VANTERPOOL, COMMISSION WITNESS, CALLED

14 Yes, Mr Vanterpool?

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

18 COMMISSIONER HICKINBOTTOM: Thank you, Mr Vanterpool.

19 Just one or two things: Firstly, if you'd speak quite
20 slowly and clearly because it's all being transcribed, as you
21 know, that would be very helpful.

22 Secondly, you're not sitting next to your lawyers. We
23 know that. That's due to COVID. We want people not to move
24 around. We want people to move around as little as possible.
25 I'm not sure that you will need any assistance from your lawyers

1 to deal with scheduling, but if you do, please let me know, and
2 you'll have that assistance.

3 THE WITNESS: Yes, sir.

4 COMMISSIONER HICKINBOTTOM: Mr Rawat.

5 BY MR RAWAT:

6 Q. Good morning, Mr Vanterpool.

7 A. Good morning.

8 Q. We need to deal with some formalities, first of all,
9 as we do with every witness. So, can I ask you just for the
10 record could you give the Commissioner your full name, please.

11 A. My name is Mark H. Vanterpool.

12 Q. And your professional address?

13 A. Port Purcell Row, Tortola, BVI.

14 Q. And again, for the record, could you just explain the
15 current position you hold in the House of Assembly.

16 A. I'm the representative for the Fourth Electoral
17 District.

18 Q. Thank you.

19 What may follow, and as I hope what we will be able to
20 find the time when you can come back and we can ask you some
21 fuller questions on this topic, the purpose for now is to try
22 and work with you now, I hope, through questions to find a
23 suitable date this week when you may be able to come and give
24 that evidence. I'm not going to ask you any questions about
25 that topic at this time.

1 As the Commissioner explained, we have been
2 endeavoring, as the Commission, to try and find suitable dates
3 for witnesses. We are very aware that, as a Member of the House
4 of Assembly, you will have other commitments that take up your
5 time. Can I start off just by clarifying with you: You've
6 accepted your summons, haven't you, and you appreciate you're
7 bound by that summons?

8 A. Yes, sir.

9 Q. Now, when did you first learn that there would be a
10 sitting or sittings of the House of Assembly this week?

11 A. I don't have an exact date, but that was probably
12 week-and-a-half or so ago.

13 Q. And could you help clear up one ambiguity. Is the
14 House setting on the 15th, 16th and 17th or the 15th and the
15 16th?

16 A. I believe they're sitting on the 15th. Tomorrow, is a
17 continuation of previous sitting, and then we have a House
18 sitting on the 16th and--sorry, 17th. I don't recall whether
19 there is--there was a specific one on the following day, but,
20 yes.

21 Q. So, certainly there may be commitments, as far as
22 you're aware for Members of the House of Assembly on the 15th
23 and the 17th?

24 A. Yes, sir.

25 Q. Now, please correct me if I'm wrong, but I think the

1 House, when it starts to sit, begins at 10:00 a.m. in the
2 morning?

3 A. That is correct.

4 Q. On the 15th, will you be engaged for the entirety of
5 that day with House of Assembly business?

6 A. I can make this very simple for you. I am prepared to
7 come before, sitting the Inquiry, any day of this week at any
8 time. I have--I have made that request to the Speaker, so I'm
9 available at any time.

10 Q. Well, that's very helpful, Mr Vanterpool, and it does
11 shorten things, but what I would like to suggest to you--and I
12 hope that is making it easier for you as well--is that you
13 attend on Friday at 2:00 p.m.?

14 A. Friday at 2:00 p.m. I will be available, yes.

15 Q. Thank you very much. That sorted that out.

16 COMMISSIONER HICKINBOTTOM: Mr Vanterpool, thank you
17 very much.

18 THE WITNESS: Thank you.

19 MR RAWAT: See you on Friday.

20 (Witness steps down.)

21 COMMISSIONER HICKINBOTTOM: Onward. Julian Fraser, I
22 think, next.

23 HON JULIAN FRASER, COMMISSION'S WITNESS, CALLED

24 COMMISSIONER HICKINBOTTOM: Just one moment,

25 Mr Fraser. We'll just wipe down the desk.

1 (Pause.)

2 MR ROWE: Commissioner, may it be possible for
3 Mr Vanterpool to leave?

4 COMMISSIONER HICKINBOTTOM: Yes, certainly. Yes.
5 Thank you, Mr Vanterpool.

6 MR ROWE: Thank you.

7 THE WITNESS: I swear by Almighty God that the
8 evidence I shall give shall be the truth, the whole truth, and
9 nothing but the truth.

10 COMMISSIONER HICKINBOTTOM: Thank you, Mr Fraser.

11 Yes, Mr Rawat.

12 BY MR RAWAT:

13 Q. Good morning, Honourable Fraser.

14 A. Good morning.

15 Q. Again, please, the formalities. Could you give your
16 full name to the Commissioner, please.

17 A. My name is Julian Fraser.

18 Q. And your professional address?

19 A. House of Assembly, Richard C. Smith, Stoutt Building,
20 Road Town, Tortola.

21 Q. And your current position in the House of Assembly?

22 A. Representative for the District Three.

23 Q. You will have heard the questions that I put to
24 Mr Vanterpool. The purpose of this hearing with you this
25 morning is to try and find a date on which you can come this

1 week to give evidence to the Commissioner.

2 Could I ask: Are you in the same position as
3 Mr Vanterpool has indicated in that he was willing and able to
4 attend on any day that the Commission--

5 A. A little different because, sitting on the 27th--I
6 mean, the 17th, which is Thursday, I have to give notice, and I
7 have to be there. However, I can be here any other day except
8 Friday and Thursday.

9 MR ROWE: Okay, that's good.

10 THE WITNESS: My preference would be to get this over
11 with and be there tomorrow.

12 BY MR RAWAT:

13 Q. Well, could I propose to you that you come back on the
14 morning of Wednesday, the 16th of June?

15 A. Wednesday, June 16th.

16 Q. Yes. At 10:00.

17 A. 10:00? You are going to be ready for me at 10:00?

18 Q. We will be ready for you, Mr Fraser, on Wednesday, the
19 16th of June?

20 A. 10 o'clock it is, Wednesday.

21 MR RAWAT: Thank you very much.

22 COMMISSIONER HICKINBOTTOM: Mr Fraser, thank you very
23 much for coming.

24 BY MR RAWAT:

25 Q. Before you leave, Mr Fraser, there is one other matter

1 I should mention.

2 You have very helpfully provided a position statement
3 on governance to the Commission of Inquiry, and we have written
4 to you subsequently inviting you to come and respond to
5 questions on that position statement on the 22nd of June. I
6 just wanted to flag that up to you as a date on which we ask you
7 to return to assist the Inquiry further.

8 A. I will be here on that day. I got the summons. I
9 didn't know exactly what it was for, that it was for purpose. I
10 will be here.

11 Q. If I explain the way the Commission is operating, once
12 you've receive your summons, it is a summons at large. You can
13 be asked to come back at different times to give further
14 evidence. Thank you very much for your time today.

15 COMMISSIONER HICKINBOTTOM: Thank you, Mr Fraser.

16 (Witness steps down.)

17 COMMISSIONER HICKINBOTTOM: Ms Maduro.

18 HON ALVERA MADURO-CAINES, COMMISSION WITNESS, CALLED

19 COMMISSIONER HICKINBOTTOM: Just again one moment
20 while we wipe down the desk. Thank you.

21 (Pause.)

22 COMMISSION SECRETARY: Would you like to swear an oath
23 or make an mediation this morning?

24 THE WITNESS: Affirmation.

25 COMMISSION SECRETARY: Look at the sheet in front of

1 you and turn it over and read the words. Thank you.

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

6 COMMISSIONER HICKINBOTTOM: Thank you.

7 BY MR RAWAT:

8 Q. Good morning, Ms Maduro-Caines. Can I ask you,
9 please, to give your full name to the Commissioner.

10 A. Alvera Maduro-Caines.

11 Q. I'm going to pause there, can I also ask you just to
12 keep your voice up nice and loud because it is--you are being
13 recorded, and there is a transcription made, and it's important
14 that we record your evidence and your answers as clearly as
15 possible.

16 Could I ask now for your professional address?

17 A. Richard C Stoutt Building, Wickhams Cay, Road Town,
18 Tortola.

19 Q. And your current position in the House Assembly?

20 A. Representative of the Sixth Electoral District.

21 Q. Again, you will have heard the questions that we put
22 to Mr Vanterpool and Mr Fraser, and they have all basically been
23 able to indicate that they can come at the time suggested by the
24 Inquiry. Perhaps if I try to shorten it, what we were proposing
25 for you, Ms Maduro-Caines, is that you come to give your

1 evidence tomorrow at 10:00 a.m. Is that a time that is
2 convenient to you?

3 A. I would have preferred on Wednesday. We are sitting
4 tomorrow.

5 MR RAWAT: Commissioner, Wednesday at the moment with
6 other witnesses is a very full day.

7 BY MR RAWAT:

8 Q. So we might be able to accommodate you later on in the
9 day on Tuesday if that would assist you.

10 A. Okay, I will do Tuesday, then.

11 Q. Perhaps if I suggest a slightly later start for you,
12 Ms Maduro-Caines, would you like to come at about 11:00?

13 A. If I come at 10:00, chances are I will get through in
14 enough time to go to the sitting.

15 MR RAWAT: I see. Thank you very much.

16 COMMISSIONER HICKINBOTTOM: Just one moment, Mr Rawat.
17 Is there any possibility of starting earlier, just to
18 accommodate this Member?

19 MR RAWAT: Well, we could start again at 9:00, if you
20 wish, Commissioner.

21 COMMISSIONER HICKINBOTTOM: Would 9:00 help?

22 THE WITNESS: Yes.

23 COMMISSIONER HICKINBOTTOM: It may be that we'll have
24 a break later on in the day.

25 THE WITNESS: Yes.

1 COMMISSIONER HICKINBOTTOM: But at least then
2 Ms Maduro-Caines will be able to get back quicker than you
3 otherwise would.

4 THE WITNESS: Yes.

5 COMMISSIONER HICKINBOTTOM: Yes?

6 THE WITNESS: Yes.

7 BY MR RAWAT:

8 Q. Thank you, Ms Maduro-Caines. We shall see you
9 tomorrow at 9:00.

10 COMMISSIONER HICKINBOTTOM: Thank you very much.
11 Thank you.

12 (Witness steps down.)

13 COMMISSIONER HICKINBOTTOM: And finally, Honourable
14 Melvin Turnbull.

15 Mr Turnbull, would you like to swear an oath or make
16 an affirmation.

17 THE WITNESS: Affirm, please.

18 COMMISSIONER HICKINBOTTOM: If you would like to take
19 the seat in front of you and repeat the words.

20 HON MELVIN M. TURNBULL, COMMISSION WITNESS, CALLED

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

24 COMMISSIONER HICKINBOTTOM: Thank you, Mr Turnbull.

25 THE WITNESS: Yes.

1 BY MR RAWAT:

2 Q. Good morning, Honourable Turnbull.

3 A. Good morning.

4 Q. Could I ask you, sir, please to give the Commissioner
5 your full name.

6 A. Melvin Mitchell Turnbull.

7 Q. And your professional address?

8 A. Richard C Stoutt Building, Road Town, Tortola, British
9 Virgin Islands.

10 Q. And your current position, sir, in the House of
11 Assembly?

12 A. Representative for the Second Electoral District.

13 Q. Mr Turnbull, again hopefully, to try and shorten
14 matters and perhaps to get to the point, we were going to
15 suggest to you that you attend to give your evidence on the
16 matters under investigation at present on Tuesday afternoon.
17 Would that disrupt your working commitments too much?

18 A. Because of the House sitting, I heard other Members,
19 they--because of the House sitting, I'm not sure where we would
20 be on Tuesday. I'm hoping Wednesday would be either Wednesday
21 or Friday that would work for me. Because on Thursday's sitting
22 I have questions before the House as well.

23 MR RAWAT: May I just have a moment?

24 COMMISSIONER HICKINBOTTOM: Yes, certainly.

25 (Pause.)

1 BY MR RAWAT:

2 Q. Slightly like a negotiation, Mr Turnbull, but could I,
3 as an alternative, propose Wednesday morning at 11:00?

4 A. That will work.

5 COMMISSIONER HICKINBOTTOM: Thank you very much for
6 making it work.

7 THE WITNESS: Thank you very much.

8 COMMISSIONER HICKINBOTTOM: Thank you, Mr Turnbull.
9 Anything else for Mr Turnbull?

10 MR RAWAT: Nothing but thank you for your time.

11 COMMISSIONER HICKINBOTTOM: Thank you very much for
12 coming.

13 (Witness steps down.)

14 MR RAWAT: Before I move on to the next topic in
15 the--for the purpose of the direction here, can I flag up one
16 point?

17 COMMISSIONER HICKINBOTTOM: Yes.

18 MR RAWAT: Mr Rowe has kindly indicated that in
19 relation to some of his clients that there may be issues that
20 may require or--may require an application that you hear matters
21 in privacy session.

22 COMMISSIONER HICKINBOTTOM: Right.

23 MR RAWAT: What I have indicated is that there would
24 need to be an application for us to go into private session.
25 And obviously Mr Rowe and his team now have the schedule as to

1 when their clients are coming.

2 COMMISSIONER HICKINBOTTOM: When is the first client
3 coming roughly?

4 MR RAWAT: It will be Ms Maduro-Caines at 9:00 a.m.
5 tomorrow.

6 MR ROWE: No difficulty with her. No difficulty with
7 her.

8 MR RAWAT: Well, I shall liaise with Mr Rowe, and we
9 can try and make sure that if there is going to be an
10 application, it is made in good time with minimum disruption to
11 the Hearing.

12 MR ROWE: Thank you.

13 MR RAWAT: Could I turn, perhaps, to the last of
14 Mr Rowe's clients, and that is The Honourable Speaker.

15 COMMISSIONER HICKINBOTTOM: Yes.

16 MR RAWAT: The Speaker has not responded to his
17 summons which was returnable at 10:00 a.m. today. Before
18 dealing with the practicalities of scheduling Speaker's
19 evidence, I would invite Mr Rowe or another of his team just to
20 address you on the point that they raised in correspondence,
21 which is that section 16 of the Evidence Act means that the
22 Speaker was not required to attend the summons today.

23 COMMISSIONER HICKINBOTTOM: Good. Thank you.

24 Mr Rowe.

25 MR ROWE: Briefly, Commissioner, under these

1 circumstances, the Speaker has been scheduled in an arrangement
2 plan since 2019 to address the Commonwealth Association of House
3 of Assembly. He has, through us, asked if it were possible for
4 him to come at 1:30 this afternoon. That meeting is scheduled
5 to end at 1:00. We asked--we suggested to him that he add a
6 half an hour to that to ensure that if there is any delay, that
7 he got here on time. I spoke to my learned friend, Mr Rawat,
8 and he has indicated that that might be difficult, but he
9 certainly would wish to attend given his particular function as
10 Speaker of the House to make arrangement for appropriate day
11 when the House is not sitting to give his evidence.

12 COMMISSIONER HICKINBOTTOM: We'll come on to that.

13 The first question, Mr Rawat, as raised is the reason
14 why he's not attended, why he's not complied with the summons.
15 There are reasons why somebody is not compellable under the
16 Evidence Act--for example, sitting of the House--

17 MR ROWE: Of the House.

18 COMMISSIONER HICKINBOTTOM: There are other
19 circumstances in which a witness may well be compellable but may
20 wish to change a date because something else pressing or he or
21 she is engaged in something else pressing. Are you saying that
22 10:00 today he was covered by the Evidence Act and therefore not
23 compellable?

24 MR ROWE: We are saying, sir, that the second of those
25 suggestions.

1 COMMISSIONER HICKINBOTTOM: Right.

2 MR ROWE: Because this is why, as we would have
3 probably have done on Friday--on Thursday to say please extend.
4 That is why I have communication to the Secretary was to
5 indicate this alternative time today because of his previous
6 commitments.

7 COMMISSIONER HICKINBOTTOM: But you have no
8 instructions from him in terms of when he might actually be able
9 to attend to give his substantive evidence this week?

10 MR ROWE: What I would suggest, sir, given what is
11 happening here today, that his duties extend primarily to the
12 House. The House does not sit on Friday. Friday would be a day
13 when--

14 COMMISSIONER HICKINBOTTOM: We would have to come?

15 MR ROWE: Yes, sir. He would have no reason not to
16 come. That was my turn.

17 COMMISSIONER HICKINBOTTOM: Mr Rawat, is Friday a day
18 in which the Speaker could be accommodated?

19 MR RAWAT: Yes.

20 Can I give this some context, though.

21 COMMISSIONER HICKINBOTTOM: Yes.

22 MR RAWAT: Firstly, up until the clarification that
23 Mr Rowe has provided now, it was the position of Silk Legal that
24 the Speaker was protected by section 16, and the difficulty was
25 that section 16 makes a Member of the House of Assembly as not

1 compellable to give evidence if that Member would be prevented
2 from attending a sitting of the House of Assembly or a meeting
3 of the Committee, and the difficulty was whether the function
4 that the Speaker is attending today could be properly described
5 as a "meeting of the Committee of the House of Assembly", and
6 that has never been clarified.

7 The second point is that, at no time was there made an
8 application to vary the date of the summons, and going toward
9 that is perhaps something that Silk Legal should take on board.

10 In terms of scheduling the Speaker's evidence, we do
11 recognise that as Speaker he has an obligation to the House of
12 Assembly, and he has to attend and be present at all sittings of
13 the House of Assembly. Obviously, there is a Deputy Speaker,
14 and there are provisions when the Speaker is away for others to
15 sit in his place.

16 But can I suggest that The Honourable Speaker attend
17 at 9:00 a.m. on Friday morning?

18 MR ROWE: At 9:00 before--

19 MR RAWAT: Yes.

20 MR ROWE: Okay, that's convenient.

21 COMMISSIONER HICKINBOTTOM: Yes.

22 And can I say this, Mr Rowe, I appreciate that the
23 Speaker has other obligations, and important obligations of the
24 House of Assembly. Those obligations are effective in the
25 Evidence Act which means that he's not compellable when the

1 House is sitting, but he is compellable when the House is not
2 sitting, which means that he's in willful default of the summons
3 today.

4 What I'll do is, I will ask him to honor the summons
5 9:00 on Friday.

6 MR ROWE: Yes.

7 MR RAWAT: Commissioner, before we confirm that, I
8 should have checked that our AV support was available at
9 9:00 a.m. on Friday. I must say I've assumed that he's
10 also--Mr Peters is available every other day on which I've said
11 9:00 a.m. And I apologise to him for not checking before doing
12 so.

13 Unfortunately, as you know, Commissioner, we are
14 scheduled to sit Mondays to Thursdays. Mr Peters will be
15 available from 12:00 p.m. on Friday, and so we will need to
16 start at 12:00, so I'd suggest if the Speaker can answer to his
17 summons for 12:00 on Friday. Yes.

18 MR ROWE: Yes.

19 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rowe.

20 MR RAWAT: Thank you. And thank you to Mr Peters.

21 Those are all the matters that I wish to raise for the
22 purposes of the Direction Hearing. I don't know whether there
23 are any other matters that you wish to raise before we move to
24 the evidence.

25 COMMISSIONER HICKINBOTTOM: I don't think there is,

1 Mr Rawat.

2 Before we move to the evidence, does everything have
3 to be reconstituted and cleaned? "Yes" is the answer, so I will
4 rise while that's done, and then we can get on with hearing the
5 evidence.

6 MR RAWAT: Thank you very much.

7 MR ROWE: Thank you.

8 (Recess.)

9 COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

10 MR RAWAT: Thank you.

11 So, we are now in a position to start with the
12 evidence that we will be calling this week, which, as you
13 indicated earlier, when we were dealing with directions, is
14 concerned with the system by which Members, in particular
15 Members of the House of Assembly and elected Ministers have to
16 deal with any interests, particularly including conflicts of
17 interest.

18 If I could start by briefly just outlining the legal
19 framework that applies.

20 COMMISSIONER HICKINBOTTOM: Yes.

21 MR RAWAT: I won't go into great detail of it, but
22 again, it gives us the framework within which some of the
23 questions that may need to be put will arise.

24 Firstly, that under the Constitution and it's section
25 66(1) (f) of the 2007 Constitution, there is an obligation on a

1 candidate who stands in the general election to publicly declare
2 if they are in some way a party to a Government contract. That
3 does not stop the individual from running for office, but they
4 have to make the Declaration.

5 The second element of interest is in relation to the
6 Register of Interests Act. The Constitution again provided for
7 a Registrar of Interest to maintain a Register of Interests, and
8 that has been in place with--a statute implementing that part of
9 the Constitution has been in place since 2008. It has been
10 amended twice, once in 2007, in order to primarily change
11 references to the Legislative Council to the House of Assembly;
12 and second, much more recently, I think shortly after the 12th
13 of March, 2021, there was an amendment to the Register of
14 Interests Act 2006, so as to allow the Registrar of Interests to
15 disclose material to a Commission of Inquiry.

16 The Act employs, as in force at the moment, imposes a
17 number of obligations on Members, and that extends not just to
18 elected Members of the House of Assembly, but also the Attorney
19 General and the Speaker, and primarily--primary amongst those
20 obligations is the need to make a Declaration of their interests
21 on the date that they assume the functions of their office and
22 then on the subsequent, each subsequent anniversary of that
23 date. The Declaration has to be made in a prescribed form that
24 is annexed or scheduled to the Act, itself, and it covers a
25 range of categories where information has to be provided.

1 There is within the Act which may be described as a
2 mechanism by which the compliance of Members with that
3 obligation is monitored and remedied, if necessary, and
4 sanctioned, and so there is a Standing Committee charged with
5 consideration of matters relating to the Register and to which
6 the Registrar acts as the Clerk. The Registrar can submit
7 reports in certain circumstances to that Committee. And
8 similarly, in certain defined circumstance, the Committee can
9 send a report to the House of Assembly.

10 In some situation where there has been perhaps what
11 might be described as severe default, the House of Assembly has
12 powers of sanction on an individual Member.

13 The third area of interest I would highlight is the
14 obligation on a Minister attending Cabinet to declare a conflict
15 of interest, and you may remember when that Minister Vincent
16 Wheatley gave evidence to you, he said something about that.
17 The detail is in the Cabinet Handbook 2009, which you heard
18 evidence of and from, for example, the Cabinet Secretary Sandra
19 Ward, but briefly that sets out the obligations on a Minister or
20 someone otherwise attending Cabinet to declare an interest or
21 the interest of a Member of a family in a matter which is before
22 Cabinet and before that matter is disclosed. The interest can
23 be private, pecuniary or non-pecuniary. It means that once
24 declared, the person must not participate in any further
25 discussion.

1 And where a Minister or Member of Cabinet has doubts
2 or uncertainty over of their interest in the matter, then the
3 Cabinet Handbook prescribes that they should inform Premier in
4 advance of the matter coming up for discussion, and that's all I
5 propose to say on the legal framework. Perhaps before we call
6 our first witness, if I could just reiterate the purpose of this
7 session is to attain further evidence and information from those
8 who are subject to the system, make use of the system, in order,
9 as you indicated earlier, to see how the system works, and that
10 will involve asking questions of individuals about their
11 interests and how they go about declaring those in accordance
12 with the requirements imposed on them.

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

14 DAWN J. SMITH, COMMISSION WITNESS, CALLED

15 MR RAWAT: Commissioner, our first witness is learned
16 Attorney General Dawn J. Smith. If I could ask that the
17 Attorney General is sworn now.

18 COMMISSIONER HICKINBOTTOM: Yes, thank you.

19 COMMISSION SECRETARY: Good morning, Attorney General.

20 THE WITNESS: Good morning.

21 COMMISSION SECRETARY: Would you like to swear an oath
22 or make an affirmation?

23 THE WITNESS: I'd like to affirm, please.

24 COMMISSION SECRETARY: Would you like to take the
25 sheet and repeat the words in front of you.

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

4 COMMISSION SECRETARY: Thank you.

5 COMMISSIONER HICKINBOTTOM: Good. Thank you,
6 Attorney.

7 Yes.

8 BY MR RAWAT:

9 Q. Good morning, Attorney.

10 A. Good morning.

11 Q. Can I first of all start off by thanking you for
12 coming to give evidence to the Commission today, and as I deal
13 with every witness with the formalities, so can I ask that you
14 give the Commissioner your full name, please?

15 A. Yes, my name is Dawn Juliana Smith.

16 Q. And your professional address?

17 A. TTT Building, Road Town, Tortola, Virgin Islands.

18 Q. As I say to all witnesses--I'm not sure whether it
19 helps, but my questions are intended to be short and simple, but
20 if at any time you have any difficulty understanding a question
21 or you would like me to repeat it or put it in a different way,
22 please do ask me.

23 There are a number of bundles in front of you. We
24 don't need to look at them now, but we will be going to them or
25 some of them in due course.

1 I'm sure I don't need to tell you this, but can I ask
2 that you do keep your voice up and speak slowly. As you'll
3 appreciate, it's important that your answers are accurately and
4 clearly recorded on the Transcript.

5 A. Um-hmm.

6 Q. Can I begin by asking you just to give the
7 Commissioner a short summary of your professional background
8 before you assumed the position of Attorney General to the
9 British Virgin Islands.

10 A. A short summary of a long life. Okay.

11 Well, I qualified as the Barrister of the Eastern
12 Caribbean Supreme Court in the Virgin Islands in October 1997.
13 From then, I was in private practice until, I think,
14 August 2006, when I was appointed as the representative of the
15 Government of the Virgin Islands in Europe, and I was based in
16 London for three years.

17 After that, I returned to private practice.

18 And in January 2013, I joined the Financial Services
19 Commission as their General Counsel, and I stayed there--well,
20 while I was there, shortly after Hurricane Irma, I was seconded
21 to the Premier's Office as Permanent Secretary from
22 November 2017 until February 2019.

23 I left my position as General Counsel at the
24 Commission to take up the post of Attorney General, which I've
25 held since the 1st of October 2020.

1 COMMISSIONER HICKINBOTTOM: Thank you very much.

2 BY MR RAWAT:

3 Q. Thank you.

4 If we go to the first bundle, there should be a bundle
5 that is your Witness Bundle.

6 A. Yes.

7 Q. If you could please, turn to page 21 in that bundle.

8 A. Yes.

9 Q. If I've taken you to the right page, it's a letter
10 that you wrote to the Commission dated the 2nd of June 2021.

11 A. Yes, it is.

12 Q. And I wanted just to draw your attention to the third
13 paragraph of that letter because there you explained that the
14 position of Attorney General to the Virgin Islands is a public
15 rather than political office?

16 A. Yes.

17 Q. And you were appointed after a competitive application
18 process.

19 A. Yes.

20 Q. And your appointment is made by the Governor on the
21 advice of the Judicial and Legal Services Commission?

22 A. Yes.

23 Q. And as I understand it, that Commission is chaired by
24 the Chief Justice?

25 A. Yes.

1 Q. And there is also a Judge of the Court of Appeal of
2 the High Court present on that panel?

3 A. Yes.

4 Q. And so, one difference between the Virgin Islands and
5 England and Wales is that appointment as Attorney does not
6 follow from membership of a particular political party?

7 A. No, it doesn't.

8 Q. You, as Attorney--and tell me if I'm wrong in
9 this--but you have played a role in piloting through the House
10 of Assembly the more recent amendments that have been made to
11 the Register of Interests Act of 2006?

12 A. Yes.

13 Q. And am I right to say that the pending legislation
14 which is the Register of Interests Bill 2021, is a piece of
15 legislation that would be drafted by your Chambers?

16 A. It is being drafted by my chambers, yes.

17 Q. And would--does it then follow that you would be
18 responsible for taking that piece of legislation through the
19 House of Assembly?

20 A. Not necessarily by me. I took through the Register of
21 Interests (Amendment) Act, so it is likely that I would take
22 that one as well.

23 Q. And I think as of the 3rd of June, the Register of
24 Interests Bill has yet to reach the House; is that right?

25 A. That's correct.

1 Q. And that's still the position at the moment?

2 A. That's correct.

3 Q. And I can take you to it, if you need to see it, but
4 one of the changes that it will make if passed into law is that
5 it will make the Register of Interests public or available for
6 public inspection?

7 A. You can take me to it.

8 Q. If we go to the bundle, please. You should
9 have--there should be a Constitution and Legislation Bundle.

10 A. Yes.

11 Q. You should find the Bill at page 82 in that bundle.

12 A. I have it.

13 Q. That's the first page. Yes. If we turn to page 83,
14 that will be, then, the first substantive page of the Bill.

15 I note it's headed "Register of Interests Act," but
16 I'm calling it, I hope rightly, a "Bill" at the moment.

17 If you go through to 86, please, this is part of
18 Clause 5 of the Bill, but if I draw your attention on page 86 to
19 5(3), it says: "The Registrar shall permit inspection of the
20 Register at the request 'of any Member of the public during
21 normal working hours'", and that's what I have taken to mean
22 that obviously this has yet to become law. But if it does
23 become law and that Clause is maintained, then the effect is
24 that a Member of the public can come along and look at or
25 inspect the Register?

1 A. That's correct.

2 Q. On the 4th of May, when you first made submissions to
3 the Commissioner, one of the points you made about the role of
4 the Attorney was that good governance or maintaining good
5 governance is your mission statement?

6 A. Yes. It is part of my mission statement, yes.

7 Q. And whilst others may be critical of it, as Attorney,
8 you do occupy a unique role within the Constitution?

9 A. I do.

10 Q. You are an independent law officer who advises the
11 Cabinet, the House of Assembly, and the Governor?

12 A. Yes.

13 Q. Your "yes" was said with some hesitation. If you wish
14 to add to that, please do so.

15 A. No, no.

16 Q. Given your role, you may feel that you can't answer
17 this question, but if you can, it would be helpful. Do you
18 think that if the Register, as intended, is made available to
19 the public, that is something that would promote transparency
20 and accountability and so be beneficial to good governance?

21 A. You're asking for my opinion?

22 Q. Yes, as the Attorney General.

23 A. I think if the Register is made available to the
24 public, they may be able to say whether it is correct or not.

25 Q. And can you help us with this any: Would that--in

1 what way do you think that that may assist in promoting good
2 governance, if at all?

3 A. We haven't defined "good governance". Is there a
4 definition that you wanted me to use or you just want me to
5 know?

6 Q. I'm not going to put words in your mouth, Attorney.

7 A. Okay.

8 Q. But I link back to it being part of your mission
9 statement, and so it's your own sense of good governance, if you
10 like.

11 I mean, if we--if we--it is not easy, I accept, to
12 define "good governance" or sometimes "bad governance", but
13 perhaps if I dropped the phrase "good governance" and talked
14 about accountability and transparency. Does putting the public
15 in the position where they can say whether something is right or
16 wrong about the Register, does that, in your view as Attorney,
17 promote accountability and transparency?

18 A. It would.

19 Q. Can I take you to your own Register of Interests.

20 A. Yes.

21 Q. And I'm going to put this in context. I explained,
22 as--what I'd like to do is to use that, because you're our first
23 witness, as a bit of an example.

24 And so, I may ask you again about your view and your
25 opinion as Attorney about the obligations that the Register of

1 Interests Act impose. If you go, and this is in your own
2 bundle, to page 6, please.

3 A. Page 6?

4 Q. Yes, please.

5 A. Yes, I have it.

6 Q. For the Transcript, it's a letter that was addressed
7 to you as a Member of the House of Assembly, dated the 19th of
8 February 2021, and it refers to the Register of Interests Act.
9 And if you go to page 7, Attorney, one of the matters that the
10 Commissioner asked of you--and let's put it in context.

11 What request one was, was the date and content of each
12 Declaration of Interests that you have made at any time during
13 your tenure as a Member, and we have to appreciate that, in your
14 case, your tenure as a Member is still relatively short.

15 A. Yes.

16 Q. You have yet to complete one year as Attorney General.

17 But then at 2, the Commissioner asked, "Irrespective
18 of any such declarations you may have made, the information and
19 documents that you would provide in such a Declaration of
20 Interest, if made now, pursuant to Section 3(1)". Section 3(1)
21 is the provision in the 2006 act that imposes that obligation on
22 Members to make a Declaration to the Registrar.

23 Now, if you go to page 10, please, this was, Attorney,
24 a letter from you dated 12th of March in which you responded
25 substantively to the 19th of February 2021 letter. I'm not

1 going to read out the detail that you set out in that letter.

2 A. Um-hmm.

3 Q. But, if I draw your attention to your point 3, it's
4 right, isn't it, that what you did was to set out using the
5 categories in Schedule 1 to the Act, which we will come back to,
6 you've set out those interests that you would declare on the
7 Register as of that date; that's right, isn't it?

8 A. Yes.

9 Q. So, would you accept that there is nothing under the
10 2006 Act that prohibits a Member of the House of Assembly from
11 giving information such as you gave to a third party?

12 A. I may give the same information to a third party in
13 another context. Whether I would--and I don't know if this is
14 the question you're asking, but whether I would give the
15 Declaration that I gave to the Registrar to a third party in the
16 form that I gave it to her, the answer to that is "no", and my
17 reason is that I understand that what I give to the Registrar at
18 this point in time to be a confidential document.

19 The information that is written in section 3 I would
20 have had to disclose, for example, as a public officer or some
21 portion of it.

22 Q. But if I understand your answer correctly, if you had
23 completed the form and then delivered it to the Registrar of
24 Interests, on your view of the operation of the Act, that
25 document is not something that you can then give to a third

1 party? But you are at liberty as a Member of the House of
2 Assembly to set out the information that you gave to the
3 Registrar and give that information to a third party?

4 A. For another purpose I may have to, yes.

5 Q. Yes.

6 And what the Commission is seeking from--I'm sorry,
7 please go ahead.

8 A. Yes.

9 But what I wouldn't do is to purport to go against the
10 intention of the Act by making my actual Declaration available
11 to a third party.

12 Q. I think we're at the same point.

13 A. Yes.

14 Q. And the point to make is that the request was seeking
15 voluntary information, and you felt able to volunteer that
16 information?

17 A. Um-hmm.

18 COMMISSIONER HICKINBOTTOM: I'm sorry, could I just
19 ask one question here. I understand that difference, so really
20 you said there's no confidence in the information. It's your
21 information; you can give to whomever you like.

22 In terms of the form which you sent to the Registrar
23 for a Declaration, the information is yours, that's confidential
24 to you, but why would you feel any difficulty in making that
25 public? Because isn't the confidence in you? You have the

1 right, the confidentiality right, don't you?

2 THE WITNESS: Is the question: Why would I have a
3 difficulty in making the information public?

4 COMMISSIONER HICKINBOTTOM: No, because you said
5 there's no problem with making the information public, but you
6 said there was problem making the document that you sent to the
7 Registrar public.

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: Why is that?

10 THE WITNESS: I would respect the scheme, the
11 statutory scheme.

12 COMMISSIONER HICKINBOTTOM: But isn't the statutory
13 scheme to respect your confidentiality?

14 THE WITNESS: The statutory scheme provides for me to
15 provide information in a particular form to the Registrar.

16 COMMISSIONER HICKINBOTTOM: Yes.

17 THE WITNESS: And for that information to be kept
18 confidential by the Registrar as well as the documentation that
19 I provided to her.

20 COMMISSIONER HICKINBOTTOM: But isn't the
21 confidentiality yours? Or who is the beneficiary of the
22 confidentiality? The confidence that is being protected is
23 your--is your right to--

24 THE WITNESS: That may be, so but I should respect the
25 law.

1 COMMISSIONER HICKINBOTTOM: Okay. Yes. Thank you.

2 BY MR RAWAT:

3 Q. The Register of Interests Act of 2006, which is the
4 present law, requires a Member of the House of Assembly to
5 provide a Declaration of Interests on the date they assume
6 office?

7 A. Yes.

8 Q. And so, in your case it's the 1st of October 2020?

9 A. Yes.

10 Q. They are then required to do that then on every
11 subsequent anniversary, so for you the next Declaration falls
12 due on the 1st of October 2021.

13 A. Yes.

14 Q. Now, I can take you to it, if you need me to,
15 Attorney, but the Act provides that if a Member does not provide
16 a Declaration within three months of the date on which it's due,
17 then that amounts to a breach?

18 A. Yes.

19 Q. And it doesn't provide a defense of reasonable excuse,
20 does it?

21 A. You can take me to that section.

22 Q. Yes, please.

23 If we go--do you still have it open in front of you?

24 A. I do.

25 Well, I thought I did.

1 Q. Let me take you to it again.

2 It's the Register of Interests you will find at
3 page 59. And if we go to section 7--

4 A. Give me one minute, please.

5 (Pause.)

6 A. Okay. What page did you say it was?

7 Q. The Act starts at page 59.

8 And if we go to page 64 and section 7, if you need me
9 to take you back to section 3, by the way, Attorney, do tell me,
10 but section 7(A) reads as follows: "Where a Member fails to
11 make a Declaration within a period of three months from the date
12 on which the duty to make that Declaration accrued, the Member
13 shall be in breach of the provisions of this Act and the
14 Registrar shall within 14 days of the knowledge of such breach
15 submit a report of such breach to the Committee, which shall
16 meet to consider the report within 21 days of its submission."

17 And so, it seems on its face that the mechanism of the
18 Act provides that you have to make your Declaration on the Due
19 Date.

20 A. Yes.

21 Q. If you haven't within three months, you have committed
22 a breach.

23 A. Yes.

24 Q. And that that then leads to a report being written,
25 and it's sent to the Committee, and that's the Standing

1 Committee charged with considering the Register of Interests?

2 A. Yes.

3 Q. And my question was: When one reads the Act, it
4 doesn't provide any defense to that. You wind up coming within
5 the three months or you don't?

6 A. Yes, that's correct.

7 Q. And if you don't, then the risk is that sanctions may
8 ultimately follow?

9 A. That's correct.

10 Q. Now, the Committee that I've been referring to, is as
11 I've said, described as the Standing Select Committee of the
12 House of Assembly, charged for the time being with the
13 consideration of matters relating to the Register. Now, that is
14 its full title as per the Act. You will find that at page 60,
15 Attorney, if you need it.

16 A. Yes.

17 Q. As of today, is there a Standing Select Committee in
18 place, do you know, Attorney?

19 A. I believe that there is.

20 Q. And when was it established?

21 A. I don't know. I don't believe I was there at the
22 time, but I believe that one is currently in existence.

23 Q. And you assumed Office, obviously, on the 1st of
24 October 2020.

25 A. Yes.

1 Q. Taking that as the date, from that, date can you say
2 whether it was in place?

3 A. I believe it is in place. I don't have personal
4 knowledge of it. I'm not a Member of it, so I can't tell you
5 what I don't know. I believe that the policy is in place, yes.

6 Q. But you can't say when it was established for--

7 A. I don't have that information, no.

8 Q. You say that you're not a Member, so you've not been
9 asked at any point to give any kind of advice to the Standing
10 Select Committee during your tenure as Attorney General?

11 A. No.

12 Q. Do you know who chairs the Standing Select Committee?

13 A. I don't know, but I believe that it is the Premier,
14 but I really do not know.

15 Q. Do you know who the Members of the Standing Select
16 Committee are?

17 A. I do not know.

18 Q. The Act allows a Registrar to submit a report to the
19 Standing Select Committee. It allows the Standing Committee to
20 also refer a matter to the House of Assembly.

21 A. Yes.

22 Q. Now, keeping it to your time as Attorney General,
23 which I accept is brief, but in that time, have you ever learned
24 that a report was submitted to the Standing Select Committee?

25 A. No.

1 Q. Have you ever become aware of the Standing Select
2 Committee referring a matter to the House of Assembly?

3 A. No.

4 Q. Tell me if you cannot answer this, but obviously in
5 earlier pre-2019 sessions of the House of Assembly, there may
6 have been a Standing Select Committee. Have you learned that in
7 previous years the Standing Select Committee was established or
8 not?

9 A. I believe it was. I have not verified it. I have not
10 checked. I wouldn't want to say so with any certainty because
11 I, myself, have not seen the documents. I have not verified the
12 point, but I believe that one existed.

13 Q. And again, this may be something that you cannot help
14 us with--I accept that--but pre-2019, insofar as you know, did
15 the Registrar submit any reports to the Standing Select
16 Committee?

17 A. I don't know.

18 Q. We are inevitably jumping between bundles, but not too
19 many at present. If we go back to your own Witness Bundle,
20 please, Attorney, and page 46. This is the form that you've
21 submitted to the Registrar, and I would like to just take you
22 through some of it. I don't want to go into the details that
23 you have provided. What my questions would, I hope seek to
24 elicit from you is your understanding as to what is required on
25 the form?

1 A. Um-hmm.

2 Q. To deal with the details that you gave briefly,
3 Attorney, if you look at page--if we set it into this context so
4 that those who are following can perhaps better understand, the
5 form is scheduled to the Act, and it has a Preamble that
6 explains the main purpose of the Register of Interests. Perhaps
7 if I could read that, Commissioner, into the record.

8 COMMISSIONER HICKINBOTTOM: Yes, you can.

9 MR RAWAT: "The main purpose of the Register of
10 Interests is to provide information of any pecuniary interests
11 or other material benefit which a Member receives which might
12 reasonably be thought by others to influence his or her actions,
13 speeches or votes in the House of Assembly or actions taken in
14 his or her capacity as a Member, the details of the information
15 which is required to be registered. Please refer first to the
16 Explanatory Notes in each section of the form".

17 BY MR RAWAT:

18 Q. The Preamble continues by saying that, if there is a
19 need, additional sheets can be attached to the form, and each
20 such sheet should carry the Member's signature. And if there
21 are any changes or additions to the entry, they should be
22 notified to the Registrar within one month of any changes
23 occurring.

24 If I pause there, Attorney, would I be right to
25 understand the scheme this way: You submit your form on the

1 appointed date, in your case the 1st of October 2020; you know
2 that one year later you will have to do the same; but if in
3 between there is a change to your circumstances, which could be
4 a positive or a negative change, it is incumbent upon the Member
5 to return to the Registrar and provide that additional
6 information? Is that right?

7 A. That is my understanding, yes.

8 Q. And the reason for that is that that maximises the
9 opportunity to maintain an accurate and up to date record?

10 A. I would say so, yes.

11 Q. Now, with--in your case, and again, taking it
12 shortly--if you look at some--if I do it this way: What happens
13 next is that the form has 10 categories, and we will look at
14 them in due course, but what it requires is that the person
15 completing it give details under each category, and each
16 category comes with Explanatory Notes that is meant to, I
17 suppose, give guidance. Would you accept that?

18 A. Yes.

19 Q. Now, in your case dealing with your own form briefly
20 before returning to the categories, you gave under
21 "Directorships" details of two unremunerated property holdings.

22 A. Yes.

23 Q. That's at page 47.

24 You then--at page 54, under the category that deals
25 with the land, but you set out details of two undeveloped pieces

1 of land in Martin Spring Ghut and a residential property.

2 A. Yes.

3 Q. And then if I take you to page 55, under
4 "shareholdings", you disclose shareholdings in a property
5 company.

6 A. Yes.

7 Q. Now, taking those three entries together, they appear
8 to refer to the same pieces of land, if you like, the same
9 properties.

10 If I give you an example, if you compare 47 and 55--

11 A. Um-hmm.

12 Q. --you've explained that, in relation to a property
13 company, you are a director, and then you've also made clear
14 that you hold shares in it.

15 A. Yes.

16 Q. My question is intended to be a general one, Attorney,
17 but it's this: Is that the approach that you have adopted,
18 which is of putting, perhaps might be said, to this same
19 information under different categories, raises the possibility
20 that if a form like this is completed diligently, then the same
21 information may be needed to be given more than once?

22 A. Yes.

23 Q. Because the same interests could trigger different
24 categories, couldn't it? You could be both a director and a
25 shareholder?

1 A. Yes, that's true.

2 Q. Or you could be a director and your spouse could be
3 the shareholder?

4 A. I didn't have to address my mind to that issue.

5 Q. I'm speaking again generally, rather than your own
6 specific circumstances.

7 A. Oh.

8 Q. But it's the point that if it's completed diligently,
9 you may be giving the same information more than once?

10 A. Yes, that's possible.

11 Q. And that approach is necessary, isn't it, because one
12 of the functions that falls on the Registrar's shoulders is to
13 ensure that it's an accurate record? And so as much information
14 as the Registrar has, the better they're able to form that
15 function. Would you agree?

16 A. The more accurate information the Registrar has, yes.

17 Q. The Registrar has to be satisfied that the record is
18 complete and accurate?

19 A. I believe that is one of her responsibilities under
20 the legislation.

21 Q. Can I take you, just, please, to the different
22 categories, and again it's general questions. It's not about
23 your own disclosure.

24 If we go to 37, it's Category 1, which is
25 "Directorships".

1 A. 37?

2 Q. 47, I'm sorry.

3 A. Okay, good. Um-hmm.

4 Q. Notes--there are two notes, but note 1 says you should
5 include Directorships "which are individually unremunerated but
6 where remuneration is paid through another company in the same
7 group". Could you, just for the record, explain what you
8 considered that note is directed towards?

9 A. Could you repeat that question, please?

10 Q. I've read out note 1.

11 A. Um-hmm.

12 Q. And it's that as well as what I might put to you is
13 that what the guidance that is being given to the person filling
14 in the form is that as well as disclosing the directorship that
15 is individually renewed--unremunerated so that you're not
16 receiving payment directly from that company, but if you are
17 receiving remuneration through another company in the same
18 group, then that must be disclosed?

19 A. Yes, that's what it says.

20 Q. Would you accept that as an interpretation of that
21 note?

22 A. I believe that's what it says, yes.

23 Q. If we go to category 2--

24 A. This is on page 48?

25 Q. Page 48. Yes.

1 A. Um-hmm.

2 Q. That is for remunerated employment from a job, or
3 office, trade, professional vocation, apart from membership in
4 the House of Assembly or Ministry or office. Obviously as a
5 public officer, you fell outside that.

6 A. Um-hmm.

7 Q. But that is intended to allow the Member to declare
8 any other activities that they may be engaged in, be it business
9 or a separate job; that's right, isn't it?

10 A. Yes.

11 Q. If we go then to category 3 on page 49, what that says
12 is: "Does any of the paid employment registered in Categories 1
13 and 2 entail the provision to clients of services which depend
14 essentially upon or arise out of your position as a Member of
15 the House of Assembly", and it then directs the person
16 completing the form to Note 1 which reads: "The services
17 covered by this category include actions connected with any
18 parliamentary proceeding, sponsoring meetings or functions in
19 the House of Assembly building or offices making representation
20 to Ministers, Fellow Members or public servants, accompanying
21 delegations to Ministers and the provision of advice on
22 Parliamentary or public affairs".

23 And so, would I be right to say that what Category 3
24 is intended to elicit is circumstances where either because you
25 have a directorship or through your employment, your remunerated

1 employment, you provide a benefit to a client which arises out
2 of being in the House of Assembly. For example, you make
3 representations on behalf of a company in which you have a
4 Directorship. That's what's required to be declared, isn't it?

5 A. Yes.

6 Q. Because that is something that even with the Register
7 not being public is something that is important for transparency
8 purposes because if Members of the House of Assembly are making
9 representations on behalf of individuals or businesses with
10 which they have a connection, it's important that that be
11 recorded; would you agree?

12 A. If it's important, yes.

13 Q. If I look at now to category 4 which is headed
14 "sponsorship", the first question that's put to the person
15 filling the form is, "did you benefit from sponsorship before
16 election where, to your knowledge, the financial support in any
17 case exceeded in aggregate \$2,500, and Note 2 says: "You should
18 register money given to you by your election campaign committee
19 and money spent by your election campaign committee in
20 connection with your election with your permission".

21 A. Where are you reading from, please?

22 Q. Sorry, it's--

23 A. I see it now, okay. Um-hmm.

24 Q. There's also a qualification which is perhaps now out
25 of date, in that doesn't apply to elections that took place

1 before the enactment of the 2006 Act, which is in 2008.

2 So, in relation to this paragraph, paragraph 4(a),
3 what do you understand is meant by "sponsorship"?

4 A. That's an interesting question, having never run for
5 election myself, I suppose it has to do with whether you have a
6 sponsor.

7 Q. Could I suggest--

8 A. --just before elections. That's what I'm assuming it
9 means: Did you benefit from any sponsorship before election,
10 where, to your knowledge. The financial support...

11 Q. But if we look at note 2, where it refers to election
12 campaign committee and money spent by election campaign
13 committee--

14 A. Yes.

15 Q. --isn't it wider than that, in that if money is spent
16 on--if you are given money for your campaign or money spent on
17 your behalf for your campaign, then it would be important that
18 you declare that?

19 A. It is included, and yes, you would have to declare it.

20 Q. If I briefly take you, Attorney, to B, 4-B, "do you
21 benefit from any other form of sponsorship or financial or
22 material support as a Member of the House of Assembly", and the
23 relevant note here seems to be at note 1 where it says you
24 should register under this section, "any financial or material
25 benefit, direct or indirect. For example, the provision of free

1 or subsidised accommodation or provision of the services of
2 research assistant or as a subsidised salary rate". So, again,
3 it's about declaring potential interests.

4 A. Yes.

5 Q. So, if you received, let's say, a Member of the House
6 of Assembly were to receive free office accommodation from which
7 to conduct their business as an elected representative, that is
8 something that should be included in this part of the form,
9 isn't it?

10 A. It would appear so, yes.

11 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat, all
12 of these are on the phase of it, personal benefits, so
13 sponsorship before the election as it were money you get to fund
14 your election company.

15 THE WITNESS: Yes.

16 COMMISSIONER HICKINBOTTOM: Similarly for B, when you
17 are a Member of the House of Assembly.

18 Is there any regulation of political funding more
19 generally? I mean, for example, party political funding? Is
20 there any regulation of that? That's taking us outside the
21 scope of the Registration of Interests.

22 THE WITNESS: I'll say that--

23 COMMISSIONER HICKINBOTTOM: Outside of Registration of
24 Interests.

25 THE WITNESS: Not that I'm aware of, but I haven't,

1 myself, checked that.

2 COMMISSIONER HICKINBOTTOM: Okay. Thank you. That's
3 fair.

4 THE WITNESS: But I don't believe that there is.

5 BY MR RAWAT:

6 Q. Attorney, I will skip through a number of categories
7 because I don't have questions for the moment but I just want to
8 again for those following the Hearing remotely just so that they
9 see this.

10 Category 5 is gifts, benefits, and hospitality in the
11 Virgin Islands. So that is in relation to gifts that you
12 receive whilst in the Virgin Islands.

13 Category 6 deals with overseas visits where the cost
14 of the visit was not wholly borne by the Member or by public
15 funds.

16 Category 7 is overseas benefits and gifts.

17 Category 8, is land and what it refers to is the need
18 declare that any land other than any home used solely for the
19 personal residential purposes of you or your family. So, the
20 Member isn't obliged to declare their home if they use it solely
21 for residential purposes. If they were to use it for an
22 ancillary purpose which have other property interests, those
23 would have to be set out at this part of the form. Would you
24 agree?

25 A. Yes.

1 Q. And then if we go to category 9 which is at 55, that's
2 shareholders, and what's required is each company or body
3 indicating the nature of the business and the extent of the
4 interests.

5 That takes to us category 10 which is on your page 56,
6 Attorney. It is headed "miscellaneous". And it reads as
7 follows: "If bearing in mind the definition of 'purpose' set
8 out in the introduction to this form, you have any relevant
9 interest which you consider should be disclosed but which do not
10 fall within the nine categories set out above, please list
11 them".

12 And, for the record, you wrote "none at this point",
13 but again my question is more general, and it is this: What do
14 you understand to be the purpose of category 10?

15 A. Right, so that would take me back to the introductory
16 paragraph, and what it would be getting at is whether
17 notwithstanding the nine items listed, if there is any interest
18 or material benefit that would not be covered by the listed--by
19 the nine questions preceding number 10, and a Member would
20 reasonably think or reasonably be thought by others, it would be
21 reasonably be thought by others to influence the actions of the
22 Member, the speeches or votes in the House of Assembly or their
23 actions taken as a Member, then it ought to be written in that
24 section.

25 Q. And so, when completing that section, what the Member

1 has to do, doesn't he or she, is to consider whether they do
2 have any other interests which could be thought by others--

3 A. Yes.

4 Q. --as potentially influencing their actions as a Member
5 of the House of Assembly?

6 A. Yes.

7 Q. So, quite simply, they have to think what would others
8 think about me if they learned about this information?

9 A. Yes, they do.

10 Q. And about my conduct as a Member of the House of
11 Assembly?

12 A. Yes, they do.

13 Q. If I might briefly now just take you back to the Law
14 Bundle, to the Constitution and Legislation Bundle, that we
15 looked at. It's 65 that I would like to take you to.

16 Hang on. If you give me a moment, please. Sorry, if
17 I take you to 79, first of all. This is the amending statute,
18 the Register of Interests Amendment Act of 2021 which you
19 introduced into the House of Assembly, and it amended the
20 section 9 of the Principal Act, the 2006 Act, and it did it in
21 two ways: Firstly, that it allowed--if you need to look it up,
22 Attorney, you will find section 9 at page 65.

23 A. Yes.

24 Q. But it widened the circumstances in which the Register
25 could be open for inspection beyond a criminal investigation or

1 the order of a court but to include upon the written request of
2 a Commission of Inquiry.

3 A. Yes.

4 Q. What the amendment also introduced was an amendment to
5 section 13 of the Principal Act which we find at page 67, the
6 amendment we find at page 81.

7 A. Hold on. You said 67?

8 Q. The 67 is the original section 13.

9 A. Yes.

10 Q. If you look at 80, we see the text that is being
11 introduced by the 2021 Act.

12 A. 13, yes.

13 Q. And the substantive amendment was that "where a
14 request for information is made to the Registrar pursuant to
15 section 1(b), then the Registrar may provide information that,
16 in his opinion is strictly necessary to fulfill the requests,
17 and upon such conditions as to the preservation of
18 confidentiality after the purpose for same has been exhausted as
19 he shall deem appropriate."

20 Now, that provision, is it directed at a Commission of
21 Inquiry or also at a court?

22 A. Could I have one minute, please. I'm just reviewing--

23 Q. Of course.

24 (Pause.)

25 A. Your question is who is that section directed to?

1 Q. Yes.

2 A. Well, the section is directed to the Registrar, and
3 she can impose those conditions, as I see it, on anyone who is
4 able under the Act to request that information from her.

5 Q. I see.

6 So, those that are presently able to request
7 information are, firstly, someone conducting a criminal
8 investigation?

9 A. Yes.

10 Q. Secondly, a court conducting legal proceedings?

11 A. Yes.

12 Q. Thirdly, now, a Commission of Inquiry, and fourthly, a
13 Member making a written request?

14 A. Yes.

15 Q. Now, your view of the amendment is at least in
16 relation--it applies beyond the Commission of Inquiry, it could
17 apply to a court as well?

18 A. Yes.

19 Q. But ultimately, whether conditions are imposed is a
20 matter for the Registrar exercising a discretion under the Act?

21 A. Yes.

22 COMMISSIONER HICKINBOTTOM: We've dealt with this, I
23 think, in a previous hearing, but in terms of subsection 1(a),
24 the new subsection, "Conditions" can be imposed by the
25 Registrar, but only as to the preservation of confidentiality

1 after the purpose for the disclosure has been exhausted.

2 So, take a court proceeding, she can only impose
3 conditions once, as it were, the court proceedings are over?

4 THE WITNESS: That's the way I understand it, yes.

5 COMMISSIONER HICKINBOTTOM: And that you explained or
6 someone on your behalf explained at a previous hearing?

7 THE WITNESS: Yes.

8 BY MR RAWAT:

9 Q. You've told us that the new Bill which will, in fact,
10 if it comes into force, will repeal the 2006 Act and create a
11 new scheme for the Register of Interests, that it has not yet
12 been put before the House of Assembly.

13 When, then, does the opportunity arise for Members to
14 seek amendments to the Bill?

15 A. Would you repeat that question?

16 Q. The pending bill--

17 A. Yes.

18 Q. Is the Register of Interests Bill 2021.

19 A. Yes.

20 Q. That, on your evidence, has not yet been introduced
21 into the House of Assembly?

22 A. I don't even know that it has gone to Cabinet.

23 Q. Right.

24 A. Right.

25 Q. I see.

1 A. I believe it's still in the drafting stage.

2 Q. Thank you for that clarification.

3 Now, so the first step is for it to go to Cabinet?

4 A. Once the drafting is complete, yes, it will go to
5 Cabinet.

6 Q. And at that stage, can Cabinet seek amendments of the
7 Bill?

8 A. A Cabinet may make recommendations as to amendments to
9 the Bill, yes.

10 Q. The Bill is then introduced into the House of
11 Assembly?

12 A. Yes.

13 Q. And is it at that stage that Members can then seek
14 further amendments to the Bill?

15 A. Yes.

16 Q. In your experience as Attorney General, have you ever
17 received representations on a Bill when it's at the drafting
18 stage and still effectively within the control of your Chambers?

19 A. Representations--

20 Q. From Members or Cabinet Ministers.

21 A. I couldn't say it because a lot of that drafting--I
22 wouldn't do it myself. Do we receive representations on bills
23 that are being drafted? Yes, we do. They can come from various
24 quarters, and it also depends on what type of consultation
25 happens, depending on the type of Bill it is, there may be

1 consultation before the drafting begins, there might be
2 consultation with select groups while it is happening. There
3 may be consultation within the public service.

4 So, even in the course of drafting, you may receive
5 recommendations or suggestions as to what ought to be included
6 and so on.

7 Have I ever received or should I say has Chambers ever
8 received any from Members of the House of Assembly? During my
9 tenure, I don't believe so, but I couldn't say "yes" or "no",
10 but I just don't believe so.

11 Q. If I could turn to another matter, please. As
12 Attorney, you sit as an ex officio Member of the Cabinet?

13 A. Yes.

14 Q. You will recall that in the beginning before starting
15 my questioning of you, I set out some policy in relation to
16 Ministers and Members of Cabinet's obligations to declare a
17 potential interest.

18 Now, I don't need to ask you specifically about
19 whether that obligation has ever fallen on your shoulders as
20 Attorney, but I wanted to ask you this: As Attorney sitting in
21 Cabinet, have you ever been called upon to advise as to a
22 potential conflict of interest?

23 A. No. Members typically disclose them themselves.

24 Q. The Cabinet Handbook, which I refer to, says that
25 whether a Member has some uncertainty or doubt over an interest,

1 then they should speak to the Premier. In your view as
2 Attorney, is the question or if there were such uncertainty, is
3 that something on which you would be able to advise, in
4 principle?

5 A. Is the question should I advise or can I?

6 Q. Can you advise.

7 The handbook provides for someone to go to the Premier
8 if they have uncertainty or doubt. Is it also possible for them
9 to go to the Attorney General?

10 A. Well, it's fairly typical for people to come to the
11 Attorney General if they have uncertainty or doubt on any matter
12 which they think has a legal implication, so I would say "yes".

13 Q. Thank you.

14 MR RAWAT: Sir, may I have just a few moments?

15 COMMISSIONER HICKINBOTTOM: Yes, sir.

16 (Pause.)

17 MR RAWAT: Commissioner, those are all my question, so
18 can I conclude by once again thanking the Attorney General for
19 coming to give evidence to the Commission today, and also for
20 the way in which she has done so. Thank you.

21 COMMISSIONER HICKINBOTTOM: Can I add my thanks to
22 those, Attorney. Thank you for coming and giving your evidence
23 and giving it so clearly.

24 THE WITNESS: You're very welcome, Commissioner.
25 Thank you.

1 (Witness steps down.)

2 COMMISSIONER HICKINBOTTOM: Mr Rawat, two things.
3 First, I suspect before the next witness, we will have to take
4 some COVID steps to make sure that the desk is clear and so on,
5 but how many other witnesses have you got today? I'm just
6 looking at the time.

7 MR RAWAT: We will be calling The Honourable Sharie B
8 de Castro, The Honourable Shereen Flax-Charles. I think then we
9 have The Honourable Kye Rymer and The Honourable Carvin Malone.

10 So, I note the time, and you may want to have a short
11 break now.

12 COMMISSIONER HICKINBOTTOM: This is very difficult,
13 but how long do you think you'll be with the next Member?

14 MR RAWAT: I don't know whether that will be a comfort
15 to The Honourable de Castro, but probably longer than I was with
16 the Learned Attorney General.

17 COMMISSIONER HICKINBOTTOM: Right. Given the work
18 we've still got to come, can I suggest that we now break until
19 say half past 1:00 and then we will carry on with The Honourable
20 Sharie B de Castro?

21 MR RAWAT: Yes.

22 COMMISSIONER HICKINBOTTOM: Good. Thank you all very
23 much.

24 (Recess.)

25 HON SHARIE B de CASTRO, COMMISSION WITNESS, CALLED

1 COMMISSIONER HICKINBOTTOM: Good. Are we ready to
2 resume?

3 MR RAWAT: We are, Commissioner. Our next witness is
4 The Honourable Sharie B de Castro.

5 COMMISSIONER HICKINBOTTOM: Thank you.

6 COMMISSION SECRETARY: Good afternoon. Would you like
7 to swear an oath or make an affirmation? Could you take the
8 Bible in your right hand and read what's written on that piece
9 of paper there, please.

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

13 COMMISSIONER HICKINBOTTOM: Thank you very much.
14 Just one moment.

15 (Pause.)

16 COMMISSIONER HICKINBOTTOM: Thank you. Mr Rawat.

17 MR RAWAT: Thank you, Commissioner.

18 BY MR RAWAT:

19 Q. Ms de Castro, thank you for coming to give evidence
20 today, and can I apologise that we've kept you waiting for some
21 time.

22 Could we start off, please, with the formalities.
23 Could you give the Commissioner your full name, please.

24 A. Commissioner, my name is Sharie B de Castro.

25 Q. And your professional address?

1 A. My professional address is Richard Stoutt Building,
2 Road Town, Tortola, Virgin Islands.

3 Q. Thank you. I hope to try and keep my questions short
4 and simple. If at any time you have difficulty understanding
5 the question or you would like me to repeat it or rephrase it,
6 please do ask me to do so.

7 There are in front of you a number of bundles. We may
8 need to go look at some of those documents in due course, but
9 for the present we could keep them shut. The final thing to
10 remind you of is, this is just to ask you to please keep your
11 voice up. Please speak slowly. It's important your answers are
12 clearly and accurately recorded on the Transcript of this
13 hearing.

14 Can we start as we did with the Attorney General just
15 by asking you to give a brief summary of your background, your
16 professional background, before you entered into politics
17 please?

18 A. Yes, Commissioner, I am an educator by training, so I
19 was a teacher at the Elmore Stoutt High School here in the
20 British Virgin Islands, and I am also the owner of an
21 educational business, Right to Eat, which focuses on literacy
22 advancement.

23 Q. And it's right, isn't it, that you were selected as an
24 at-large candidate of the Virgin Islands Party in the 2015
25 Election?

1 A. Yes, Commissioner.

2 Q. But you were unsuccessful in that election?

3 A. That is right.

4 Q. But you stood again in the 2019 Election, and that was
5 again as a territorial candidate for the Virgin Islands Party?

6 A. Yes, that is correct.

7 Q. Can you help us with this, please. Is it right that
8 in order to stand for your party as a territorial candidate, you
9 would have to be nominated by the party?

10 A. Yes, that is correct.

11 Q. And again, the way the Territorial seats work is that
12 the Virgin Islands are one single constituency, and is it that
13 the top four candidates with the top four votes are the ones
14 that get the seats?

15 A. Yes, that is correct.

16 Q. At the time of the 2019 Election, can you remember
17 what the population of the BVI was?

18 A. I cannot remember specifically what the population
19 was, but I believe given the voter registration, I believe it
20 was about around 15,000 voters. I believe the population would
21 have been anywhere from about 30 to 35,000, but I stand to be
22 corrected.

23 Q. I appreciate. Obviously, I'm asking you to cast your
24 mind back in time, but in terms of those eligible to vote, it's
25 about 15,000?

1 A. Yes. That is based on my recollection.

2 Q. Yes.

3 I think--and we can check this, but I think there is
4 on the Government website the official results are published,
5 and what those recorded the 2019 Elections are that there were
6 15,038 registered voters, and 9,720 ballots cast.

7 Now, again, can you help us with this: Is it right
8 that if a voter in that election would be able to vote for the
9 representative in their district but also then be able to vote
10 for four people to sit as a territorial representative?

11 A. Yes, that is correct.

12 Q. So, one person has in effect five votes?

13 A. Yes, that is correct.

14 Q. How many votes did you get, yourself?

15 A. I can't--Commissioner, I cannot remember the specific
16 number. I know it was above 4,000 votes, but I do not remember
17 the specific details of it--the exact number. But I know it
18 was--from my recollection, it was above 4,000 votes.

19 Q. I think again the official records record it as 4,
20 778, which was 12.49 percent of the votes cast for territorial
21 candidates. Would that accord with your recollection?

22 A. Yes, that is correct.

23 Q. And I think I probably stand to be corrected on this,
24 but I think you were top of the list in terms of votes cast.
25 You've got the first seat, if you like; is that right?

1 A. Yes, that is correct.

2 Q. And once selected, you were appointed as Junior
3 Minister for Trade and Economic Development?

4 A. Yes.

5 Q. But then subsequently a few months later you became
6 the Junior Minister of Tourism?

7 A. Yes, that is correct.

8 Q. And you're still in that role, are you not?

9 A. Yes, sir.

10 Q. Now, you, I think, I believe, Ms de Castro, were here
11 in the room when I was asking questions of the learned Attorney
12 General, and I was asking her about the Register of Interests
13 Bill 2021, which the Attorney explained hasn't yet reached
14 Cabinet or the House of Assembly, but it is something that has
15 been discussed publicly.

16 One potential effect of that Bill is that it will make
17 the Register of Interests public, and so a Member of the public
18 can come along and look at it. Is that a measure that you are
19 in support of?

20 A. Commissioner, I am in support of the Register of
21 Interests being made public.

22 To further clarify, currently the Integrity and Public
23 Life Act is before the House of Assembly this week for its
24 second and third reading, and subsequently, it does suggest
25 changes or amendments to the Register of Interests Act, so it is

1 my understanding that it will be amended forthwith.

2 Q. I see.

3 That is something new to us. The Integrity Bill, if
4 you like, will also make changes to the Register of Interests
5 Act of 2006?

6 A. Yes, sir, that is my understanding.

7 Q. And are those changes that the Register of
8 Interests--the current Register of Interests will become public?
9 Is that one of the changes that's envisaged?

10 A. Yes, that is my understanding.

11 Q. And without putting words into your mouth,
12 Ms de Castro, is one of the reasons that you would support that
13 the Register being public is that it makes or promotes
14 Government being seen as accountable and transparent?

15 A. I believe that is correct.

16 Q. Could we look, then, at the Declarations that you have
17 had to make as a Member of the House of Assembly.

18 Now, you assumed office obviously following your
19 success at the polls on the 12th of March 2019; is that right?

20 A. Yes, that is correct.

21 Q. And as the Attorney General explained to the
22 Commissioner this morning, under the Register of Interests Act
23 of 2006, you are then required to provide a Declaration of your
24 interests on that date, the 12th of March 2019, and then on the
25 every subsequent anniversary.

1 Do you accept that that's an obligation that's on you
2 as a Member of the House of Assembly?

3 A. Yes, sir, I do.

4 Q. You should have, I hope, your bundle in front of you.
5 If you go to Page 74 in the bundle, this is--so this is--I will
6 check--the First Declaration that you made, and you can see at
7 the top it's stamped and the date--it's stamped Registrar of
8 Interests Government of the Virgin Islands, and written in
9 manuscript inside the stamp is the date 10th of July 2019.

10 If you go to last page in the bundle, you will see the
11 last page of the Declaration, which is 84, and this is the last
12 page, if I could ask you, can you confirm that's your signature,
13 Ms de Castro?

14 A. Yes, it is.

15 Q. And it's dated 10th of July 2019.

16 A. Yes, it is.

17 Q. Now, would you accept that you did not file your
18 Declaration on the required date, the 12th of March 2019?

19 A. Yes, I accept that.

20 Q. And, in fact, it seems that you were out by four
21 months; is that right?

22 A. That is correct.

23 Q. Now, the Attorney explained this morning that what the
24 Act does--and if you need me to show you the Act, please do say
25 so--what the Act does is that it gives you three months after

1 the date to submit your Declaration, and if you haven't done so
2 within three months of that date, the Act says you are in
3 breach, and the Registrar can write a report.

4 So, would you accept that, by being four months out
5 from your date, you were, in fact, in breach of the Register of
6 Interests Act of 2006?

7 A. I do, and permit me to explain. That as a newly
8 elected Member of the Government, it was a steep learning curve,
9 and without formal orientation to the position, subsequently, I
10 was through the notifications from the Registrar been reminding
11 me, I subsequently did take due consideration to visit her
12 office to be fully informed and briefed as to what was expected
13 of me, and on that date I did fill out my Declaration and
14 submitted it.

15 Q. Could I break that down a little with you, please.

16 A. No problem, sir.

17 Q. You've explained that, as a newly elected Member, you
18 had a steep learning curve. You referred to orientation. Who
19 is responsible for giving you the orientation?

20 A. In general, my assumption would be as a newly elected
21 Member that the House of Assembly would have in some form or
22 fashion introduced workshops to Members to familiarise them with
23 the processes and structures and responsibilities therein, and
24 that was not the case, so I was, as a new Member, being newly
25 accustomed to the role, basically adjusting to this new

1 responsibility. After becoming fully aware of what was expected
2 of me, I did subsequently submit the Register of Interests
3 Declaration.

4 Q. Were there any Members of your party who had been
5 elected to the House of Assembly in 2019 who had previously been
6 Members of the House of Assembly?

7 A. Yes, that is correct. There is.

8 Q. How many?

9 A. There was one Member that was previously elected.

10 Q. Who was that?

11 A. The Sole Member that elected previously was the
12 Premier, The Minister of Finance, The Honourable Andrew Fahie.

13 Q. And correct me if I'm wrong, but is the Premier also
14 would be the leader of your party in the House of Assembly?
15 Would that be right?

16 A. Yes, the Premier is the leader of the Party.

17 Q. And did the Premier speak to yourself and other newly
18 elected Members about the importance of completing the Register
19 of Interests Declaration?

20 A. I cannot specifically remember if that was the case.
21 However, I did state previously that my expectation becoming a
22 new Member in any position in any organization that I would
23 generally be oriented to the role by the persons in charge of
24 said organization or Department. And as stated and which I know
25 is customary in other islands within the Caribbean and other

1 jurisdictions, there are new member workshops that do take place
2 that enlighten Members as to their roles and responsibilities.
3 I'm simply suggesting and stating that that was not the case
4 when I was elected.

5 Q. Without--to repeat the question, who do you say is
6 responsible for giving that you orientation?

7 A. I believe that, as new Members, the House of Assembly
8 itself in terms of the staff, the Office of the House of
9 Assembly should give an orientation process to Members,
10 knowing--so that they are fully aware of the processes involved
11 as sitting as a Member of the House.

12 Q. In response to a question from me, the Attorney
13 earlier today said and confirmed that the Act doesn't give you a
14 defense or reasonable excuse?

15 A. Sir, I am not in any way giving you an excuse. All I
16 did was stated my position as to why my Register of Interests
17 Declaration was late. I have admitted that it was late, and I
18 stand by that. However, I was simply giving you an explanation
19 being a new Member to the House why that was the case from my
20 position.

21 Q. And just so that we can be clear, in the first few
22 months that you were a new Member, no one in the House of
23 Assembly gave you any orientation which included the importance
24 of filling in the Register of Interests?

25 A. Sorry, there was no orientation. I can say that the

1 only correspondence I received in reference to the Register of
2 Interests was from the Registrar of Interests where she stated
3 that I should comply with producing the Declaration and the
4 subsequent letters that she wrote reminding me of doing such.

5 Q. Do you still--how soon after your taking up your
6 position as the newly elected Member did the Registrar write to
7 you?

8 A. I cannot remember the specific date at this time.

9 Q. Do you--

10 A. But I believe that there is--I'm sorry. I believe
11 there was a letter dated for the same date, the 12th of
12 March 2019, but I would have to revert and actually check that.

13 Q. Do you have that correspondence with the Registrar?

14 A. I would have it. I don't have it on me now, but it is
15 something that I should be able to produce.

16 Q. Did you--you've referred to the Registrar sending you
17 letters. Did you respond to her?

18 A. I didn't respond in writing, but I did have one
19 conversation with her to basically set up an appointment to meet
20 with her in order because she did give that opportunity that we
21 could reach out to her or if we had any questions concerning the
22 Register of Interests, and so I did take that offer, and I met
23 with her in person at her office and subsequently filled out the
24 form on said date.

25 Q. So, being fair to the Registrar, is it right that on

1 or about the date when your Declaration was due, she had written
2 to you to remind you of your obligation?

3 A. I believe that is the case, yes. I would have to
4 produce the document indicating the specific date.

5 Q. So, from that date March 2019, you were aware you had
6 an obligation to fill in the form?

7 A. Yes, that is the case.

8 Q. And did you--when you became aware of that form go and
9 look at the Act and say what is it that I need to do?

10 A. I do not remember specifically. When I did complain
11 of that--as I explained earlier, being a new Member, I can state
12 at the time it was quite busy in terms of adjusting. But I can
13 stay state that when I actually did meet with the Registrar
14 subsequently, I filled out the form and it was submitted.

15 Q. Were you aware, Ms de Castro, that you could be
16 reported to the Standing Committee charged with considering the
17 Register of Interests?

18 A. At the time, no.

19 Q. When did you become aware that you could be reported
20 to the Standing Committee?

21 A. I became aware sometime after. I cannot specifically
22 state the date, but it wasn't before I submitted my initial
23 Declaration. It was sometime recent.

24 Q. Sometime recently.

25 A. Yes.

1 Q. How recent? Can you help us?

2 A. I would say within the last few months.

3 Q. In 2021?

4 A. Yes, in 2021.

5 I had not subsequently known that there was a
6 provision that stated it was within three months.

7 Q. Does that mean that it's only in 2021 that you have
8 become aware that there is a Standing Select Committee charged
9 with considering the Register of Interests?

10 A. No, sir, that is not the case. I'm aware that there
11 was a Standing Select Committee established for the Register of
12 Interests. I'm not certain of the specific date. I believe it
13 could have been sometime in the latter part of 2019, and that
14 was done through a motion, I believe, in the House of Assembly
15 appointing Members to said Committee.

16 Q. And would you be able to give the Commissioner the
17 date on which that motion was passed?

18 A. I would have to find that information, but I can
19 present it.

20 Q. Do you know who chairs the Committee?

21 A. Yes, I know who chairs the Committee. The Honourable
22 Premier chairs the Register of Interests Committee.

23 Q. And who is on that Committee?

24 A. The Members of the Committee are, based on my
25 recollection, are The Honourable Neville Smith, The Honourable

1 Kye Rymer, The Honourable Shereen Flax-Charles, and The
2 Honourable Marlon Penn.

3 Q. Could you turn to page 63 in your bundle, please.

4 This is the Second Declaration that you provided to
5 the Registrar of Interests. It's your 2020 Declaration that you
6 confirmed it fell due on the 12th of March 2020. We can see
7 this is the first page. It is stamped the 12th of May 2020.

8 And if you go to the last page, is it your page 73,
9 please.

10 Again, can you confirm that that is your signature on
11 that last page?

12 A. Yes, that is my signature.

13 Q. And you dated it 12th of May 2020?

14 A. Yes.

15 Q. So, it would seem that, on the day you completed the
16 form, that was the day it was before the Registrar of Interests;
17 is that right?

18 A. That is correct.

19 Q. But it's also right that, again, you haven't submitted
20 it by the required date, did you?

21 A. That is correct.

22 Q. It's within the three months, but it's still not on
23 the required date?

24 A. It is within the three months and not on the required
25 date, but I will expound by stating that we at that time the

1 Territory was on a lockdown, and there was interruptions in
2 normal business as related to offices being opened.

3 Subsequently, given the time that we were in, upon being able to
4 do so, I did submit my Register of Interests.

5 Q. Was the Territory on a lockdown on the 12th of
6 March 2020?

7 A. I cannot specifically remember the exact date. I know
8 that the Territory did go into lockdown in March, but I'm not
9 sure of the specific date.

10 Q. Were you aware of the obligation in the Act that, as
11 well as producing a Declaration every year, if there were
12 changes during the course of that year, you had to draw those to
13 the attention of the Registrar?

14 A. Yes. I was made aware of that.

15 Q. Was there correspondence in 2020 between you and the
16 Registrar over your second failure to provide the Declaration in
17 time?

18 A. I am not particularly sure. That is something that I
19 can check, given the time we were in. I do remember the
20 correspondence from 2019, but I cannot specifically state about
21 2020.

22 Q. And--

23 A. I believe I would have gotten a letter stating that it
24 is due on the 12th of March, but subsequent correspondence I am
25 not certain.

1 Q. Again, I appreciate that you're going--you want to
2 check what correspondence you have, but is it likely that you
3 would have retained those letters from the Registrar?

4 A. Sorry, can you please repeat?

5 Q. You've indicated to the Commissioner that you will
6 need to check what correspondence you have?

7 A. Yes.

8 Q. But is it likely that you have retained the letters
9 from the Registrar?

10 A. Yes, that is very likely. That is something that I
11 can submit at a later date.

12 Q. If we go just to look, please, at--so that you can
13 orientate yourself from the bundle, Ms de Castro, if you can
14 look at WB--your Witness Bundle at 52. This is your most recent
15 Declaration. Again, you would have had a Declaration that falls
16 due on the 12th of March 2021. If you see that it's there,
17 again we see it's stamped with "Registrar of Interests," written
18 in manuscript on the date 11th of May 2021.

19 A. Yes.

20 Q. If you go, however, to the last page in that document
21 which is at 62, again just for the record can you confirm that
22 that's your signature?

23 A. Yes, it does.

24 Q. It's dated the 12th of March 2021?

25 A. That is correct.

1 Q. So, that is the Due Date?

2 A. Yes.

3 Q. Can you assist the Commission with the discrepancy
4 between those two dates?

5 A. Yes, I can.

6 We received notice from the Registrar as usual, a
7 written letter stating that our interests would be due, they
8 would be coming in on 12th May--sorry, on the 12th of March, my
9 apologies. However, at the time, the Registrar of Interests we
10 were also notified by the Clerk of the House of Assembly that
11 the Registrar of Interests was ill and was hospitalised, and so
12 we were unable to submit the said documents. However, they were
13 sitting there waiting to be submitted. Upon return to the
14 office, she wrote a letter notifying us that she had returned,
15 and that was the said date that it was submitted.

16 Q. So, she had given you guidance, complete the form,
17 leave them with the Clerk of the House of Assembly?

18 A. Yes.

19 Q. And then when she was well again, she would review the
20 forms?

21 A. Well, just to clarify, not to leave with the Clerk.
22 They were filled out and left in my office, and my Secretary did
23 submit upon receiving the letter stating that the Registrar was
24 back in office.

25 Q. So, on this third year, you were in date, so to speak;

1 that's right, isn't it?

2 A. That is correct.

3 Q. It might be suggested to the Commissioner in due
4 course that your failure to file on time two years in a row is
5 indicative of someone who's taking a relaxed view to their
6 obligations as a Member of the House of Assembly. Would you
7 accept that?

8 A. I would not accept that.

9 Q. Why wouldn't you accept it?

10 A. I believe I have prefaced my explanation in the past
11 as it relates to what my position was upon entering office and
12 subsequently, so while I accept that I was late, I will not
13 accept that it was due to me being somewhat--I forgot the word
14 that you used.

15 Q. The word I used was "relaxed."

16 A. Yes.

17 Q. But you could use your own words?

18 A. Yes--I just wanted to quote you. I do not submit to
19 the fact that I was being relaxed in doing so. I believe that I
20 wanted to ensure that, given the series of events and also
21 maturing in the seat at the House of Assembly having acquired
22 the subsequent knowledge that I wanted to make sure that I was
23 in line with what was required of me.

24 Q. You explained that in relation to the 2019 Declaration
25 you had received no orientation.

1 A. Yes.

2 Q. You had received a letter on 12th of March 2019 from
3 the Registrar notifying of your obligation to file a
4 Declaration. You did so, as we've seen in July 2019.

5 A. Yes.

6 Q. In 2019, did you make any representations that there
7 was a need for orientation?

8 A. Yes, I have been making representations that there was
9 a need for orientation, and it was further cemented by my
10 subsequent participation in the Commonwealth Parliamentary
11 Association programmes and seminars through the region and
12 internationally. Subsequently, I was also a guest Speaker at
13 two or more new member parliamentary proceedings for the Angola
14 House of Assembly, and the Grenada House of Assembly. So, that
15 is why previously I referenced that it is customary that when a
16 new House of Assembly is installed that it is practiced through
17 the region that perhaps through the Commonwealth Parliamentary
18 Association or even potentially just through the House of
19 Assembly of that specific line that there are new Member
20 workshops so that Members could be apprised of their
21 responsibility.

22 I can state as referenced I believe previously that,
23 in fact, two-and-a-half years later, today is, in fact, the
24 first workshop from the Commonwealth Parliamentary Association
25 for new Members in the British Virgin Islands Legislative

1 Assembly. That is unfortunate, but it is the case.

2 Q. The question was directed to whether you had made
3 those representations in 2019. Did you make representations--

4 A. I stated that I did, and I did subsequently. I just
5 further explained my knowledge as to why I did, having
6 interacted with other Parliaments and the new Member
7 orientations.

8 Q. If we look at page 7, please. If I had taken you to
9 the right placing you should have a letter dated 19th of
10 February 2021.

11 A. Yes.

12 Q. And it's a letter addressed to you from the
13 Commissioner.

14 And it relates to obligations under the Register of
15 Interests Act of 2006, and it's a request for information. And
16 if we go over to the next page, the Commissioner asked you three
17 things, and I will summarise them:

18 Firstly, the date and content of each Declaration of
19 Interests you've made during your time as a Member.

20 Secondly, irrespective of any such Declarations, the
21 information and Documents that you would provide in such a
22 Declaration if it was made at the date of the letter.

23 And, thirdly, if during your period of appointment as
24 a Member you failed at any time to comply with your obligation
25 to make such a Declaration, in respect of each such failure, a

1 full explanation as to why you did not make such Declaration and
2 what, if any, sanction admonishing, direction, or adverse
3 consequence resulted.

4 Now, in response to that, you sent two letters, and I
5 want to take you to both of them. The first one is at page 10.
6 You see there, Ms de Castro, that you acknowledged the receipt
7 of the letter, but you--and that was on the 17th of March 2021.
8 The Commissioner had asked for a reply by the 26th of
9 February 2021, but on the same day you also sent a more detailed
10 letter, and that's dated the 17th of March as well. And in
11 response to the Commissioner, you made a number of points. You
12 said: "As a Member of the House of Assembly, and since the
13 introduction of the Register of Interests Act of 2006, I
14 complied with Section 3 saying in the form and manner set out in
15 Schedule 1 therein." You then write: "I do not keep copies of
16 my Declarations of Interest, and as such I would not be in a
17 position to assist you with the dates and its contents", and
18 then you refer to the change that was made by the House of
19 Assembly amendment passed to the Register of Interests which
20 allowed the Commissioner to obtain information from the
21 Registrar.

22 Now, you make only one reference to dates, and you say
23 that you're not in a position to assist with the dates of the
24 Declarations. Does that mean that, as of the 17th of
25 March 2021, you'd forgotten that you twice failed to submit your

1 Declarations on time?

2 A. That is not the case. I just did not know the
3 specific date as requested.

4 Q. Was there any reason why you could not have told the
5 Commissioner at that time that you were aware that you had
6 failed to submit them on time?

7 A. I do not believe that that is the case.

8 Q. So, there was no reason you couldn't volunteer that
9 information at that time?

10 A. I believe so. However, given the fact that we had
11 taken the initiative to go into the House of Assembly and amend
12 the said legislation, I believe that the Commissioner had direct
13 access to retrieving such documents.

14 Q. Can I ask you: So, why do you not keep copies of your
15 Declarations of Interests?

16 A. At the time I cannot answer as to why that was the
17 case. However, given my maturity in it, I have since realised
18 that it would make sense to do so, and by so doing I may have
19 been able to give the dates. However, I would not have been
20 inclined to give the specific documents that I submitted.

21 Q. Would you have been inclined to give the information
22 that you submitted?

23 A. My understanding of the said letter was that the
24 documents--and I reference the particular instructions--give me
25 one minute.

1 Q. Page 8.

2 A. Yes.

3 It referenced the documents, and my understanding was
4 that the documents could not be given. And, subsequently,
5 because of the amendment to the law, it was my understanding
6 that documents would be available, thereby the Commission would
7 have access to those documents.

8 Q. My question is really directed to Point 2 of the
9 Commissioner's letter which actually seeks the information that
10 you would give, so it's asking you for your own information.

11 A. Please clarify. You said number two?

12 Q. Yes. On page 8, it's the three requests that the
13 Commissioner made of you on the 19th of February 2021. Number
14 two, which is the information and Documents that would provide
15 in such a Declaration, so the Commissioner wasn't asking for the
16 form itself but for the information?

17 A. Well, it says information and documents, so I looked
18 at it collectively. If you are stating now that the information
19 could have been submitted void of the actual document and
20 Declaration, perhaps that could be considered, but at the time
21 my understanding was that the documents were to be submitted.

22 Q. Now, the Commissioner sent the same letter to all
23 Members of the House of Assembly, and he received replies from
24 other Members of the House which were in very similar terms to
25 your own.

1 Did you discuss the content of your response with
2 other Members of the House of Assembly?

3 A. Can you please clarify your question?

4 Q. Of course.

5 If I take you back to page 11, and so--that's your
6 fuller letter.

7 A. Yes.

8 Q. You have that?

9 A. Yes.

10 Q. Thank you.

11 The 19th of February letter we were just looking at--

12 A. Yes.

13 Q. --was sent to all Members of the House of Assembly--

14 A. Yes, sir.

15 Q. --seeking the same information?

16 A. Yes, sir.

17 Q. The Commissioner received different replies from
18 different people?

19 A. Okay.

20 Q. But there were a group of Members of the House of
21 Assembly who sent letters, the wording of which was very
22 similar, if not the same, as your own letter.

23 A. Okay.

24 Q. So, my question is: Before you sent this letter, did
25 you discuss its contents and what your response would be with

1 other Members of the House of Assembly?

2 A. Thank you for your clarification. Based on it, I can
3 now answer.

4 I did discuss with the Members of my Government the
5 letter that was requested of us, and we did collectively draft a
6 template that we subsequently submitted personalising it to all
7 individual interests or--if you need clarity, I can explain
8 that.

9 Q. Perhaps if I could break it down with you, please.

10 The letter--I mean, when one looks at these letters,
11 the wording, the substance is exactly the same.

12 A. I'm sorry, not--not to interrupt you, but I did just
13 confirm that there was a correspondence between Members of the
14 Government side in relation to the request, and subsequently we
15 did draft a template; hence, it would be the case that there are
16 similar dynamics within the letter. Perhaps identical in many
17 cases, so I have not negated from assuring you that that was the
18 case.

19 Q. I'm not suggesting that at all, Ms de Castro. What I
20 was trying to do was just to break down your evidence a little
21 bit.

22 A. Okay.

23 Q. The point is that what you're saying, is that this
24 letter--yours is dated 17th of March 2021--was the collective
25 work of the Members of the Government side of the House of

1 Assembly; is that right?

2 A. Yes, in ensuring that we meet the requirement to
3 answer to the Commission of Inquiry as requested.

4 COMMISSIONER HICKINBOTTOM: Ms de Castro, I've no
5 problem with that, as a principle, but drafting a template is
6 fine as long as you can all sign up to it.

7 THE WITNESS: I'm sorry?

8 COMMISSIONER HICKINBOTTOM: As long as you can all
9 sign up to what the template says.

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: But, in paragraph A of
12 your letter, it says: "I have complied with Section 3 of the
13 Act."

14 And you haven't.

15 THE WITNESS: Okay. In reference to the one time that
16 I was out of--the specific time is outlined.

17 COMMISSIONER HICKINBOTTOM: Twice you've been outside
18 time, once in breach, so you haven't complied with Section 3.

19 THE WITNESS: Okay. So, in that case I do take note
20 of that.

21 COMMISSIONER HICKINBOTTOM: As I say, nothing wrong
22 with it--

23 THE WITNESS: My statement in that regard was based on
24 the fact that I had submitted in reference to breaking it down
25 for as it relates to the deadlines and the due dates that was

1 not considered based on my submission. However, I do understand
2 your point.

3 COMMISSIONER HICKINBOTTOM: Yes, thank you.

4 BY MR RAWAT:

5 Q. In together drafting this letter, did the discussion
6 involve Members of the group raising the fact they may have
7 missed the deadline for submission of the Declaration of
8 Interests?

9 A. I cannot recall that to be the case.

10 Q. But leaving aside the position in relation to your own
11 Declaration, the other matters that are set out there are ones
12 that you would not have signed--you would--concerned matters
13 that you would only have signed this letter if you agreed and
14 supported them, so for example, the reference to the Amendment
15 of the Commission of Inquiry--of the Register of Interests Act,
16 you wouldn't have signed this letter off if you hadn't agreed
17 with it?

18 A. Yes, that is the case.

19 Q. Could we look in a little bit more detail at your own
20 form, please.

21 A. Yes.

22 Q. You have two declarations in the bundle. We only need
23 go to one because the information that you put on both is the
24 same.

25 A. Okay.

1 Q. So, if you go to page 52, please. It's the 2021
2 Declaration.

3 A. Yes.

4 Q. And I think I referred erroneously to you hadn't got
5 the same information on two forms. In fact, it's the same
6 information on all your forms, so I apologise for this, because
7 we can just take this as the example.

8 And it's really asking you about your approach to
9 completing this form, please.

10 A. Okay.

11 Q. Because as we explained earlier, one of the things
12 that the Commissioner is interested in is how the system works.
13 Now, when you filled in this form, did you read the Preamble to
14 it that we see at page 52?

15 A. Yes, I did.

16 Q. And did you understand what the purpose of it is, is
17 that it's for you to give information that might be thought by
18 others as possibly influencing your actions or your behavior as
19 a Member of the House of Assembly?

20 A. Yes.

21 Q. If you look, then, at what you completed, there are,
22 as we've looked at, 10 categories in this form. The first
23 category is Directorships, and you confirmed that you hold no
24 remunerated or unremunerated Directorships in any company, and
25 that's right, isn't it?

1 A. That is correct.

2 Q. If we turn over, we go to next category you have to
3 complete as a Member of the House of Assembly is remunerated
4 employment, office, profession, and et cetera, and you take that
5 as "yes," and you wrote down "Right to Read after school
6 literacy company." Now. You explained at beginning of your
7 evidence that it's an educational company.

8 A. Yes.

9 Q. Are you an employee of it as a company and it's
10 actually owned and operated by somebody else?

11 A. No.

12 So, for clarity, I am the sole owner of Right to Read,
13 and I was the sole employee at the time providing after school
14 programmes for poor children and adults who had difficulties
15 with reading specifically, and so I sought to give them the
16 necessary redress to get them up to their reading levels, so I
17 was the sole person in the entity, owner as well as employee.

18 Q. Is it a company?

19 A. No, it is not a company. It is not a company. It is
20 d/b/a. So, I just have a trade license, but it is not a
21 company.

22 Q. If you turn to Category 3, which is then headed
23 "Clients"--and this was canvassed with the Attorney General--the
24 purpose of Category 3 is for you, as a Member of the House of
25 Assembly, to disclose any services that you may have provided to

1 clients. So, for example, if on behalf of Right to Read you had
2 made representations to another Minister, that's where you would
3 have had to disclose that. If you had in any other way made
4 representations for a client, then you would have to disclose
5 that as well.

6 Now, in your case, you said you noted that, and that's
7 the correct position?

8 A. Yes, that is correct.

9 Q. Paragraph--well, Category 4, please, and that's
10 sponsorship. That breaks down into two aspects. The first one
11 is it asked you: "Did you benefit from any sponsorship before
12 election where to your knowledge this financial support in any
13 case exceeded in aggregate \$2,500"? And there are notes at the
14 bottom. If I draw your attention to Note 2, please, Ms de
15 Castro. It says: "You should register money given to you by
16 your election campaign Committee, money spent by your election
17 campaign Committee in connection with your election with your
18 permission."

19 Now focusing just on that aspect, which is elections,
20 what do you understand was meant or what did you understand was
21 meant by sponsorship?

22 A. My understanding was sponsorship during the campaign
23 for the election.

24 Q. And so obviously we're looking at your 2021 form, but
25 it must relate to your 2019 position as well. Now, you said

1 "no" to that. So, does it follow that you received no funding
2 to assist your campaign?

3 A. That's not what was stated. It stated that it did not
4 exceed the amount.

5 Q. I see.

6 And where to your knowledge the financial support in
7 any case exceeded in aggregate 2,500, is that the total level of
8 support or support from an individual? What did you understand
9 it to be?

10 A. Can you clarify your question, please? Can you repeat
11 it?

12 Q. I'll take you back to 4(a).

13 A. Okay.

14 Q. It asks you in effect to declare sponsorship before an
15 election with your knowledge, the financial support in any case
16 exceeded in aggregate \$2,500.

17 A. Okay.

18 Q. Now, what do you take that to mean?

19 A. I understand it to mean that if during election a
20 sponsorship exceeded the amount as stated, I would have to state
21 that I did and subsequently list the sponsors that would
22 have--that I would have received such funding.

23 Q. And that's individual sponsors, if they gave you over
24 2,500, then you would have to declare that. If they gave under
25 that, you wouldn't have to declare it. Is that your

1 understanding?

2 A. I believe it is.

3 Q. So, if one person gave you more than \$20,000, you
4 would have to declare it, wouldn't you?

5 A. Yes, but that was not the case.

6 Q. If 10 people gave you \$2,000, you wouldn't have to
7 declare it.

8 A. Can you please give me a moment, please, sir.

9 Q. Please do.

10 A. I believe that is my understanding at this time based
11 on what you have formulated. So, I reference just for clarity,
12 just to make that I understand, I reference for clarity where
13 you just referenced in subsection 2 where it states you should
14 register money given by an election campaign Committee and money
15 spent, and I specifically referenced that back to A, but because
16 I said no to that specific section, there was no need to list in
17 the subsequent section. That is my understanding.

18 Q. Ms de Castro, the reason for my questions is not in
19 any way to probe what you did or did not declare particularly.

20 A. No, that's fine.

21 Q. What they are directed at, as you've explained, you
22 didn't have any orientation.

23 A. Yes.

24 Q. It's important to understand how you, as a Member of
25 the House of Assembly approached a form such as this?

1 A. I understand.

2 Q. And what you feel you need to declare or not to
3 declare.

4 A. Okay.

5 Q. And as I understand your evidence, it is that where
6 you are given sums of money that go over 2,500, then you declare
7 it. If they're below that, you don't declare that?

8 A. That is my understanding.

9 Q. And so your Election Campaign Committee did not spend
10 money on your behalf but went over 2,500?

11 A. Just to clarify in reference to the Election Campaign
12 Committee, based on a construct of the Parties' Constitution,
13 the district candidates specifically have assigned district
14 committees. However, the at-large representatives do not. It
15 is a collective given that we do have to work alongside the
16 district representatives. In the case of collective
17 representations since five Members would subsequently be the
18 representative for one district, so just to clarify this, a
19 district committee from districts one through nine, but there is
20 not an at-large committee for each single Member, just to
21 clarify, based on what--based on what you just read.

22 Q. That's helpful because you have raised a potential
23 ambiguity in the form, haven't you?

24 A. Well, I would say so based on what I have seen.

25 Q. It's not guidance on your evidence that assists you as

1 a territorial candidate?

2 A. Well, not because it's based on the construct of my
3 political party; that is not the case.

4 Q. Well, you may recall that the Commissioner asked the
5 Attorney General this morning about what she knew about campaign
6 finance regulation. You said based on the construct of your
7 political party. There are district committees but there isn't
8 a committee for territorial candidates. How is the Territorial
9 campaign funded?

10 A. I would state in very broad terms, I could say
11 specifically, but generally in the Virgin Islands--and when I
12 say that I could only speak specific to myself because I cannot
13 speak pertaining to anyone else--but oftentimes campaigns are
14 funded with the--at the individual's expense. There are some
15 cases where persons aren't able to give some sponsorships, but
16 holistically I believe it would be a potential mix of both,
17 depending on the Member. And to my knowledge, just to answer
18 your initial question, there is no laws as it pertains to
19 campaign financing, to my knowledge.

20 Q. If we look at the second aspect of Category 4, which
21 is benefits that you receive as a Member, so it's now once
22 you're in post, if you like, and you were asked, do you benefit
23 from any form of sponsorship or financial or material support as
24 a Member of the House of Assembly, and you've answered that
25 "no"; is that right?

1 A. That is correct.

2 Q. If we then look at the next few categories, if we go
3 to Category 5, which is on page 57, please.

4 A. Yes.

5 Q. It's headed "gifts, benefits and hospitality Virgin
6 Islands." The question that is put to the person completing the
7 form is: "Have you, or your spouse, to your knowledge, received
8 any gift of a value greater than \$500 or any material advantage
9 of a value greater than 1.5 percent of the current salary of an
10 elected Member of the House of Assembly from any company,
11 organization or person within the Virgin Islands which in any
12 way relates to your membership with the House of Assembly."

13 Now, again, you've confirmed there by striking out
14 "yes," that you have not received gifts, benefits and
15 hospitality during your time as a Member of the House of
16 Assembly above \$500 or 1.5 percent of the current salary; is
17 that right?

18 A. That is correct.

19 Q. In relation to overseas visits, which is Category C,
20 you were asked if you or your spouse made any overseas visits
21 arising or related to being a Member of the House of Assembly
22 where the cost was not wholly borne by yourself or by public
23 funds, and you said no to that.

24 A. That is correct.

25 Q. Obviously, circumstances that we are all aware of will

1 have limited the opportunity for you as a Member of the House of
2 Assembly to go abroad anyway, but in your time as a Member of
3 the House of Assembly, have you had an opportunity to make
4 overseas visits?

5 A. Yes, I have.

6 Q. And were those funded out of public funds or by
7 yourself?

8 A. They were--in relation to my position, if I traveled
9 on official duty?

10 Q. Yes. I'm not asking you about your personal--

11 A. Oh, yes. An official duty was funded by public funds.

12 Q. Category 7 asks you to declare any overseas benefits
13 and gifts, and you've confirmed there, as do you on your earlier
14 forms, that you have received during your time as a Member of
15 the House of Assembly, you have not received overseas benefits
16 and gifts that come within that category?

17 A. That is correct.

18 Can I just give a point of clarity as an explanation.
19 In the context of BVI, as I have experienced it and I'm a newly
20 elected Member, but I can state that oftentimes money or funding
21 is requested from us in the case of sponsorship, not so much the
22 other way around, so I wanted to make that clear. If there are
23 initiatives within the community, whether to schools, whether to
24 various groups, persons would make representation, but to--in
25 reference to--because I see it specifically asking whether we do

1 receive sponsorship. I wouldn't understand the likelihood of
2 that given the construct of how our representation is set up.

3 Q. So, we're returning to Category 4 here, but--

4 A. In general, based--because I realise you're moving on
5 to land next, so, I just wanted to make a general statement
6 based on my experience that that would be the case.

7 Q. You said your experience is that the sponsorship is
8 the other way around, if anything?

9 A. Yes.

10 Q. Can I come back to that--

11 A. If you would like.

12 Q. --to this form.

13 The next one is the category that a Member of the
14 House of Assembly must fill in, is land, and it's land other
15 than any home used solely for the personal residential purposes
16 of you or your family, and you've said "no" to that. You don't
17 own any land that fits within that category?

18 A. That is correct.

19 Q. Then Category 9 is shareholdings, whether you have
20 shareholdings in any company or body which has a nominal value
21 greater than \$25,000 or less than that sum but greater than
22 1 percent of the issued Share Capital of the company or body.

23 And that again you've said "no" to that.

24 A. That is correct.

25 Q. In effect, outside your responsibilities as a Member

1 of the House of Assembly, your only other interest, if you like,
2 is Right to Read, for which you have a trade license?

3 A. Yes.

4 Q. I'm going to say to you just now to ask for your help
5 on Category 10, which is "Miscellaneous," and that's on page 62.
6 If you need to refer to the stance of the form again, you will
7 find that on page 52.

8 What Category 10 asks you to do is if bearing in mind
9 the definition of purpose set out in the introduction to this
10 form, you have any relevant interests which should be disclosed
11 but which do not fall within the nine categories set out above,
12 please list them, and you have left that blank.

13 So, what do you understand the purpose of Category 10
14 to be?

15 A. Can you give me a minute, please?

16 Q. Of course.

17 A. In summary, my understanding is that if there is
18 something that does not fit within the categories that went
19 before, that I should disclose it. If I believe it is--and I
20 would have to go back to page 52 where it speaks to the purpose
21 of the Declaration of Interests, so the reason I left that blank
22 is because I did not believe that there was anything
23 additionally that I needed to declare.

24 Q. If you go back to 7, please.

25 A. Number 7?

1 Q. Yes, please.

2 This is the letter of 19th of February?

3 A. Page 7?

4 Q. Page 7.

5 A. My apologies.

6 Q. We've looked at this already. If we go to page 8, I'm
7 going to draw your attention to what the Commissioner in that
8 letter said about Category 10 that we've looked at, the letter
9 records that the Commissioner considers and in any event
10 requests that when responding to that paragraph--

11 A. Sorry, can you tell me specifically--

12 Q. If you go to page 8, please.

13 A. Yes.

14 Q. And you've got one, two, three.

15 A. Okay.

16 Q. Underneath that, there is reference to paragraph 10 of
17 Schedule 1 of the 2006 Act.

18 A. Okay.

19 Q. And that's what I've been calling "Category 10."

20 A. Okay. Right.

21 Q. And what the letter says is the Commissioner considers
22 and in any event requests that when responding, to that
23 paragraph, you should include any relevant interests and
24 immediate family members and any persons living in the same
25 household.

1 Now, you responded to that letter, as we looked at it,
2 at page 11--

3 A. Okay.

4 Q. --and you said this: "In relation to paragraph 10 of
5 schedule 1 of the principle Act of 2006, it does not
6 specifically address interests of immediate family members.
7 However, once again, the spirit of assisting your Commission in
8 further strengthening good governance, I do propose to recommend
9 to the House of Assembly that such paragraph can be amended to
10 expressly mention the said family members."

11 Given what you just said as your understanding of this
12 paragraph and what its purpose was, why did you think that it
13 wasn't--it wouldn't already cover interests held by immediate
14 family members?

15 A. Okay. Just give me a moment.

16 Q. Yes, please.

17 A. Okay. Can you repeat your question? Because I have
18 been able to scan to this--

19 (Overlapping speakers.)

20 Q. I'd asked you earlier about your understanding of that
21 last part of the form number 10, I've drawn your attention to
22 the Commissioner's letter.

23 A. Yes.

24 Q. And to your answer, and which was that it did not
25 specifically address interests of immediate family members, but

1 my question is this: Given what you have already said was your
2 understanding of the purpose of that last category or paragraph,
3 why do you think--why doesn't it already cover interests of
4 immediate family members?

5 A. Okay. One minute.

6 (Pause.)

7 A. So, based on my understanding of your question in
8 relation to that specific number 10, there were references in
9 the said document that we had to fill out where--and I'm trying
10 to draw my reference to it, where it specifically stated that a
11 spouse or a dependent child, so in those instances it was
12 specifically stated underneath the said section that, in terms
13 of an explanation that it was stating where the spouse is or
14 dependent children, so specifically to that number I did not see
15 such additional notes, so I was not aware that it was in any way
16 based on the request that this additional persons were specific
17 to that number, if you understand.

18 Q. What do you understand, Ms de Castro, by the phrase
19 "immediate family members"?

20 A. I understood immediate family members as per the
21 construct--in my general understanding, given that this is what
22 we are dealing with in terms of the Declaration of Interests, it
23 would have to be what is referred to in the document which is
24 just your spouse or dependent children.

25 Q. Accepting that you left that blank, so I'm not going

1 to ask you about why you left it blank or not, but I'm going to
2 put this to you.

3 A. Okay.

4 Q. You've agreed, I think and said that the point of 10
5 is to disclose any interest that another person might think
6 could influence your actions as a Member of the House of
7 Assembly.

8 A. Yes.

9 Q. Now, if--and this is a hypothetical--you had an adult
10 sibling who had a contract with Government, shouldn't that be an
11 interest that you might need to put in 10?

12 A. Commissioner, you're asking me hypothetically but
13 based on my understanding of the law, and in terms of the
14 Register of Interests where it makes specific note of what it
15 means by specific areas of the Declaration as stated before, in
16 areas where they wanted to know about your spouse or your
17 dependent children, it was specifically stated on the form. It
18 was not stated there.

19 So, my understanding was that it would have been in
20 reference to spouses and children, and I can submit that I do
21 not have neither, so it would not have applied to me.

22 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat, if
23 that's right as a construction of the form, that's how you've
24 construed it, that would be a weakness in the system, wouldn't
25 it?

1 THE WITNESS: Well, it would be, given your line of
2 questioning.

3 COMMISSIONER HICKINBOTTOM: Yes, so you said that's a
4 weakness in the system, and that's a weakness in the Act,
5 perhaps?

6 THE WITNESS: I'm not sure what I could agree that it
7 is a weakness. I have basically perused this document,
8 submitted it three times, and I believe that I have fully
9 complied with the intention of the form that was given to me.

10 COMMISSIONER HICKINBOTTOM: I understand that. I
11 understand that. You say you've construed in this way, and you
12 say that that's the proper construction of the form.

13 THE WITNESS: Yes, that is how it is laid out.

14 COMMISSIONER HICKINBOTTOM: That's how it's laid out,
15 and that's what you were required to do.

16 THE WITNESS: Yes.

17 COMMISSIONER HICKINBOTTOM: But if that's right, I'm
18 not sure Mr Rawat agrees, but if your construction is right, it
19 is a defect--isn't it?--in the Government system because the
20 sort of contract that Mr Rawat has referred to doesn't--never
21 appears as a declared interest.

22 THE WITNESS: Well, I would submit that, as of my
23 understanding, it would bring a question to the attention of the
24 Declarations of Interest. I believe that one can speak to the
25 declarations of their spouse themselves, their spouse and their

1 children. Anything outside of that, in the context, that is
2 what I consider to be your immediate family.

3 So, in that sense I would have to request a definition
4 from you as it relates to what you define "immediate family" as.

5 COMMISSIONER HICKINBOTTOM: However you define it, for
6 the purposes of paragraph 10, your interpretation is that they
7 are not included in paragraph 10. They're only included where,
8 for example, in paragraph 5, have you your or spouse to your
9 knowledge received any gifts, so in paragraph 10, they're not
10 included.

11 THE WITNESS: Well, it doesn't make mention of it, so,
12 to my knowledge, no. However, in the larger context of the
13 discussion that we are having, I want to further state that the
14 hypothetical situation that was given was in reference to an
15 adult sibling. However, based on my understanding of immediate
16 family, that would not factor in, based on this declaration.

17 COMMISSIONER HICKINBOTTOM: Sorry, I understand that.

18 THE WITNESS: Okay.

19 COMMISSIONER HICKINBOTTOM: Forget about definitions.
20 Paragraph 10, any family member, your husband or wife, you say
21 is not included in paragraph 10.

22 THE WITNESS: Based on my understanding of the form.

23 COMMISSIONER HICKINBOTTOM: Yes. If that's right,
24 then that is at least a possible efficiency in the scheme
25 because your husband or wife could have an interest that would

1 fall within the miscellaneous category that is not disclosed.

2 You say probability not disclosed under the system.

3 THE WITNESS: It could be if it is the intent for both
4 Parties to be included in that--in that miscellaneous category.

5 COMMISSIONER HICKINBOTTOM: Yes.

6 THE WITNESS: However, I can only speak based on
7 what's before me.

8 COMMISSIONER HICKINBOTTOM: I see that. Yes. Thank
9 you.

10 BY MR RAWAT:

11 Q. But the point I was putting to you, Ms de Castro, is
12 why the reference is only to immediate family members? The
13 hypothetical I put to you is one that does fall outside
14 immediate family member.

15 A. I'm sorry, can you--can you repeat that?

16 Q. What I'm going to suggest to you is that if you read
17 paragraph 10 with the Preamble.

18 A. Okay.

19 Q. The purpose is for you, as a Member of the House of
20 Assembly, to set out there anything else that can reasonably be
21 thought by others could influence your actions.

22 A. I completely understand what you're saying, and you
23 give me a hypothetical--

24 Q. The hypothetical that I gave you and the reason I gave
25 you a hypothetical is because you've left the paragraph blank.

1 A. I left the paragraph blank because, based on my
2 understanding of the form, it does not apply to me.

3 Q. You're referring--

4 A. It does not refer--I can only speak of it as it
5 relates to myself.

6 Q. I see.

7 A. And not only just based on what is expounded in the
8 form in terms of it not specifically stating spouse or dependent
9 children but because realistically the only person I cannot
10 cover is myself, given the current state of as an individual
11 member. I cannot speak as a whole.

12 Q. I'm not speaking about your--I'm not asking about your
13 personal circumstances. It's more about what you understand the
14 purpose of the form to be. On your understanding of the purpose
15 of the form, its only purpose is to have a Declarations of
16 Interest that relates to a Member, a spouse of a Member and
17 dependent children of a Member. So, that means that if a Member
18 of the House of Assembly does have an adult sibling who has a
19 contract with Government, they don't need to put it on this
20 form?

21 A. As I've stated before, the Register of Interests, as
22 it--as I understand it, is specific to a spouse and children. I
23 understand the hypothetical situation that you put forth, but
24 given the construct that it is, I can only speak to the form as
25 it is, and therefore I'm unwilling to speak to the hypothetical

1 situation given that I can only speak based on what is in print
2 in front of me.

3 Q. And what you told the Commission in your letter of the
4 17th of March was that you proposed to recommend to the House of
5 Assembly that the paragraph be amended to expressly mention said
6 family members. Now, have you made such a proposal to the House
7 of Assembly?

8 A. I have not done so as of this moment, no.

9 Q. Do you still intend to make the proposal?

10 A. Well, based on the clarification and the potential
11 weakness--potential again--I state "potential weakness," it is
12 something that could be considered in the context, that if it is
13 as with the other sections in the form, that we ought to
14 specifically state whether our interests are for or--sorry, in
15 that category pertaining to our spouses or children, then it
16 should be explicitly stated, so that would mean an amendment in
17 the form that we have to fill out.

18 Q. Now, I told you I would return to the question of
19 sponsorship as in sponsorship coming from you as a Member of the
20 House of Assembly.

21 No, the Commission has been told of the existence of a
22 fund that allows for assistance grants to be provided to
23 businesses and individuals. As a territorial candidate, do you
24 have access to that fund?

25 A. Yes, I do.

1 Q. Can you explain how the process works? I would like,
2 if you could, just explain how the process works in normal
3 circumstances. I mean, that is circumstances that existed
4 before the pandemic began.

5 A. Okay. So, as I understand it, the process--there is
6 an application that persons can collect from the House of
7 Assembly that speaks to the district allocation, or in my case,
8 the Territorial allocation, and persons have the opportunity
9 based on specific needs as listed on the form that they can
10 apply for assistance from the said fund from an individual
11 Member.

12 Q. Now, you say "persons." Is that just individuals or
13 can businesses apply for assistance from the individual--from
14 the Member?

15 A. In my experience, it has been individuals even if they
16 do produce documents stating that they do own a business. It is
17 from the individual.

18 Q. As a Territorial representative, how much are you
19 given to allocate each year?

20 A. As a Territorial representative, the allocation is
21 \$150,000 per year.

22 Q. Now, the first year that you could have allocated
23 those funds was obviously 2019?

24 A. Yes, that is correct.

25 Q. It was that Year 2019 to 2020, did you distribute the

1 entirety of the fund that you could have done?

2 A. Yes, I did.

3 Q. Now, what guidance or policies are given to you to
4 follow when deciding whether to give an assistance grant to an
5 individual?

6 A. So, there is a document that was given to each Member
7 by the Clerk of the House of Assembly, who is a supervisor for
8 the office, that stipulates how funding can be given, based on
9 specific requests or Categories, so there is a document that
10 stipulates.

11 Q. So the person fills in the form, it comes to you for
12 assessment. You keep in mind the documents of the--the document
13 the House of Assembly provided you, and then you decide how much
14 goes to that individual. Is that how it works?

15 A. That's how it works. Based on my experience, persons
16 apply additional documents along with the form to expressly
17 explain the need, whether there is a letter, and additional
18 correspondences, and then the said application process--sorry,
19 the said application is submitted from the Member to--up the
20 chain basically to the Clerk of the House of Assembly who gives
21 the final consent.

22 Q. And has the Clerk of the House of Assembly ever
23 refused any grant that you've been minded to provide--to give to
24 someone?

25 A. At this moment, in terms of refusal, with the general

1 allocation, I cannot--at the moment I cannot think of it. If I
2 do, I can revert. But at the moment I cannot think of it.

3 But there is a process--just to explain, there is a
4 process whereby the Clerk if she sees it fit can do the
5 necessary due diligence to inform a Member if the application
6 that they have signed off on is without the confines of what is
7 allowed.

8 Q. Are you expected as a Member to also carry out your
9 own due diligence?

10 A. Of course.

11 Q. You referred to guidance from the Clerk to the House
12 of Assembly. Would you be able to provide a copy of that
13 guidance to the Commissioner?

14 A. I believe it is something that I can provide.

15 Q. And just so we have been clear obviously, it's always
16 possible that the guidance may have changed from year to year.
17 Would you be able to confirm whether it is the same guidance or
18 if not, could you provide all copies of the guidance?

19 A. I can't confirm that it is the same guidance.

20 Q. What is the maximum that is, as a Territorial
21 representative, that you're allowed to pay out to an individual?

22 A. Based on my recollection, there is not a maximum. I
23 can revert and verify that, but I do not believe that there is.
24 The structure is more confined to--based on the presented need,
25 whether it be potentially medical, educational, financial

1 hardship and so forth. But from my recollection as it relates
2 to that specific fund, there is not a stipulation.

3 Q. Now, you said that--it's almost always individuals
4 that you pay out to, even if they have businesses.

5 A. I will let you finish and then--

6 Q. Well, it was trying to understand whether there are
7 payments made to businesses as well as individuals.

8 A. I can clarify, just based on your prompting, I can
9 clarify that there are instances where payments are made to what
10 I consider to be vendors on behalf of said individuals. So, in
11 that case it would have been written to a vendor which is a
12 business or whether it's in that case let me say a business, but
13 on behalf of the individual who would have requested the
14 funding.

15 Q. So, your experience is that the applicants are always
16 individuals?

17 A. Yes.

18 Q. That payment may be made--

19 A. But let me say, individuals, potentially schools, so
20 for instance, right now it's graduation time, sorry, it's
21 graduation time in the Territory. Schools may reach out to
22 elected Members, requesting that we sponsor trophies,
23 certificates for said students. So, in that case it's not an
24 individual.

25 Q. I see.

1 So, the money can be paid out to individuals who have
2 a specific need, it can be paid out to community organizations
3 or schools who again contact you for what might more properly be
4 described as "sponsorship."

5 A. Yes.

6 Q. It isn't, in your experience, usually paid out to a
7 business where such payment occurs is where the payment is being
8 made on behalf of an individual applicant, so then you're paying
9 off to a vendor, to use your words?

10 A. Yes.

11 Q. And again, you said there is no maximum to what can be
12 paid out to an individual. Is that the same across the board,
13 if a school approaches you for funding, is there no maximum to
14 what you can pay out?

15 A. To my understanding, no.

16 Q. Obviously you do your due diligence, that the Clerks
17 of the House of Assembly can also in certain circumstances
18 conduct a due-diligence exercise.

19 Is the money ultimately coming from the Ministry of
20 Finance?

21 A. Okay, so, I'm not particularly knowledgeable of the
22 construct as it relates to the accounting system. As I am
23 aware, I know that the funding is allocated to each Member. I
24 cannot speak to the specifics of how that is structured. I
25 cannot.

1 Q. I see.

2 But just so that we can be clear, if someone
3 approaches you and they need to pay a loan off, you could
4 actually authorise that money be paid to the company to which
5 that loan is owed?

6 A. Okay, so let me clarify--I just want to make sure that
7 I understand what you're saying, so I'll further explain, if an
8 individual does submit an application request with the necessary
9 documents, a Member can, given due consideration to the request,
10 give a contribution to support that request, whether it be to an
11 individual or to a vendor, given the context of the request.

12 Q. Is it possible to make a prospective application, so
13 to pay for something in advance of it actually happening?

14 A. Well, not to my knowledge. Can you be more specific
15 just so that I can make sure that I understand?

16 Q. I want to be careful about being specific, but is
17 this--

18 A. I just want to make sure that I understand.

19 Q. But for someone to approach you for a sum of money to
20 be paid to them advance of an event. If, for example, someone
21 needs to take medical treatment, could you give them funding in
22 advance of them taking that treatment?

23 A. If I understand your question, that would be the case
24 because the person would have provided the necessary
25 documentations, stating that they would be doing an operation,

1 for instance, just in context. And that funding can possibly be
2 given, and there have been instances where someone would produce
3 a Bill which would mean that it would have happened already.

4 Q. Are there any prohibitions on who you as a Territorial
5 representative can give an assistant grant to?

6 A. Yes. Any elected Member cannot give--I do not
7 remember the specific clause within the context of the document,
8 but based on my recollection, you cannot give funding to
9 immediate family as well as persons who work within the said
10 Department, which is the House of Assembly.

11 Q. Now, you've referred to "immediate family." What is
12 meant by "immediate family" in this context?

13 A. That is a very good question. I do not, based on my
14 recollection, I do not believe that the form specifically
15 expresses the said definition. However, based on my
16 understanding, it is--it would be appropriate for any Member to
17 decide what that is, in the construct of my understanding, I
18 tend to not even consider the thought from the perspective that
19 I do not believe that I should--well, not that I don't believe.
20 I do not give any funding to persons that would be considered
21 immediate family members.

22 Q. Considered by yourself or considered by others?

23 A. Considered in the context because of this question, in
24 the House of Assembly, but in informal meetings, my
25 understanding upon entry--let me just put it this way for

1 clarity--my understanding upon entry as a new Member, is that
2 you cannot give--again, I can't specifically state what the
3 language is on the document because it's not before me, but that
4 you cannot give to--I don't know if "immediate" is the word used
5 but I will just say "family," given that I don't specifically
6 have the form in front of me stating exactly what the
7 descriptive language is in support of the definition.

8 Q. But your recollection is that the document doesn't
9 actually have a definition of "immediate family" on it, guidance
10 that you're expected to use--

11 A. Not to my recollection.

12 Q. And so, different Members of the House of Assembly
13 could take a different approach to that question?

14 A. That is potentially the case, but I can only speak for
15 myself, which I have previously explained.

16 Q. In your case, if there is a Member of family who does
17 have a legitimate need for an assistant grant--of an assistance
18 grant, rather, they can't come to you because, in your view, it
19 falls outside what you can do. How does that person then get an
20 assistant grant?

21 A. I cannot answer that because I do not--as stated, I'm
22 restricted from helping family members, so I believe it is
23 known, I believe it is widely known, that this is the case, and
24 so I have never been confronted with a situation where that has
25 even been brought to me.

1 Q. But is there any guidance as on what a Member of the
2 House of Assembly should do in that situation?

3 A. No, there is absolutely no guidance.

4 Q. Now, you have spoken about schools approaching you as
5 a Member of the House of Assembly for sponsorship, for trophy,
6 et cetera, can you use the fund for any other purpose? Again,
7 if you wanted to hold an event for children at Christmas, can
8 you use the fund for that purpose?

9 A. That is the case. Members can do projects within the
10 community based on the needs that they see and the interests
11 that they have nationally in terms of specific, say, subareas,
12 potentially education, youth, that type of stuff. So it can be
13 used for projects within the district, or more specifically
14 Territory.

15 Q. And again, is there any guidance given to you as a
16 Member of the House of Assembly as to how you should use the
17 fund for such projects?

18 A. Specific guidance--can you clarify. When you say
19 "guidance," do you mean an itemised lists stipulated how it is
20 to be facilitated? Is that what your question is?

21 Q. Let me put it this way. What you've told us is you
22 have guidance, written guidance, as to the process by which you
23 can give an assistant grant. The guidance does not encompass
24 what should happen if family members want a grant, but you can
25 also use the funding that you get for projects within the

1 community. But what my question is directed to is that: In
2 those circumstances, is there any further guidance, either
3 within the document you're provided or otherwise, that helps you
4 decide what projects you will support or helps you decide how
5 much you will fund a project or how to assess whether a project
6 is viable or what you do with the money. Is there any
7 assistance or guidance given to you as Member of the House of
8 Assembly?

9 A. It is based on a Member's discretion, given the--like
10 I specifically stated--interests. Any Member would campaign
11 potentially on specific areas that they deem to be important to
12 the community in terms of needs that could be filled project
13 wise. So, in that instance, Members can potentially do a
14 project, whether it's an event or potentially even--I mean, the
15 scope of the project is wide, but as it relates to any detailed
16 document that specifies in its totality that--I do not--I have
17 not had sight of such a document.

18 Q. In terms of the--you say you have \$150,000 a year that
19 you can use for various purposes, so you can use it to support
20 individuals, you can use it for projects for which you were
21 elected.

22 Are you required to publish annually how you have
23 spent the \$150,000?

24 A. At the moment, no.

25 Q. Do you think requiring Members of the House of

1 Assembly to do something like that would improve public
2 confidence?

3 A. I--my position is that it is public funds and,
4 therefore, any publishing of such I am not against. I believe
5 that it would only assist the process.

6 Q. Because viewed from the outside, it might be said that
7 the ability of an elected representative to have a fund of money
8 that can be distributed to voters carries with it the risk of
9 undermining public confidence, doesn't it?

10 A. That is your opinion.

11 Q. I'm sorry--

12 (Overlapping speakers.)

13 Q. I'm not voicing an opinion.

14 A. Okay, so is that a hypothetical representation?

15 Q. Yes.

16 A. Okay, so based--I cannot--I cannot formally state
17 whether that is the case or not.

18 Q. Well, how--

19 (Overlapping speakers.)

20 A. Repeat your question.

21 Q. --the allegation that it looks like vote-buying?

22 A. That is a very straightforward question. My answer to
23 that would be, as previously suggested, that the said--the said
24 disbursements can be publicly noted. I have stated my position
25 that I'm not in any way against such a move. I'm am just

1 working within the context of what was presented to me once
2 elected.

3 COMMISSIONER HICKINBOTTOM: Ms de Castro, that's
4 understandable, and I understand that, but I think Mr Rawat's
5 question is this: \$1.8 million--that's 13 times \$150,000 each
6 year--goes to elected representatives of the House for
7 distribution. As you've said, based on the Members' discretion,
8 I think is the phrase you used. And there doesn't seem to be
9 any checks and balances on how it is used. Publication would be
10 a check on it, but at the moment, not much in terms of checks.
11 What checks are there?

12 THE WITNESS: Well, in terms of checks and balances,
13 as from my understanding, the accounts team and the Clerk of the
14 House of Assembly would inspect the request, and decide whether
15 it is prudent that it moves forward. So, as stated before,
16 given the scope of what is required, even if a Member does
17 forward an application, it is within the remit of the office
18 that if it does not fall within the current construct of what is
19 expected, that it can be denied.

20 COMMISSIONER HICKINBOTTOM: Thank you.

21 Yes?

22 BY MR RAWAT:

23 Q. Just moving on to another question, please. According
24 to the Constitution, the 2007 Constitution, an elected Member of
25 the House of Assembly is required to vacate his or her seat, if

1 that Member is a director or Manager of a company that is
2 contracted to do business with the Government unless they have
3 been exempted by the House of Assembly under section 67(7) of
4 the Constitution.

5 Now, my question is this, have you, yourself, been
6 exempted from vacating your seat under section 67(7)?

7 A. Okay. Can you repeat the question?

8 Q. The 2007 Constitution provides that an elected Member
9 of the House of Assembly has to vacate his or her seat, if that
10 Member is a director or Manager of a company that is contracted
11 to business with the Government unless they are exempted by the
12 House of Assembly, and the House of Assembly can make that
13 exemption under the Constitution, and specifically under 67(7)
14 of the Constitution.

15 A. Okay.

16 Q. So, that then allows the Member to continue in the
17 House of Assembly.

18 My question is this: Have you been exempted from
19 vacating your seat under section 67(7)?

20 A. Not at all. I do not have any contracts with the
21 Government.

22 Q. Would you agree with this: That to increase trust in
23 the system and to remove the risk of corrupt practices,
24 legislation that institutes policies for candidate and party
25 financing and the registration of political parties for

1 financial-reporting purposes, can only be a benefit?

2 A. I do agree with that.

3 Q. So, in broad terms Ms de Castro, you would be in favor
4 or an openness about party financing in relation to campaigns?

5 A. I believe so. I believe the ultimate aim is to ensure
6 that we have a comfortable means by which any elected Member can
7 be held accountable to the persons of whom they represent, and
8 so to the extent of what that looks like, I am willing to oblige
9 myself to those requests, given that I was indeed elected by the
10 people, and I believe that I should be held accountable to them.

11 MR RAWAT: May I have a minute, please?

12 COMMISSIONER HICKINBOTTOM: Yes, thank you.

13 MR RAWAT: Commissioner, those are my questions.

14 Can I conclude by thanking Ms de Castro--

15 MR OLYMPITIS: Can I ask a question myself?

16 COMMISSIONER HICKINBOTTOM: Yes, go ahead.

17 (Mr Olimpitis consulting with the Witness.)

18 THE WITNESS: Commissioner, if I may, I would like to
19 make some clarity to a previous point that I made.

20 COMMISSIONER HICKINBOTTOM: Yes, go ahead.

21 THE WITNESS: Just so for the clarity in relation to
22 the checks and balances that are provided (unclear), they are
23 for the checks and balances as it relates to once the
24 application goes through further steps in the process.
25 Ultimately, the application is sent to the Treasury where it can

1 at that point also be rejected and sent back given any
2 peculiarities that may arise based on the accounting general or
3 the staff at the Treasury because the process basically moves
4 from the Clerk of the House of Assembly on to the Treasury
5 Department, where checks are actually issued and signed off on
6 by the accounting general, so there is a further step where that
7 accountability mechanism is in place where, if there is any
8 additional inquiries it can be represented at that time.

9 COMMISSIONER HICKINBOTTOM: So, the application moves
10 from the Member to the House of Assembly Clerk?

11 THE WITNESS: Yes. She's accounting officer for the
12 House.

13 COMMISSIONER HICKINBOTTOM: And then from there on to
14 the Ministry of Finance and they sign off.

15 THE WITNESS: Well, specifically--yes, the Treasury is
16 under the Ministry of Finance, but specifically the Treasury
17 Department.

18 COMMISSIONER HICKINBOTTOM: And the application goes
19 all the way--

20 THE WITNESS: All the paperwork, PO that would have
21 been published, everything is attached and sent.

22 COMMISSIONER HICKINBOTTOM: Okay. Thank you very
23 much.

24 MR RAWAT: May I ask a couple of questions as it
25 arises out of that last answer, please.

1 BY MR RAWAT:

2 Q. The first is this: Is there a--at that stage, when it
3 gets to the Treasury Department, is there a threshold for the
4 sums that they would inquire into?

5 A. Not--

6 Q. For example, you, as a Member of the House of
7 Assembly, have approved an assistant grants for a relatively
8 small amount of money, it's gone to the Clerk of the House. It
9 then has to go to the Treasury Department to be paid out, are
10 there sums that are--would be deemed as so small that they don't
11 need to be reviewed?

12 A. No, not--when you say "reviewed," what do you mean?

13 Q. Well, you've said that the third check is that the
14 Treasury Department would look at it, and may raise concerns, if
15 necessary.

16 A. Okay, so, based on your explanation, to my
17 understanding, there is no minimum by which a person can
18 receive, if I understand your question.

19 Q. So, there is no minimum sum below--there's no
20 threshold below which the Treasury Department will just simply
21 sign the check and not bother to carry out a due-diligence
22 exercise?

23 A. No. What normally the amount, the Treasury has the
24 ability and the remit to look through every application as given
25 and, thereby, make a decision.

1 Q. In your time as a Member of the House of Assembly,
2 have you ever had the Treasury turn down a grant that you have
3 approved?

4 A. I have not had that--that has not been the case for
5 me.

6 COMMISSIONER HICKINBOTTOM: The Treasury would look at
7 it in terms of due diligence in the paperwork that's there.
8 They have to have an involvement because they effectively sign
9 whatever check has got to be signed, so that's their
10 involvement, so they would look at it from an accounting point
11 of view.

12 THE WITNESS: Of course, because all the documents
13 that we would have received are attached to the document.

14 COMMISSIONER HICKINBOTTOM: Yes, yes. Thank you.

15 MR RAWAT: Sir, as I indicated, I've finished my
16 questions. But what I wanted to do was first of all to thank
17 Ms de Castro for coming to give evidence and for the way in
18 which she has given her evidence.

19 It perhaps may help if I just remind her of what she
20 has agreed to go and check on.

21 COMMISSIONER HICKINBOTTOM: Yes.

22 MR RAWAT: The first is whether she still has the
23 correspondence that she received from the Registrar of Interest,
24 in particular the letters, the reminder letters that the
25 Registrar sent to her on an annual basis.

1 THE WITNESS: Sorry, not to cut you, should I take
2 notes or will you provide a document?

3 COMMISSIONER HICKINBOTTOM: The Commission Secretary
4 will take notes.

5 THE WITNESS: Thank you.

6 MR RAWAT: Secondly, I'd asked Ms de Castro the
7 question as to whether she has approved an assistant
8 grant--assistance grants the Clerks of the House has refused it,
9 and she said that she would check that.

10 The third is another matter that Ms de Castro wanted
11 to check was whether there was a maximum to the limit that can
12 be paid out, but that may be encompassed by the fourth matter
13 that she's agreed to assist you on, sir, and that is providing
14 the guidance that is issued to her as a Member of the House of
15 Assembly when dealing with grants out of the fund.

16 COMMISSIONER HICKINBOTTOM: And I think Ms de Castro
17 said that she would be able to produce the correspondence from
18 the Registrar?

19 MR RAWAT: Yes.

20 COMMISSIONER HICKINBOTTOM: And the guidance?

21 MR RAWAT: Yes. So, other than that, I have nothing
22 further.

23 I'm grateful to Mr King.

24 The other matter that Ms de Castro agreed to assist us
25 with is a copy of the motion of the House of Assembly

1 establishing the Standing Select Committee.

2 COMMISSIONER HICKINBOTTOM: Yes.

3 MR RAWAT: But again, thank you very much for your
4 time.

5 THE WITNESS: No problem. Thank you for having me.

6 COMMISSIONER HICKINBOTTOM: Thank you. No, Ms de
7 Castro, thank you for your time. Thank you for the evidence you
8 have given and the way you have given it very clearly, and yes,
9 thank you for coming.

10 THE WITNESS: Thank you.

11 (Witness steps down.)

12 COMMISSIONER HICKINBOTTOM: Mr Rawat, shall I suggest
13 we have a break for five minutes and then the room can sort of
14 be reconstituted, and then we will come back and hear the
15 evidence of Ms Flax-Charles.

16 MR RAWAT: Thank you very much, sir.

17 (Brief recess.)

18 SHEREEN D. FLAX-CHARLES, COMMISSION WITNESS, CALLED

19 COMMISSIONER HICKINBOTTOM: Yes, I think we're ready,
20 Mr Rawat, thank you.

21 THE WITNESS: Thank you, Commissioner.

22 Our next witness is the Honourable Shereen
23 Flax-Charles. And I ask Ms Flax-Charles to be sworn, please.

24 COMMISSIONER HICKINBOTTOM: Thank you.

25 THE WITNESS: I swear by Almighty God that the

1 evidence I shall give shall be the truth, the whole truth, and
2 nothing but the truth.

3 COMMISSION SECRETARY: Thank you.

4 COMMISSIONER HICKINBOTTOM: Thank you very much. Yes,
5 Mr Rawat.

6 BY MR RAWAT:

7 Q. Good afternoon, Ms Flax-Charles.

8 Can I ask you to begin by giving the Commissioner your
9 full name, please.

10 A. Shereen D Flax-Charles.

11 Q. And your professional address?

12 A. Richard Stoutt Building, Road Town, Tortola.

13 Q. As I've indicated to other witness, I do try to keep
14 my questions short and simple. It doesn't always work, but if
15 at any time you have difficulty understanding a question I've
16 put it to you or you'd like me to repeat it, or put it in a
17 different way, please do ask me.

18 There are number of bundles in front of you and we
19 will go to them as necessary in due course.

20 I don't think this will be a problem for us, but can I
21 remind you as we do for all witnesses just to speak slowly, keep
22 your voice up, and that is because so that we can accurately and
23 clearly record what you have to say.

24 Again, if I could start off by asking you just to give
25 a summary of your professional background before you entered

1 politics, please.

2 A. Yes, Commissioner.

3 I worked with the British Virgin Islands Tourist Board
4 in a number of capacities for 20 years, the last being Special
5 Projects Manager.

6 Q. And is it right that, for the 2019 election, you were
7 selected as at large candidate standing for the Virgin Islands
8 party?

9 A. Yes, Commissioner.

10 Q. And was that the first time that you had stood for
11 election, Ms Flax-Charles?

12 A. Yes, Commissioner.

13 Q. Now, the official results record that you received
14 4,033 votes, which is 10.54 percent of all the votes cast for
15 territorial candidates. Does that accord with your recollection
16 of your success at the polls?

17 A. Yes, Commissioner.

18 Q. And that once you were elected, it's right, isn't it,
19 you were appointed as Junior Minister for Tourism?

20 A. Yes, Commissioner.

21 Q. Subsequently you changed roles with Ms de Castro, and
22 you've become the Junior Minister for Trade and Economic
23 Development?

24 A. Yes, Commissioner.

25 Q. And you're still in that role at present?

1 A. Yes, I am.

2 Q. Now, one of the questions that I've asked to others
3 and I'd like to put to you is this: There are measures in place
4 to make the Register of Interests public. I canvassed that with
5 the Attorney earlier today, who confirmed that that's in the
6 Register of Interests Bill which hasn't yet come before the
7 House.

8 Ms de Castro, The Honourable Ms de Castro explained
9 that her understanding is there are actually measures being
10 considered by the House at present. In terms of the Measure of
11 making the Register of Interests public, is that a measure that
12 you will be supporting?

13 A. Yes, Commissioner. I will be supporting. I'm all for
14 full disclosure.

15 Q. Can I just take you then to the disclosure that you
16 have been obliged to provide under the Register of Interests Act
17 of 2006.

18 Now, in your case, Ms Flax-Charles, you also assumed
19 office as an elected Member on the 12th of March 2019, and that
20 means that, under the Act, you have an obligation to make a
21 Declaration on that date and on every subsequent anniversary;
22 that's right, isn't it?

23 A. Yes, Commissioner.

24 Q. Could I just show you your First Declaration, please.
25 Before I do, can I just take you to page 35 in the

1 bundle.

2 Give me a moment, please.

3 (Pause.)

4 Q. Go to page 25. This is an extract from the Island Sun
5 Newspaper for the 9th of February 2019, and it records amongst
6 others your own Declaration of Interest.

7 Do you have that, Ms Flax-Charles?

8 A. Yes, I do, Commissioner.

9 Q. And what we see is that what you placed--and you did
10 it two weeks running--was you placed an advert that said: "I
11 Shereen Flax-Charles would like to declare the following
12 business interests as a candidate in the next general election,
13 and the Virgin Gorda Music School, Anver Productions Mystic
14 Virgin, Echo Build BVI, and Flax VI Limited.

15 Now, none of those interests--and correct me if I'm
16 wrong--none of those interests had a contract with the
17 Government at that time, did they?

18 A. No, none of those interests had a contract,
19 Commissioner.

20 Q. And so, would it be fair to you to say that what you
21 were doing was volunteering additional information about your
22 business interests ahead of the election?

23 A. Yes. I would--I would say that. That is the case.

24 Q. If we now look--and that's an obligation that's on
25 every election candidate, isn't it?

1 A. As far as I am aware, I believe that that is the case.

2 Q. If we look at Page 82, the same bundle, we're now
3 looking at the Register of Interests, so this is your 2019
4 Declaration. It's stamped with the Registrar of Interests
5 Government of the Virgin Islands stamp, but in manuscript is the
6 date 8th of June 2019.

7 Do you have that?

8 A. Yes, I do, Commissioner.

9 Q. If you go to the last page in this form, and it's
10 page 92, we see a signature. Could you confirm that that is
11 your signature?

12 A. That is my signature, Commissioner.

13 Q. And you've dated it July 8th, 2019?

14 A. Yes, I did, Commissioner.

15 Q. Now, the obligation on you was to file this by the
16 12th of March 2019, so would you accept that you were out by
17 four months?

18 A. Yes, I do accept that, Commissioner.

19 Q. Now, one of the requirements that's placed on a Member
20 of the House of Assembly making the Declaration is to set out
21 their interests as of the date that it's due. So, if it's the
22 12th of March, as in your case, the obligation is to set out
23 your interests as of the 12th of March.

24 Now, when you filled in the form in July 2019, were
25 you declaring the interests you held in March 2019 or were you

1 declaring the interests you held in July 2019?

2 A. It would have been when I declared in February in the
3 newspaper, Commissioner.

4 Q. So, you were just repeating what you had put in your
5 February Declaration?

6 A. Basically, there was one company, which was the only
7 company which would have been Flax VI Limited, Commissioner,
8 that is not included.

9 Q. Ms Flax-Charles, could I just slow you down a little
10 bit. I'd like to take it in stages, if I may, so that we could
11 understand?

12 A. Um-hmm.

13 Q. How you came to fill in the form.

14 The purpose of the question is to understand two
15 things from you: Firstly, how the system works, and secondly,
16 how you as a Member of the House of Assembly approach the
17 completing of this form in the making of declarations.

18 Now, my question was this--I'll come back to the
19 detail that you provided to the Registrar in a moment, but there
20 are two obligations, and this came from the Attorney General,
21 that a House of Assembly Member faces. The first is to submit
22 the form on the Due Date, and to give their interests that they
23 have at that point in time. The second is if any point their
24 interest changes during the year, to update the Register. The
25 purpose is to have an up-to-date register at all times.

1 Now, you were four months' late, so were you supplying
2 the information as to your interest--it may be the same
3 information, and things may not have changed, but when you--was
4 your understanding you had to give the information about your
5 interests that were contemporaneous as in July 2019 or were you
6 thinking "I've got to tell them what interests I held in
7 March 2019?"

8 A. My--my understanding, Commissioner, was I needed to
9 submit the Declaration to the newspaper two weeks before
10 nomination day.

11 And on March the 12th, if I recall, that is the date
12 that we were sworn in. I do not remember when I received that
13 letter from the Registrar, and I'm sure it was probably around
14 that date, and, yes, I was negligent in getting them in on time,
15 and I do accept that fact.

16 Q. The Act doesn't allow for a defense of reasonable
17 excuse, but the difficulty it presents for the Members of the
18 House of Assembly is that if three months had expired after the
19 date that it is due, then they are held in breach of the Act.
20 So, in your--in your situation, because you are now four months
21 after the 12th of March, you were in breach of the Act. Is that
22 something that you accept?

23 A. Yes, I do, Commissioner.

24 Q. Now, you explained just a minute ago you can't recall
25 receiving correspondence from the Registrar.

1 A. No, I said on that particular date before that. I
2 know that I did receive correspondence. I'm just not sure of
3 the date. I would have to look back in the bundle to see where
4 that information is.

5 Q. Right.

6 When you--so, 12th of March 2019 you were sworn.
7 That's the date on which you're obliged to complete the form?
8 Is your evidence that you can't remember receiving a letter
9 before that date but you do remember receiving letters after
10 that date?

11 A. I do not recall if I received it before that date.

12 Q. Now, can you remember how soon after you were sworn
13 that you received correspondence from the Registrar?

14 A. I would have to check the documents, Commissioner.
15 I'm not a hundred percent sure. I don't want to give a date and
16 then it is the wrong date.

17 Q. Now, you say you will have to check the documents.
18 The Commission hasn't obtained copies of any correspondence
19 between yourself and the Registrar. Do you have copies of that?

20 A. Those I can provide for you, Commissioner.

21 Q. You've accepted at least in this first time round you
22 had breached the act, but were you aware at the time that you
23 could be reported to the Standing Committee charged with
24 considering the Register of Interests?

25 A. No, I was not, Commissioner.

1 Q. Now, The Honourable Ms de Castro has told the
2 Commission, you were a Member of that Standing Committee; is
3 that right?

4 A. Yes, I am, Commissioner.

5 Q. When were you appointed to the Standing Committee?

6 A. It was sometime in late 2019, I believe. I would have
7 to check back on that as well.

8 Q. And when you say late 2019, was that around the time
9 that Members of the House of Assembly were allocated to
10 committees?

11 A. I believe so, Commissioner.

12 Q. Well, if you could provide the Commissioner with the
13 date at which you were first appointed to the committee, that
14 would be helpful.

15 And is that the date at which the Committee was first
16 constituted?

17 A. I would believe so. I believe that is the case, sir.

18 Q. Again the Honourable de Castro has told us who else
19 sits on it, so as I understand, it was chaired by the Honourable
20 Premier?

21 A. That is correct, Commissioner.

22 Q. I think is it yourself and Marlon Penn also sit on the
23 Committee. And any other Members of the Committee?

24 A. The Honourable Kye Rymer and the Honourable Neville
25 Smith.

1 Q. Since you were appointed to the Committee, how often
2 has it sat?

3 A. The Committee has never sat, Commissioner, since I was
4 appointed.

5 Q. And in the time that you've been a Member of the
6 Committee, has it received any reports from the Registrar?

7 A. That I would not know, sir.

8 Q. So, you've never been asked to deal with any business
9 concerning the Committee for considering the Register of
10 Interests?

11 A. No, Commissioner.

12 Q. Can we go back to your First Declaration, please.

13 Now, this is your 2019 Declaration. I can take you
14 back to what you put in the Notice, the election notice, if you
15 need it, but you put--and this is at Page 83,
16 Ms Flax-Charles--you put reference to Flax VI Limited. If you
17 go over the next page--

18 COMMISSIONER HICKINBOTTOM: Page 81.

19 THE WITNESS: Okay, right.

20 COMMISSIONER HICKINBOTTOM: It's my page 81.

21 BY MR RAWAT:

22 Q. If you give me a moment I'll just check whether it's
23 also my page 81. It's my page 83.

24 COMMISSIONER HICKINBOTTOM: It's Ms Flax-Charles'
25 Page 81. She's got it.

1 THE WITNESS: Right, I do have it, and it is there, so
2 I would have to redact that statement I made earlier. I did not
3 realise, Commissioner, that the Directorship as opposed to the
4 d/b/as, I have them separate.

5 COMMISSIONER HICKINBOTTOM: Okay.

6 BY MR RAWAT:

7 Q. Perhaps we could get into that detail as we go
8 through, and what I'll try to remember is the difference in page
9 numbers so we don't all get lost.

10 A. Yes.

11 Q. But at your 81, it's your 2019 form, and you've
12 referred to Flax VI Limited.

13 On the next page which you get to paragraph 2 of the
14 form, you then set out that you mentioned the Island Silhouettes
15 Boutique, the Naughty Virgin Beachtique Boutique, Virgin Gorda
16 Music School, and Eco Build BVI, which you say is construction
17 and contractor landscaping, interior decoration. Now, what you
18 did not mention is Anver Productions in this form. Was there
19 any reason you omitted Anver Productions?

20 A. I cannot say at this time. I would have to go back
21 and check. Some of the businesses may not have been active at
22 the time of--that the form was filled.

23 Q. So--and the reason I asked, in February 2019, in your
24 election notice, you've made reference to Anver Productions.

25 A. Right.

1 Q. Was Anver Productions active in July 2019?

2 A. I am not sure. I will have to go back and check.

3 Anver Productions--let me explain, Commissioner--is a
4 music studio, and due to the destruction caused by Hurricane
5 María, the studio was completely destroyed. So, while we might
6 have kept the License going, nothing was happening in terms of
7 any recording.

8 Q. I see.

9 If it was an active business, would it come under
10 Directorships for you or would it come under--remunerated
11 employment?

12 A. It would be a d/b/a, and it would be--for me it's
13 unremunerated as it is a business that my husband deals with
14 directly.

15 Q. What you also didn't refer, which you did mention in
16 your 19th of February 2019 election notice, you didn't mention
17 in your declaration Mystic Virgin. Was there any reason you
18 omitted Mystic Virgin from the Declaration of Interest?

19 A. That was not in operation at the time of this
20 Declaration.

21 Q. Had it been in operation in February 2019?

22 A. It was.

23 Q. Could you just explain the reference to the two
24 boutiques. I can probably guess the business, but what role do
25 you play in those businesses?

1 A. Right now I do not play a role. My husband deals with
2 those businesses exclusively. Even when I was working at the
3 Tourist Board, the workload is a lot, and so I have not been
4 able to pay attention to those businesses.

5 And further so, when I was elected, I average 18 to 20
6 hours a day seven days a week, and so I had absolutely no time
7 to deal with those businesses.

8 Q. Are they businesses in which you have a shareholding
9 or that you co-own?

10 A. Those are d/b/as, and if I recall, all of those are in
11 my husband's name.

12 Q. I see.

13 We may come back to the detail in a little while.

14 A. Yeah.

15 Q. Of your d/b/as. I think there is a document that you
16 produced with your Declaration which I can take you to, but I
17 just want to take you to your Second Declaration, which is my
18 page 66, so it may be your page 64.

19 COMMISSIONER HICKINBOTTOM: 66, so there we are.

20 MR RAWAT: Thank you.

21 BY MR RAWAT:

22 Q. So, this is the Declaration for 2020, Ms Flax-Charles.
23 Do you have the document?

24 A. Yes, I do, Commissioner.

25 Q. And so, what we see again on the first page is that

1 it's stamped again with the Registrar's stamped written in
2 manuscript is the date 2nd of June 2020. And if you go to
3 page 76, that's the last page with the exception the annex that
4 you attach, and it's again, it's right, it's signed by you?

5 A. It's my page 74, sir.

6 Q. Right.

7 (Overlapping speakers.)

8 A. It's my signature, Commissioner.

9 Q. And it's dated the 26th of May 2020?

10 A. I see that.

11 Q. So, again, is it right that, in that year, you had not
12 submitted your Declaration by the required date which was the
13 12th of March 2020?

14 A. That is correct.

15 Q. Now, you've said you'll check for the correspondence
16 that you had in 2019 with the Registrar of Interests. Did you
17 remember having correspondence with her over this failure to
18 make your Declaration in time?

19 A. I would think so. I would think that there are some
20 documents. We have corresponded over the past two-and-a-half
21 years, so there must be some sort of correspondence there.

22 Q. So, you will have copies of her letters to you; is
23 that right?

24 A. Yes, I should.

25 Q. Did you respond to the Registrar in writing?

1 A. I may have responded by e-mail. I cannot be certain,
2 so that I would have to check, and those documents would be with
3 the Registrar.

4 Q. Well, again, if I could ask, if you could just check
5 your own records and perhaps produce to the Commission the
6 documents--

7 (Overlapping speakers.)

8 Q. --correspondence you had with the Registrar, that
9 would be most helpful.

10 If I go now to your 2021 Declaration, and we see that
11 at Page 51 in the bundle.

12 Do you have it?

13 A. Yes.

14 Q. Again, stamped by the Registrar. It's dated the 11th
15 of May 2021. If you go through to Page 61, that's your
16 signature, isn't it?

17 A. Yes, it is.

18 Q. And you dated it the 12th of March 2021?

19 A. That is not my handwriting, Commissioner.

20 Q. Which bit of it is not your handwriting?

21 A. The date. The date.

22 Q. Can you explain how the date came to be there?

23 A. I have no idea, sir. It is possible that I did not
24 date it, and it was dated by someone else.

25 Q. We'll help the Commissioner to understand this, how

1 did you come to complete this form?

2 A. I filled the form out, as far as I can see here.

3 Q. So, the other entries in the form, that's in your
4 handwriting, is it?

5 A. Yes.

6 Q. But you don't believe that the date is in your
7 handwriting?

8 A. Not that I don't believe, Commissioner. I know it's
9 not--

10 Q. You're certain that it's not in your handwriting?

11 A. It is not my handwriting.

12 Q. Now, in that case, I mean on the face of the document,
13 there is a discrepancy between the date that it's signed, that
14 12th of March date and then the 11th of May date, but can you
15 help at all as to when you did actually fill in the form?

16 A. I cannot recall. I know that the Registrar was
17 hospitalised, and there was some back and forth in terms of when
18 she would be back in office.

19 Q. Can you help at all with you would have been aware I'm
20 going to suggest that on the 12th of March 2021 you had to
21 submit your--

22 (Overlapping speakers.)

23 A. Yes, I am aware that it is the 12th, yes.

24 Q. And can you help the Commissioner at all with how
25 close you were to that date this year?

1 A. I cannot say. I would think that I was a lot closer
2 than the other two years, Commissioner.

3 Q. If I take you to 7, please.

4 COMMISSIONER HICKINBOTTOM: I'm sorry, you completed
5 the form. What did you do with the form?

6 THE WITNESS: I gave it to my Secretary that I share
7 with another Member, and it was sent in.

8 COMMISSIONER HICKINBOTTOM: Thank you.

9 BY MR RAWAT:

10 Q. So, following on from what the Commissioner asked,
11 just ask you this: Where did you get the forms from?

12 A. The form was sent from the Registrar.

13 Q. Each year, does she send you a form to fill in?

14 A. Yes, Commissioner.

15 Q. Well, if we go to 7, please, in the bundle. This is
16 the first letter that the Commissioner sent to you in your
17 position as a Member of the House of Assembly rather than as a
18 Minister or Junior Minister. It's dated 19th of February, 2021.
19 And if you go overleaf, you will see at page 8 the three
20 requests that Commissioner made of you, which included, firstly,
21 the date and content of each Declarations of Interest; secondly,
22 that irrespective of such Declarations you may have made, the
23 information and documents that you would provide in such a
24 Declaration; and lastly you're asked, if during your period of
25 appointment as a Member you filed at any time to comply with

1 your obligation to make such a Declaration pursuant to Section
2 3(1) in respect of each such failure, a full explanation as to
3 why you did not make such Declaration.

4 Now, your answer we find at page 10. It is dated the
5 12th of March 2021. It is in exactly the same terms as the
6 letter that we were looking at from your colleague, The
7 Honourable de Castro. And it sets out a full answer to the
8 Commissioner's request.

9 Is it right or do you agree with the evidence that
10 Ms de Castro gave which was that this was a joint letter
11 collectively drafted by those on the Government side of the
12 House of Assembly?

13 A. Yes, I do Commissioner.

14 Q. And you signed it, and you clearly would not have
15 signed it if you did not agree with the contents of that letter?

16 A. That is correct, Commissioner.

17 Q. If you go to (a), you say: "As a Member of the House
18 of Assembly and since the introduction of the Register of
19 Interest Act of 2006 I have complied with Section 3 of same in
20 the form and manner as set out in Schedule 1 therein."

21 Now, was there any reason why you didn't disclose in
22 this letter that you had twice failed to submit your Declaration
23 of Interests on time?

24 A. Can you repeat the question?

25 Q. If you look at your answer A, you've said: "As a

1 Member of the House of Assembly and since the introduction of
2 the Register of Interests Act 2006, I have complied with
3 Section 3 of same in the form and manner system as set out in
4 Schedule 1 therein."

5 And my question is: Was there any reason why in
6 responding to the Commissioner on the 12th of March you did not
7 disclose to him that you had twice failed to get your
8 Declaration in on time?

9 A. There is no reason.

10 I considered that since I did submit it, that that
11 would be sufficient.

12 Q. Perhaps, do you have the legislation bundle there, if
13 you can find it? It should say: "Constitution and Legislation
14 Bundle."

15 A. And the page number?

16 Q. If you go to page 59, 1st of all. That is the first
17 page of the Register of Interests Act of 2006, and if you turn
18 to 61, Section 3, which, as you told the Commissioner, you had
19 complied with, it reads as follows: 3(1), "a Member shall make
20 a Declaration in the form set out in schedule within 30 days
21 after this Act comes into force and, thereafter, on the date on
22 which he assumes the function of his office and on each
23 subsequent anniversary of that date." And the point is that, it
24 can't have been right when you wrote that you had complied with
25 Section 3 because you hadn't complied with the requirement in

1 that section to submit it on the either on the date on which you
2 assumed the functions of your office as a Member of the House of
3 Assembly or on subsequent dates.

4 A. I will say that I did not submit it on March the 12th
5 of each year beginning with 2019, but it was submitted, albeit
6 being late.

7 Q. Now, another point that you have in common with the
8 Fellow Members of the Government side of the House of Assembly
9 is that B, where you say: "I do not keep copies my Declaration
10 of Interests, and as such I will not be in a position to assist
11 you with the dates and its contents." Why do you not keep your
12 Declarations of Interest?

13 A. Well, being a new Member of the House of Assembly,
14 Commissioner, I was not--I did not--I just did not make a copy
15 at that time. And in the quest to gather documents in since
16 they were already late, copies were not made.

17 Q. Can we look in a little bit more detail about what you
18 have declared. I'm going to try and do this by focusing on one
19 of your forms, and that's the 2021 Declaration. If need be,
20 we'll try and cross-refer you to the earlier forms, but if we
21 start at 51, which I hope will be the first page of your 2021
22 Declaration.

23 Now, the first part of the form on Page 51 is a
24 preamble, and it says that the main purpose of the Register of
25 Interests is to provide information of any pecuniary interest or

1 other material benefit which a Member receives which might
2 reasonably felt by others to influence his or her action or
3 speeches or votes in the House of Assembly or actions taken in
4 his or her capacity as a Member.

5 So, with that in mind, did you--first of all, did you
6 read that Preamble when you were completing your forms?

7 A. I would have.

8 Q. And when you read it, what did you understand the
9 purpose of this Declaration to be?

10 A. The purpose of the Declaration would have been to
11 disclose any businesses that you might be doing business with
12 the Government with.

13 Q. Isn't it a little wider than that, Ms Flax-Charles?
14 Isn't the point for you to set out in a record an accurate
15 record of any interests that might be thought by others could
16 influence the way you behaved and conduct yourself as a Member
17 of the House of Assembly?

18 A. Can I get some more clarity on that, please.

19 Q. Well, the best clarity I can give you is to invite you
20 to read the preamble to yourself.

21 (Witness reviews document.)

22 A. Okay, can you just repeat the question?

23 Q. It's a proposition that I was putting to you, that the
24 purpose of completing this Declaration is wider than you had
25 suggested, that the point of it is for you, as a Member of the

1 House of Assembly, to set out in one document any interests or
2 benefit which might be thought by others could influence your
3 actions or the way you conduct yourself as a Member of the House
4 of Assembly. That's the purpose of making this Declaration,
5 isn't it?

6 A. It would appear that way.

7 Q. And that's why it's so important for it to be
8 up-to-date as well as accurate? And that's why it matters,
9 doesn't it, when people are late with their forms? Would you
10 agree?

11 A. I would agree. It was late. I've already accepted
12 that fact. I have already stated that I was late, and I cannot
13 go back on that.

14 Q. Can we look at how you completed the form to get an
15 understanding of how you approached it as a Member of the House
16 of Assembly.

17 A. Certainly.

18 Q. I've been calling them categories but I'm going to
19 adopt the Commissioner's wording "paragraph," so paragraph 1
20 asks about your Directorships.

21 Now, in 2021, you had said no to that. Earlier, we
22 looked at your 2019 Declaration where you referred to Flax VI
23 Limited, and that's if you need to look it up again at page 83
24 or possibly 81.

25 But what had happened, you didn't refer to Flax VI

1 Limited in your 2020 Declaration, so what happened to that
2 company after 2019?

3 A. That company no longer exists.

4 Q. Paragraph 2, which is at your page 53, is the next
5 section that you're then required to fill in, and that is
6 remunerated employment office profession.

7 And you there referred to Anver Productions, and you
8 say musical band vocalist.

9 Now, in 2019 as we looked at earlier, you had referred
10 to the boutiques, the Virgin Gorda Music School, Echo Build BVI.
11 But you didn't fill those in in 2021. What had happened to
12 those?

13 A. Because of the hurricane of 2017, their Virgin Gorda
14 Music School, the building that housed that school was totally
15 destroyed, inclusive of all of the musical equipment used to
16 teach the children in the community.

17 Island Silhouettes, that business was closed because
18 of the hurricanes as well. I'm trying to find that document.

19 Q. If you go to Page 84, I think it's either 84 or 82 for
20 you.

21 A. Yes. Those businesses were closed after the
22 hurricanes with one remaining--one re-opening shortly maybe six
23 months after the hurricane.

24 Q. The hurricanes are in 2017.

25 A. Exactly.

1 Q. In your 2019 Declaration, you are referring to the
2 boutiques and to the Virgin Gorda Music Schools, that's two
3 years after the hurricanes?

4 A. They were closed--the music school has not reopened
5 since the hurricane. It is still closed.

6 Q. So, are you saying now that it was an error to refer
7 to the Virgin Gorda Music School in your 2019 Declaration?

8 A. I would have to say that.

9 Okay, I see where I made my error. There is
10 renumeration and unremuneration, so the school has not been
11 opened, so that is an error.

12 Q. Should it have been omitted from the form entirely or
13 should it gone somewhere else on the form? Is it still a
14 business--

15 A. Well, the trade license is not up-to-date at this
16 particular point in time, so it's still a business on paper, and
17 we do intend to reopen. However, the building still has not
18 been repaired.

19 Q. Okay. The two boutiques, you said one was reopened
20 some six month after the hurricane.

21 A. Right.

22 Q. What happened to that business? Is it still an active
23 business?

24 A. It is. I am not involved in that business on a
25 day-to-day basis.

1 Q. Do you receive any kind of remuneration from that
2 business?

3 A. I used to, and I used to--used to get some
4 remuneration from that.

5 Q. And is it a business that you own or is it a company
6 that you're a director of?

7 A. It's not a company. All of those businesses are
8 d/b/as.

9 Q. I see. So, they're not businesses in which you own
10 shares--

11 A. No, sir.

12 Q. Simply d/b/as, and you either get remuneration from
13 them or you don't?

14 A. Exactly, sir.

15 Q. And essentially, after 2019, is it your evidence that
16 you got no remuneration from the boutiques, the music school, or
17 Eco Build BVI?

18 A. Exactly, sir. The Eco Build BVI is not functioning.
19 If you notice, I have a list of trade licenses, some
20 them are functioning, some them are not.

21 Q. I see.

22 I'm going to take you to the trade licenses in a
23 moment because I'd like you to explain that document to the
24 Commissioner, yourself, so what I want to do is just take you
25 through different paragraphs first to see where you are.

1 So, if we go back to page 53, when I asked you about
2 Anver Productions and where it was at in 2019, you said that the
3 studio had also suffered in the hurricane but--

4 A. Right.

5 Q. But at least in 2021, from the point of view of being
6 a musical band and you as a vocalist, I assume, that's the
7 present state of Anver Productions, is it?

8 A. Yes, it is. Anver Productions falls under one
9 umbrella, recording studio, musical band, and then there's some
10 other side, like a D J service, et cetera.

11 Q. Is your remuneration from that simply as the vocalist
12 in the band?

13 A. Yes, it is.

14 Q. Now, if we go to paragraph 3 at 54, that refers to
15 clients, and to summarise it, it's intended to ask a House of
16 Assembly Member to declare any services they have provided
17 through being a Member of the House of Assembly to clients of
18 their other businesses. So, in your case, you have not had, for
19 example, to make representations on behalf of others, to
20 Ministers or anything like that; is that right?

21 A. I'm not understanding your question.

22 Q. I'm trying to take paragraph 3 quite quickly. It
23 refers to where you have paid employment either as a director or
24 that you're remunerated.

25 If that work involves the provision to clients of

1 services which depend upon you being a Member of the House of
2 Assembly, then you have to declare it. Now, you've answered
3 "no," so it is the position that you have never, if you like,
4 provided those services to clients?

5 A. Based on me being a Member of the House?

6 Q. Yes.

7 A. No, I have not.

8 Q. What I'd suggested is that the purpose of it is if you
9 used your position to help someone have access to a Minister or
10 something like that.

11 A. Not at all.

12 Q. Let's go to paragraph 2, then, at 55.

13 COMMISSIONER HICKINBOTTOM: Paragraph 4.

14 MR RAWAT: Paragraph 4, sorry, sir.

15 BY MR RAWAT:

16 Q. It refers to sponsorship. It's titled "sponsorship."
17 The first question that you're asked to answer is: "Did you
18 benefit from any sponsorship before election where, to your
19 knowledge, the financial support in any case exceeded in
20 aggregate \$2,500." And if you look at the bottom of the page,
21 Ms Flax-Charles, you see that what the note says is you should
22 register the money given to you by your Election Campaign
23 Committee and money spent by your Election Campaign Committee in
24 connection with your election with your permission.

25 So, it seems to be directed to asking Members of

1 Assembly to declare funds they may have received for the
2 purposes of their election, so in your case it takes you back to
3 2019.

4 Now, what did you understand to be required of you in
5 answering that question?

6 A. In aggregate of 2500 would mean that, overall if
7 anything was over 2500, you would have to declare it.

8 Q. Whatever source it came from?

9 A. Exactly. If it was over 2500.

10 Q. And in your case, that didn't happen. You didn't
11 receive funds over 2500?

12 A. No, it did not--no, I did not, sir.

13 Q. Now, The Honourable de Castro explained that the
14 position is somewhat different if you're a Territorial candidate
15 because you don't have a district Committee, so how is your
16 campaign as a Territorial candidate financed?

17 A. Whatever I did, it came from my pocket.

18 Q. So, you didn't receive any kind of sponsorship at all?
19 You paid your way through your election; is that--

20 A. Basically, that's what I did. Being as conservative
21 as possible, even though I am--I was an at-large candidate at
22 the time.

23 Q. And you say it all came from your pocket. What role
24 does the Party play in supporting your campaign?

25 A. I'm not 100 percent sure what all the party does. We

1 show up at the rallies and so forth, do what we have to do, and
2 I made sure all of my paraphernalia, the give-aways, whatever it
3 is that you pass out with your picture, your slogan and so
4 forth, all of those things I purchase on my own.

5 Q. So, if there was party support of your campaign, that
6 was something that was unconnected to you?

7 A. Exactly.

8 Q. If we look at paragraph 5--before we leave paragraph
9 4, what you're also asked is to declare any benefit from any
10 form of sponsorship or financial or material support as a Member
11 of the House of Assembly. And you have not received any kind of
12 benefit--

13 A. No, Commissioner.

14 Q. If we go to five, gifts, benefits and hospitality in
15 the Virgin Islands, have you or your spouse, to your knowledge,
16 received any gift of a value greater than 500 or any material
17 advantage of a value greater than 1.5 percent of the current
18 salary of an elected Member. You've answered "no" to that as
19 you've done every year. And that's the case, you've not
20 received anything that brings you within this paragraph?

21 A. I have not received anything as it relates to
22 paragraph 5, Commissioner.

23 Q. Paragraph 6, overseas visits and this relates to
24 whether you've had, again in your capacity as a Member of the
25 House of Assembly, an overseas visit that was not funded either

1 by yourself or from the public purse, and again during your
2 time, that's never occurred to you?

3 A. No, it has not.

4 Q. Nor if we look at 7, do you--have you received any
5 overseas benefits or gifts as a Member of the House of Assembly?

6 A. No, I have not, Commissioner.

7 Q. Page 8 at page 59 is "land," and if we go back to page
8 90 for a moment.

9 A. One-nine?

10 Q. Nine-zero.

11 A. Nine-zero.

12 I have 98.

13 Q. This is the Declaration which you were asked to
14 provide, do you have any land other than any home used solely
15 for the personal residential purpose of you or your family.

16 Now, what you've declared is--this is in 2019--your
17 home in Princess Quarters and then a rental property in Princess
18 Quarters.

19 When we go to 74, in 2020, again--I'm sorry, 74 or 72.

20 A. I think that might have been omitted. Is it the same
21 document that speaks to land?

22 MR RAWAT: Yes.

23 COMMISSIONER HICKINBOTTOM: I think there is a page
24 missing. There is a page missing it would seem, Commissioner.

25 MR RAWAT: There seems to be a missing page.

1 COMMISSIONER HICKINBOTTOM: Between 73 and 74. 73 and
2 74, Mr Rawat, go from overseas benefits and gifts--

3 BY MR RAWAT:

4 Q. What you declared in 2020 is the same as you declared
5 in 2021. So, if--

6 COMMISSIONER HICKINBOTTOM: That's page 59. Thank
7 you.

8 THE WITNESS: In 2019 you said?

9 BY MR RAWAT:

10 Q. So, in 2019, you had a home and one rental property.

11 A. Right.

12 Q. When you got to 2020, which is the missing page, you
13 actually gave the same information as you gave in 2021, so if I
14 take you to that I can ask, and we can deal with it.

15 A. Yes.

16 Q. That's at 59.

17 So, in effect, your Declaration is that you have a
18 residential property in Princess Quarters. And that's your
19 home?

20 A. Yes, sir, that is.

21 Q. Used for the personal residential purposes of you and
22 your family?

23 A. Yes, Commissioner.

24 Q. Separate to that, you had one rental property in
25 Princess Quarters?

1 A. Yes, Commissioner.

2 Q. And then there is a vacant property in South Valley
3 that you co-own?

4 A. Yes, that's correct, Commissioner.

5 Q. And that's the full extent of the land holdings that
6 you have?

7 A. Yes, Commissioner.

8 Q. Paragraph 9, if you go to page 60.

9 Your Declaration has been that you have no
10 shareholdings; is that right?

11 A. That is correct, Commissioner.

12 Q. I would now like your assistance, please, to explain
13 the document which you annexed to your 2020 Declarations and
14 your 2021 Declarations.

15 And if you go to page 62, it's headed "Trade
16 Department Premier Office."

17 Have you got that, Ms Flax-Charles?

18 A. Yes, I do, Commissioner.

19 Q. Can you explain what the purpose of this document was?

20 A. Well, to be honest, Commissioner, full disclosure.

21 Q. Can you expand on that a little bit? What did you
22 want the Registrar to understand from giving her this document?

23 A. I just wanted her to understand that these were all of
24 the businesses. Some of them are not in operation, either owned
25 by myself, my husband, and my two older children who are adults.

1 Q. So you went further than you were obliged under the
2 Register of Interests Act?

3 A. Yes, I did, Commissioner.

4 Q. And what you--so, what you were giving her was the
5 trade licenses that were in place as of the time of making the
6 declaration; is that right?

7 A. Yes, Commissioner, whether they were active or not.

8 Q. Looking at it now, do you think it would have assisted
9 the Registrar if you had been able to tell her which trade
10 licenses were active and which were not?

11 A. That is correct.

12 I would say that that would have been something that
13 we could have done.

14 Q. If you go back to 61, it's paragraph 10, which asks
15 you, as a Member of the House of Assembly to do this. It says:
16 "Bearing in mind the definition of purpose set out in the
17 instruction to this form you have any relevant interests which
18 you consider should be disclosed but which do not fall within
19 the nine categories set out above, please list them." So, it
20 takes you back to the Preamble and asks you to give further
21 information.

22 What did you understand the purpose of this paragraph
23 to be?

24 A. Relevant interest would mean other businesses that you
25 might have or other organizations that you might be involved

1 with, but that is not the reason why I submitted the trade
2 licenses because the acts up front what companies or other
3 businesses you might have.

4 Q. What the form asks you to do is, as you go through
5 Categories 1 to 9 is to declare Directorships.

6 A. Right.

7 Q. It asks you to declare where you might have other
8 employment from. It asks you to declare land that you might
9 hold that is more than residential, and it has asked you to
10 declare shareholdings either yourself or with or on behalf of
11 your spouse or dependent children.

12 Isn't the purpose of paragraph 10 to go further than
13 that, and for you as a Member of the House of Assembly to list
14 anything else that might, going back to the first page, be
15 thought by others to influence your actions or conduct as a
16 Member of the House of Assembly?

17 A. I would say that is what I understand it to be.

18 Q. So, was there any reason, given you said that you
19 wanted to make full disclosure, was there anything, thinking
20 about it that, you ought to have put in paragraph 10 on the
21 form?

22 A. Not that I can recall. I don't see anything else that
23 would have been relevant when I filled out the form and
24 submitted it.

25 Q. This is a question I put to The Honourable de Castro,

1 but if, for example, you had a relative who had secured a
2 government contract from the Government of which you are a
3 Member, do you think that's something that you might need to
4 record for paragraph 10?

5 A. Based on what I--what I consider a relative and based
6 on the documents and the definition of a relative, it would have
7 been spouse and dependent children.

8 Q. So, you read the act or the requirements on you as
9 only requiring you to give information about yourself, your
10 spouse, and your dependent children?

11 A. Yes, Commissioner.

12 Q. Now, a Member of the public reading or learning that,
13 for example, a government Minister's relative had secured a
14 contract might conclude that that is information that or that is
15 something that could influence the actions of and conduct of
16 that Member. Do you agree with that?

17 A. I would--I would agree with that from the public's
18 perception, Commissioner, but I must add that the public
19 perception and what is reality in the BVI are far apart.

20 Q. But in order to bring the perception and the reality
21 closer together, isn't an approach of full transparency
22 beneficial?

23 A. I would agree with that, and that is why I am in favor
24 of the legislation--different legislation that we will be
25 bringing to the House across the board so that everything is

1 clear, both to the public and to elected officials, as well as
2 senior public officers.

3 Q. How things are made clear to the public may depend on
4 what information is included.

5 Would you accept that if paragraph 10 is construed
6 more widely than what you have done, that may mean that the
7 public have a better understanding of the interests held by the
8 Members of the House of Assembly?

9 A. Yes, Commissioner.

10 And I would go a step further to say that in the last
11 couple of months we have been having public consultations on a
12 lot of the legislation that is to come before the House, so the
13 public will have a better understanding of what we're doing as a
14 government, as a House of Assembly.

15 Q. But if we focus on paragraph 10, if that guidance that
16 paragraph made clear that it wasn't limited just to yourself as
17 a Member of the House of Assembly, your spouse or your dependent
18 children, but that you should look at it more widely, that may
19 help with the public perception of what--of how Member of the
20 House of Assembly are up to?

21 A. I do agree with you. I would never disagree with
22 that, and that is why we are seeking to amend the Register of
23 Interests Act in order to ensure that the public is aware of
24 what our interests are.

25 COMMISSIONER HICKINBOTTOM: I understand that, and the

1 evidence from the Attorney General is that the Registration of
2 Interests Bill has--is really at a very early stage. In draft,
3 we have the draft. I don't think it's been to Cabinet yet. It
4 certainly hasn't been to the House yet, but the current draft
5 does not propose any change to paragraph 10. It may change as
6 it goes through the system, but it doesn't propose any change
7 yet.

8 THE WITNESS: What I would say, Commissioner, when the
9 bill leaves Cabinet, it comes to the House for the first
10 reading, and then the second and third readings we go into what
11 you would call the "Committee Stage" where that bill is picked
12 apart, and that is where those changes can be made.

13 COMMISSIONER HICKINBOTTOM: I understand that, yes.
14 Thank you.

15 BY MR RAWAT:

16 Q. So, to bring the threads together, please,
17 Ms Flax-Charles, would you agree or would you be supportive of a
18 form that ensured that Members of the House of Assembly did not
19 just limit their Declarations to themselves, their spouse, and
20 their dependent children but also to any interests held by
21 others which might be thought to impact on their conduct as a
22 Member of the House of Assembly?

23 A. Absolutely, and I would preface that to say almost
24 everyone in the British Virgin Islands is related to each other.

25 Q. That may mean that the detail of the guidance needs

1 some work, but the principle is one that you would support?

2 A. I absolutely would support that.

3 Q. Because, on the construction that you've offered, the
4 problem would be--and I am using a hypothetical, but if you have
5 an adult sibling who has entered into a contract with the
6 Government, that is not something on your construction that you
7 would need to put in this form but it would be something that
8 surely the public would benefit from knowing because it is
9 something that the public might think, well, might influence
10 your conduct. Would you accept that?

11 A. I agree, Commissioner.

12 Q. Thank you.

13 Can I just take you--I think I will move on to the
14 same questions that I put to The Honourable de Castro, and that
15 is just to hopefully you will do it more shortly because of her
16 answers, but--so I'm going to put a set of propositions to you
17 based on the evidence that your colleague gave, and the first is
18 this: As a Territorial representative you also have access to
19 the funds that allow you to give assistance grants?

20 A. Yes, Commissioner, I do.

21 Q. And do you agree with the evidence that we received as
22 to the process? Firstly, there's an application form, and you,
23 as a Member of the House of Assembly approve or reject the
24 application; is that right?

25 A. Yes, it is, Commissioner.

1 Q. And if you approve it, it then goes to the Clerks of
2 the House of Assembly, and then it then goes to the Treasury
3 Department for final sign-off and payment; is that right?

4 A. That is correct, Commissioner.

5 Q. Is it also right that you're given \$150,000 a year as
6 a Territorial representative to use?

7 A. That is correct, Commissioner.

8 Q. And taking 2019-2020 as an example, in that year, did
9 you distribute the entirety of the 150,000 that was allocated to
10 you?

11 A. In the first year, Commissioner, I believe that there
12 was a small balance that was left back. Applications were
13 submitted, but December is a very crazy month, and some of those
14 applications were not processed.

15 Q. My understanding from The Honourable de Castro's
16 evidence is that the payments are made to individuals as well as
17 entities such as schools that might seek sponsorships, but in
18 your practice as a Member of the House of Assembly, have you
19 ever paid out sums to a business?

20 A. What I would say, Commissioner, is schools,
21 organizations, businesses, will only get appealed if someone--an
22 individual requests assistance, and then I can give an example,
23 if they're having difficulty paying a bill, then it would be
24 paid to the business as in the case of someone needing surgery,
25 lifesaving surgery, that can be done here in the British Virgin

1 Islands, that check would be made to the particular clinic.

2 Q. But what isn't the case is that if a commercial
3 business knocks on your door and says we would like X amount of
4 money as an assistant grant, that's not something--

5 A. No, that is not something that I would do.

6 Q. Do you know whether there is a maximum that you're
7 allowed to pay out?

8 A. I am not 100 percent sure. I believe if there is any
9 amount over 10,000, it has to be signed off on by the Premier.
10 That is my understanding.

11 Q. And were you given guidance by the Clerks of the House
12 of Assembly as how you should operate this system?

13 A. Yes, there is a document. I cannot tell you every
14 single thing that's in that document without being able to refer
15 back to it at this time, Commissioner.

16 Q. Can you help with this point, which The Honourable de
17 Castro couldn't, and that is the position of family members. If
18 the family member, her understanding of her approach is that if
19 she has an approach from a family member, the answer is "no."
20 Now, in those circumstances, if there is a deserving case who
21 happens to be a family member, how do they get help?

22 A. They would not get help from me, Commissioner.

23 Q. Can they get help from others?

24 A. They can get help from others if they apply to another
25 Member whether on the Government's side or on the opposition.

1 Q. And it's perhaps different because you're a
2 Territorial representative, but are you permitted under the
3 scheme to support that application in any way?

4 A. No. We don't see each other's applications,
5 Commissioner.

6 Q. And do you agree with the evidence of Honourable de
7 Castro who said that the fund can also be used to fulfill policy
8 promises of yourself as a candidate?

9 A. We--yes, we do--we do sponsor different programmes
10 throughout the Territory as an at-large representative. I can
11 give you an example. By a young man wanted to do a project with
12 children in the community where they planted herbal garden at
13 the elderly home in Virgin Gorda. Things likes that we do, we
14 sponsor schools with projects, mirrors and the like where young
15 people are able to get involved and be a part because we do have
16 a program where young persons need community hours in order to
17 graduate from high school, and so a lot of my focus is on
18 assisting young people.

19 Q. It might be suggested that, giving a Member of the
20 House of Assembly of whatever party a sum of money that they can
21 use in this way, that to an outsider, might suggest that it
22 looks like vote-buying. How does the system guard against that
23 allegation?

24 A. Well, Commissioner, we have to do due diligence.
25 Sometimes things might fall through the cracks but I can only

1 speak for myself. I try my best to investigate to make sure
2 that the claims and applications that come in are legitimate.
3 And as we mentioned before, there is a process after it leaves
4 the Member, it goes to the Clerk and then to the Treasury.

5 And I must say this because there are lots of people
6 even before the hurricane, I wasn't an elected Member then, but
7 in my community work there are lots of people that are suffering
8 in the BVI. We do have not a welfare system like the United
9 States does, and I would like to think that, as a Member if
10 someone comes and needs help, and we investigate and it is
11 legitimate, especially in cases of health, we see a lot of that.
12 It's about saving a life. It's not about buying a vote, and
13 we've had those instances. Right now we have persons who need a
14 kidney transplant, persons who need a pacemaker, and the list
15 goes on and on. We are never able to fulfill all of the
16 requests. I can take a guess and say as a Territorial Member, I
17 probably have over \$3 million in requests that I will never be
18 able to fulfill. And have you to prioritise because how do you
19 decide to give an individual money to pay their electricity bill
20 and someone whose life needs to be saved by assisting with a
21 kidney transplant or a heart surgery or whatever type of surgery
22 it is. So, I do not consider it as buying a vote. I consider
23 it truly as really being able to make a difference, and to help
24 persons who really and truly need the help.

25 Q. If you have a situation--you've explained that, in

1 effect, you get more requests than you can fulfill, and you
2 obviously start the year with a certain amount of money and as
3 requests are answered by you as a Member of the House of
4 Assembly, the sum diminishes. What is the position of someone
5 who towards the end of that year, does need support and is a
6 deserving case, but if you can't fulfill that request, where can
7 they go to?

8 A. The only other place they could go to is--well, not
9 only, they can probably, Commissioner, go to the Social
10 Development Department. Or we refer them to organizations such
11 as the Rotary Club and the Lions' Club who do offer assistance.
12 The Family Support Network and places such as those because
13 until we get a drawdown of 37,500 every quarter, so we do not
14 get that full bulk of--we don't get the whole 150k at the
15 beginning of the year.

16 So, we also lien on the other agencies and nonprofits
17 to assist us with helping persons so if we cannot help, we refer
18 them to those agencies and others that I have just mentioned.

19 Q. And are you--you've explained the due diligence that
20 is done. Are you required to keep records of how you are
21 distributing the money?

22 A. Yes, we are, Commissioner.

23 Q. Are you audited at all?

24 A. I am not 100 percent sure. I know that the Clerk is
25 an accounting officer, and she keeps check of whatever we do and

1 whatever we send in terms of the allocation that we received.

2 Q. Would you--The Honourable de Castro's evidence was
3 that she would support a proposal that details be published as
4 to how funds are distributed, is that something that you would
5 also be in support of?

6 A. Absolutely. I have no challenge with that at all,
7 Commissioner.

8 Q. You will have heard today or you may have heard today
9 that the Commissioner has asked questions of witnesses as to
10 whether there are any rules in relation to party financing and
11 campaign financing. Would you agree that if the Virgin Island
12 authorities legislated and instituted policies for candidates in
13 party financing and for the registration of political parties
14 for financial-reporting purposes, that would only increase trust
15 in the system and it would also reduce the risk of corrupt
16 practices emerging?

17 A. I would absolutely support that. I will agree with
18 that.

19 Q. In your own stance, Ms Flax-Charles, are you a
20 supporter of reform of party--of party campaign financing?

21 A. Yes, I am, Commissioner.

22 Q. Can I turn to another matter that I also put to The
23 Honourable de Castro, and it's this, and it takes--takes us back
24 to the Virgin Island Constitution of 2007. Section 67 of that
25 Constitution provides that if you, as an elected Member of the

1 House of Assembly were to be a director or manager of a company
2 that's contracted to business with the Government, then you have
3 to vacate your seat, unless you are exempted by the House of
4 Assembly, and there is a provision within the Constitution for
5 the House of Assembly to exempt you from that requirement to
6 vacate your seat.

7 You have been a Member of the House of Assembly since
8 2019. In your case, have you been exempted from vacating your
9 seat under section 67(7)?

10 A. I don't have any contracts. Or none of my immediate
11 family have contracts with the Government, nor do we intend to.

12 Q. Just to make sure that we're specific. What section
13 67(7) refers to is a decision of the House of Assembly to exempt
14 a Member from that requirement. Have you--you haven't--it's
15 your evidence you haven't been the beneficiary of such a
16 decision?

17 A. No, I have not.

18 MR RAWAT: Sir, may I have a moment?

19 THE WITNESS: What I would say is, if a Member, if
20 someone becomes a Member and they had an existing contract with
21 Government, there wouldn't need to be something in place for
22 that legally and otherwise because if a Member was elected but
23 had a contract that spans over into their term in office,
24 something has to be in place to at the least ensure that the
25 employees of that company still have a job.

1 So, I don't know if I fully understand what you're
2 asking me about.

3 BY MR RAWAT:

4 Q. Well, you've taken it wide and you've suggested that
5 the way you have it, if you like, a rollover, so you've got a
6 contract with Government and you enter into Government yourself
7 or into the House of Assembly, so you've said something has to
8 be in place. Do you know whether there is a mechanism or scheme
9 at the moment?

10 A. I believe that there were some resolutions that were
11 passed in the House some time ago for some Members that had
12 contracts with Government before they were elected, and so we
13 need to look at it from a broader perspective, Commissioner.

14 I like to look at things from how it affects the lives
15 of people and families and so forth, and so for me, if a Member
16 getting elected in 2019, but in 2017 signed a contract with
17 Government and that contract stretches over into--up to
18 2020--2021, let's say, there must be something where that person
19 can be safeguarded in the sense of their employees because if
20 that contract were to just stop when a Member becomes elected,
21 what provision is there for the employees and the families of
22 that--of those employees.

23 COMMISSIONER HICKINBOTTOM: That's not--that's not
24 your case because--

25 THE WITNESS: No, it's not.

1 COMMISSIONER HICKINBOTTOM: --it's a hypothetical
2 case.

3 THE WITNESS: Yes.

4 COMMISSIONER HICKINBOTTOM: But it's a real
5 hypothesis, that a candidate may be elected, candidate has a
6 contract, what happens to the Contract when he or she is elected
7 because there are, as it were, real people involved in terms of
8 employment itself.

9 THE WITNESS: Right, so Commissioner, that is
10 something that I believe that we would look at a lot closer just
11 to make sure that there is full disclosure all the way around.
12 We're committed to that.

13 COMMISSIONER HICKINBOTTOM: I understand that. Thank
14 you very much.

15 BY MR RAWAT:

16 Q. As you've explained, Ms Flax-Charles, it's not a
17 situation that relates to you because you haven't entered into a
18 contract with Government, either before or since becoming a
19 Member of the House of Assembly, and that situation applies both
20 to your spouse, your children, dependent or not, or indeed other
21 members of your family. Either at any point they haven't
22 entered into contracts. But you're nodding yes but I'm going to
23 ask the Commission now if I could just have a moment.

24 COMMISSIONER HICKINBOTTOM: Yes, certainly, yes.

25 (Mr Olimpitis consulting with the witness.)

1 MR RAWAT: Commissioner, Ms Flax-Charles, I have no
2 further questions. So, if I could just conclude by thanking
3 Ms Flax-Charles for coming Tuesday and giving her evidence and
4 the way indeed in which she's given that evidence, thank you
5 very much.

6 COMMISSIONER HICKINBOTTOM: Could I just ask two final
7 questions just to clarify your evidence in relation to the
8 distribution of the funds and you've gone into that in some
9 detail, thank you.

10 The first is, Ms Flax-Charles, Ms de Castro said that,
11 in terms of checks and balances on the way the discretion to
12 distribute is exercised, and we're waiting to see the policy
13 document that's going to be produced, that she referred to two,
14 really--two, but within the same process, and that is that the
15 application, once it's been signed off by the Member, then goes
16 to the House of Assembly Clerk to be signed off by her, and then
17 goes to the Treasury to be signed off by it.

18 Are there any other checks and balances that you're
19 aware of?

20 THE WITNESS: Not that I'm aware of, but I will say
21 that I have had the experience of having a document, an
22 application returned, so I think the process is working. I
23 would not say that it doesn't need to be improved because
24 anything can be improved upon, but I have had that experience,
25 so I know that it's working.

1 COMMISSIONER HICKINBOTTOM: But was that something--if
2 you can answer this question, was that an application that was
3 refused, as it were, because of the merits of the application or
4 because some document wasn't provided or box was not ticked?

5 THE WITNESS: In one case, there were documents that
6 were not provided, and in other cases, another Member had
7 already given that person assistance.

8 COMMISSIONER HICKINBOTTOM: I understand that, and
9 that's really the second--it is a question, but it's really a
10 concern, really. This money, 1.8 million between all of the
11 Members, \$150,000 each, is distributed, as you said. I mean,
12 it's, in part, in good part, welfare payments based on need, but
13 not only because prizes for schools, community projects, they
14 all can benefit, can probably benefit from these funds, so it's
15 not purely welfare.

16 And you've said that the requests that you get--and
17 I'm not sure that you'll be any different from any other
18 Member--is something like 20 times the amount that you have to
19 give away, 3 million pounds a year in terms of requests.

20 And in terms of the exercise of discretion, it seems
21 to me that that's a complete nightmare because you have to
22 decide whether money goes to--well, you've used the examples of
23 somebody who needs an important, if not vital, operation;
24 somebody who may have another financial need; or a school that
25 wants a trophy, and you have to decide, exercise your discretion

1 in respect of all of this. And it seems to me as an outsider,
2 that it's a bit of a ramshackle system, even though as you've
3 said you do, you do your best. You do your best. But, it's the
4 exercise of a very wide discretion, without, one suspects, we
5 haven't seen the policy document yet, a huge amount of guidance.
6 It's a big burden on your shoulders or on the shoulders of any
7 Member.

8 THE WITNESS: Yes, it is, Commissioner, and they would
9 see as well the district representatives, they get a little bit
10 less. I cannot remember the figure, but the at-large gets a
11 little more since we have to cover the entire Territory.

12 COMMISSIONER HICKINBOTTOM: I see that.

13 But also, and this is reflected in the answer--in the
14 information you gave about the application that was refused. As
15 a BVI citizen there, if I want a payment from a Member, I have
16 five Members to choose from, to make an application, the
17 district Member and the five Territorial Members.

18 THE WITNESS: Yes, sir. That is the case, and most
19 persons would send five applications, so you have to be very,
20 very careful, and I have to give kudos to the Clerk and the team
21 at the Treasury because they do pick up on it--

22 COMMISSIONER HICKINBOTTOM: Yes.

23 THE WITNESS: --when someone, when a Member submits
24 the same application, same documents, everything.

25 COMMISSIONER HICKINBOTTOM: Two Members may submit, as

1 it were, the same application?

2 THE WITNESS: Right.

3 Yes, it has happened before, at least in my case--

4 COMMISSIONER HICKINBOTTOM: But it's bound to happen?

5 THE WITNESS: Yes.

6 COMMISSIONER HICKINBOTTOM: It's bound to happen from
7 time to time?

8 THE WITNESS: Yes, we have to tweak the system a
9 little bit more.

10 COMMISSIONER HICKINBOTTOM: Thank you very much.

11 And unless you've got any further questions, Mr Rawat,
12 just to thank you, to join Mr Rawat in thanking you for coming,
13 giving your evidence and giving it so clearly and helpfully.
14 Thank you very much.

15 THE WITNESS: Thank you.

16 (Witness steps down.)

17 COMMISSIONER HICKINBOTTOM: Mr Rawat, is there
18 anything else?

19 MR RAWAT: Nothing more for us to do today.

20 COMMISSIONER HICKINBOTTOM: I think, again, there are
21 one or two pieces of information and documents.

22 MR RAWAT: Yes, I think so.

23 The other thing we have is Ms Flax-Charles is going to
24 provide us with her correspondence with the Registrar.

25 COMMISSIONER HICKINBOTTOM: Good.

1 Perhaps if we can agree with Mr Olimpitis the list of
2 things which the two Members. I don't think there was any from
3 the Attorney General.

4 MR RAWAT: No.

5 COMMISSIONER HICKINBOTTOM: That I think would help
6 everybody.

7 MR RAWAT: Yes.

8 COMMISSIONER HICKINBOTTOM: Good. Unless there is
9 anything else. Thank you very much.

10 (Whereupon, at 4:56 p.m. EDT, the Hearing was
11 adjourned.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", positioned above a horizontal line.

DAVID A. KASDAN