

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 15
(MONDAY 21 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), Sir Geoffrey Cox QC and Ms Lauren Peaty of Withers LLP appeared for various BVI Government Ministers and public officials.

Mr Lewis Hunte QC appeared for Dr Kedrick Pickering.

Mr Archibald C. Christian appeared.

Counsel to the Commission Mr Bilal Rawat also appeared.

Hon Carvin Malone gave evidence.

Ms Ingrid Moses-Scatliffe gave evidence.

Mr Myron V. Walwyn gave evidence

Mr Ronnie W. Skelton gave evidence.

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Session 1

Mrs Jo-Ann Williams-Roberts, Solicitor General
Ms Lauren Peaty, Withers LLP

Mr Bilal Rawat

Hon Carvin Malone

Mr Steven Chandler, Secretary to the Commission
Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

Session 2

Mr Bilal Rawat

Ms Ingrid Moses-Scatliffe

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

Session 3

Mr Bilal Rawat

Mr Myron V. Walwyn

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

Session 4

Mr Bilal Rawat

Mr Ronnie W. Skelton

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

Session 5

Mrs Jo-Ann Williams-Roberts, Solicitor General

Sir Geoffrey Cox QC, Withers LLP

Ms Lauren Peaty, Withers LLP

Mr Lewis Hunte QC

Mr Archibald C. Christian

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

P R O C E E D I N G S

Session 1

1
2
3 COMMISSIONER HICKINBOTTOM: Good morning, everyone.
4 I'm sorry about the delay in starting, which is due to a
5 technical hitch which I think has now been resolved, and I think
6 we're now ready to resume.

7 Mr Rawat.

8 MR RAWAT: Good morning, Commissioner. Can I begin by
9 introducing the representation that we have present in the
10 hearing room. The Attorney General is represented this morning
11 on her behalf and on behalf of the elected Ministers whom she
12 represents by the Solicitor General Jo-Ann William Roberts and
13 also by Lauren Peaty of Withers. There are no other legal
14 representatives either present in the hearing room or online.

15 COMMISSIONER HICKINBOTTOM: Yes.

16 MR RAWAT: Our first witness is a Minister represented
17 by the Attorney General. It's the Honourable Carvin Malone, and
18 if I could ask if he could be sworn or affirmed at this point.

19 COMMISSIONER HICKINBOTTOM: Yes, thank you.

20 HON CARVIN MALONE, 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.

25 MR RAWAT: Thank you, Commissioner.

1 BY MR RAWAT:

2 Q. Honourable Malone, thank you for coming to give
3 evidence this morning.

4 Can I, first of all, start with an apology, which is
5 also coupled with an additional thanks, and that is that I think
6 you were scheduled last week, but obviously because of the
7 timetable overrunning slightly, you kindly agreed to put off
8 your evidence to today?

9 A. Yes, I'm grateful.

10 Q. We should be grateful for that, and that was of great
11 assistance to the Commissioner.

12 There are formalities that we need to deal with. The
13 first of those is to ask you, please, to give the Commissioner
14 your full name?

15 A. My name is Carvin Malone.

16 Q. And your professional address?

17 A. It's Sea Meadows, Road Town, Tortola.

18 Q. Thank you.

19 Now, I say this to all witnesses, and it is that I do
20 try to keep my questions short and simple. Sometimes it does
21 not work out that way, and if at any point you would like me to
22 repeat or rephrase the question, please do ask me.

23 A. Certainly.

24 Q. You will see in front of you perhaps a daunting set of
25 bundles. You don't need to open any of them at this stage, we

1 might not need to look at all of them, but what I will do is as
2 we go through evidence is to take you through various documents.

3 Can I ask one final thing, and that is to remember,
4 please, to keep your voice up and to speak slowly. The
5 microphone that you have in front of you doesn't amplify your
6 voice. It merely records. But what's important is for the
7 Transcript of this hearing to contain an accurate and clear
8 record of your answers to my questions.

9 Again, can I begin by, as I have done with all--

10 (Lights go out.)

11 COMMISSIONER HICKINBOTTOM: I think that's a problem.

12 Do you know what the problem is, Dame?

13 (Pause.)

14 MS PEATY: It's the generator, I think.

15 THE WITNESS: So, is the generator now returning?

16 COMMISSIONER HICKINBOTTOM: I think it was a problem
17 with the electricity supply, but that may have affected the
18 live-streaming.

19 THE WITNESS: Yes.

20 COMMISSIONER HICKINBOTTOM: I hasten to add that I
21 know nothing about these matters.

22 (Pause.)

23 COMMISSIONER HICKINBOTTOM: I think we're back in
24 business.

25 The only evidence we've heard so far just to recount

1 is that the Witness has confirmed that he's The Honourable
2 Carvin Malone.

3 Thank you very much.

4 MR RAWAT: Thank you.

5 BY MR RAWAT:

6 Q. Hopefully, we won't have any more technical glitches,
7 Mr Malone, but my first question is the one that I put to all
8 Honourable and indeed former Honourable Members of the House of
9 Assembly, and that is to ask them to begin by just giving an
10 outline of your professional background before you entered
11 politics.

12 A. Okay, great. I'll be grateful to do that. Carvin
13 Malone, as I said before, schooled at the Willard Wheatley
14 Primary School, BVI High School and at Pace University in New
15 York City. Management experiences includes that of Caribbean
16 Basin Enterprises as the President and CEO, of CB Engineering
17 Associates of Virgin Islands Block Company; and the family-owned
18 business Malone Group Property Investment, Ltd, and Islands
19 Block Corporation, Ltd.

20 Quasi-Government experience includes past
21 Member--well, I was a Member of the 2007 Constitution Review
22 Commission, former Board Member of and the Finance Chairman of
23 the H. Lavity Stoutt Community College, Board Member of the BVI
24 Port Authority, Board Member of the BVI Development Bank, Board
25 Member of the Fiscal Advisory Committee back in '88 to '90, and

1 a Board Member of the Land Development Control Authority.

2 Also in terms of social and community experiences, a
3 past President of the Virgin Islands Party, four-time President
4 of the--well, which is a record--of the Tortola Lions Club, past
5 Chairman of the BVI Hotel and Commerce Association in '83 to
6 '86. Past President of the BVI Amateur Basketball Association,
7 the Lawn Tennis Association, and the Vice President of the BVI
8 Olympic Committee.

9 COMMISSIONER HICKINBOTTOM: Thank you very much.

10 BY MR RAWAT:

11 Q. Thank you.

12 And you said that you were the past President of the
13 Virgin Islands Party.

14 A. That's correct.

15 Q. Is it right that you were selected as an at large
16 candidate for that Party in the 2019 Election?

17 A. That's correct.

18 Q. And was that the first time that you stood for
19 election?

20 A. That's correct.

21 Q. Now, as an at-large territorial candidate, the way it
22 works, as we understand it, from the evidence of other
23 Honourable Members, is that each voter can vote for the
24 representative in their district and then they also have four
25 votes to choose four people to sit as territorial

1 representatives.

2 A. That's correct.

3 Q. And essentially, at least for the at-large election,
4 the top four win through? That's how it works?

5 A. That's correct, yes.

6 Q. Now, according to the official results published on
7 the BVI Government's website, you, in that election, received
8 3,936 votes, which was 10.29 percent?

9 A. That's correct.

10 Q. Of the votes cast for territorial candidates.

11 Does that accord with your recollection of your
12 success at that election?

13 A. That's correct, placed fourth in that.

14 Q. And once selected and sworn into the House of
15 Assembly, which was on the 12th of March 2019, were you
16 immediately appointed to your ministerial post?

17 A. No. It goes through a particular process of you have
18 to first get elected, and then once the Premier is actually
19 sworn in, then it would be able to go through.

20 But in the conduct of this particular session, I would
21 just like to say, Commissioner, I wish to thank you for the
22 opportunity to read into the record of this sitting my
23 unqualified willingness to assist you in the discharge of your
24 duty as outlined in your instrument of appointment dated 19th of
25 January 2021. I wish, however, Commissioner, to advise that,

1 while it is your ultimate goal to fulfill the terms of reference
2 as outlined in your appointment letter, it is by contrast my
3 ultimate goal to fulfill my duty as a democratically elected
4 representative of the Virgin Islands, part of which is to
5 educate, to protect and defend the political, economic and
6 social advances gained by present and past leaders of the Virgin
7 Islands or fathers and our forefathers and to fulfill the needs
8 and aspirations of the people of the Virgin Islands generations
9 past, present and future. It is predicted that, though not
10 originally envisaged, the final Commission of Inquiry report
11 will serve as a blueprint for the UK's discharge of its
12 obligation to prepare the Virgin Islands for future political
13 advancement. As with all other administrative powers, it is
14 what the United Nations or United Kingdom committed to and is
15 obligated to provide under Resolution 66 of section 1 of
16 Chapter 11 of the charter of the United Nations. This, I
17 contend, would have been better served in a review of governance
18 in the Virgin Islands as opposed to this instrument of the
19 Commission of Inquiry being conducted without disclosure, I
20 might add, of the specifics represented to the United Kingdom
21 officials by Governor Jaspert upon which it realised.

22 These allegations were, however, issued in a statement
23 in the House of Commons by Secretary of State Dominic Raab on
24 January 18, 2021, and carried widely in the British press.

25 I thank you very much for allowing me.

1 COMMISSIONER HICKINBOTTOM: Is there any other
2 statement you want to make today?

3 THE WITNESS: No.

4 COMMISSIONER HICKINBOTTOM: Good.

5 Firstly, my remit is absolutely clear. I have Terms
6 of Reference, and I propose to fulfill those Terms of Reference,
7 no more, no less.

8 THE WITNESS: Thank you.

9 COMMISSIONER HICKINBOTTOM: And secondly, today, we're
10 focusing on registered interests. Mr Rawat will ask questions
11 about Members' interests, and it would be helpful to simply
12 respond to those questions, but thank you very much for your
13 statement.

14 THE WITNESS: Thank you.

15 COMMISSIONER HICKINBOTTOM: Mr Rawat.

16 BY MR RAWAT:

17 Q. Mr Malone, can I take you back to the question that I
18 asked. Can you just confirm if you can and just try and answer
19 that question: When were you actually pointed as Minister for
20 Health and Social Development?

21 A. It was between the February 25th and when we were
22 sworn in on March 12. I'm not sure of the exact date.

23 Q. So, as of March 12, that's when you began your role as
24 a Minister?

25 A. Yes.

1 Q. And you've remained in that role since?

2 A. That's correct.

3 Q. As the Commissioner indicated to you a few moments
4 ago, the focus of the current hearings is on interests, and that
5 includes interests held by current as well as former Members of
6 the House of Assembly.

7 Now, I appreciate that you will have other demands on
8 your time, so you may not be following the--every minute of the
9 COI's hearings, but if--I hope you will take this from me: One
10 of the pieces of evidence that the Commissioner has
11 received--and it's undisputed--the current Register of Interests
12 is not open to inspection by the public. A member of the public
13 can't walk in off the street and say "I'd like to see it".

14 A. Well, the Act gives circumstances under which it could
15 be examined.

16 Q. Yes.

17 A. But not open in the Registry.

18 Q. But that is not one of the circumstances. You would
19 have to get a court order in order to see it.

20 Now--and there would have to be ongoing legal
21 proceedings.

22 But the purpose of my question is that we have been
23 told--and the Commissioner has seen--a Register of Interests
24 Bill dated 2021, which intends to make all the Register of
25 Interests open to the public. Is that a measure that you would

1 be supporting?

2 A. Well, in part, because I think that if it's publicly
3 accessible, then that is a measure as I think the Premier has
4 actually indicated, that would be a measure in which I could
5 actually support, in terms of having it publicly accessible.

6 Q. With no disrespect to the Premier, what's important on
7 this question is that we get your view, and I accept that this
8 may be a matter of detail to be worked out, but the question is
9 directed to whether you, in principle, agree with proposal that
10 the Register should be open to the public?

11 A. Well, it's open to the public in terms of having it
12 accessible, yes.

13 Q. And do you accept that that step improves Government
14 accountability and transparency?

15 A. That's correct.

16 Q. Now, as we've established, you assumed office as an
17 elected Member of the House of Assembly on the 12th of
18 March 2006. I can take you--

19 A. 2000 and?

20 Q. Sorry, 2019. I've extended your time in the House of
21 Assembly by several years?

22 A. Yes.

23 Q. But I can take you to the Act, if you need it, but I
24 hope you'll take this from me, that what it places on you, as a
25 Member of the House of Assembly, is firstly a requirement--and

1 this is under section 3--

2 A. Yes.

3 Q. --to provide a Declaration of your interests on the
4 date that you are sworn in. Do you accept that that's an
5 obligation on you?

6 A. Yes.

7 Q. And then that obligation arises again under section 3
8 on every subsequent anniversary of that date.

9 A. That's correct.

10 Q. So, in effect, you, as a new Member to the House of
11 Assembly in 2019, there are four dates in your time before you
12 have to stand for re-election when you will have to submit a
13 Declaration?

14 A. That's correct.

15 Q. The other aspect of the Act to draw your attention to
16 is section 7.

17 A. Um-hmm.

18 Q. Section 7 provides that, within three months of the
19 Due Date, so the 23rd of the March each year, you have not filed
20 a Declaration, then the Act says you are in breach, and the
21 Registrar has to send a report to you--about you to the Standing
22 Committee.

23 A. After the three-month period.

24 Q. After the three months, yes.

25 If after three months--by three months you have not

1 filed your Declaration, a report must follow?

2 A. That's correct.

3 Q. And were these obligations that you were aware of on
4 the day that you were sworn?

5 A. We were informed--I'm still trying to come to grip
6 exactly in what manner we were informed, but yes, I know that we
7 had from the date sworn and a three-month window within which to
8 file this.

9 Q. Well, just to be clear--and again, I'll take you--you
10 don't have a three month window to file this in. Your
11 obligation is to file it on the 12th of March 2019. Were you
12 aware of that obligation on the day that--

13 A. No, I was aware of a three-month window to file it in.

14 COMMISSIONER HICKINBOTTOM: All right, Mr Rawat was
15 going to take you to the statute or provision I think, but I
16 mean, perhaps Mr Rawat, you could take Mr Malone first to
17 section 112.

18 MR RAWAT: Yes.

19 BY MR RAWAT:

20 Q. If you look at the bundles on the table in front of
21 you, Honourable Malone, there should be a bundle which is headed
22 "Constitution and Legislation Bundle". Do you have that?

23 COMMISSIONER HICKINBOTTOM: It's one of the dark
24 bundles in front of you.

25 THE WITNESS: Constitution and Legislation Bundle?

1 BY MR RAWAT:

2 Q. Yes.

3 A. Thank you very much.

4 Q. Now, if you go to--the pages numbers are in bold and
5 the bottom right-hand corner of the page and you'll see that
6 number one on index is the Virgin Islands (Constitution) Order
7 2007?

8 A. Yes.

9 Q. Which, as you indicated to the Commissioner a while
10 ago, you were actually involved in the review process.

11 A. That's correct.

12 Q. That resulted in this Constitution?

13 A. That's correct.

14 Q. Fine.

15 If you go to section 112 in the Constitution, which
16 you will find at your page 53--

17 A. 53. 53 will be right--yes.

18 Q. You should have, if we're on the same page, you'll
19 have a--you'll see that there's a section headed "Register of
20 Interests".

21 COMMISSIONER HICKINBOTTOM: Section 112.

22 THE WITNESS: Section 112. Okay, good.

23 BY MR RAWAT:

24 Q. What section 112(1) provides is: "There shall be for
25 the Virgin Islands a Register of Interests which shall be

1 maintained by a Registrar who shall be appointed or may be
2 removed from office by the Governor acting in his or her
3 discretion".

4 A. Um-hmm.

5 Q. And then (2) provides: "It shall be the duty of any
6 person to whom this section applies to declare to the" Register
7 for Entry--"Registrar", rather, "for entry in the Register of
8 Interests, such interests, assets, incomes and liabilities of
9 that person or of any person connected with him or her as may be
10 prescribed by law".

11 (3) provides: "A person shall make a Declaration
12 under subsection (2) upon assuming the functions of his or her
13 office and at such intervals thereafter being no longer than 12
14 months as may be prescribed by law".

15 And (4): "This section applies to all Members of the
16 House of Assembly, including Ministers, and the holders of such
17 offices except that of Governor as may be prescribed by law".

18 And so, if you look at subsection 112(3) of the
19 Constitution of 2007, what it makes clear there is that there is
20 constitutional obligation upon assuming the functions of your
21 office to make a Declaration.

22 Do you follow that?

23 A. Yes.

24 Q. And so, if I take you--and what you then have to do is
25 make Declarations as prescribed by law thereafter.

1 A. Yes.

2 Q. If I take you to page 59 in the bundle.

3 A. 59.

4 COMMISSIONER HICKINBOTTOM: Yes, being no longer than
5 12 months.

6 MR RAWAT: Yes.

7 BY MR RAWAT:

8 Q. And so, 59 is the Register of Interests Act 2006?

9 A. That's correct.

10 Q. It has been amended on two occasions, one very recent,
11 one that we're all aware of, but the provision that I'm going to
12 take you to has not been amended?

13 A. Sure.

14 Q. And that's section 3 on page 61. Do you have that,
15 Honourable Malone?

16 A. Yes.

17 Q. 3(1) "A Member shall make a declaration in the form
18 set out in schedule 1 within 30 days after this Act comes into
19 force and thereafter on the date on which he assumes the
20 function of his office and on each subsequent anniversary of
21 that date".

22 So, what section 3 does is it relates back to
23 section 112(3) that I showed you of the Constitution?

24 A. Um-hmm.

25 Q. And what it requires, as a Member--of an Honourable

1 Member of the House of Assembly coming into office on the 12th
2 of March 2019 is under (a), on that date, reflecting what's in
3 the Constitution, to declare interests on the very day that you
4 make--that you're sworn into office. And then subsequently what
5 it's done at (b) is taken the interval to be the maximum allowed
6 under the Constitution, which is 12-months, and so for you,
7 every 23rd of March, until this Fourth House of Assembly
8 finishes its--

9 A. Every what? Twenty-third or--

10 Q. Twelfth of March, forgive me?

11 A. The dates are getting--

12 Q. Yes.

13 COMMISSIONER HICKINBOTTOM: It's not important.

14 MR RAWAT: It is important.

15 BY MR RAWAT:

16 Q. But I think I had in mind the date for the 2015 to
17 2019 House, but for you, so that I'm not confusing you, on the
18 12th of March 2019 you had an obligation under the Constitution
19 and under the Act to make a Declaration, and then subsequently
20 it's every year, so those are the first two immediate
21 obligations upon you. Do you accept that?

22 A. Yes, as I say, just as in everything that we do in
23 law, there is a particular period. There is a three-month
24 period, and it shows--

25 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,

1 Mr Malone, and I will let you complete what you want to say if
2 you wish to still wish to say it. We haven't come to section 7
3 yet. We're just looking at section 112. Just look at section
4 112.

5 THE WITNESS: I know, but what I say constitutes a
6 breach is important, isn't it?

7 COMMISSIONER HICKINBOTTOM: Well, yes, looking at 112,
8 the obligation is to make a Declaration on the day you're sworn
9 in. That's what 112 says; if you don't make a Declaration, you
10 are in breach of that obligation.

11 THE WITNESS: I'm not in breach of the Act. The Act
12 shows me--

13 COMMISSIONER HICKINBOTTOM: I'm sorry, we'll come to
14 the Act. Let's look at the Constitution because the
15 Constitution is really quite important. Section 112 requires a
16 Member to make a Declaration on the day he's sworn and
17 thereafter at intervals of no more than one year. If the Member
18 fails to do that, do you accept that the Member is in breach of
19 the Constitution?

20 THE WITNESS: No, I do not accept they're in breach of
21 the Constitution.

22 COMMISSIONER HICKINBOTTOM: Right.

23 THE WITNESS: Because it's actually prescribed in the
24 Act, which is the Register Act exactly the particular period.
25 The Act does not say that if you don't do it on that specific

1 date, that you're in breach of the Act.

2 COMMISSIONER HICKINBOTTOM: So, do you say that the
3 Act overrides the Constitution?

4 THE WITNESS: I would not say that at all because the
5 Act allows--the Constitution allows the Act to actually state
6 the particular period in which it can be done.

7 COMMISSIONER HICKINBOTTOM: We're going to legal
8 submissions on this this afternoon, Mr Malone.

9 (Overlapping speakers.)

10 THE WITNESS: That will be picked up then.

11 COMMISSIONER HICKINBOTTOM: It will be picked up then.

12 THE WITNESS: Fine.

13 COMMISSIONER HICKINBOTTOM: But your position is, is
14 that if you are late, if you're in breach of the obligation in
15 section 112 and section 3, you're not in breach of the
16 Constitution or the Act?

17 THE WITNESS: That's correct.

18 COMMISSIONER HICKINBOTTOM: Thank you.

19 BY MR RAWAT:

20 Q. I'll take you to section 7.

21 A. Yes.

22 Q. Which is your page 64 in that bundle.

23 Do you have that?

24 A. 64, right.

25 Q. And it's 7(a) that we need to draw your attention to.

1 A. Yes.

2 Q. Which says: "Where a Member fails to make a
3 Declaration within a period of three months from the date on
4 which the duty to make that declaration accrued, the Member
5 shall be in breach of the provisions of this Act".

6 A. That's correct.

7 Q. "And the Registrar shall within 14 days of the
8 knowledge of such breach, submit a report of such breach to the
9 Committee". And that's a Standing Committee charged with
10 consideration of the Register of Interests?

11 A. That's correct.

12 Q. So, at least in relation to section 7, you accept
13 that, if you failed to make a Declaration within a period of
14 three months from the date in which it's due, you are in breach
15 of the Act?

16 A. That's correct.

17 Q. And do you accept that, in those circumstances, when a
18 Registrar has knowledge of such breach, then that Registrar is
19 mandated to report to the Standing Select Committee?

20 A. That's correct.

21 Q. Could we look at the dates on which you filed your
22 Declarations, please.

23 A. Okay.

24 Q. You can put the Legislation Bundle to one side and
25 return to the bundle that relates to you. And it may be you've

1 already had a look at these papers. So, if we go to 101 in that
2 bundle--excuse me.

3 If I explain, what I'd like to do, first of all,
4 before we get into the details--

5 A. Yes.

6 Q. --of what you declared, I'd just like to look at the
7 dates on which things were filed.

8 Now, page 101, I'm going to suggest, is your 2019
9 Declaration. We can see that that's got your name and your
10 constituency is recorded as "Territory at large".

11 Is that in your handwriting?

12 A. That's correct.

13 Q. You can see that it's stamped by the Registrar, and
14 she's written within the date the 7th of May 2019?

15 A. That's correct.

16 Q. If you go, please, Honourable Malone, to page--I think
17 it is, 113. It should be the last page of this form. You have
18 attached--you've got an appendix to it, but--

19 A. Sure.

20 Q. I don't need to go to that in a moment, but can you
21 confirm that that carries your signature?

22 A. That's correct.

23 Q. And it's dated, isn't it, the 30th of April 2019?

24 A. That's correct.

25 Q. And so is that date within your handwriting?

1 A. Yes, um-hmm.

2 Q. Now, was the form sent to you by the Registrar?

3 A. Yes.

4 Q. And did she in advance of the Due Date, which is 12th
5 of March 2019, send you a letter notifying you of your
6 obligation to file by that date?

7 A. That is what I'm trying to find where those
8 correspondence were, but it was given to me, and it was filled
9 in at this time.

10 Q. You say you're trying to find those correspondence.

11 A. That very first one.

12 Q. Right.

13 Do you have some correspondence with the Registrar
14 amongst your papers?

15 A. Yeah.

16 As you have determined by all the Witnesses, she was
17 quite diligent in her work.

18 Q. I think the one thing that all former and current
19 Members of the House of Assembly appear to be united on is that
20 not only was she quite diligent, I think that borrow The
21 Honourable Fraser's words, she was assiduous--

22 A. Yes.

23 Q. --in notifying Members of their obligation and also
24 sending them reminder letters. Did you get correspondence from
25 her of that sort?

1 A. That's correct.

2 Q. And have you retained that correspondence?

3 A. My office has it, yes.

4 Q. Right.

5 So, if the Commissioner considers it necessary, you
6 would be willing to provide copies of that correspondence--

7 A. Yes, once it's necessary because they were sent, and I
8 was not exempt from those.

9 Q. I'm sorry you were not?

10 A. I was not exempt from having these notices sent to me.

11 COMMISSIONER HICKINBOTTOM: Just to--I would find it
12 useful because most witnesses--well, the Witnesses paint a
13 general picture of, in your words, diligence on the Registrar's
14 part both before the Due Date and thereafter in the case of what
15 she termed "delinquency", that is non-filing, so but it would be
16 useful if you could please--

17 THE WITNESS: To have whatever correspondence she had
18 sent as it relates to remind us?

19 COMMISSIONER HICKINBOTTOM: Well, yes, or, indeed, a
20 notice by her that the Due Date is coming up because that's the
21 evidence of other witnesses.

22 MR RAWAT: If I could ask Ms Peaty to make a note of
23 that, I think she's already doing it, so it's all correspondence
24 between yourself and the Registrar that would be helpful.

25 COMMISSIONER HICKINBOTTOM: Thank you very much.

1 BY MR RAWAT:

2 Q. Now, 30th of April 2019, the date on which this
3 Declaration was due was the 12th of March 2019.

4 A. Um-hmm.

5 Q. So, do you accept that you did not file by the date
6 that's mandated under section 3--

7 (Overlapping speakers.)

8 A. I didn't file on the 12th of March, but I filed on the
9 30th of April.

10 Q. Yes, we can all see that, but do you accept that you
11 did not file by the date that's mandated by section 3 of the
12 Act, which is the 12th of March 2019?

13 A. I'm not sure how many ways I can say this. I filed it
14 on April 30th.

15 Q. Yes.

16 A. 2019.

17 Q. So, you accept you did not file by the date mandated
18 under section--

19 A. We have a three-month period to file, and we agreed
20 that that would be taken up in legal arguments later.

21 Q. Do you accept that you did not file by the date
22 mandated under section 112 of the Virgin Islands (Constitution)
23 Order 2007?

24 A. The Constitution allows for the Act to say the period
25 in which we can do, so I accept that it was not filed on

1 March 12th. It was filed on April 30th.

2 COMMISSIONER HICKINBOTTOM: I've got the point,
3 Mr Malone.

4 THE WITNESS: Yes.

5 COMMISSIONER HICKINBOTTOM: Thank you very much.
6 Could you just help me on this, and I don't wish you to make a
7 legal submission because those will be made by lawyers later on.

8 THE WITNESS: I will do it at 4:30.

9 COMMISSIONER HICKINBOTTOM: And they'll do it whenever
10 they do it, so I'm not asking for a legal submission, but you
11 said that section 112 allowed the Act to set a date by which the
12 Declaration was due. This is page 53 of the Constitution.

13 THE WITNESS: I would allow my lawyers to try to
14 defend that particular situation.

15 COMMISSIONER HICKINBOTTOM: Right. So, you don't
16 refer to any particular part--

17 (Overlapping speakers.)

18 THE WITNESS: No, I read No. 3 that you read from the
19 Constitution just not too long ago, but any further--any further
20 submittals on this will be taken up by law.

21 COMMISSIONER HICKINBOTTOM: Fine.

22 THE WITNESS: If I'm wrong, I'm wrong.

23 COMMISSIONER HICKINBOTTOM: That's fine. Thank you
24 very much.

25 MR RAWAT: Thank you.

1 BY MR RAWAT:

2 Q. If we go now to page 71 in the bundle that we were
3 just looking at.

4 A. Yes. Sorry, which bundle? This is Carvin Malone's
5 bundle?

6 COMMISSIONER HICKINBOTTOM: Yes.

7 BY MR RAWAT:

8 Q. Yes.

9 Now, again, just to confirm, that's your name in your
10 handwriting--

11 A. Yes, that's correct.

12 Q. We can both see that it's stamped "Registrar of
13 Interests". She has written 19th of April 2021 within the
14 stamp, hasn't she? Do you see that?

15 A. That's correct, yes.

16 Q. But on top as well is in manuscript 2020 and then
17 initialed. Is that in your handwriting?

18 A. That's correct.

19 Q. And that's are your initials?

20 A. That's correct.

21 Q. So, what you're saying is, if we're right, is that's
22 your 2020 Declaration?

23 A. That's correct.

24 Q. Now, if you go, please, to page 91, last page of that
25 Declaration, does it carry your signature?

1 A. That is correct.

2 Q. And is the date underneath that signature written in
3 your hand?

4 A. That's correct.

5 Q. And what date have you written?

6 A. March 8, 2021.

7 Q. Right.

8 So, if that's your 2020 Declaration, it was due on the
9 12 of March 2020, so it was signed and returned to the Registrar
10 a year after--almost a year after it was due?

11 A. That's correct.

12 Q. So, you did not file by the 12th of March, did you?

13 A. No, I did not.

14 Q. And on your interpretation of section 7, which allows
15 you, you suggested to the Commissioner, a grace period of three
16 months--

17 A. Yes, that's correct.

18 Q. --you were way beyond the grace period, weren't you?

19 A. Yes, with reasons.

20 Q. Well, it may assist you that the Attorney General who
21 not only acts in her own or has participant status in her own
22 regard, but also acts on your behalf, when she gave evidence
23 this time last week, confirmed that the Act doesn't offer a
24 defense of reasonable excuses, so can I just before we get
25 into--I'll give you an opportunity to explain the circumstances,

1 Mr Malone. It's only fair to do that.

2 A. Yes, please, thank you.

3 Q. But the point is that leaving aside your
4 interpretation of section 3 and section 7--

5 A. Yes.

6 Q. --you were in breach of the Act, weren't you?

7 A. Yes, by virtue of this, yes.

8 Q. And, therefore, you were in breach of the
9 Constitution?

10 A. Well, the Constitution gives the Act, and if you're
11 outside of this, then it could be deemed that.

12 Q. But do you consider yourself to have breached the
13 Constitution--

14 (Overlapping speakers.)

15 A. Myself and so forth. So, in breach of the
16 Constitution, I didn't go in in that particular depth--what I
17 saw here in the Act that by virtue of 7, 3 I think it was, that
18 I'd be in breach of the Act itself.

19 Q. We took you--then the Commissioner has taken you back
20 to section 112--

21 A. Yeah. Again, that is a point I would rather my
22 lawyers this afternoon that particular thing. I--we, based on
23 section 7 of the Act, I'm in breach of the Act, so.

24 Q. But you're not willing--you're not able--

25 (Overlapping speakers.)

1 Q. I appreciate the point that you're saying that your
2 lawyers will make legal submissions--

3 A. That's correct on that point.

4 Q. Pending those legal submissions, you are not able to
5 say whether or not you're in breach of the Constitution?

6 A. Yeah, because I did not do any research, and I did not
7 have it as to whether or not the Constitution gives a particular
8 determination as it reached to the breach of the Constitution.
9 Breach of the Constitution is obviously a serious act, so the
10 whole thing is that, when it comes to breach of the Act, this
11 particular Declaration, Chapter 7, there is no getting away from
12 Chapter 7--73, I think it was, as it relates to ways in which
13 you can breach the--

14 COMMISSIONER HICKINBOTTOM: And I don't want to put
15 words in your mouth, and the other thing I don't want to do is
16 to rob you of the--any legal submissions which are coming later.

17 THE WITNESS: That's correct, yes.

18 COMMISSIONER HICKINBOTTOM: But from what I
19 understand, you accept that a breach of the Constitution--when a
20 right or obligation is embedded in the Constitution, you accept
21 that a breach of that obligation is more serious than the breach
22 of some other act? And if you don't agree, do say so.

23 THE WITNESS: Well, no, because I wouldn't--you know,
24 law has its fine words and so forth, is, was, could, would--all
25 has consequences.

1 COMMISSIONER HICKINBOTTOM: But you're say--

2 THE WITNESS: And it relates to the Act. The Register
3 of Interests, it clearly states that if you don't file within a
4 three-month period, then you're in breach of the Act.

5 BY MR RAWAT:

6 Q. So, your approach to filing your Declarations was that
7 you--and this is your contemporaneous approach, that you always
8 had a three-month period--

9 A. Yes.

10 Q. --in order to get it sorted out?

11 A. That's correct.

12 Q. I see. And in this case--

13 A. And given the chance for 2020.

14 Q. Yes.

15 A. I would be prepared for this.

16 Q. I was just about to give you the chance.

17 A. Yes.

18 Q. But the point is that in relation to 2020, as you've
19 accepted, you were very close to being almost a year late with
20 it?

21 A. Yes.

22 Q. Now, the reasons, you said you had reasons for why it
23 was so late. Would you like to give those to the Commissioner?

24 A. Oh, please. Thank you.

25 The entire world was placed on I think it was March

1 11th of 2020 in a--faced with a Global pandemic. In the Virgin
2 Islands, we started to look at the committees that would be
3 charged with leading this particular pandemic, and the Ministry
4 of Health, based on the Public Health Act of 1977, and two other
5 Acts of 2012, I think, and 2013, we had to basically go in and
6 shepherd the country through this pandemic.

7 And one of the first challenges was who is going to
8 lead this? Was it going to be the Governor's Office under the
9 Disaster Management Act or was it going to be the Public Health
10 Act? And once we got through that and it was determined that
11 the Public Health Act of 1977 would be the guiding force as it
12 relates to this, we sat unawares.

13 We had potential disruption of lives, likelihoods, are
14 and all attention focused on this.

15 In fact, in 2020, there were 94 sittings of the
16 particular Cabinet. There were extraordinary sittings of the
17 House that were actually conducted. And this was after the
18 Health Emergency Operating Center itself had numerous sittings
19 in order to come before Cabinet in order to get this done.

20 So, not that there was any deliberate attempt not to
21 file this, but the fact is that these circumstances played a
22 major part and cannot be overlooked in terms of what it is.

23 COMMISSIONER HICKINBOTTOM: In terms of the pandemic,
24 Mr Malone, certainly we all understand the enormous effects that
25 the pandemic had on the Government here and everywhere else, but

1 particularly here. The evidence so far is that the pandemic did
2 not put the Registrar off her stroke. She still reminded
3 Members of the House of their obligation under section 3 and
4 section 7, and she still sent out a notice before the Due Date
5 and reminders after the date.

6 Is that your recollection, too?

7 THE WITNESS: Well, two or three things. The
8 Notices--and it will be borne out as to whether any were sent
9 between March and when they were due within that 30--that 90-day
10 period--April, May, June--I'm not sure if any were received in
11 that 90-day period. After we were able in June to begin to
12 accept the first set of residents and belongers and nationals
13 back into the country, it began to open up a bit more, but it
14 was not until August or September that we opened it up to work
15 permit holders and to other persons, and not until December were
16 we able to open it up to international travelers, you know, and
17 so forth. So, there was a gradual approach in doing this.

18 And all said, we had the task of making sure that all
19 of the infrastructure for handling this pandemic was put in
20 place. The swabbing centers, the laboratory efficiencies, the
21 persons to handle the airport, to handle, you know, the
22 different things.

23 COMMISSIONER HICKINBOTTOM: I understand that. I
24 understand the enormous strain that the pandemic put on the
25 Government and, indeed, the people here in the BVI and also you

1 as the Minister of Health. I understand all of that. But the
2 narrow question is: Did the Registrar continue to send out
3 reminders? I think your answer is you don't know, which is--

4 THE WITNESS: No, no. My answer is she did continue,
5 but I'm saying I do not know if they were sent between that
6 March--

7 COMMISSIONER HICKINBOTTOM: Okay--

8 THE WITNESS: And that June period and so forth. I
9 would bet you that she did not send it between the March and
10 June section because the entire country was closed down; the
11 first instance, it was three to four-week period, and then we
12 lift it, and we had to go back into it.

13 COMMISSIONER HICKINBOTTOM: That's clear. Thank you.

14 BY MR RAWAT:

15 Q. I think also to be fair to the Registrar, there is
16 actually no obligation on her in law to send you a single
17 letter.

18 A. Well--

19 Q. She's not--it's important--

20 A. I'll say this--

21 (Overlapping speakers.)

22 Q. She's not a witness here.

23 A. Yes.

24 Q. I think for the record it's important to be clear that
25 when she sent Members notices, which, on the evidence that has

1 been shown it does follow that she sent notices before the Due
2 Dates to everyone, and she did that every year to everyone.

3 A. Yes.

4 Q. And that once they had missed that date, she would
5 send them reminders. She did not send them reminders talking of
6 a grace period, but she would just repeatedly send people
7 reminders asking them to make good their default.

8 And would you accept, therefore, that it's likely that
9 during your course of your time as Member of the House of
10 Assembly, you have received notices from the Registrar, and you
11 have received reminders from the Registrar?

12 COMMISSIONER HICKINBOTTOM: My understanding of
13 Mr Malone's answer is that he does accept that as a general
14 proposition but not necessarily for the period from March 2020
15 for three months.

16 THE WITNESS: Yes.

17 COMMISSIONER HICKINBOTTOM: Is that correct?

18 THE WITNESS: Yes.

19 COMMISSIONER HICKINBOTTOM: Thank you.

20 THE WITNESS: And given the extraordinary
21 circumstances of the Global pandemic of which the world had not
22 seen for, say, save 1921, maybe.

23 COMMISSIONER HICKINBOTTOM: We're just checking on the
24 reminders that the Registrar had sent.

25 THE WITNESS: Yes.

1 Q. If you could go, please, do you have a bundle in front
2 of you which I think may be headed something like "Governor's
3 Disclosure".

4 A. "Disclosure from Governor".

5 Q. Yeah.

6 Now, I'm going to take you to some letters which are
7 not addressed to you but are addressed to other Honourable
8 Members, and I'd be grateful if you wouldn't read out the name
9 of that Honourable Member.

10 But if you go in that, first of all, to page 48, you
11 should have a letter headed at the top "10th of March 2020".

12 A. That's correct.

13 Q. And if you keep your thumb at that page, please--

14 A. Yes.

15 Q. --Honourable Malone, and just flag up page 75 in the
16 bundle.

17 Do you have that?

18 A. Yes.

19 Q. That's a date--also dated 10th of March 2020 addressed
20 to a different Member of the House of Assembly.

21 A. Sure.

22 Q. Neither of them is you, but they are both in exactly
23 the same words.

24 A. Yes.

25 Q. And they say: "On the 12th of March you took an oath

1 and assumed the functions of your office as a Member of the
2 House of Assembly. The 12th of March 2020 marks the first
3 anniversary as a Member of the Fourth House of Assembly of the
4 Virgin Islands. According to section 3 of the Register of
5 Interests Act of 2006, hereunder set out for your ready
6 reference, a Member is required to file a Declaration of
7 Interests on each subsequent anniversary of taking office".

8 And the Registrar then sent out section 3. The letter
9 continues: "Enclosed herewith is a Declaration form for your
10 completion and return to this office at your earliest, bearing
11 in mind that the Declaration is due on 12th of March 2020".

12 A. Yes.

13 Q. And she then continues to give each Honourable Member
14 a date at which it should arrive at her office for
15 administrative purposes?

16 A. Yes.

17 Q. So, I would suggest that on those two identical alerts
18 it's likely that the Registrar sent the same letter on the 10th
19 of March to every Member of the House of Assembly?

20 A. It goes to show exactly what I said because the
21 Declaration of the Global pandemic and when we ourselves
22 closed--had to for the sake of lives had to close the country,
23 that between that particular period in which the pandemic was
24 declared, when had to close the borders, close the country and
25 go into 24 hours lockdown, and it was during the 12th--this was

1 sent--well, it was dated at least for the 10th of March.
2 Whether it was sent will be a different story, but it was dated
3 for the 10th of March. And just like how you guided me to when
4 it was dated versus when it was stamped, it could be a different
5 issue.

6 Q. Yes.

7 A. I'm not going to argue the point, but you cannot
8 lightly the fact that the entire country had to be closed as a
9 result of saving lives and livelihoods.

10 Q. If I could come back to you on that?

11 A. Yes.

12 Q. If you turn over to 49 in that bundle, a letter from
13 the 3rd of June 2020 addressed to another Honourable
14 Member--please don't say the name, but reminding that Member
15 that they had Declarations and interests that are overdue.

16 And if you go to page 77, another reminder that, as
17 just the one we just showed you again dated the 3rd of June 2020
18 and again reminding a different Honourable Member that they were
19 overdue with their Declarations.

20 And if you leaf through--yes, we don't need to read it
21 out, but it's 78, 79, the Registrar is sending letters reminding
22 Honourable Members of their obligations.

23 You said the 11th of March 2020 was the date on which
24 there was--

25 A. Yeah, I'm try to remember if it was the 11th or 15th,

1 but it was mid-March.

2 Q. Can I just press you a little bit about that because
3 other Honourable Members have mentioned lockdowns and could not
4 assist with the precise date as which the BVI was first locked
5 down?

6 A. You could research you will find that, but whether it
7 was the 11th or 15th before the evening is out, we will get the
8 exact date.

9 Q. Yes, thank you. That would be helpful because, in
10 fact, a Google search didn't--

11 A. It didn't. Fine. I have it. I rather forget--

12 Q. If you could, perhaps in a letter to the Commissioner,
13 just set out the day on which the first lockdown was imposed and
14 when it was relaxed or removed.

15 A. May I ask a question?

16 COMMISSIONER HICKINBOTTOM: Yes.

17 THE WITNESS: There are two dates, two sets of dates
18 you referred me to. This is in the bundle coming from
19 the--Disclosure from the Governor. Did Members--did Members
20 assert--agree that they had received these?

21 COMMISSIONER HICKINBOTTOM: I think generally, the
22 picture is that Members fully accepted and often proffered the
23 fact that Mrs Romney-Varlack sent reminders throughout the
24 year--

25 THE WITNESS: Sent--

1 COMMISSIONER HICKINBOTTOM: As usual.

2 THE WITNESS: Yes.

3 But as relates to these two, did they specifically
4 indicate that they had received these two?

5 BY MR RAWAT:

6 Q. Well, I don't want to--I think it's best not to
7 comment--

8 A. Okay, fine.

9 Q. Their evidence is recorded in the Transcript.

10 I think the Commissioner's point is that--the reason I
11 wanted to take you to those was not in relation to the
12 particular conduct of those Members, but rather about the
13 approach--their illustratively approach that the Registrar took
14 even during the pandemic.

15 Can I move on before we finish your latest Declaration
16 which was kindly provided by your legal representatives this
17 morning, and that's your 2021 Declaration, which is not going to
18 be in the bundle. It's going to be loose-leaf.

19 A. Sure.

20 Q. Right. So, let's just get the dates of that into the
21 record.

22 Again, front page is your name and your constituency
23 in your hand, isn't it?

24 A. Yes, that's correct.

25 Q. The Registrar has stamped it, and the date is--her

1 handwritten date of receipt is a little difficult to--the month
2 is difficult to decipher, but it might be 19th of April 2021.
3 But certainly what you have written at the top and initialed is
4 the date 2021, haven't you?

5 A. That's correct.

6 Q. Now, if you go to the last page--well, the last page
7 of the document and not your attachment, the date that carries
8 your signature?

9 A. Yes.

10 Q. Do you have that?

11 A. Yes.

12 Q. Confirm your signature, please. That's your
13 signature?

14 A. Yes, that is my signature, and the date on it is
15 March 8.

16 Q. So, you filed your 2021 Declaration at the same time
17 as you filed your 2020?

18 A. That's correct.

19 Q. Now, taking your 2020 Declaration as the example, I
20 think you--your threshold of acceptance is that that's in breach
21 of section 7, isn't it?

22 A. 2020, you mean?

23 Q. Yes.

24 That's the one thing we can agree on?

25 A. That's correct.

1 Q. That's in breach of section 7?

2 A. Well, for the fifth time, yes.

3 Q. Well, for the first time, then, has a report been
4 written about you to the Standing Select Committee?

5 A. Well, I'm not a Member of that Committee, so I can't
6 say or actually affirm or deny.

7 Q. Would you expect the Registrar to write a report about
8 you to the--

9 A. Based on it and so forth, so yeah.

10 Q. And there's no reason that you can dispute--she would
11 be perfectly justified to write a report about you to the
12 Standing Select Committee, wouldn't she?

13 A. Well, we kept her safe enough to be able to.

14 Q. I'm sorry?

15 A. We kept her safe to be able to write the Report.

16 Q. I'm sure she's very grateful at that.

17 Did you know who chaired that Committee?

18 A. The Members actually have indicated the Chairman of
19 that particular committee, and I think The Honourable Premier
20 Andrew Fahie.

21 Q. When did you find out that The Honourable Premier
22 chairs that Committee?

23 A. Well, sometime in 2019 there were a series of select
24 committees of the House, and membership were appointed for the
25 select committees.

1 Q. Was that when you found out that The Honourable Andrew
2 Fahie chaired that Committee, or had you found that out more
3 recently?

4 A. Well, they were all named. They were all given to us.
5 At the end of the day. I was more concerned with the ones I
6 chaired and were a member of.

7 Q. Appreciate. My question is not a trick one. When did
8 you find out--

9 A. 2020 was extraordinary. 2019 was extraordinary, but
10 it need not come into this record and so forth. He is the Chair
11 of it.

12 Q. Well, did you find out that he was the Chair of it in
13 2019?

14 A. Well, when it was actually established.

15 Q. That's when you found out that he was the Chair of the
16 Committee?

17 A. Whether it's September-October, I can't say which
18 month, but when they were named, the Service Committee, the
19 Register of Interests Committee, the Youth Parliament Committee,
20 the Standing Orders Committee, all these committees--

21 COMMISSIONER HICKINBOTTOM: You will have known when
22 it was established; when the Standing Select Committee was
23 established in 2019, you would have known its Constitution.

24 THE WITNESS: Well, yeah because we were all--we were
25 all--we were all actually made Members, some Chairpersons, some

1 Members of different committees.

2 BY MR RAWAT:

3 Q. Go to page 8 in the bundle, the Carvin Malone bundle,
4 please.

5 A. Carvin Malone. Page 8.

6 Q. This is a letter 19th of February 2021.

7 Do you have that?

8 A. Yes.

9 Q. And it's addressed to you at the House of Assembly.

10 And it concerns the Register of Interests Act 2006 and

11 Declarations under that Act. If you go, please, to page 9.

12 A. Page 9.

13 Q. You were asked there a number of questions. The first
14 is the date and content of each Declaration of Interests you
15 made at any time during your tenure as a Member. The second is:
16 "Irrespective of any such Declarations you may have made, the
17 information and documents"--

18 A. Which one are you reading from?

19 Q. If you see, you should have a page 9, a series of
20 numbered items on the page?

21 A. Yes.

22 Q. Do you have those? That's what I'm reading out to
23 you?

24 A. Yes.

25 Q. So, there were three requests made in that letter.

1 I'm just going to summarise them. So, the first request is to
2 give to the Commissioner the date and content of each
3 Declaration of Interests you have made at any time during your
4 tenure as a Member pursuant to your obligations to make such
5 Declarations under the 2006 Act.

6 Do you have that?

7 A. Yes.

8 Q. The second request was: "Irrespective of any such
9 Declarations you may have made, the information and Documents
10 that you would provide in such a Declaration of Interests".

11 And the third request was: "If during your period of
12 appointment as a Member, you failed at any time to comply with
13 your obligation to make such a Declaration pursuant to section
14 3(1), in respect of each such failure, a full explanation as to
15 why you did not make such Declaration and what, if any,
16 sanction, admonishment, direction or other adverse consequence
17 will result".

18 Now, your response to that is found at page 11. And
19 you wrote--the Commissioner had asked for a reply by the 26th of
20 February 2021. You wrote on 11th of March 2021 acknowledging
21 receipt of the letter, and you then continue: "My office seeks
22 to support the Commission of Inquiry by providing the necessary
23 information/documents that will allow a thorough and fair
24 inquiry. Please accept my apologies for the delay and
25 acknowledge receipt of the above-mentioned correspondence".

1 What didn't accompany the letter was the necessary
2 information and documents to allow a thorough and fair inquiry.
3 Was there a reason you didn't feel able to give any information
4 to the Commissioner at that point in time?

5 A. Not that I would like to offer any excuse on that and
6 so forth. It clearly was one in which whatever details were
7 given, I was of the opinion that the Response Unit may have--may
8 have actually dealt with it. Maybe. I'm not sure to the
9 exact--

10 Q. I'm sorry to cut across you. Finish your answer, and
11 then I will ask you one question.

12 A. Yes.

13 No, there is none that I can remember now as to
14 exactly when this in terms of the reasons for not giving the
15 particular Declaration. However, the Response Unit was charged
16 to looking at the--you know, taking the information and then
17 doing this, because I remember one of the amendments to the Act
18 was to allow you to get all of the details that we have.

19 Q. That's quite right, but it didn't require amendment of
20 the Act for you to explain to the Commissioner that you'd missed
21 your 2020 deadline by almost a year, did it?

22 A. No.

23 Q. And it didn't require an amendment of the Act by the
24 House of Assembly for you to say, well, actually, in answer to
25 request no 2, here is what I would provide to the Registrar?

1 A. No.

2 Q. Right. Well, can we move on?

3 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat, when
4 you said that the IRU was charged to respond, did you think they
5 would respond or might respond to this?

6 THE WITNESS: Well, that was probably my impression.
7 I have no specific response now as to exactly why that section
8 of it and so forth. I know that we were quite keen on making
9 sure that whatever documents you had unrestricted could be
10 actually furnished and so forth. I could have gone to length in
11 terms of the very same item in terms of the pandemic and how we
12 had done it because it was a critical time frame for 2020 that
13 we were made upon, so the full explanation could have been
14 exhaustive.

15 COMMISSIONER HICKINBOTTOM: No, I just wanted to know
16 what part you thought that the IRU might play.

17 THE WITNESS: No, I'm saying as relates to that and so
18 forth, it is one in which we could have explained because there
19 is no makeup issues in there. It was one in which not as an
20 excuse, but the fact is that we were in the trials of a pandemic
21 of which 2020 was doing it.

22 You see, I was always going to be keen in terms of
23 following the particular guidelines because this moment had to
24 come, so we had to make sure that we followed whatever it is
25 that needed to be done.

1 BY MR RAWAT:

2 Q. Okay. If you turn to page 12, please, on the 10th of
3 March 2021, you were written to again by the Commission, and if
4 you look at the second paragraph, please, Mr Malone, what it
5 reads is that: "The Commissioner has instructed me to write to
6 you as a Member of the House of Assembly of the British Virgin
7 Islands with an open invitation to provide him with any
8 information and/or documentation that you have in your control
9 or possession, which you consider might be relevant to COI's
10 Terms of Reference. Alternatively, if you consider you do not
11 hold any such information and/or documentation, the Commissioner
12 would invite you to indicate the same".

13 Now, if you turn to page 14, please, your response to
14 that letter is dated the 11th of March 2021, and so it's written
15 on the same day as you answered the 19th of February letter, but
16 what you write here is: "I hereby acknowledge receipt of your
17 letter dated 10th of March 2021 in regards to the above subject.
18 My office seeks to support the Commission of Inquiry by
19 providing the necessary information and documents that will
20 allow a thorough and fair inquiry".

21 Now, it was not accompanied by any information or
22 documentation. What necessary information and documents did
23 have you in mind at that point in time that your office would be
24 providing?

25 A. Well, as it relates to--was this in terms of the

1 Registrar of Interests that is writing?

2 Q. Yes.

3 I want to be fair to you. What I should draw your
4 attention to is also a letter you wrote on the 15th at page 15,
5 so you then wrote. In subsequent answer to--on the 12th of
6 May 2021, referring back to that letter I just showed you of the
7 10th of March it said that you "do not hold any information
8 and/or documentation that is in my control or possession which
9 might be relevant to the Commission of Inquiry's Terms of
10 Reference".

11 A. Yes.

12 Q. So, I think I should be more specific in my question.

13 You referred now to correspondence that you hold with
14 the Registrar of Interests, from the Registrar of Interests.
15 Why didn't you think that that might be relevant to the
16 Commissioner?

17 A. You mean in terms of notices?

18 Q. Yes.

19 A. Well, in terms of the Notices and so forth, I said one
20 of the--I am not sure as to the exact timing. The Notices was
21 sent out to every Member, so I'm not sure--I was not exempt from
22 it. So, if I erred in terms of not sending or referring the
23 Notices sent to the Commissioner, well, I accept that as one in
24 which I erred.

25 Q. So, there wasn't any particular reason--

1 A. No, no, not at all.

2 Q. --you decided not to provide it at that time?

3 A. Not at all.

4 Q. It's moving on to a slightly different topic. I'll
5 take you to one of the forms and what you completed in the form.

6 A. Yes.

7 Q. Can I also give you some context.

8 This is an area--

9 A. Which page?

10 Q. We're going to page 71 in the same bundle.

11 But just to assist you, what my questions are
12 primarily directed towards is your understanding as a Member of
13 the House of Assembly of what you were exactly expected to
14 provide--

15 A. Yes.

16 Q. --in terms of information and interests. So we can
17 stick to, I hope, one form for much of the time, and what we
18 have is your 2020 form which is in the bundle at page 71.

19 A. Yes.

20 Q. Now, I've asked this question of more than one
21 witness, but can you see that there is a Preamble to the form
22 which says "The main purpose of the Register of Interests is to
23 provide information of any pecuniary interest or other material
24 benefit which a Member receives which might reasonably be
25 thought by others to influence his or her actions, speeches or

1 votes in the House of Assembly, or actions taken in his or her
2 capacity as a Member".

3 A. Yes.

4 Q. Do you have it? You're there, are you?

5 Now--and then you refer to Explanatory Notes in each
6 section of the form.

7 Now, you filled in the form three times?

8 A. Yes.

9 Q. What did you understand to be the purpose of the form?
10 What were you actually being asked to do as a Member of the
11 House of Assembly?

12 A. For myself and any member of my close family: My
13 wife, my children, my child.

14 Q. I think you're going back to the letters. You can put
15 that bundle to one side.

16 A. No, I want to come back to it because I said--

17 Q. That's a letter addressed not to you, but if--

18 A. I know, but what I'm saying--

19 (Overlapping speakers.)

20 A. --the letters was actually addressed to me also, and
21 it will be part of my bundle.

22 Q. Yes. It's part of information you have yet to provide
23 to the Commissioner, and that's why we can't ask you about it.

24 A. I know that.

25 Q. But let's go to page 71 and ask about your form and

1 what you understood it to be.

2 A. Yes.

3 Q. Now, you said your wife and child. But can you
4 clarify, what were you being asked to provide in terms of
5 information?

6 A. Well, information, it was actually in the guideline
7 sent to us by the Registrar, so she had asked for information
8 concerning your immediate family.

9 And in the guidelines she had asked over and over for
10 information as it relates to myself and my spouse or my
11 children.

12 Q. Now, you've referred to the guideline. Go to page 83,
13 please. This is part of a form. It's the section on overseas
14 visits. We don't need to focus on that. What I want to draw
15 your attention to is the Explanatory Note at the bottom because
16 you see it refers to a Guidance Pamphlet on Registration and
17 Declarations of Members' Interests.

18 Do you have that?

19 A. Yes.

20 Q. Is that what you're referring to when you say--when
21 you speak of "guidelines"?

22 A. No. I'm referring to the letter that she had sent to
23 us.

24 Q. Okay. Before we leave that topic, in your time as a
25 Member of the House of Assembly, have you ever been given a

1 guidance--a guidance pamphlet?

2 A. Not that I remember.

3 Q. In completing your form, have you ever felt that you
4 needed to go and get advice from anyone about what was required
5 to be put on the form?

6 A. Not particularly, no.

7 Q. Now, you say that this is--there were guidelines in
8 letters from the Registrar.

9 A. That's correct.

10 Q. Is that in letters that you still hold in your office?

11 A. Yeah. Those are--those are some that will be--

12 Q. Right.

13 A. Guidelines in terms--she was specific as was in the
14 letters that she showed me exactly what she expected.

15 Q. So, from recollection, I appreciate you do not have
16 the correspondence in front of you at the moment, so we need to
17 be careful. But from your recollection, doing the best that you
18 can, were her letters of a similar sort to the ones that I
19 showed you, the ones addressed to you?

20 A. Yes.

21 Q. And that's what you took to be guidelines?

22 A. Yes.

23 Q. Now, you say wife and child. Did you--were you under
24 the impression that you had to declare interests that belonged
25 to yourself, your wife and adult children or--

1 A. Adult child.

2 Q. Adult child, I see.

3 Now, if you go, please--let's go back to page 71,
4 please, Mr Malone, and just go to number 2. Now, in each of
5 your forms, what you've done is annexed an attachment that gives
6 the details that answers the question.

7 A. Sure.

8 Q. And so, you've cross-referred to the annex, and so,
9 when one tracks across your forms, you've adopted a standard
10 approach. But again, keeping it general--and this is a slightly
11 cheeky question, but I'm going to draw on your expertise given
12 what you have declared: Can you help the Commissioner with
13 this: What do you understand to be the difference between a
14 company and a d/b/a?

15 A. Well, the incorporated--the incorporated company, the
16 limited liability companies that we have here, would be those in
17 terms of a company. If you're doing d/b/a, you can trade with a
18 licence, and it might well be one time when it was active, we
19 had a group of companies called Malone Group Property
20 Investments Limited, but we had a d/b/a in terms of Virgin
21 Holidays that took the bookings and actually administered and so
22 forth. So the substantive company, quote-unquote, was Malone
23 Group Property Investments Limited. The d/b/a was another.

24 Q. And in terms of how you would describe yourself if you
25 were operating a d/b/a as opposed to a company, is there any

1 requirement you distinguish yourself? Could I set up a d/b/a
2 tomorrow and get myself a trade licence and start calling myself
3 a director?

4 A. Well, there are persons who may not have incorporated
5 a company. They have a trade licence in their name and Carvin
6 Malone The Best in the Game, d/b/a Carvin Malone, The Best in
7 the Game.

8 Q. Was that one of your d/b/as?

9 A. No.

10 I could give you one of the companies--

11 COMMISSIONER HICKINBOTTOM: I know, Mr Malone that it
12 wasn't, but again just grappling with this, incorporating
13 company--we understand that incorporated companies have
14 Directors--d/b/a is linked trade licences. And I assume that
15 more than one person can hold the licence, but when they hold
16 the licence, do you have a Directors of a d/b/a?

17 THE WITNESS: No, not necessarily so. Because they
18 are not required, as far as I understand.

19 COMMISSIONER HICKINBOTTOM: When you say not
20 necessarily, again, this is, as Mr Rawat said, just to help with
21 us other evidence we've heard--

22 THE WITNESS: Yeah, because--

23 COMMISSIONER HICKINBOTTOM: Does that mean they could
24 have Directors or could have people who call themselves
25 "Directors"?

1 THE WITNESS: Not that I am informed.

2 COMMISSIONER HICKINBOTTOM: Right. Okay. So,
3 companies, Directors, individuals, d/b/as, trading under a
4 tradename.

5 THE WITNESS: Yeah, because you see you have
6 partnerships. You can have a partnership.

7 COMMISSIONER HICKINBOTTOM: Yes.

8 THE WITNESS: You can have a Registered Limited
9 Liability Company.

10 COMMISSIONER HICKINBOTTOM: Yes.

11 THE WITNESS: I think it's kept--
12 (Overlapping speakers.)

13 COMMISSIONER HICKINBOTTOM: And there are all sorts of
14 different entities which can trade.

15 THE WITNESS: Yes.

16 COMMISSIONER HICKINBOTTOM: But you have Directors for
17 incorporated companies, and for the rest do you have Directors?
18 Might you have Directors?

19 THE WITNESS: Well, not in--not in a legal sense of
20 the word, would you? Because at the end of the day the
21 Directors are governed by the company's Act.

22 COMMISSIONER HICKINBOTTOM: I understand that.

23 And again, using your sort of expertise, do they in
24 fact call themselves Directors sometimes when it's a d/b/a?

25 THE WITNESS: Well, yes.

1 COMMISSIONER HICKINBOTTOM: They might.

2 THE WITNESS: Yes.

3 And this is why I said earlier that it all depends on
4 which word you use legally--

5 COMMISSIONER HICKINBOTTOM: Yes.

6 THE WITNESS: It could mean something else.

7 COMMISSIONER HICKINBOTTOM: That's very helpful.

8 Thank you.

9 MR RAWAT: Thank you.

10 BY MR RAWAT:

11 Q. Now, if I--again, the focus of my question is just on
12 when you read the form and thinking what information do I have
13 to give, its targeted to that; right?

14 A. Yes.

15 Q. What was expected--what did you believe was expected
16 of you.

17 A. Yes.

18 Q. Now, to give context, you said at paragraph 1--which,
19 Commissioner, for your note will be at 73.

20 A. 71?

21 Q. Go to 73 now.

22 So, 73 is the first paragraph that you're expected to
23 complete, which is Directorships and then the second one is
24 remuneration, in effect at 75, and you will go to the attachment
25 in a moment. You've set that all out in detail, but if you look

1 at three, what three says is: "Does any of the paid employment
2 Registered in categories 1", which is Directorship, "and two"--

3 A. Sorry, which page are you looking at?

4 Q. 77.

5 A. Okay, fine.

6 Q. "Does any of the paid employment Registered in
7 categories 1 and 2", that's Directorships and remuneration,
8 "entail the provision to clients of services which depend
9 essentially upon or arise out of your position of Member of the
10 House of Assembly"" and you're directed to the notes.

11 Now, what did you think you were expected--what
12 information did you think you were expected to give under this
13 heading?

14 A. Okay. "Does any of the paid employment Registered in
15 categories 1 and 2 entail the provisions to clients of services
16 which depend essentially upon or arise out of your position as a
17 Member of the House of Assembly?" That's no before, that's no
18 during, and no after.

19 Q. That's your answer.

20 A. Yes.

21 Q. I get that's your answer.

22 A. Yes.

23 Q. The point is what did you understand the question to
24 be directed to?

25 A. Well, I read nothing more of it than what's here in

1 terms of, "detail the provisions to clients of services which
2 depend essentially upon or arising out of your position as a
3 Member of the House of Assembly". Do I get any clients as a
4 result of me being a Member of the House of Assembly, the answer
5 is no.

6 Q. Is that what you thought it was supposed to be, that
7 you were--that if--

8 A. I'm reading it now. This is not a written script I'm
9 giving you. I said "no" before, no during and no after.

10 Q. I'm not at all disputing your answer.

11 A. Okay.

12 Q. I accept that you wrote no, and I'm not going to go
13 behind the fact that you wrote no.

14 A. Correct.

15 Q. What I'm directing my question to is what did you
16 understanding you were supposed to give? You might help by just
17 reading Note 1: "Services covered by this category include
18 action connected with any Parliamentary proceedings, sponsoring
19 meetings, or functions of the House of Assembly, building or
20 offices, making representations to Ministers, Fellow Members or
21 public servants, a company delegations to Ministers and the
22 provision of advice on parliamentary and public affairs".

23 A. Okay. You were saying whether or not I was seeking to
24 get clients as a result of me being a Member, the answer is no,
25 I was not seeking any particular thing, so the answer is no.

1 Q. All right. Well--

2 (Overlapping speakers.)

3 A. Go ahead.

4 Q. Honourable Malone, I just want to make absolutely
5 clear, this is not about whether you gave the right or the wrong
6 answer.

7 A. I know, yes.

8 Q. Is what did you understand--

9 A. You asked me three times--

10 COMMISSIONER HICKINBOTTOM: And it's only because
11 Members have given different interpretations of what is intended
12 by this.

13 THE WITNESS: Okay.

14 COMMISSIONER HICKINBOTTOM: You have given yours, and
15 you have given your answer.

16 THE WITNESS: Yeah.

17 COMMISSIONER HICKINBOTTOM: And that's the sum of what
18 you considered was covered by the scope--

19 THE WITNESS: Yes.

20 COMMISSIONER HICKINBOTTOM: Thank you.

21 BY MR RAWAT:

22 Q. Let's go to paragraph 4, then, at the top. You see
23 it, page 79, please?

24 A. 79, okay, fine.

25 Q. Again, you've answered "no" to this question which is

1 about sponsorship, and to try and shorten it I'm not in any way
2 disputing the accuracy of your answer, but what the 4(a) asks
3 you is: "Did you benefit from any sponsorship before election
4 where, to your knowledge, the financial support in any case
5 exceeded in aggregate 2,500?"

6 And if you go to 2 at the bottom, Note 2. "You should
7 Register money given to you by your Election Campaign Committee
8 and money spent by your Election Campaign Committee in
9 connection with your election with your permission".

10 Now, this is a question that I have put to more than
11 one Member, and this is a question that has elicited different
12 responses. And so, I want to ask you what your interpretation
13 of this paragraph was: What do you take--what did you take to
14 be meant by "sponsorship before election"?

15 A. Well, if any group or persons or individuals were to
16 give more than the 15--\$2,500, then you have to list it,
17 basically. That's what I take from it.

18 Q. So--and you say give you more than 2,500. Are you
19 including within "sponsorship" financial donations?

20 A. Yeah. There's a thin line between donation and
21 sponsorship. I'm not sure. And I guess this is where the form
22 may have to be more explanatory as opposed to sponsorship and
23 donation.

24 Q. You said there is a thin line between the two. Can
25 you elaborate on that? What do you see as the difference, if

1 any, between sponsorship and donation?

2 A. Well, I don't know if I see any. Because sponsorship
3 was interpreted here as actually donations. I'm not sure--I'm
4 not sure if in my--if in my experience the donation, because the
5 British and American wording between "sponsorship" and
6 "donations" could well change, but as far as I'm concerned,
7 donation and sponsorship is basically the same thing.

8 Q. So, you approached it on that basis, did you?

9 A. Yes.

10 Q. So, the way it would work is if 10 people gave you
11 \$2,000, you wouldn't have to declare that; but, if one person
12 gave you \$20,000, you would have to declare it?

13 A. That's correct.

14 Q. Now, you've answered, as we say "no" to that. You've
15 also answered to (b) "no", and (b) is, do you benefit from any
16 form of sponsorship or financial or material support as a Member
17 of the House of Assembly?

18 Now, what do you understand that you were being asked
19 to furnish in terms of information in answer to question 4(b)?

20 A. Did I benefit from any form of, call it gifts if you
21 want, donations if you want, financial or monetary support as a
22 Member of the House of Assembly, the answer is "no". Whether
23 it's gift, sponsorship, donations or whatever it is.

24 Q. But did you appreciate that, if, for example, somebody
25 says I'm going to give you free use of an office so that you can

1 fulfill your duties as an elected representative, that's
2 something that you would have to declare?

3 A. Yeah, the value of it.

4 Q. Yes.

5 And if you, yourself, let's say that you're a
6 successful businessman who operates an office, use that office
7 for House of Assembly business, is that something you feel that
8 you would have to declare?

9 A. Well, there is--is there a line between my duty as an
10 at-large representative and as a Minister, the answer is yes.
11 And if I had to use the office, somebody giving me as a gift, I
12 would have to declare it. But it seems to work only one way
13 because--

14 Q. Which way is that?

15 A. Well, going--if somebody give me a gift to conduct
16 government business. But if I give somebody--what if I give the
17 Government a gift to conduct their business?

18 Q. Well, that might put you at an advantageous position
19 in relation to other businesses that you may own, so wouldn't
20 that be something that you might have to declare?

21 A. Well, I may then be in breach of that because, at the
22 end of the day, say for instance, at the R and R Malone Complex.
23 I have given a free service to run the vaccines, so I have to
24 make sure I declare that.

25 Q. It's again, not a criticism of you.

1 A. I know.

2 Q. It's actually about the form and whether the form is--

3 A. That's actually being portrayed in terms of--

4 Q. But the questions are directed to this, and you're not
5 the only--other Honourable Members have made this point to the
6 Commissioner, that for them some of the wording of the form has
7 created doubt and uncertainty as to what is actually required to
8 be given.

9 A. Well, in that one there, I suppose because I don't
10 consider myself sponsoring the Government.

11 Q. So, you would not, yourself, reading this, think to
12 yourself that, to borrow your words, "I am giving a gift to the
13 Government", that you would need to declare it on this form?

14 A. Not on this form, no.

15 Q. Thank you.

16 Now, can I jump to your paragraph 8. For the record,
17 Commissioner, The Honourable Malone answered "no" to paragraphs
18 five, six, and seven.

19 COMMISSIONER HICKINBOTTOM: Yes.

20 BY MR RAWAT:

21 Q. But eight, you have declared--that's when you were
22 asked--it's page 87, please. You're asked to declare your land?

23 A. Yes.

24 Q. Although I think on this form you may not have ticked
25 "yes" or "no" but you have given the details that follows. And

1 so, for example, you have given--you were asked at the top: "Do
2 you have any land other than any home used solely for the
3 personal residential purposes of you or your family".

4 Now, one of the pieces of lands you declare is in
5 McNamara, and you declare it as a residence. Is that your
6 actual residence?

7 A. That's correct.

8 Q. So, you actually went further than required and that
9 you gave more information than--

10 A. Just in case they weren't clear what they wanted.

11 Q. And you say "just in case they weren't clear"?

12 A. The form was not clear as to what it really wanted.

13 Q. What about the opening line of paragraph 8 creates
14 that doubt in your mind?

15 A. Please indicate whether the--

16 (Witness reviews document.)

17 COMMISSIONER HICKINBOTTOM: I think above that.

18 THE WITNESS: Do you have any land other than any home
19 used solely for the personal residential purpose of your family.

20 At times, I did, in fact, lease out my home, and I
21 wanted to make sure that we were clear about that and so forth.
22 So there were times when I was moving back and forth, so the
23 house was used in earlier years, so I wanted to make sure that
24 it was down there.

25 BY MR RAWAT:

1 Q. I see. But, in the time that you have been a Member
2 of the House of Assembly, your house hasn't been leased?

3 A. No.

4 Q. Right.

5 But what you--so you understand from the first line
6 that you don't have to declare your home?

7 A. Yes.

8 Q. But what you wanted to do, to be sure, was to declare
9 your home because, in the past, before you became a Member of
10 the House of Assembly, you had leased it on occasion?

11 A. Sure.

12 Q. Now, there are two other properties that you mention,
13 a residential condo Admiralty Estate complex and a residential
14 condo in the U.S.

15 A. Yes.

16 Q. Are those rental properties?

17 A. Yes.

18 Q. Did you read this paragraph and this question?

19 A. Yes.

20 Q. As not being limited to land in the BVI?

21 A. For me, absence of what I wanted to make sure because
22 as I say, there was nothing here to not disclose, so I wanted to
23 make sure it is in my wife and my name and I wanted to make sure
24 it was there.

25 Q. And that's the full extent of your landholdings, is

1 it, a home and then two residential condos?

2 A. In terms my parents, my parents are both now deceased,
3 and, the will is still being finished, so I, as executor, one of
4 the dual executors, may have it Registered in my name for the
5 estate of. So, those are not listed here.

6 Q. I see, but that's a property of which you're dealing
7 with as an executor of the will?

8 A. That's correct.

9 Q. In terms of shareholding, we will come back to that in
10 a moment, if I may. Can I take you to paragraph 10 of page 91.

11 It's headed "Miscellaneous", and it reads: If bearing
12 in mind the definition of 'purpose' set out in the introduction
13 to this form--that's a reference to the Preamble I showed you a
14 while ago--and then it continues, do you have any relevant
15 interests which you consider should be disclosed but which do
16 not fall within the nine categories set out above, please list
17 them. Now, you said they're "not applicable".

18 So, again, taking away from your answer and not
19 interrogating you about your answer, but I just want to
20 know--ask you to help the Commission with this: When you look
21 at this form, what do you understand by this paragraph?

22 A. Do I have any additional shares, do I have any
23 additional land, do I have any additional assets of which could
24 be--could be placed here, what I must have failed to do is to
25 put the extent of the loans I have. Maybe that would be

1 something in there, but it doesn't--it doesn't--the answer to
2 that still remains "not applicable", as far as my understanding.

3 Q. Can I break down your answer a little bit. The first
4 is, when I asked for your answer, you said "do I have any
5 additional land, do I have any additional shares". Do you think
6 that this question is directed against you, or is it directed
7 against you and your family?

8 A. Me and my immediate family, yes.

9 Q. And do you define "immediate family" as your spouse
10 and child?

11 A. Yes, that's the way I interpret that.

12 Q. Now, you then said do I have to declare loans. I'm
13 not asking you to tell us about your loans now, if you don't
14 mind, but now that you've raised that, as you've been looking at
15 this form with us today, is that something that, in your mind
16 now creates some ambiguity, if you're now thinking, well,
17 actually, I'm not clear whether they would require me to declare
18 loans?

19 A. Well, the fact is that like any other form that you
20 have, the balance sheet because speaking from accounting, I
21 guess, the assets and they're actually--they're actually either
22 you did them cash, or you did them by loans, you did them by
23 gifts, you get them by other stuff and so forth.

24 In terms of enhancing the form, maybe there may be a
25 section for whether or not to carry loans on this.

1 Q. So, that's something that, thinking about it, you
2 think the form could be better--

3 A. Enhanced.

4 Q. Better tease out for Members, whether they have, let's
5 call it "loans", that may be something that they may need to
6 declare?

7 A. Yeah, because, at the end of the day, some folks
8 are--are land-rich but poor, how much loans they have on the
9 books.

10 Q. I see.

11 A. They see a house here, a house there, and so forth,
12 what you don't see is what funded it.

13 Q. Thank you.

14 Can I just take a look at your--the attachments
15 because that's where you actually set out, and it is for the
16 Transcript, a typed document that you've produced and you have
17 annexed it each of your Declarations, the three that you
18 provided. And you then cross referred to the sections to which
19 it applies, which is section 1, Directorships, 2, remuneration,
20 and 9, shareholding; that's right, isn't it? And it starts
21 about page 93 and goes through.

22 Now, can you help me with this, please: You've
23 explained that you are a director of Caribbean Basin Enterprise
24 BVI Limited.

25 A. That's correct.

1 Q. With each of these, again for the Transcript, what you
2 do is you name the company, you name your role within the
3 company?

4 A. Yes.

5 Q. And you also name the extent of your share ownership?

6 A. That's correct.

7 Q. So, in this case, Caribbean Basin Enterprises, you've
8 declared that you have 100 percent share ownership?

9 A. Yes.

10 Q. Now, you refer to three contracts, and so this was the
11 position as of--you've put as of March 8, 2021. Contract for
12 the Ministry of Education, Health and Social Development,
13 contract with Ministry of Transportation and Works, so there's
14 two contracts with Ministry of Education, and one with Ministry
15 of Transportation and Works. It's to do, if I summarise it, to
16 do with waste management, in effect?

17 A. Yes.

18 Q. And you've explained the start date of the contract
19 and the status of the contract?

20 A. That's correct.

21 Q. So, again, for the record, two of them are on hold?

22 A. Yes.

23 Q. And only one of them is active.

24 A. Yes.

25 Q. And is that still the position today, Mr Malone?

1 A. That's correct.

2 Q. Now, these were obviously contracts that were in place
3 before you entered elected office?

4 A. Long before, yes.

5 Q. And one of them is--one of them that's active is, if
6 I've understood it right, is at least in part with your own
7 Ministry?

8 A. Yes.

9 And the reason why I placed on that Ministry of
10 Education/Health and Social Development was because it was first
11 under the Ministry of Education.

12 Q. And that has been transferred to your Ministry?

13 A. Yes.

14 Q. Now, how does that work from a conflict point of view
15 for you as the Minister leading that Ministry?

16 A. Well, there were many attempts to have it "taken
17 altogether" from me in earlier years, but being in the number
18 one and number two business, others saw it fit to let who's best
19 at it remain.

20 Q. Well, that may be something we need to come back to,
21 if I may, but your March 8th, 2021, you're the Minister for
22 Health and Social Development?

23 A. Yes.

24 Q. Your Ministry, which you lead and which you have a
25 constitutional duty to administer--

1 A. That's before I held this contract.

2 Q. Yes, but as of 2021, the Ministry still has the
3 contract in place?

4 A. That's correct.

5 Q. It is an active contract with your company.

6 A. Yes.

7 Q. You are the Minister.

8 A. Yes.

9 Q. How, in terms of the management of that contract, do
10 you deal with the potential conflict of interest?

11 A. Well, what we have done is this: There were two or
12 three submittals--and I guess you'll get to these a little bit
13 earlier--but the Constitution allows for a Member, because--

14 Q. I'm sorry to cut off, but is this the section 67
15 exemption?

16 A. Yes.

17 Q. So, you're not required to vacate your seat?

18 A. Yes.

19 Q. That is something I will come back to, if I may?

20 A. That's fine.

21 Q. It's essentially the mechanics of it.

22 You're sitting in the Ministry of Health and Social
23 Development. It's 2021.

24 A. But I was not there sitting in 2009. So, I was
25 saying, at the end of the day, when this was--we're the ones who

1 installed the equipment, its proprietary equipment 2009, and at
2 the end of the day, the ones best-suited for administering and
3 servicing this is the very company with which I actually sit.
4 One could have argued that I may have been best-suited in the
5 Ministry of Transportation and Utilities, but because we "held"
6 these--held these particular subjects, then I thought it best
7 and other Members thought best not to put that possibility of
8 conflict of interest, because the companies, engineering, mainly
9 infrastructure, Caribbean Basin, number one and two business,
10 then let's keep you away from this.

11 In fact, when you Google the portfolios, you would
12 find that it was original that telecommunications may have been
13 placed under this Ministry, but because I have family in that
14 field, I thought it best to not put it there. And to my
15 surprise, the prison came, and at the end of the day I either
16 had to simply not take any Ministry or have it declared.

17 In Cabinet, in the House of Assembly, as directed by
18 the Constitution.

19 Q. If I put my question perhaps--perhaps I should put it
20 more simply.

21 If a problem arises with that contract between--

22 A. No, I have proper staffing and so forth.

23 Q. That's where the question--

24 (Overlapping speakers.)

25 A. --fully what it is.

1 Q. But how do you keep yourself away from that? Because
2 imagine this hypothetical scenario: If a problem arises between
3 the Ministry that you lead and the company with which it has a
4 contract, of which you are 100 percent Shareholder, how do you,
5 as the Minister, manage that conflict?

6 A. Well, the thing is that I exempt myself totally from
7 any dealings with any officers dealing with any contract related
8 to this and so forth. In fact, I'm disadvantaged in that monies
9 are owing that has not been paid, and I dare not go and ask them
10 where is my money? So, the other day, I had to exempt myself
11 totally from this and not use my office to find out, well, can I
12 get on the top of the scale, and so forth.

13 So, I'm more at a disadvantage than I am at an
14 advantage because I wanted--I deliberately have done that.

15 So, by keep away from anything concerning this, is
16 what I do.

17 Q. And is that arrangements written down, is it
18 documented?

19 A. Well, if you want to stay out of trouble--I don't know
20 if it's documented really, but if you want to stay out of
21 trouble, you actually do this.

22 Q. Yes.

23 A. That's right.

24 Q. What you've explained is that, if the Ministry is in
25 arrears with your company, you can't effectively go and ask

1 yourself to pay the bills?

2 A. Right.

3 Q. But who runs it, then? You're saying that you--

4 (Overlapping speakers.)

5 A. I understand.

6 Q. That's on the company side, but within the Ministry,
7 who administers it? Who makes the decisions?

8 A. No, it would have--my Ministry is fortunate to have
9 from the Secretary's Deputy, from the Secretaries Financial
10 Officers, and unit heads and so forth, so there is a whole
11 string of--there's a whole string of processes in order for it
12 to come any arrangements, any particular subjects. That's all.

13 Q. I mean, you don't have a junior Minister?

14 A. No.

15 Q. So, you are the Minister?

16 A. No, Permanent Secretary is because if you were from
17 the UK, you'll know that, as far as we're concerned, the civil
18 service is who "run" things.

19 Q. So, the Permanent Secretary, in your Ministry, will
20 oversee this contract in relation--to the Caribbean Basin?

21 A. Yes, we have absolutely zero, nothing to do.

22 And it is a difficult thing to explain to the
23 population at times because they feel as if they can call the
24 Minister and the Minister can effect it immediately. It can't
25 happen. And in most cases it does not happen.

1 Q. And you have just kept yourself away from this
2 contract since 20--

3 A. This and almost any other. Because at the end of the
4 day, I told the financial officer, I was clear-cut about exactly
5 how the administration of the office goes and so forth.

6 Q. Okay.

7 A. And this is why certain questions you may ask me I
8 would have to bring in the officers related to it--

9 Q. Yes.

10 A. --in order to give you the details.

11 Q. You're not the only Minister that has made that point
12 to the Commissioner, but the point here is this arrangement,
13 effectively, if you like, a wall between yourself as Minister
14 and your company, is that actually written down?

15 A. Well, not that I've seen, I cannot say if it is or it
16 is not. I haven't been guided to it by no in terms of etiquette
17 protocols and other--of being from the disclosure I give you, in
18 terms of my experience, I'm experienced enough to know that you
19 don't do it, period.

20 Q. Okay. Let's try and go through the form a little bit
21 more quickly. If we go to page 93. We're on page 93. The next
22 thing that you declare is CB Engineering Associates Limited,
23 100 percent share ownership in that. You identify yourself as a
24 Director.

25 A. Yes.

1 Q. And that provides engineering and architectural
2 services in project management.

3 A. Yes.

4 Q. That has no contracts to the Government?

5 A. Yes, let me say here again, is where I was
6 disadvantaged to some degree because my history will show that
7 it was a very active company before I got into politics. And
8 once I got in there, and to avoid any of this, just did not seek
9 to be further engaged in these works.

10 Q. I see. So, you've put it has no contract--

11 A. Yes, sir.

12 Q. It has none.

13 Can your companies, without any difficulty, enter into
14 contracts with Statutory Boards?

15 A. I seek not to.

16 Q. Well, that may be Carvin Malone being a cautious
17 accountant. But can you--

18 A. Yes.

19 (Overlapping speakers.)

20 A. My company can get into contracts with Government and
21 the statutory bodies. There is a requirement for you to seek
22 exemption from being placed, so it could seek it with statutory
23 budget, it could seek it with Government but there's a procedure
24 in which it's done.

25 Q. Let me explain, The Honourable Neville Smith has

1 explained that to the Commissioner, so I think we have some
2 evidence about the operations of section 67. But your
3 understanding is that, if one of your companies goes once a
4 contract with a Statutory Board or the Government, you would
5 have to go down the section 67 route for yourself?

6 A. That's correct.

7 Q. Okay. Let's go over to the next page, then, please.
8 It's your page 95.

9 This is a company in which you have 50 percent share
10 ownership, a status of a director, it's called Island Block
11 Corporation Limited. It's rental of office and commercial
12 spaces, I think, in Mount Sage; yes?

13 A. (Witness nods.)

14 Q. Now, you have said there that the company has between
15 April 2010 and January 2020 entered into contracts which are all
16 active with various Ministers, with the Minister of
17 Transportation, Works and Industry, two contracts; and three
18 contracts with the Deputy Governor's office, and in one
19 instance, it's leasing office space but the rest of it is
20 leasing file storage space; is that right?

21 A. Yes.

22 Q. Now, again, from obviously different Ministries, not
23 your own, but did you, on coming into office in 2019 take any
24 steps to create any kind of distance between those contracts and
25 yourself as a Minister?

1 A. Well, let me say: Distance is what you're saying.

2 Q. Well, you've explained how in relation to the prison
3 contract?

4 A. Yeah, yeah. The Officers, so--
5 (Overlapping speakers.)

6 Q. You don't have anything to do with that?

7 A. No.

8 Q. But what steps in relation to these contracts, if any,
9 have you taken about--

10 A. These are even easier because, at the end of the day,
11 they have been set from the dates indicated here, and it is only
12 on renewal of any of these that we would then--if they come up
13 for renewal, then it will be important for me to go back to the
14 House of Assembly and let them know, well, these are coming for
15 renewals, and I will seek your exemption under 66 or 67 of the
16 Constitution.

17 Q. I see.

18 And if--this is a hypothetical "if"--if, for example,
19 you were to have conversations with the Minister of
20 Transportation, Works and Industry--

21 A. No, no, no, the office takes care of all of that. I
22 separate myself totally.

23 Q. Right.

24 And by the "office", do you mean the company office?

25 A. Yes.

1 Q. So, you effectively--you're saying that since coming
2 into elected office, you don't run your own companies?

3 A. Well, no, right. Exactly. I have an office that does
4 that. In fact, again, to my disadvantage--

5 Q. You make no decision in relation to the companies?

6 A. No, they would call me from time to time when they
7 have areas of which they need--they need recommendations on and
8 so forth, and I would actually--I will actually give that, but
9 in terms of the day-to-day running of the company, no.

10 Q. I see.

11 But again, to go back to my hypothetical, if the
12 Minister of Transportation, Works--and you put it Industry--it
13 might be "Works and Utilities", but if the Minister sought to
14 discuss one of these contracts with--

15 A. I would send them to the office, and I would tell
16 them, well, look, see if it's available, see what the price of
17 it is, see what terms you can get.

18 Q. Is that something, a conversation like that, an
19 approach like that, is that something that you would feel
20 necessary to put on the form?

21 A. Sorry, in what--in what way?

22 Q. Well, if a Minister in another Department with which
23 one of your companies had a contract wants to discuss with you
24 the operation of that contract, would you declare that on your
25 form?

1 A. I see what you're saying.

2 If could be--I'm not sure exactly. Are you in charge
3 of the day-to-day affairs of your company, "yes" or "no", the
4 answer would be no. So, in that format.

5 Q. Yes, but if I as a Minister come up to you and say,
6 "Mr Malone, I need to discuss how this contract is working out
7 for my Ministry", and you then do have a conversation, would you
8 declare that fact--

9 A. Did we have a conversation with that?

10 Q. Yes.

11 A. Well, I don't know what I will have to declare because
12 if I tell them, if I tell them to go see the office, well, do I
13 have to declare that?

14 Q. You tell me.

15 A. I don't know. I don't see the reason to because, at
16 the end of the day, it's a small place, small world, you
17 have--we are in--we did not get into the commercial rental space
18 after February of 2019. We have these spaces. I was the
19 particular family leadership in this.

20 If the particular Government, if I see there is a--if
21 there is a government want and a Minister come and say, Minister
22 Malone, do you have any space? Yes. Can you see the office for
23 actual details. Why would I have to declare that?

24 Q. So, the answer in those circumstances is it sounds to
25 me--

1 A. You can draw the inference from it.

2 Q. Unfortunately, I don't get to draw inferences, and
3 that's why I'm trying to pin you down on your answer.

4 COMMISSIONER HICKINBOTTOM: Your answer is you
5 wouldn't declare that?

6 THE WITNESS: Well, I don't see what is there to
7 declare.

8 COMMISSIONER HICKINBOTTOM: No--

9 THE WITNESS: A Minister asked me whether or not I had
10 space?

11 COMMISSIONER HICKINBOTTOM: I'm sorry, I understand
12 your reasoning but you wouldn't declare it.

13 THE WITNESS: I know, but what is there to declare?

14 COMMISSIONER HICKINBOTTOM: I'm sorry.

15 BY MR RAWAT:

16 Q. We also can't give you your answers. That's why it's
17 important--

18 COMMISSIONER HICKINBOTTOM: Your answer is no, but I
19 understand the reasons for it.

20 BY MR RAWAT:

21 Q. And as you said, you--

22 A. I know what I'm saying is that at the end of the day,
23 you have to be reasonable in your questions. If someone comes
24 to me and said, well, look, you have been renting for 20 years.
25 Do you have any space available? You are asking me whether or

1 not I will declare that this Minister had the nerve to come ask
2 me if I had space. I don't see where that becomes a relevant--

3 COMMISSIONER HICKINBOTTOM: Sorry, I understand the
4 reasoning.

5 THE WITNESS: Thank you.

6 BY MR RAWAT:

7 Q. But if you flip it, if--and I appreciate that your
8 point is that you have divorced yourself from the day-to-day
9 operation of your businesses.

10 A. Sure.

11 Q. But if you were to approach a Minister saying "I hear
12 you're looking for office space, I have some", that is something
13 you would--

14 A. Different.

15 Q. --have put down in paragraph 3, isn't it?

16 A. Yes, that's different.

17 Q. Let's go through the rest of the form as quickly as we
18 can.

19 95 again. You've referred to the Malone Group
20 Property Investment Limited of which you have a 25 percent
21 ownership, and you've identified your title as "Director", and
22 you say "no active government contracts".

23 A. Yes.

24 Q. So, in terms of when you're declaring information on
25 the form, did you have in mind the need to declare contracts

1 with Government?

2 A. Yes.

3 Q. And that was the focus?

4 A. Yes.

5 Q. When you defined "Government", did you also include in
6 that Statutory Boards?

7 A. I did, yes.

8 Q. And then you've got Progressive Management and
9 Communications, which is a management and communications
10 company, 100 percent share ownership. You're the Director of
11 that. Also has no active government contracts; is that right?

12 A. Yes.

13 Q. "Surface" (phonetic) Hold Corporation Limited,
14 10 percent share ownership. Is that just as a shareholding
15 rather than playing a role in it?

16 A. Yes, it is a shareholding.

17 Q. Right.

18 Provides commercial real estate holdings, and again,
19 it has no current government contracts, does it--

20 A. Yes.

21 Q. --if I understood that right.

22 I mean, you said a seabed lease application submitted,
23 mooring rights application, but that's an application you've
24 made rather than a contract that you're engaged in?

25 A. That's correct, yes.

1 Q. Then you've declared again Sage Investment Holding
2 Limited CCT. What does CCC stand for?

3 A. This is a cell phone company.

4 Q. Right. 2 percent share ownership in that, no active
5 role in it?

6 A. No, at all.

7 Q. It's, as you said, a telecommunications service
8 provider.

9 Now, various Government--what you said that it's
10 active, it has contracts to various government departments and
11 statutory bodies.

12 A. Yes.

13 Q. But you're just simply an investor in this company?

14 A. Yes, absolutely nothing, officer or Director or
15 anything.

16 Q. And you're not provided with any of the details of the
17 contract that it enters into?

18 A. I don't have it.

19 Q. Mount Sage Holdings 1996 Limited Ocean Conversion,
20 again, it provides water desalination services. You have a
21 2 percent ownership? It's active. It has an active contract
22 with the Ministry of Transportation, Works and Utilities. Now,
23 again, is that--are you in the same situation you are with Sage
24 Investment, in that, you're just a minor shareholder; is that
25 right?

1 A. Yes.

2 Q. You don't get details of what contract it entered
3 into?

4 A. No.

5 Q. If--well, perhaps the better example is to say the
6 telecommunications provider, if that were to enter into contract
7 with your own Ministry, would you be made aware of that?

8 A. Yes.

9 Q. What's the mechanism by which you might be made aware
10 of that?

11 A. Sorry, if it's a Cabinet item or House of Assembly
12 item, we will do it, but they will have no--they will have no
13 commitment to make me aware that someone wanted to purchase a
14 phone from CCT or someone like that.

15 Q. Again, if a different Ministry enters into a contract,
16 then you're saying there's no obligation--

17 A. There is no commitment to it, yes.

18 (Overlapping speakers.)

19 A. If it has to come before Cabinet or House of Assembly.

20 Q. Then that's when you would be aware of it?

21 A. Sure.

22 Q. So, effectively you learned it just at the same time
23 as other Cabinet Ministers?

24 A. That's correct, yeah.

25 Q. But if it's with your own Ministry--

1 A. That's why I say, the day to day offering, if it's not
2 on policy and it's not on law, folks do come up to me from time
3 to time, what's the status of this contract, I have no idea.
4 Can you call the Member for housing, the Member for prison, the
5 Member for safe haven.

6 Q. When you say Member for--

7 A. Well, in terms of the public officer.

8 Q. I see.

9 So, this in your view, the civil service really do run
10 everything?

11 A. Well, in terms of this because that is how it's set
12 up.

13 Q. But is there a mechanism within your Ministry for them
14 to say, well, actually we're thinking of entering into a
15 contract with a company in which you have an interest?

16 A. Right. In terms of if I have an interest with it,
17 then they would flag that immediately in terms of--

18 Q. Well, is that mechanism written down?

19 A. I can't say that it is. It wasn't specifically
20 brought before me, and I will have to--if any of those details
21 come to me between now and--this would be the place to do it
22 because they most certainly must be listening, and then they
23 will show me--they will educate me further.

24 Q. Who are the both--

25 A. No, because I have a Permanent Secretary and a some

1 Deputy Permanent Secretaries, and financial officers.

2 Q. So, they're the ones that may be able to tell you--

3 A. Sure.

4 Q. --whether any of your companies have entered into
5 contracts with your own Department?

6 A. I'm still young in this official capacity, yes.

7 Q. Yes. So, all right. Okay. We won't take that any
8 further.

9 Let's go through the rest of the form.

10 99, you referred to Sage Marina Holdings, Village Cay
11 Marina. Again, a minor 2 percent share ownership in that, so no
12 active role, even before you came into government; is that
13 right?

14 A. Right.

15 Q. That has contracts with various governments
16 departments and statutory bodies as does Sage Yacht Harbor
17 Enterprise Limited, Virgin Gorda Yacht Harbor, which again
18 provides marina and boat yacht services, commercial, retail and
19 wholesale spaces. Again, various government departments and
20 statutory bodies but again, no direct involvement on your part;
21 is that right?

22 A. Yes.

23 Q. You then refer to Mount Sage Holdings 1996 Limited,
24 which, in brackets, you have put Colonial Insurance, and it's a
25 property and health insurance provider, 2 percent share

1 ownership in that, various government departments and statutory
2 bodies contract?

3 A. Yes.

4 Q. And that's the full extent of your--you've declared
5 all your Directorships, all your sources of remuneration and all
6 your shareholdings?

7 A. Sure.

8 Q. And to be fair to you, you've gone down to 2 percent,
9 have you given a complete picture of the extent of your
10 shareholdings in this form?

11 A. I would hope so.

12 Q. Was that in your approach? Is that what you decided
13 to do, I'm just going to give everything.

14 A. I was going to give everything.

15 Q. Thank you.

16 Can I just turn to another topic, please, and that is
17 I hope we can take it briefly, but just--and the reason we can
18 take it briefly is because the Commissioner has already received
19 quite a lot of evidence about this, but it's the system by which
20 you as a--and this is a territorial representative--have a fund
21 on which to distribute assistance grants.

22 A. Yes.

23 Q. Now, please correct me if I'm wrong in this. It's
24 trying to summarise other people's evidence, but as a
25 territorial representative, the fund, leave aside COVID, is

1 \$150,000 a year?

2 A. That's correct.

3 Q. And the process is that someone can make an
4 application to you as a territorial representative?

5 A. Yes.

6 Q. You will assess the merits of that application?

7 A. Yes.

8 Q. You will reach a view on it?

9 A. Yes.

10 Q. And you will make a decision?

11 A. Yes.

12 Q. And that decision extends, does is not, to deciding
13 how much they will receive?

14 A. Sure.

15 Q. But it then goes to the Clerk of the House of
16 Assembly?

17 A. Yes.

18 Q. In some instances, the Clerk can send it back to you?

19 A. That's correct.

20 Q. Has that ever happened to you?

21 A. On one or two occasions where you may have a Member
22 who was best served--sorry, was previously granted assistance
23 from other Members, and it was felt that they--that they should
24 not be getting it from two or three Members. Number one.

25 Number two, in an instance where it was sent back for

1 actual correction, they needed to get the notices substantiated.

2 No. 3, if it was an educational grant that was best
3 suited in the Ministry of Education, then it was asked to be
4 forwarded to them.

5 Q. I see.

6 A. And the different housing folks and so forth. So,
7 yes, there were times there where some instances.

8 Q. So, are there instances where you have authorised or
9 positively agreed to an application where what can come back to
10 you is, no, actually the person needs to go to another Ministry
11 so it doesn't come out of your fund, it might come out of
12 Ministry funds, for example, the education scholarship might
13 come from somewhere else entirely?

14 A. Yeah, it was--it was thought best suited to come out
15 of the--although in no. 3, for instance, in terms of financial
16 assistance with scholarships, is allowed an actual verification.
17 So, the fact is is that there was a broad scope in terms of what
18 could be done, but it was still specific under the provisions of
19 the guidelines that were set.

20 Q. If you go--from the Clerk to the House of Assembly, it
21 also goes to--then goes to the Treasury Department?

22 A. Yes.

23 Q. And these are not my words, these are the words of The
24 Honourable Vincent Wheatley. The job of the Treasury
25 Department--

1 A. But you've asked me not to refer to--

2 (Overlapping speakers.)

3 A. You're questioning me, so you can't violate your own
4 rules.

5 Q. Fair point.

6 A. Yes.

7 Q. But the job--is the job of the Treasury Department to
8 issue the funds?

9 A. Yes.

10 Q. Do they ever send applications back with a query?

11 A. Well, you see--yes, they have had situations where
12 they may feel as if that although the Clerk may have processed
13 it, it is still lacking some other information that they need in
14 order to fulfill their duty.

15 Q. Can you give the Commissioner some examples of what
16 sort of information they have asked for at that stage?

17 A. I really don't remember. My private secretary deals
18 with most of this, but at the end of the day, any of the
19 information that would come, they would be keen enough to send
20 it back and say, well, look, this should not be--and so forth.

21 So, there is a trifecta in terms of surveillance of
22 this.

23 Q. You being one of the parts of the trifecta?

24 A. One of the other--the Treasury being another.

25 Q. The other evidence is, for example, that the

1 application may be sent back because a particular part of it
2 hasn't been signed or a document hasn't been submitted?

3 A. Exactly.

4 Q. Is that the sort of--is that sort of typical--is that
5 typical of what's been sent back to you, the kind of queries you
6 have to deal with?

7 A. Yes, those are typical because there are situations,
8 too, that it may not be monitoring fully, and the head of which
9 this is placed may have been busted, it doesn't have any more
10 funds available in it. And if that is the case, well, this is
11 where the trifecta situation will come in. If it isn't caught
12 in the first, second, then the third will hit because it cannot
13 overspend the particular hit out of which it is done.

14 Q. Now, I think you draw attention to the guidelines for
15 assessing assistance grants, which are in front of you. When
16 did you first receive those guidelines?

17 A. While it was spoken of early, in all honestly, it was
18 very late. I can't say exactly when. But I know in '19 and
19 '20--so it was in '21 in terms of the written guidelines. We
20 were always told what not to be in here, and it was--it was part
21 of that package--just like what I told you, I don't know
22 specifically when the Registrar give us those forms but I know
23 we had to have it because Honourable Smith was one that did it
24 on a specific date, and there were guidelines that were spoken
25 of. Maybe if I search my file I will find it and so forth, but

1 we were always keen.

2 And even if we weren't told, then my secretary or
3 other persons would know. Well, certain things simply don't fit
4 the bill in terms of what could be--what could be examined.

5 Q. So--

6 A. That's it.

7 Q. So, the guidelines themselves, your recollection is
8 that these were sent to you in 2021?

9 A. No.

10 We may have had them but me, myself, you asked me
11 about.

12 Q. Yes, these are guidelines that govern your operation
13 as a Member of the House of Assembly--

14 (Overlapping speakers.)

15 A. Yes, and so forth. My Secretary deals with all of
16 them and so forth, and she must have had them and the other
17 Members. What I'm saying you asked when did I--

18 Q. Yes.

19 A. So, I paid much closer attention.

20 Q. To try and clarify, Mr Malone, is what you're saying
21 that you may have seen these guidelines relatively recently, but
22 your secretary will have been aware of them at an earlier stage?

23 A. Yeah, yeah. They actually kept--they kept me on the
24 straight and narrow, so at the end of the day--

25 Q. Which secretaries are you referring to?

1 A. No, that's private secretary.

2 Q. So, maybe as a Minister you end up with quite a lot of
3 secretaries, but you have a Permanent Secretary--

4 A. Yes.

5 Q. --as a Minister.

6 And then a private secretary?

7 A. That's correct.

8 Q. Permanent Secretary I understand. The Permanent
9 Secretary is running your Ministry. What does the private
10 secretary do?

11 A. Well, none of the other Ministers explained this?

12 Q. No.

13 A. Oh, really? Okay. Well, each Minister has a private
14 secretary and so forth. So all of the stuff that is--none
15 is--because--handle the appointments, if you wanted to see me
16 tomorrow, it will go through the private secretary.

17 Q. And--

18 A. This particular--

19 Q. And it's your private secretary, since you came into
20 office, your private secretary has been handling correspondence
21 around the applications?

22 A. Yes.

23 Q. So, she deals with the applications?

24 A. Yes. And the Clerk and with the Treasury.

25 Q. Right.

1 So, what do you do in the process?

2 A. Sorry, what do I do when?

3 Q. What do you do in the process?

4 A. You have to ask me in relation to.

5 Q. In relation to an application, what do you do?

6 A. Once it comes in and is examined, and it was--it fits
7 the particular scope, the guidelines and so forth, it comes to
8 me for determination.

9 Q. So, you put in a full stage in that your private
10 secretary makes an assessment of the application?

11 A. Yes.

12 Q. And puts it in front of you?

13 A. Yes. In most cases, yes.

14 There are people who would see me personally and say,
15 look, I need to conduct an operation but the national health
16 insurance doesn't cover all of it and so forth, can you please
17 assist and so forth. So I would send them to fill out a form to
18 see exactly what it is, get the medical bills, get whatever the
19 circumstances may exist so that then they could be examined,
20 they could be looked at and so forth. Because some folks may
21 well not have been current on each item, they may not have been
22 current on other stuff. They would be down on their luck
23 because between 19--between 2017 and 2021, remember, there is
24 nothing that has been normal in most of these islands.

25 Q. In terms of--

1 A. Hurricanes destroyed medical bills, then the actual
2 pandemic.

3 Q. In terms of the amount that you get, your \$150,000,
4 taking 2019 to 2020 as an example, did you have to distribute
5 the entirety of that amount?

6 A. Sure.

7 Q. Now, the guidelines--I should ask you this. I'm just
8 trying to understand the process that you put in place.

9 How are you able to fairly determine an application if
10 you're not aware of the guidelines?

11 A. What I'm saying is that at the end the day, the
12 Secretary will be looking at these, number one. Number two, and
13 total the errors because I have sent most of my contributions to
14 assistance with medical stuff. I know that that was there and
15 so forth. When I saw this sheet of paper, it might be a
16 question, but in terms of whether or not I know of some of the
17 limitations, the answer is yes because they were vocalised but
18 if you asked me when did I get this sheet of paper, is what I
19 speak of.

20 Q. Just be clear to me, when did you get that piece of
21 paper?

22 A. I don't remember the exact date, but it was either
23 late '20 or early '21 in terms of getting this exact piece of
24 paper. But as I said before--

25 Q. It's your secretary that does--

1 (Overlapping speakers.)

2 A. Well, that, number one, and number two, just like the
3 Register of Interests, because when you come into office, when
4 you come into office, there is a whole series of packages that
5 is actually given to you. Number one.

6 Number two, your research of me would have told you
7 that I was one of the Members who were charged with going to the
8 UK to look at the--to look at the loan guarantee and all of
9 that, you know, concerning the RBA and the loan guarantee and
10 whether or not we should be entering into that, so a lot of the
11 time was spent on research and getting information.

12 MR RAWAT: Commissioner, I note we have been going for
13 some time, and I'm conscious that--I suppose I have got about 15
14 minutes more, but whether we ought to just give the Stenographer
15 a short break?

16 COMMISSIONER HICKINBOTTOM: I think that's probably
17 right.

18 Mr Malone, we have a Stenographer, and after about two
19 hours it becomes even more difficult for him to carry on without
20 a break.

21 THE WITNESS: Sure.

22 COMMISSIONER HICKINBOTTOM: So, we'll just have a
23 short break now and then we'll come back and finish off your
24 evidence.

25 THE WITNESS: And then I'm done?

1 COMMISSIONER HICKINBOTTOM: Mr Rawat says about 10 or
2 15 minutes more, but we will have a 10-minute break and then
3 come back, if you will.

4 THE WITNESS: Okay.

5 COMMISSIONER HICKINBOTTOM: Thank you very much.

6 (Brief recess.)

7 COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

8 Thank you, Mr Malone.

9 BY MR RAWAT:

10 Q. Honourable Malone, if I could take you to page 123 in
11 the bundle?

12 A. Which bundle?

13 Q. In the Carvin Malone bundle.

14 A. 123.

15 Q. And just to pick up on and finish on a point that you
16 made during your evidence, which was about section 67, and so
17 you should have at 123 the start of a number of resolutions of
18 the House, Resolution number 10 of 2019, number 11 of 2019,
19 which is your 125 and number six of 2020 which is at your 127.

20 Do you have those?

21 A. Yes.

22 Q. And put simply, you came before the House and sought
23 an exemption from having to vacate your seat because of
24 contracts with Government; is that right? And so in relation to
25 the first one, which was dated the 2nd of December 2019 but

1 Gazetted on the 12th of September, this was in relation to
2 contracts between Island Block Corporation Limited of which you
3 were a Director, and it relates to the provision of properties
4 to the Ministry of Transport and Works, Department of Motor
5 Vehicles, and then Deputy Governor's office, three separate
6 contracts with the Governor's Office; that's right, isn't it?

7 A. Yes.

8 Q. Now, these resolutions are debated in an open hearing
9 of the House of Assembly, aren't they?

10 A. Yes.

11 Q. And are the resolutions published so the public can
12 read them? Do you know?

13 A. Well, once they actually got it, Gazetted, it's
14 actually public, yes.

15 Q. And if we go to 125, this was on the same day, and
16 that was in relation to the Contracts we'd already looked at,
17 which is your--arise from your Directorship of Caribbean Basin
18 Enterprise and BVI limited?

19 A. Yes.

20 Q. And it's the present contract with your Ministry in
21 relation to the sewage-treatment plant and various other sewage
22 things, and there's also a sought to H Lavity Stoutt Community
23 College overleaf; is that right?

24 A. Yes.

25 Q. And then the last one, 8th of June 2020, you were

1 again the recipient of a successful motion not to exempt your
2 seat, and that was in relation to, again, Island Block
3 Corporation Limited and leasing of space as a temporary records
4 center?

5 A. That's correct, that's correct.

6 Q. So, are those the entirety of the occasions on which
7 you sought exemptions under section 67?

8 A. Yeah, that I sought, yes.

9 Q. Can I move on just to a little--slightly different
10 subject, but your role in Cabinet, what's the process that you
11 want to declare a conflict when you're sitting in a Cabinet
12 meeting?

13 A. I would have it informed to the Premier and who would
14 inform the Chairman. And even if I forgot, then I'll be
15 reminded by the Attorney General or, you know, Members.

16 Q. How soon before the item comes up on the Cabinet
17 agenda do you inform the Premier?

18 A. Well, even when it's being considered to be placed on
19 the--there is a Cabinet Steering Group that directs what items
20 are placed on the Agenda, and I would actually declare that at
21 the time.

22 Q. I see.

23 Do you feed into the Cabinet steering group?

24 A. No, not at all.

25 Sorry. Explain that, feed into? Am I a Part

1 November.

2 Q. The Cabinet Steering Group as I understand it has the
3 job of agreeing the agenda for the Cabinet meeting?

4 A. Right.

5 Q. Can you make submissions, if you like to the Cabinet
6 Steering Group for items to be on the Agenda?

7 A. Well, the process is that they would have to be
8 formulated, put in the--put in the--circulated to the different
9 factual comment from AG Financial Secretary, from the
10 Secretaries it required. Then they will be circulated. It's an
11 entire process, so it's fed in by the process.

12 I personally can't do it, but it goes in terms of--in
13 terms of--each of the Ministries submitting a paper have to go
14 through a process, and it is circulated, it is agreed by the
15 Cabinet Secretary, and then when all that is required has been
16 completed, then it goes to the Cabinet Steering Group.

17 Q. I see. And at what point do you know what's on the
18 agenda so that you can declare an interest if it arises?

19 A. Well, after the--after Cabinet Steering Group, decides
20 that it will be agenda'd or it will be placed on the Agenda,
21 then.

22 Q. And how soon before the Cabinet meeting is it
23 mentioned to you as the Minister?

24 A. It comes in terms of definition, the Cabinet Steering
25 Group, my understanding is, they meet on a Monday and Cabinet is

1 on a Wednesday.

2 Q. And so, you have between Monday and Wednesday to
3 inform the Premier to any--

4 A. And the Secretary, yes. And Premier. And he will do
5 whatever is required.

6 Q. Primary, and Secretary. Is that the Cabinet
7 Secretary?

8 A. Yeah, but it is--it is the Premier that would have to
9 give alert to her.

10 Q. I see. All right.

11 Well, could you turn to 16, please. If you look at
12 the large grey bundle, just furthest away from you. You should
13 have two bundles that are grey. Take the larger one, one
14 underneath that one, and turn to page 16, please.

15 A. One-six?

16 Q. One-six.

17 Cabinet minutes for the 3rd of April 2019. You are
18 listed as one of those present. Can you see your name there?

19 A. My name is one, two, three--

20 Q. Six down?

21 A. Four, five, six.

22 Q. Yep, you've got it.

23 If you turn to 29, please. Page 29.

24 One of the issues which we have been exploring with
25 witnesses, in particular those whose sit in Cabinet is how the

1 policy is governing when you declare interests and how you
2 declare them operate, so this is an example at page 29 on this
3 meeting of the 3rd of April 2019, where, as you see it, 12, that
4 the matter that came before Cabinet was NBLHL application number
5 put forward by the Ministry for Natural Resources, Labour and
6 Immigration, and it's about Road Town Wholesale Trading Limited.
7 You are recording--recorded as declaring a private interest, and
8 I just wanted to understand what was meant by "private interest"
9 in this context?

10 A. Well, I'm a Board Director Member Shareholder--Board
11 Director Member for Block Island Corporation.

12 Q. I see.

13 So, this--you're both a Director and a Board Member
14 and a shareholder in Island Block Corporation; is that right?

15 A. Right.

16 Q. And this related to the Transaction that Island Board
17 Corporation were involved in?

18 A. Yes.

19 Q. I see. And is the term "private interest" a term of
20 art? I mean, is it meant to capture commercial interest?

21 A. I guess, yeah--I am interested in commercial interest,
22 but I hold shares, so whatever it is.

23 Q. I see.

24 Is the advice that given to you, if you like, when a
25 commercial interest arises, it should be labeled a "private

1 interest", or is that somebody else's words?

2 A. Well, that's a legal particular differential. I have
3 shares, I'm a Board of Director Member.

4 Q. I see.

5 Go to 58, then, please. If you look at 17th of
6 April 2019--that's a Cabinet meeting--do you have that?

7 A. Yes.

8 Q. You're listed as appearing just before the
9 then-Attorney General. Do you have your name?

10 A. Yes.

11 Q. If you go, please, to 72 in this bundle, you see just
12 above 29 there is a Round Robin from the Ministry of Finance
13 concerning the rehabilitation of Elmore Stoutt High School
14 (unclear)--

15 (Overlapping speakers.)

16 Q. --building.

17 A. Yes.

18 Q. Can you just tell me his, what's a round robin in
19 this context? What does it refer to?

20 A. Well, Round Robin is when you would have a Cabinet
21 paper, and Cabinet is normally held on the Wednesdays in person
22 or during the--during the pandemic it was mainly through WebEx
23 and so forth, but in these circumstances of Round Robin is that
24 if you need a paper to be determined before the next Cabinet
25 meeting, then you draw--agree to have it available to Members

1 for their determination before the next Cabinet meeting.

2 Q. Because it's only at the next Cabinet meeting that you
3 can agree the Minutes; is that why?

4 A. Yes, it would be entered in as if it was at a
5 particular meeting--but it was--it was to be determined by
6 Members, Round Robin, it's actually passed around and actually
7 determined, and then...

8 Q. Right.

9 Now, you are--at 73 recuse yourself, you are recorded
10 as recusing yourself because of a familial interest.

11 A. Right.

12 Q. The familial interest it appears to be--and correct me
13 if this is wrong--is that your brother--

14 A. Yes.

15 Q. --was recommended the Ministry of Finance for a petty
16 contract in relation to this Round Robin?

17 A. That's right.

18 Q. Now, what guidance are you given as to the extent of
19 family relationships that you need to declare?

20 A. Well, in terms of if you have relatives and again,
21 like everyone else has informed, it's small island, small place,
22 you have family members, you have relatives all over and so
23 forth, but if my brother comes up for a particular contract, I
24 recuse myself from those particular deliberations and
25 determinations.

1 Q. Now, some of the evidence that is submitted that this
2 is directed to a spouse and your children.

3 A. No, that is as it relates to the Registrar of
4 Interests.

5 Q. I'm referring specifically to the evidence in relation
6 to Cabinet conflicts?

7 A. I confirm that.

8 Q. Now, you've gone further and obviously you've declared
9 an interest because your brother was involved?

10 A. Sure.

11 Q. But what's the outer limits for you? If instead of
12 your brother, it was a cousin, would you declare the interest?

13 A. Let me ask you: Folks have a range of cousins, first
14 cousin, second cousin, third cousin.

15 Q. So, where's your line? Do you stop before you get to
16 first cousin or do you stop at second cousin?

17 A. Well, I look in terms of my aunts and uncles and my
18 brother and sister and so forth. I don't know if I had any
19 determination as it relates to a first or second cousin, but--

20 Q. So for you?

21 A. My brother, my aunt, my uncle.

22 Q. So, your approach has been, if there is a potential
23 conflict that involves my wife, my child, my adult siblings,
24 aunts and uncles, I will declare it?

25 A. That's correct.

1 Q. What about on your spouse's side? If it's your wife's
2 siblings, would you declare it?

3 A. That's easy here because my wife is from Sunset,
4 Louisiana.

5 Q. Well, let's imagine your wife is not from Sunset,
6 Louisiana. If she were here and she had family on this island,
7 would you declare it in that instance?

8 A. Me, Carvin Malone, yes.

9 Q. Okay. 170, please.

10 A. And that's if I knew about it. Not everything that
11 your siblings--

12 Q. I think it's a precondition of being able to declare a
13 potential interest that you know about it.

14 A. Yes.

15 Q. So, let's go to 170, 26th of July 2019 Cabinet
16 meeting. You're again present, and if you go to 191, you again
17 recuse yourself, Honourable Malone, but it's recorded that--and
18 if I explained that this was a memorandum introduced by the
19 Premier, and it was about appointment of Members to the planning
20 authority, and you on the first item that's recorded is--before
21 the paper is presented is you recuse yourself due to your--start
22 that again.

23 You recuse yourself because of your "close
24 relationship" to one of the nominees recommended for membership.
25 Now, those approved for memberships are listed down at the

1 bottom of the page. And it was just can you clarify what is
2 meant by "close relationship"?

3 A. Well, my brother was there again.

4 Q. Right, but prior to being recorded as a familial
5 relationship, now it's recorded as a close relationship. Again,
6 is that a term that's intended to refer to a family connection--

7 A. I'm not sure what anyone else mean. As I told you, my
8 brother, my sister, my aunts and uncles.

9 Q. Are you giving any advice about declaring interests
10 where it's not a family connection but a different sort of
11 connections?

12 A. Yeah, just in terms of relatives of that nature,
13 brother, sister, spouse.

14 Q. So, the focus in terms of what you're looking out for
15 is a family connection?

16 A. Sure.

17 Q. Go to 396, please.

18 Again, Cabinet meeting 7th of November 2019, we can
19 see that you're there, just listed above the then-Attorney
20 General.

21 Do you have that?

22 A. Yes.

23 Q. 420, then. This is a memorandum that's from the
24 Minister of Finance relating to office accommodation for various
25 Government Ministries and Departments being relocated from the

1 central administration building, and you are recorded as
2 recusing yourself to avoid a conflict of interest in this
3 matter. The conflict isn't specified, and I wondered if you
4 could just help the Minister--the Commissioner, rather, what was
5 the nature of the conflict in this instance?

6 A. Being a Member of the Board of Directors and a
7 shareholder of Island Block Corporation.

8 Q. So, it was because there was a possibility of entering
9 a contract with a company in which you have a direct interest?

10 A. That's correct.

11 Q. I see. Right.

12 Let's take a look at the last one, 517, please. You
13 should have a meeting--Minutes of Meeting of 5th of February
14 2020. I think you have been promoted a little bit up the name
15 list because you're now not second from last but third from top.
16 Do you have yourself there, yeah? Do you have yourself?

17 A. Yes.

18 Q. All right. Let's go then to 554, please.

19 A. 554?

20 Q. Yes, please.

21 It's a memorandum from the Minister of Natural
22 Resources, Labour and Immigration. It's about a grant of Crown
23 Land to a Shantel Malone, and you then recuse yourself again or
24 you declared an interest, which I take is the same as that, that
25 you've recused yourself from discussion of the item. And it's

1 because of a close family relationship with Ms Shantel Malone.
2 Again, it's going back to, I suppose, the question of when is a
3 cousin a cousin. But what was the nature of that relationship?

4 A. My niece.

5 Q. I see.

6 So, on your--on your side--so for you, your ambit
7 extends not just to siblings but also to extensions to their
8 children as well?

9 A. Yes.

10 Q. I see. Right.

11 A. Well, let me just--let me just put on the record that
12 first--

13 COMMISSIONER HICKINBOTTOM: I've read that. She was
14 the first.

15 THE WITNESS: Only BVI lander to win a medal in the
16 Pan Am games and she might well be the first to win a gold
17 medal--sorry, a medal in the Olympics.

18 BY MR RAWAT:

19 Q. Thank you for that. But the point is, from your
20 approach as a Cabinet Minister to the need to declare interests,
21 your circle is quite wide, isn't it? I appreciate that your
22 wife is not from the BVI, but from your side it covers your
23 wife, your child, your aunts and uncles, your siblings and their
24 children?

25 A. That's correct.

1 Q. Is that how you've approached Cabinet?

2 A. Well, yes I approach the Cabinet and the House of
3 Assembly in this same manner because I not that this day will
4 have to come, so the other day I wanted to make sure that we did
5 this.

6 And you will see from my Opening remarks, if we go to
7 the other step, we have to gain the confidence by making sure
8 that we are forthright in it. If we go down to every cousin,
9 then I would be not be able to sit in Cabinet.

10 Q. Yes.

11 No, think that's a point that other witnesses have
12 also made to the Commissioner.

13 A. Sure.

14 Q. But it is helpful to have evidence from those who sit
15 in Cabinet as to where they see the line being drawn.

16 A. Sure.

17 Q. On the advice that they're given.

18 MR RAWAT: Commissioner, I've reached the end of my
19 questions. Can I conclude firstly by thanking The Honourable
20 Malone for the time that he's given to the Commission today, and
21 the patience that he's shown in having to wait around a little
22 bit but also finally to thank him for the way in which he has
23 given his evidence.

24 COMMISSIONER HICKINBOTTOM: Yes, can I echo that, can
25 I thank you, Mr Malone, for your time and your patience and the

1 clear way in which you have given your evidence. We all very
2 much appreciate it.

3 THE WITNESS: Thank you.

4 COMMISSIONER HICKINBOTTOM: Thank you very much.

5 (Witness steps down.)

6 MR RAWAT: If you could rise briefly, Commissioner,
7 whilst we reset the room for the next witness.

8 COMMISSIONER HICKINBOTTOM: Yes, certainly.

9 (Recess.)

Session 2

1 INGRID MOSES-SCATLIFFE, COMMISSION WITNESS, CALLED

2
3 COMMISSIONER HICKINBOTTOM: First, may I apologise for
4 the delay in taking your evidence, Ms Moses-Scatliffe. I
5 apologise for the delay. We're ready to start that evidence
6 now. Thank you very much.

7 THE WITNESS: Thank you.

8 MR RAWAT: Thank you, Commissioner.

9 BY MR RAWAT:

10 Q. Ms Moses-Scatliffe, thank you for coming to give
11 evidence today. Can I begin by just dealing with asking first
12 for you to be sworn.

13 A. Sure.

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

16 THE WITNESS: Make an affirmation.

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

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

22 COMMISSIONER HICKINBOTTOM: Thank you very much.

23 BY MR RAWAT:

24 Q. Thank you.

25 For the record, can you give the Commissioner your

1 full name, please?

2 A. My full name is Ingrid Anne Marie Moses-Scatliffe.

3 Q. I try, as we go through, to keep my questions short
4 and simple, but if at any time you would like me to rephrase a
5 question or repeat it, please do ask me. There are a number of
6 bundles that you'll see there in front of you. We will go to
7 some of the documents in those bundles in due course.

8 Can I ask one final thing. The microphone in front of
9 you doesn't amplify. It merely records.

10 A. It doesn't have?

11 Q. Amplify.

12 A. Oh, okay.

13 Q. It just records your voice. So, what you will need to
14 do is to keep your voice up and speak slowly, please.

15 A. Can I ask one question. You said there were a number
16 of bundles before me. There was a bundle that was delivered to
17 me.

18 Q. Yes.

19 A. Is the bundle here with my name a duplicate of the one
20 that was given to me and that I brought?

21 Q. Yes, you can use the bundle that was sent to you, if
22 that's easier for you?

23 A. Yes, that's what I wanted to confirm.

24 Q. Could you begin by just giving the Commissioner a
25 brief outline of your professional background before you became

1 Speaker of the House?

2 A. Prior to being appointed to the Speaker of the Second
3 House of Assembly, I was a partner for a few years in a local
4 law firm. Prior to that, and before changing careers, I was the
5 Chief Registrar of Lands with the Lands and Survey Department,
6 and prior to that for over 12 years, I was the Senior Manager at
7 an international bank in the Territory.

8 COMMISSIONER HICKINBOTTOM: Thank you very much.

9 BY MR RAWAT:

10 Q. Now, you just explained that you were first appointed
11 Speaker of the Second House of Assembly.

12 A. Correct.

13 Q. And it's right, isn't it, that you were also Speaker
14 of the Third House of Assembly?

15 A. Correct.

16 Q. Prior to that first appointment in 2011, had you been
17 a candidate in the general election?

18 A. No, I was not.

19 Q. And at any time thereafter, did you put yourself
20 forward to be a candidate--

21 A. No, I did not.

22 Q. Were you, though, a Member of a political party?

23 A. No, I am not.

24 Q. And you were not at that time.

25 A. No, I was not.

1 Q. So how did you become appointed as Speaker of the
2 Second House?

3 A. Well, I got a telephone call shortly after election
4 from The Honourable Premier at the time, Dr D Orlando Smith, and
5 he invited me to stand for the Speaker of the House of Assembly.

6 Q. And how does the process work? Were you only person
7 invited to stand or were there others?

8 A. Well, there is a process. On the day of the actual
9 swearing in ceremony, the Clerk who presides over the session
10 and the sitting asked for nomination to be appointed to the
11 Speaker. And this is all documented in the House of Assembly
12 Standing Orders. The Clerk would ask for nomination for
13 Speaker; the Premier would put forward his candidate, which was
14 myself; and ask the opposition and any other Member if there
15 were any other candidates they wanted to propose. In the Second
16 House of Assembly, there were none, and that's when I was sworn
17 in.

18 Q. And was it a similar process when you became Speaker
19 of the Third House?

20 A. It was a similar process for the Third House.

21 The question was asked, the opposition members said
22 no, they didn't have any nominations.

23 Q. And when did you finally step down from the position?
24 When the House adjourned for the 2019 Election?

25 A. At the end of January, when the House was dissolved,

1 that day.

2 Q. During your time as Speaker, what did you see the role
3 as encompassing?

4 A. Again, the role of the Speaker is documented in the
5 Virgin Islands Constitution 2007 as well as the House of
6 Assembly Standing Order. The rule is to preside over House of
7 Assembly sittings and all committees of the whole House.

8 Q. And did you have, as Speaker, any executive function
9 in terms of running the House?

10 A. I presided over the House as it relates to House of
11 Assembly sittings, committee meetings of the whole, any informal
12 meetings that Members had, anything to do with the Members.

13 Q. Right.

14 But, if Members had an issue with the Clerk of the
15 House, did you have any involvement in that?

16 A. When you say Members had an issue...

17 Q. Well, if they wanted the House of Assembly to operate
18 in a certain way, was that something that you would be involved
19 in?

20 A. When you say in a certain way, it all depends. If
21 Members had concerns collectively as a body, then those issues
22 would be discussed at House of Assembly in formal meetings, and
23 the Clerk is the Secretary to the House of Assembly sittings as
24 well as the sittings of the Committee as a Whole, as well as
25 most of the Committee meetings of Members.

1 Q. But in terms of line manager responsibility, you have
2 a Clerk to the House of Assembly. Does the Clerk to the House
3 of Assembly have a line manager, if you like?

4 A. It's just a very thin line. You have an input, but
5 the Clerk is the accounting officer for the House of Assembly.
6 The Clerk actually reports to the Deputy Governor's Office.

7 Q. The issue that the Commissioner has been investigating
8 is the question interests of declared by members of the House of
9 Assembly which includes former Members of the House, and the
10 Commissioner has taken evidence about the Register of Interests
11 Act 2006, which prescribes--prescribes for a Register that it
12 has to be one that is not available for inspection to the
13 public.

14 During your time in the House of Assembly, did you
15 form any view about whether it was a good idea or a bad idea for
16 the Register to be published?

17 A. No, I didn't form any view whatsoever when I was sworn
18 as Speaker. I got a package just like I presume every other
19 Member did.

20 Q. And what was in the package?

21 A. The Register of Interests Declaration form along with
22 a cover letter.

23 Q. Along with a?

24 A. Cover letter.

25 Q. And when did you get that package?

1 A. I got that package the very first day that I showed up
2 at my office.

3 Q. I can take you to the law, if it will help, but were
4 you aware from that very first day that you had an obligation to
5 make a Declaration of your interests on the day that you were
6 sworn?

7 A. When I got the package, I read the letter. I referred
8 to the Elections Act which governs the Declaration, and I was
9 aware.

10 Q. Were you aware that you had an obligation to submit a
11 Declaration on every subsequent anniversary?

12 A. Yes, I did.

13 Q. Were you also aware that separate to that, if you had
14 not within three months of that date submitted your Declaration,
15 then that constituted, using the words of the Register of
16 Interests Act of 2006, a breach of the Act and one which the
17 Registrar had to report to the Standing Select Committee?

18 A. Yes, I did.

19 Q. Could I take a look at some of your Declarations,
20 please, Ms Moses-Scatliffe. If you go, please, to page 69 in
21 your bundle.

22 Now, you were Speaker from 2011 to 2015, and then 2015
23 to 2019; that's right, isn't it?

24 A. Correct.

25 Q. And so, the date in which I think you were sworn in

1 and that the House was sworn in and had its first sitting for
2 the 2011-2015 House was the 8th of December 2014. If you look
3 at this form, it's stamped by the Registrar January 21st, 2015.
4 If you go to page 74--

5 A. Um-hmm.

6 Q. --that's the last page we have on it, but is that your
7 signature?

8 A. Yes, it is.

9 Q. And it's dated, isn't it, 14th of January 2015?

10 A. Correct.

11 Q. So, it would follow that you had missed the Due Date
12 of 8 December 2014, wouldn't it?

13 A. Correct.

14 Q. So, you haven't in that sense complied with the
15 requirement under the Act, had you?

16 A. No, I was short by a few days.

17 Section 3 of the Act, that is?

18 Q. Yes.

19 A. Correct.

20 Q. I'll be specific if you want. Some witnesses have not
21 enjoyed me being specific, but I will be.

22 So, let's go to page 62, please.

23 We just look at your 2014 Declaration. We're now in
24 the Third House, and at 62 is a Declaration stamped July the
25 7th, 2015.

1 A. Um-hmm, correct.

2 Q. The last page of that is at page 68.

3 A. Correct.

4 Q. Again, that is your signature, isn't it?

5 A. Yes, it is.

6 Q. Dated the 30th of June 2015?

7 A. Correct.

8 Q. And the Due Date was the 23rd of June 2015, which is
9 the date you were sworn--

10 A. Right.

11 Q. So, again, you would accept that you had breached
12 section 3 of the Register of Interests Act; is that right?

13 A. Correct.

14 Q. If you go to page 56, this is your 2016 form. Page 56
15 is the first page of the Declaration stamped July 6, 2016, by
16 the Registrar; that's right, isn't it?

17 A. Correct.

18 Q. If you go to page 61, is that your signature?

19 A. Yes, it is.

20 Q. 30th of June 2016 is the date, isn't it?

21 A. Correct.

22 Q. And again, you'd missed the Due Date of the 23rd of
23 June 2016.

24 And so, you were in breach of section 3 of the Act,
25 weren't you?

1 A. Yes, I was.

2 Q. If you go, please, to 50, stamped by the Registrar
3 June 27, 2017, so this would be your 2017 Declaration. The last
4 page we find at page 55. Can you confirm that that's your
5 signature, please?

6 A. Yes, it is.

7 Q. It's dated the 27th of June 2017, isn't it?

8 A. Correct.

9 Q. So, again, you had missed the Due Date of the 23rd of
10 June 2017?

11 A. Yes, I did.

12 Q. And so you were in breach of section 3 of the Act.

13 A. (Witness nodding.)

14 Q. You're nodding, Ms Moses-Scatliffe.

15 A. Yes, I did. Sorry.

16 Q. And then, finally, let's look at your last Declaration
17 which we will find at page 44, which is the first page stamped
18 by the Registrar, and she's entered the date on there in
19 manuscript the 15th of August 2018. The last page is at
20 page 49.

21 Again, is that your signature?

22 A. Yes, it is.

23 Q. And it's dated the 27th of June 2018, isn't it?

24 A. Yes, it is.

25 Q. So, again, by missing the Due Date, you were in breach

1 of section 3 of the Act?

2 A. Yes, I was.

3 Q. Did you, during your time as Speaker, have
4 correspondence with the Registrar?

5 A. Yes, I have.

6 Q. Did you--I think you've indicated that, when you first
7 write, she sent you a pack, which was the Declaration form and a
8 cover letter. Did she send you letters like that every year?

9 A. As far as I can remember, yes.

10 Q. Were you aware or not whether she was sending similar
11 correspondence to other Members of the House of Assembly?

12 A. I presume that she was sending to other Members of the
13 House of Assembly, but I can only confirm that I know I got mine
14 for that year.

15 Q. If you could turn, please, there's another bundle on
16 there which I hope is headed "Governor's disclosure". One of
17 the black lever-arch files.

18 If you could turn, please, to page 98, please.

19 A. Page 90?

20 Q. 98, nine-eight.

21 It's a memorandum dated the 9th of July 2014 from Boyd
22 McCleary, then-Governor to you as Speaker of the House of
23 Assembly.

24 A. Correct.

25 Q. And it's headed Declaration of Interests and reads as

1 follows: "The Registrar of Interests has drawn my attention to
2 the delinquency of some Members of the House of Assemblies in
3 failing to file their Declarations of Interests as required
4 under section 3 of the Register of Interests Act 2006. Some
5 Members have never filed a Declaration since taking office on
6 8 December 2011. The Registrar of Interests advises me that she
7 has issued numerous requests for reminders. She's also brought
8 this matter to the attention of the Standing Finance Committee,
9 yet some Members remain delinquent. The Registrar of Interests
10 is an important element in the checks and balances required to
11 ensure good governance. I would be grateful if you could bring
12 this matter to the attention of Members and encourage all to
13 file their Declaration as soon as possible".

14 Do you remember the Governor alerting you to this
15 issue in a memorandum in 2014?

16 A. I do recall.

17 Q. And that put you on notice, didn't it, that some
18 Members of the House of Assembly at least were not complying
19 with the Register of Interests Act?

20 A. Correct.

21 Q. What steps, if any, did you take in response to this
22 memorandum?

23 A. I don't have the documentation at hand, but I will
24 tell you what I recall from memory.

25 I remember writing to the Premier as well as the

1 Members of the House of Assembly, and I do recall having a
2 conversation, if not correspondence with the Registrar which she
3 would have been aware, as well as bringing it to the attention
4 of the Premier that the standing Finance Committee that the
5 Governor is referring to in the memorandum, the Standing Orders
6 of the House of Assembly, which had been in place from 1976 did
7 not include provisions for a Standing Select Committee for the
8 Registrar of Interests.

9 Q. If we take that in steps, you wrote to Members and
10 drew the issue to their attention. Subsequent to that, did you
11 take any further steps in relation to those Members to ascertain
12 whether or not they were complying?

13 A. I remember it being raised in meetings. I cannot tell
14 you definitely which Members were not complying because it's a
15 personal matter, but based on the memorandum that was brought to
16 my attention, I was aware that some Members were not.

17 What I did also implied to the Premier as well as the
18 Chairman of the Standing Orders Committee was to get the
19 Standing Orders revised to include a Standing Select Committee
20 for the Register of Interests.

21 Q. Now, you said that you had correspondence which you
22 don't have to hand, but where would that correspondence which is
23 correspondence from you as Speaker, who would hold that
24 correspondence now?

25 A. That would be the House of Assembly. It's Government

1 correspondence. It would be between my e-mail, and would be in
2 the files.

3 Q. So, you would not have retained copies when you left
4 office?

5 A. No, I would not.

6 Q. Now, you've raised, then, in 2014 the problem with the
7 Standing Orders that they did not cater for a Standing Select
8 Committee. Now, from other evidence that the Commissioner has
9 received, this was something that had also been raised by the
10 Registrar. Were you aware of that?

11 A. Raised by the Registrar?

12 Q. Yes.

13 A. To whom?

14 Q. To the Standing Finance Committee to--I could show you
15 if you want. Would you like me to show you?

16 A. No, that's fine.

17 Q. But also to the Chairman of the Standing Orders
18 Committee as well, drawing to his attention the absence of this
19 Committee.

20 Now, you're the Speaker.

21 A. Um-hmm.

22 Q. What powers, if any, do you have to press for the
23 creation of such a Committee?

24 A. Well, the Standing Orders Committee had been created
25 that there are five Standing Committees in accordance with the

1 Standing Orders that are created very shortly after the House of
2 Assembly is established, so the Standing Orders Committee had
3 the responsibility for having meetings to have the Standing
4 Orders revised to include the Standing Select Committee for the
5 Registrar of Interests, so I had extensive communications with
6 the Premier as well as the Chairman of the Standing Orders
7 Committee at the time, and who then set out to have meetings to
8 get that done.

9 And I must add that there were a number of amendments
10 that were also required to be made to the House of Assembly
11 Standing Orders, bearing in mind as I said that the Standing
12 Orders had been in effect from 1976. The Constitution came into
13 effect in 2007.

14 Q. You should see some loose-leaf pages on your desk.
15 They should include something headed House of Assembly of the
16 Virgin Islands, Resolution No. 3 of 2016. Do you have that?

17 A. Yes, I do.

18 Q. That's the Resolution of the House which actually
19 established the Standing Select Committee known as the Register
20 of Interests.

21 Now, certainly, from your perspective as from 2014,
22 you had been raising as Speaker the need to amend the Standing
23 Orders so the Committee could be established. Would that be a
24 fair assessment of what you did?

25 A. Yes, it would be.

1 Q. Now, you were raising that when you were Speaker of
2 the Second House. The Resolution establishing the Committee,
3 the Standing Select Committee was, not passed by the House of
4 Assembly until you were Speaker of the Third House?

5 A. Correct.

6 Q. Can you explain to the Commissioner why it took so
7 long to get this done?

8 A. It's not a matter of just getting the Resolution
9 itself done. The resolution was--that emanated from the
10 revision to the House of Assembly Standing Orders. The Standing
11 Orders Committee did meet and had several meetings, as far as
12 I'm aware, from in 2015 if not perhaps from around the latter
13 part of 2014, and I remember in 2015, the Standing Orders had to
14 be laid in the House of Assembly first, and I do recall one
15 revision was late, I think it was in December 2015. Of course,
16 the Standing Orders and there are full amendment thing has to be
17 laid, and then a point of--an issue was raised in relation to
18 the Standing Orders with no force presented on the table of the
19 House of Assembly by Members at the time, and they were taken
20 off, and there were additions and amendments to order areas
21 within the Standing Orders themselves, which resulted in the
22 actual Standing Orders themselves not being revised until I
23 think it was early, around the first quarter, perhaps, of 2016,
24 and coming out of that Resolution.

25 Q. The Act came into force on the 18th of February, 2008.

1 Obviously you were not Speaker of the House then. You became
2 Speaker of the House in 2011.

3 In order for one step in the Act being fully
4 operational is the creation of a Standing Select Committee,
5 which is created some eight years after the Act comes into
6 force.

7 From the time that you took your oath of office as
8 Speaker in 2011, was this an issue, the need to revise the
9 Standing Orders, or would it only emerge in 2014?

10 A. I wouldn't say that it emerged only in 2014 because,
11 as I said before, there were a number of issues that needed to
12 be addressed within the existing Standing Orders of 1976, one of
13 which was adding the Register of Interests and the Standing
14 Select Committee.

15 Q. Is there anything to stop the House amending the
16 Standing Orders more than once?

17 A. There is--because the Standing Orders are actually the
18 legislation that governs the House of Assembly, the Committee
19 would meet but they also have to meet in conjunction with
20 counsel from the Attorney General's Chambers, as well as the
21 Deputy Clerk of the House at the time was the Secretary to that
22 Committee where this was all being done, and I know that they
23 met extensively to revise the Standing Orders, considering that
24 they hadn't been revised for about 30 years.

25 Q. And so, from your recollection, it's a process that

1 began in--sometime in 2014 and continued through.

2 A. It was a process that began, and it just emanated with
3 the Resolution actually being Gazetted on the 19th of May 2016,
4 but it did start prior to that.

5 Q. Did you at the time appreciate that, as well as the
6 obligation under the Act, there was also a constitutional
7 obligation being placed on Members?

8 A. Let me put it this way: The Constitution--the Virgin
9 Islands Constitution of 2007 came into effect in 2007, and that
10 made various provisions which in the Constitution, one of which
11 was to provide for a Registrar of Interests.

12 Q. What it also provides for--and I can take you to it if
13 it will help you, but it provides that it shall be the duty of
14 any person to whom the section applies to make a Declaration to
15 the Register, and what that person has to do is make a
16 Declaration upon assuming the functions of his or her office,
17 and at such intervals there after being no longer than 12 months
18 as may be prescribed by law.

19 And so the obligation, the section 3 obligation that
20 we have been asking you about, doesn't just arise under the Act,
21 it arises under the Constitution, the obligation to make your
22 Declaration on the date you take your office.

23 So, during your time as Speaker, did you appreciate
24 and I will just give it to you, but did you appreciate that
25 there was a constitutional obligation being placed on you to

1 make your Declaration on time?

2 A. I'm just rereading section 112(3)--no, section 112(4),
3 which is the section you were reading from, correct?

4 Q. I paraphrased for you 112(2) and (3).

5 A. Okay. Okay.

6 Could you repeat the question again, please?

7 Q. I won't read out the text now that you've had an
8 opportunity to read it.

9 A. Um-hmm.

10 Q. Did you appreciate from the time that you became
11 Speaker in 2011 that the Constitution placed an obligation on
12 you to make a Declaration on the day that you assumed your
13 office?

14 A. I think by extension the Registrar of Interests Act
15 which is derived from the Constitution placed the requirement on
16 the Members of the House of Assembly to make the Declarations.

17 Q. You're a lawyer by training and profession,
18 Ms Moses-Scatliffe. The wording of section 112 of the
19 Constitution is not ambiguous at all, is it? It makes clear
20 that there is an obligation placed on you?

21 A. Um-hmm.

22 Q. Would you accept that?

23 A. In accordance with 112(3), correct.

24 Q. Thank you.

25 COMMISSIONER HICKINBOTTOM: I'm sorry, just while

1 we're on section 112, while you've got it open, 112(1) shall be
2 for the Virgin Islands a Register of Interests, so again that's
3 mandatory. There has to be a Register of Interests. And then
4 (5), you needn't read all of five, but a law made under this
5 Constitution shall make provision for giving effect to this
6 section. That's the 2006 Act.

7 THE WITNESS: Correct.

8 COMMISSIONER HICKINBOTTOM: The 2006 Act requires the
9 Registrar to maintain and keep the Register in accordance with
10 the Act, and the Register section 4(2) says "shall be in such
11 format as the Select Committee shall approve".

12 That means, on the face of it, that without the Select
13 Committee approving the format of the Register, there can't be a
14 Register because there is no--there is no way in which a
15 Register can be formulated. That seems to be the understanding
16 that the Registrar had because she said on more than one
17 occasion that the Register is a blank book because there was no
18 format in which to put the information which was--are you
19 looking for--

20 THE WITNESS: I'm looking for the section that you're
21 reading from.

22 COMMISSIONER HICKINBOTTOM: It's page 62 in
23 that--Ms Moses-Scatliffe. Page 62 is--that's it.

24 THE WITNESS: Page 62? What section were you reading
25 from?

1 COMMISSIONER HICKINBOTTOM: Section 4(1), the
2 Registrar shall maintain and keep the Register in accordance
3 with this Act. And 4(2), the Register shall be in such format
4 as the Select Committee shall approve.

5 THE WITNESS: Correct.

6 COMMISSIONER HICKINBOTTOM: The Registrar took the
7 view, on the face of it correctly, that without a format being
8 approved by the Committee, you couldn't have a Register. The
9 Declarations would come in, they'd be on bits of paper, and
10 she's kept them. But there couldn't be a Register because there
11 was no format in which to put the Declarations.

12 THE WITNESS: And you're asking me a question? Sorry?

13 COMMISSIONER HICKINBOTTOM: The question is: There
14 appears never to have been a Register in your time or even now.
15 It doesn't seem ever to have been a Register because the Select
16 Committee has never approved a format, there's no evidence that
17 it's approved the format. Nobody suggested that it's ever
18 approved the format and therefore, there is no Register. The
19 Registrar has various bits of paper which have been sent to her
20 by Members from time to time, but there is no Register.

21 THE WITNESS: Can I ask you, just for a clarity,
22 Mr Commissioner, you were reading from section 4(1) and (2)?

23 COMMISSIONER HICKINBOTTOM: Yes. 4(1) is the
24 Registrar shall maintain and keep the Register.

25 THE WITNESS: Um-hmm.

1 COMMISSIONER HICKINBOTTOM: And 4(2), missing out (a)
2 and (b), because that's what the Register must contain, the
3 Register going down to the bottom of (2), shall be in such
4 format as the Committee shall approve.

5 THE WITNESS: Okay.

6 COMMISSIONER HICKINBOTTOM: There is no evidence that
7 the Committee ever approved a format. The Registrar, the
8 previous Registrar Mrs Romney-Varlack, took the view that that
9 meant there was no Register because there was no format in which
10 she had to put the declared interests. So, she said on more
11 than one occasion the Registry is simply blank, it's a blank
12 book. Was that something which you thought about as the
13 Speaker? It may not have been. It may not have crossed your
14 mind.

15 THE WITNESS: I'm inclined to say "and shall be in
16 such format as the Committee shall approved". In my thinking, a
17 Register would be presented.

18 COMMISSIONER HICKINBOTTOM: By whom, to whom?

19 THE WITNESS: By the Registrar, meaning simply because
20 the Register shall contain the names, offices, addresses and
21 basic information that Members would have filled in on their
22 Declaration forms, but the format, the formal format to be
23 approved would be by the Committee.

24 So, I'm just trying to be clear if you're asking--and
25 I guess you've said that there was nothing that contained any

1 information other than loose pages.

2 COMMISSIONER HICKINBOTTOM: There are two separate
3 things. One is the duty to declare.

4 THE WITNESS: I'm aware.

5 COMMISSIONER HICKINBOTTOM: We have been through that
6 section (1) and (2).

7 THE WITNESS: And the Register.

8 COMMISSIONER HICKINBOTTOM: And section 3 and so on.
9 But there is a separate matter which is at the moment concerns
10 the--there still appears to be no Register. Today there is no
11 Register. If somebody wanted to look at the Register, there is
12 nothing to look at. There is simply the loose pages which
13 individual Members have sent to the Registrar from time to time.
14 I understand if you say, well, that was never something which I
15 thought about or it was never brought to my attention. It's
16 just a concern. I just wondered if you had any view on it.

17 THE WITNESS: I don't recall the matter of there not
18 actually being a physical Register in place. Not that--

19 COMMISSIONER HICKINBOTTOM: Being an issue?

20 THE WITNESS: No, I wasn't going to say not being an
21 issue. That's not what I was going to say.

22 Okay.

23 COMMISSIONER HICKINBOTTOM: You may not have any
24 comments on it.

25 THE WITNESS: I don't.

1 COMMISSIONER HICKINBOTTOM: Okay. Thank you very
2 much.

3 Yes?

4 BY MR RAWAT:

5 Q. Do the Standing Orders describe or at least as they
6 were during your time as Speaker, do they describe how often a
7 Select Committee should meet, a Standing Select Committee?

8 A. I'm just referring to it. I do not think so, but I'm
9 just going to refer quickly to the section in the Standing
10 Orders.

11 It prescribed the days and hours of the sitting but
12 not necessarily the frequency.

13 Q. In the case of the Committee that was set up under
14 that 2016 Resolution, they appear to have met once; it was in
15 2017. So, is it entirely open to a Committee to decide how
16 often it will meet, what this agenda will be, that's for the
17 Committee Membership--

18 A. Correct.

19 Q. So, if the Committee decides that it will meet once a
20 year, nobody is going to raise a concern over that?

21 A. If it's brought to the attention, whatever has been
22 brought to my attention, then I would bring it to the attention
23 of the Members collectively in an informal meeting as well as to
24 the Premier.

25 Q. But does it fall within your remit anyway other than

1 it being brought to your attention? Do you, as Speaker, would
2 you have had any kind of control over decisions that Committees
3 may have as to how often they would meet?

4 A. No, because I'm not a Member of the Committee.

5 COMMISSIONER HICKINBOTTOM: No, I think the evidence
6 is really it's up to the Chairman.

7 THE WITNESS: It's up to the Chairman.

8 COMMISSIONER HICKINBOTTOM: To call meetings and
9 produce an Agenda.

10 THE WITNESS: Correct.

11 BY MR RAWAT:

12 Q. Let's go to page 44 in the bundle. I just want to ask
13 you quickly just about the form itself.

14 This is your 2018 Declaration. It contains, I think,
15 generally across your forms you've made the same Declarations?

16 A. Correct.

17 Q. But some other Members might say that you haven't much
18 of them because of your legal training and because this is a
19 form that is scheduled to the Act.

20 When you came to fill it in, did you consider that any
21 of the wording or Explanatory Notes that were set out in the
22 form could give rise to doubts or ambiguity about what
23 information was required?

24 A. I cannot recall, but I do remember specifically when I
25 got the form the first time, when I completed it and submitted

1 it, the Registrar at the time contacted me and told me there was
2 one area on the form I had incorrectly completed, and I told me
3 what the correct thing ought to be. And I made the correction,
4 and sent it back to her and going forward that's what I bore in
5 mind, and that was on the very first Declaration that I made.

6 Q. And in relation to which paragraph of the form was
7 that?

8 A. It had to do with the constituency, page 1.

9 Q. So, you say you don't have a constituency as Speaker?

10 A. Correct. I wasn't sure what was meant for me to put
11 there.

12 Q. Yes.

13 A. And she told me that.

14 Q. But other than that, what you've declared--and this is
15 in your approach. There are three areas where you put
16 substantive responses.

17 A. Correct.

18 Q. The first is in relation to Directorships, so you, for
19 example, declared Directorships in a law firm, Trust Company,
20 accounting firm, Holding Company, an electronic bill payment
21 solution and a brokerage firm?

22 A. Correct.

23 Q. Now, you also declared remunerated employment. For
24 example, in the same law firm, Travers Thorp Alberga, you've
25 declared remuneration from there?

1 A. Correction. The heading of question 2 says
2 "remunerated employment office or profession". but actual
3 question asks "do you have any employment, office, trade,
4 profession or vocation apart from membership in the House of
5 Assembly or ministerial office for which you are remunerated or
6 in which you have any pecuniary interest".

7 Q. Yes.

8 So, what did you take the question to be seeking--

9 A. Pecuniary interest. It wasn't that I was being
10 remunerated.

11 Q. It's just that you have an interest, for example,
12 because you're a partner?

13 A. Correct.

14 Q. I see.

15 But the point is--and if we pick it up as well, you've
16 also for example in the same company, you've specified
17 shareholdings.

18 A. Correct.

19 Q. Now, did you appreciate, therefore, that, if you like,
20 the same sort of information might need to be repeated in
21 different parts of the form to give full disclosure? So, you
22 could be a director of a firm in which you had a pecuniary
23 interest and also held shares?

24 A. Correct.

25 Q. And for completeness, you would have to put that

1 information in different parts of the form?

2 A. Correct.

3 Q. Did any other Member ever come to you and ask for
4 guidance in terms of completing the form?

5 A. I do not recall. All I can say is a Declaration of
6 Interests is a very personal and private document, and other
7 than speaking about it generally, in general terms, it was a
8 personal matter.

9 Q. If you go to page 48, please. This isn't about a
10 particular paragraph, but can you see at the top in the
11 Explanatory Note there's reference to a guidance pamphlet on
12 Registration and Declaration of Members' Interests?

13 A. It's at the top of page--

14 Q. Page 48.

15 A. I don't--bottom middle, numbering at the bottom in the
16 middle.

17 COMMISSIONER HICKINBOTTOM: It's the top paragraph in
18 italics, towards the end of that paragraph there's reference to
19 a guidance pamphlet on Registration and Declaration of
20 Interests.

21 THE WITNESS: I see.

22 BY MR RAWAT:

23 Q. Did you ever receive a guidance pamphlet?

24 A. I don't recall receiving one.

25 Q. Now, obviously you filled in the number of this form a

1 number of times. Did you ever ask for it?

2 A. I can't recall asking for it because, as I said, the
3 only question that I had a concern with on the form was the one
4 that was incorrectly completed and the Registrar contacted me
5 and told me what it should be.

6 Q. And other than that, you had--you didn't think the
7 form gave you--it didn't give you any difficulty in
8 understanding what was required of you?

9 A. Not--no.

10 Q. If you go to page 49, please. Paragraph 10 asks you:
11 "Bearing in mind the definition of 'purpose' set out in the
12 introduction to this form, do you have any relevant interest
13 which you consider should be disclosed but which do not fall
14 within the nine categories set out above, please list them".
15 And the reference to the introduction is to the Preamble, which
16 you can see at your page 44, if you need to look at it, but
17 which sets out the purpose of the Register of Interests.

18 In terms of paragraph 10 that we're looking at at
19 page 49, what did you understand its purpose to be?

20 A. As it said, if you have any relevant interest which
21 you consider should be disclosed, but do not fall within the
22 nine categories.

23 Q. But any relevant interest, is that any relevant
24 interests held by you or held by, for example, by your spouse?

25 A. The latter.

1 Q. So in your view what was required of Members here was
2 to declare not just relevant interests they held but possibly
3 held by a spouse or other members of their immediate family?

4 A. Because the Register of Interest Act defines spouse
5 and children, minor children, by virtue of the Act itself, and
6 this question, in my view, should be anything outside that.

7 Q. So, anything outside--

8 A. That is my--that is my interpretation.

9 Q. Yes.

10 A. That is not necessarily--

11 Q. That's what's important because what's--I mean, you
12 have the advantage over us in that you had to fill in the form.
13 So, how you approached the form and how you understood the
14 wording to be requiring is important to know. So, when you
15 approached Para 10, you read it as looking--seeking information
16 that fell outside--outside what was specified in the Act, so
17 outside your spouse, outside your minor children.

18 A. And which I may have a relevant interest in.

19 Q. So, for example, a business operated by an adult child
20 in which you might have an interest or get some indirect benefit
21 is something which you might declare under paragraph 10?

22 A. I would.

23 Q. Thank you.

24 You should, I hope, also see on the table in front of
25 you some guidelines for processing assistance grants. A number

1 of Honourable Members have explained the process by which
2 provision of assistance grants operates, so the Commissioner has
3 the evidence on that. They've explained that the Clerks of the
4 House of Assembly is also involved in the process.

5 Does the Speaker to the House of Assembly have any
6 involvement in this process at all?

7 A. No, I don't.

8 Q. So, it's not the job of the Speaker to get involved in
9 this?

10 A. The Clerk is the--has the day-to-day responsibility
11 for the running of the Office of the House of Assembly.

12 Q. Next matter is there is a process by which Honourable
13 Members can be exempted from a requirement to vacate their seat,
14 which is under section 67 of the Constitution of 2007. In
15 circumstances when they might enter into a contract with
16 Government, they would be obliged to vacate the seat unless the
17 House votes otherwise.

18 Were you ever exempted under section 67 during your
19 time in the House of Assembly?

20 A. I'm just going to section 67.

21 No, I was not.

22 Q. Did you ever seek exemption?

23 A. No, I did not.

24 Q. In terms of the process of bringing such a motion
25 before the House, is it always down to the Premier to put the

1 motion before the House when an exemption of this sort is being
2 sought?

3 A. Correct.

4 MR RAWAT: Mr Commissioner, that's the end of my
5 questions. Can I conclude by thanking Ms Moses-Scatliffe for
6 her patience and for coming to give evidence today and also for
7 the way in which she has given that evidence.

8 COMMISSIONER HICKINBOTTOM: Yes. Can I echo that.
9 Thank you very much for your time, and your patience in waiting
10 and for the clear way in which you've helped me. Thank you very
11 much.

12 THE WITNESS: Thank you.

13 (Witness steps down.)

14 MR RAWAT: Can I ask to rise briefly to ascertain the
15 position for the next witness.

16 COMMISSIONER HICKINBOTTOM: Yes, I will do that.
17 Thank you.

18 (Recess.)

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Session 3

MYRON VERNELL WALWYN, COMMISSION WITNESS, CALLED

COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat. Sorry for kept you waiting but we are now ready to take your evidence. Thank you very much.

MR RAWAT: Yes, Commissioner. Our next witness is Mr Myron Walwyn, and I ask that the witness be sworn in, please.

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

THE WITNESS: Affirm.

COMMISSION SECRETARY: If you could turn the page.

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

COMMISSION SECRETARY: Thank you.

COMMISSIONER HICKINBOTTOM: Thank you.

Mr Rawat.

BY MR RAWAT:

Q. Thank you. And thank you for coming to give evidence to the Commission today.

Can I begin with some formalities. Could you give the Commissioner your full name, please.

A. My name is Myron Vernell Walwyn.

Q. What I try to do, Mr Walwyn, is to keep my questions short and straight, but sometimes that doesn't work out. And if

1 you have any difficulty understanding a question I put, please
2 don't hesitate to ask me to repeat or rephrase it.

3 There are a number of bundles on the table in front of
4 you. We won't necessarily need to look at all of them. What
5 I'll do is I'll take you to specific documents as we go through
6 your evidence.

7 A. That works.

8 Q. Final thing is just to ask you, and this may be no
9 difficulty, but just keep your voice up, please, and speak
10 slowly. The microphone in front of you doesn't amplify, but
11 it's important that we accurately record your evidence today.

12 A. Yes.

13 Q. Could I begin with the question I put to every witness
14 we've had in the last few days, and that is by asking you to
15 just give an outline of your professional background before you
16 entered into politics, please?

17 A. Yes, I started out as a teacher. Then I got involved
18 in the hospitality industry, did some formal studies there as
19 well, and proceeded to open some businesses that are still
20 operating here now in the Virgin Islands.

21 I studied law. Upon my return, I was a Crown Counsel
22 at the Director for the Prosecution's Office. I proceeded to
23 open a law firm with a few partners, and that's where I am now.

24 Q. I see. Now, in terms of politics, is it right that
25 the first time you were elected to the House of Assembly was in

1 2011?

2 A. That's correct.

3 Q. And that was as a territorial candidate?

4 A. That's correct.

5 Q. For the NDP?

6 A. That's correct.

7 Q. And that House sat--that was the Second House that sat
8 from 2011 to 2015, didn't it?

9 A. That's correct.

10 Q. And during that time, did you take on any ministerial
11 role?

12 A. Yes. I was assigned the role of Minister for
13 Education and Culture by the Premier.

14 Q. And then you were re-elected; is that right? In 2015?

15 A. Yes, I was.

16 Q. And again, did you return to the Cabinet position?

17 A. Yes.

18 Q. What was that?

19 A. Minister for Education and Culture.

20 Q. And I believe--correct me if I'm wrong--but you stood
21 again as a territorial candidate in 2019?

22 A. I did.

23 Q. And you were unsuccessful?

24 A. I was unsuccessful.

25 Q. And as we understand it, I mean, in effect every voter

1 has four--they have a district vote, but then they have four
2 votes to choose the territorial candidates?

3 A. That's correct.

4 Q. And essentially, it's the top four get it?

5 A. That's correct.

6 Q. And the others don't.

7 A. That's correct.

8 Q. Now, one of the issues that the Commissioner has been
9 concerned with is the question of the Register of Interests Act
10 of 2006?

11 A. Yes.

12 Q. And I hope you picked up on that from the information
13 that the Commission has provided to you.

14 A. Yes.

15 Q. At present under the Act, there is no provision for it
16 to be inspected by an ordinary Member of the public.

17 What--during your time in office, 2011 to 2019, what was your
18 view about making the Register open to the public?

19 A. My view now as it was then is that I have no issues
20 with the Register being public. Absolutely none.

21 Q. And can you see potential benefits to doing that?

22 A. Absolutely, particularly a very small society.

23 Q. And in way could you see those benefits coalescing?

24 A. I think it goes hand-in-hand with good governance and
25 transparency that we're trying to see, and that persons,

1 particularly the voting public ought to know what interests our
2 Members have so that when certain decisions are made they can
3 have confidence in those decisions.

4 Q. Picking up on what you've just said, would you agree
5 that a Register of Interests would only be truly effective if it
6 were an accurate record of people's interests?

7 A. I would agree with that.

8 Q. Now, obviously, a couple of years since you left
9 politics behind you, but you are a lawyer by training so you if
10 need me to take you to the Register of Interests Act, do tell
11 me, but can I just outline for you the obligations that it
12 places on Members of the House of Assembly and see if you agree
13 with me?

14 A. Yes.

15 Q. The first is that there is an obligation under
16 section 3 of the Act to make a Declaration of your interests on
17 the date that you are sworn into office.

18 A. That's correct.

19 Q. Secondly, you have an obligation under section 3 again
20 to make a Declaration on every subsequent anniversary of that
21 date?

22 A. Yes.

23 Q. There is also under section 7 a consequence of not
24 filing within three months of your Due Date, and section 7
25 describes when that situation arises, it describes it as a

1 breach of the Act, and it mandates that the Registrar send a
2 report to a Standing Select Committee. Was that something that
3 you were aware of when you were in the House of Assembly?

4 A. I was not. I was not entirely aware of it. I was
5 not.

6 Q. And can you explain to the Commissioner, why,
7 particularly given your legal background, that was not something
8 that you were aware of?

9 A. Well, I am not one of those lawyers who know
10 everything.

11 I must say to you--of course I'm making no excuses
12 because I know from the Register of Interests Act,
13 Commissioners, there is no defense in there. You either did or
14 you didn't in terms of your filing these. I was not aware of
15 the first breach which in section 3 and the second breach that
16 was in section 7.

17 COMMISSIONER HICKINBOTTOM: You weren't aware?

18 THE WITNESS: I was not aware. I was not aware at the
19 material time.

20 BY MR RAWAT:

21 Q. Can I take you just to the Declarations that you do
22 file, the ones that have been provided to us.

23 A. Yes.

24 Q. Can I explain, Mr Walwyn, what I'd like to do is take
25 this in two stages as I have done with other witnesses?

1 A. Yes.

2 Q. The first is to confirm dates?

3 A. Um-hmm.

4 Q. The second which we come to is to ask for you to
5 explain to the Commissioner how you approached the form.

6 A. Yes.

7 Q. Because, on different parts of the form, so far
8 different witnesses have given different answers?

9 A. Yes.

10 Q. As to what they understood. So, let's deal with dates
11 first.

12 If you go to page 61 in the bundle--

13 THE WITNESS: Can I confirm one thing, Commissioner?

14 COMMISSIONER HICKINBOTTOM: Yes.

15 THE WITNESS: The bundle that you sent me is that the
16 exact duplicate here?

17 BY MR RAWAT:

18 Q. Yes.

19 A. There's nothing different.

20 Q. Yes.

21 COMMISSIONER HICKINBOTTOM: Yes, there is nothing
22 different. They're the same, Mr Walwyn.

23 BY MR RAWAT:

24 Q. And we go, please, just to I think it's page--give me
25 one moment. If I take you, please, page 61.

1 Now, you can see that obviously your name and your
2 constituency being at large is typed on this Declaration form.

3 A. Yes.

4 Q. It is stamped by the Registrar October 5th, 2016, but
5 can you see just above the "received" there is written in
6 manuscript "for 2015". Is that your handwriting, Mr Walwyn?

7 A. At the top?

8 Q. Yes.

9 A. No. That's not mine.

10 Q. Right. I'm going to suggest that it's probably the
11 Registrar?

12 A. It could very well be.

13 Q. If we go, then, through to page 71?

14 A. Yes.

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

16 A. It is.

17 Q. And it's dated underneath typed "9th September 2016".

18 A. That's correct.

19 Q. Now, this appears to be your 2015 Declaration?

20 A. Yes.

21 Q. Which was due on the 23rd of June 2015, the day that
22 you were sworn in.

23 A. That's correct.

24 Q. So, would you agree that, by dating it the 9th of
25 September 2016, you failed to comply with section 3?

1 A. That's correct.

2 Q. And you were also in breach of section 7, weren't you?

3 A. That's correct.

4 Q. Now, if I now take you to page 72, we now should see a
5 Declaration which is stamped by the Registrar "December 14,
6 2016".

7 A. Yes.

8 Q. And if we go through to the last page of that which is
9 at page 82, it's again signed by you, isn't it?

10 A. It is.

11 Q. And that's 14th of December 2016.

12 A. "For 2016". yes.

13 Q. And so, that's I'm going to suggest your 2016
14 Declaration which was due on the 23rd of June 2016?

15 A. Yes, sir.

16 Q. So, again, would you accept, Mr Walwyn, that you were,
17 by filing that in 2016, you breached section 3?

18 A. That's correct.

19 Q. And you also breached section 7?

20 A. I did.

21 Q. Can I take you now to page 50.

22 A. Five-zero?

23 Q. Five-zero, please.

24 It's now a third Declaration. You can see that it's
25 stamped by the Registrar, and within the stamp she's written the

1 date '18 of September 18".

2 Do you have that?

3 A. Yes, I do.

4 Q. Go to 60 now.

5 A. Yes.

6 Q. Again, last page of the Declaration, is that your
7 signature?

8 A. It is.

9 Q. Dated the 29th of December 2017; is that correct?

10 A. That's correct.

11 Q. Now, again, 23rd of June 2017 would have been the Due
12 Date?

13 A. Yes.

14 Q. Under the Act, so you are again in breach of
15 section 3, aren't you?

16 A. I accept that.

17 Q. And also in breach of section 7?

18 A. Yes, sir.

19 Q. And then, if we do the last Declaration we have, you
20 will find at page 39 stamped by the Registrar, and she's dated
21 28th August 2018 in that? You've signed that at page 49.

22 A. Yes.

23 Q. And you've dated it 15th of August 2018, haven't you?

24 A. Yes, sir.

25 Q. And that now, taking your due date as being 23rd of

1 June 2018?

2 A. Yes.

3 Q. Submitted on the 15th of August 2018 is a breach of
4 section 3, isn't it?

5 A. Yes.

6 Q. Now, you said to the Commissioner that you didn't
7 really have an appreciation of the operations of section 3 and
8 Section 7?

9 A. Yes, at the time, yes.

10 Q. Did you have--were you aware that, leaving aside the
11 Register of Interests Act, the Constitution itself placed an
12 obligation on you?

13 A. The Constitution created the Register of Interests.
14 It's a creature of that, yes.

15 Q. If you look, there should be on the table in front of
16 you a bundle, not your own bundle but another one--

17 A. Amendment to the Constitution?

18 Q. I'm taking you to the Constitution.

19 A. I got it.

20 Q. You brought your own?

21 A. Yes.

22 Q. Go then to section 112 of the Constitution, please.

23 A. Yes.

24 Q. Do you have it?

25 A. I have it.

1 Q. Thank you. As you said, it creates the post of
2 Registrar of Interests, doesn't it?

3 A. It does.

4 Q. And at 112(1) it mandates that there will be a
5 Register of Interests?

6 A. Yes.

7 Q. At subsection 2, it makes it the duty of any person to
8 whom the section applies to make a Declaration to the Registrar.

9 A. Yes.

10 Q. Do you accept that?

11 A. Yes.

12 Q. And at subsection 3, it says that a person shall make
13 a Declaration under subsection 2 upon assuming the functions of
14 his or her office, and at such intervals thereafter being no
15 longer than 12 months as may be prescribed by law.

16 A. Yes.

17 Q. And subsection 4 makes it applicable to Members of the
18 House of Assembly, including Ministers?

19 A. Yes.

20 Q. So, if we go back to subsection 3--

21 A. Yeah.

22 Q. --that is the Constitution mandating that a Member of
23 the House of Assembly has to make a Declaration upon the
24 assuming of functions of his or her office.

25 A. Yes.

1 Q. Would you agree?

2 A. I agree with that.

3 Q. Which we see again mirrored in section 3, "duty" don't
4 we?

5 A. Yes.

6 Q. And then the second element of the subsection 3 is
7 that, at such intervals being no longer than 12 months as may be
8 prescribed by law, that's again the second obligation that we
9 see in section 3 of the Act?

10 A. Yes.

11 Q. It's found in the Constitution, isn't it?

12 A. Yes.

13 Q. So, would you accept that where you are breaching
14 section 3 of the Act, you are also breaching section 112(3) of
15 the Constitution?

16 A. No, I don't entirely agree with you.

17 Q. And could you explain--

18 A. I think what this section does, certainly portions of
19 the section we find replicated in the Act itself, but if you go
20 to section 5 of the very same section 112, subsection 5, "a law
21 made under this Constitution shall make provision for giving
22 effect to this section".

23 When I interpret that, the relevant area that you
24 really should look at is the Register of Interests Act. That is
25 my interpretation of that, so I can't agree with you.

1 COMMISSIONER HICKINBOTTOM: Do finish, Mr Walwyn.

2 THE WITNESS: Yes, I'm finished, Commissioner.

3 COMMISSIONER HICKINBOTTOM: We're going to hear some
4 legal submissions on this later today.

5 THE WITNESS: Yes.

6 COMMISSIONER HICKINBOTTOM: But you are a lawyer so
7 let me say this: In respect of section 112(5) of the
8 Constitution--

9 THE WITNESS: Yes.

10 COMMISSIONER HICKINBOTTOM: --those words are
11 classically the words relating to enforcement, which are
12 normally left to other measures. So, to give effect to the
13 section normally refers to something which provides, for
14 example, sanctions to enforce the duty, but section 1122 is in
15 pretty clear terms, it seems to me, subject to anything you say
16 or any further leave of submissions, "it shall be the duty of
17 any person to whom the section applies to declare to the
18 Registrar the interests". so that's a clear duty, isn't it.

19 THE WITNESS: Yes, but that's also replicated in the
20 Act. But then based on what you said earlier, Commissioner, if
21 you were to complete it, it says: The law made under this
22 Constitution shall make for giving effect to this section
23 including. So it's not just for sanctions.

24 COMMISSIONER HICKINBOTTOM: No, no, it's not--

25 THE WITNESS: Yes.

1 COMMISSIONER HICKINBOTTOM: Because there are various
2 ways in which effect can be given to a duty.

3 THE WITNESS: Yes.

4 COMMISSIONER HICKINBOTTOM: But what this mandates is
5 there must be sanctions.

6 THE WITNESS: Yes.

7 COMMISSIONER HICKINBOTTOM: Has to be sanctions.

8 THE WITNESS: In the Act.

9 COMMISSIONER HICKINBOTTOM: Yes.

10 THE WITNESS: I mean, I do appreciate where you're
11 coming from, but I respectfully disagree on what has been put to
12 me.

13 COMMISSIONER HICKINBOTTOM: Thank you very much.

14 THE WITNESS: Yes.

15 BY MR RAWAT:

16 Q. Thank you.

17 Can you confirm that your position was the same as
18 appears to be the case with other Member of the House of
19 Assembly, and this is both former Members and current Members
20 have given this evidence, and that is that the Registrar would
21 send you before the Due Date was up a letter notifying of your
22 obligations and a copy of the form to be completed?

23 A. I believe she would have done that.

24 Q. And that subsequent to that, if you didn't make the
25 date, she would send you reminder letters?

1 A. I believe she would have done that.

2 Q. And do you recall receiving such correspondence?

3 A. I cannot recall, but those would have come to my
4 secretary. But I really do believe that she would have sent
5 those.

6 Q. You are the second person today to refer to the use of
7 a secretary. Is this your private secretary in your ministerial
8 office?

9 A. Yes, Commissioner.

10 Q. Were you aware that she was sending letters and
11 correspondence to other Members of the House? And when I say
12 "were you aware". it's obviously during your time as a Member of
13 the House of Assembly, but were you aware that reminders and
14 notices were sent to other Members of the House of Assembly?

15 A. I can't speak for other Members. I can only speak for
16 myself. I believe she sent them to me, as I said.

17 Q. Were you aware--and this isn't asking you to speak for
18 other Members, but did you become aware at any time that other
19 Members of the House were--and this is the Registrar's
20 words--"delinquent" in filing their Declarations?

21 A. I heard her make references. I don't know who the
22 individuals were because she never said who they were, but I do
23 know that from what she said that there were person who were
24 delinquent.

25 Q. And where did you hear the Registrar make these--the

1 statement that others--that Members were being delinquent?

2 A. I'm not sure, but it could--it could have very well
3 have been at Standing Finance, possibly. Could have been there.

4 Q. As a Minister, the Standing Finance Committee is not
5 something you would sit on, would it sit?

6 A. No. It's where you sit--the whole House sits to look
7 at the appropriation bill and to bring various Departments in is
8 to see what their needs are, and they take the opportunity to
9 raise issues that they're having.

10 Q. I see.

11 So, the Standing Finance Committee is the Committee of
12 the entire House?

13 A. It is.

14 Q. That's helpful.

15 Could I take you then to some articles. You should
16 have a loose-leaf sheet on your thing which has a sort of index.
17 I think it's called "press articles re: ROIA". Do you have
18 that?

19 A. Yes.

20 Q. I just want to take you through a number of these
21 articles.

22 Now, the first one that you should have at your page 1
23 is headed "Registry of Interests, a blank book". and the it's
24 from the BVI Beacon April the 18th, 2012.

25 A. Um-hmm.

1 Q. And it says that it's been four years since the
2 Register of Interests Act was brought into force, but the
3 Register itself is still a blank book, said Registrar of
4 Interests Victoreen Romney-Varlack during the recent
5 deliberations of the Standing Finance Committee. Before
6 anything can be officially entered into the book,
7 Ms Romney-Varlack told legislators, a Standing Select Committee
8 must be appointed, and that can't happen until lawmakers update
9 the Standing Orders to conform to the Territory's Constitution.
10 Like the Public Accounts Committee, the Standing Select
11 Committee is to be made of up of sitting lawmakers.

12 And then there's a quote, so it reads as follows:
13 "Members should be thankful that the Register was not a public
14 document because, if it were, there would be nothing to
15 inspect". Ms Romney-Varlack is recorded as saying in the FFC
16 report. She went to say she'd raised the matter of needing a
17 Select Committee at every FFC meeting since her appointment in
18 February 2008.

19 Now, Mr Walwyn, can you again--

20 A. Yes.

21 Q. --the reference there to the FFC report, what do you
22 take that to mean?

23 A. I think she means the Standing Finance Committee.

24 Q. And does the Committee actually produce a report, or
25 is there Minutes of the Meeting?

1 A. There are minutes, I would imagine, yes.

2 Q. And so what one would see is if a Department has to
3 come between the--before the Standing Finance Committee, they're
4 coming before the whole House?

5 A. Essentially. All Members should be present, yes.

6 Q. And they can not only raise and answer questions about
7 their budget, but also raise other issues?

8 A. Yes, they do take their time to raise other issues.

9 Q. So, did you--I mean, you were probably relatively new
10 to the House by April 18, 2012, but did you appreciate what the
11 Registrar meant by the fact that the Register itself is still a
12 blank book?

13 A. Well, I can't--I can't--I cannot say that what I read
14 was said in my hearing at that time. I mean, I'm just seeing
15 this for the very first time, this description, so I don't think
16 I would be able to say without more.

17 Q. Let's try and give you a little bit more?

18 A. I shall be grateful.

19 Q. Let's go through the rest of the--to conclude this
20 particular Law Report.

21 A. Yes.

22 Q. If I should, for the record, just say that on page 2
23 it continues, "for now Ms Romney-Varlack keeps the very
24 elementary Declarations filed by Legislators in file folders,
25 the Report states".

1 What I'll do, if that's all right, is that I'll put
2 the detail of these other put those other press reports into the
3 Transcript before asking my question, Mr Walwyn.

4 COMMISSIONER HICKINBOTTOM: Yes, thank you.

5 BY MR RAWAT:

6 Q. The second press report that we have in this short
7 bundle in front of you, Mr Walwyn, is from the Virgin Islands
8 News On-line January 6, 2013, headed "Politicians' Registry of
9 Interests should be public, Romney-Varlack".

10 And it then continues: "The 2007 Virgin Islands
11 Constitution has a provision in section 112 for a Registrar of
12 Interests whereby elected officials must declare their assets,
13 incomes and liabilities. However, the record is not public.
14 The office of the Registrar of Interests is head by Ms Victoreen
15 Romney-Varlack. She appeared before the 2012 House of Assembly
16 Standing Finance Committee to defend her 2013 budget request.
17 During Ms Romney-Varlack's testimony, the Member for the Third
18 District Honourable Julian Fraser RA inquired if the office was
19 broadening its scope by expanding its powers. The Registrar
20 informed that, in terms of scope, the Registrar would maintain
21 the Register of Interests in accordance with the Constitution.
22 She noted that, in order do so, the Standing Select Committee
23 needed to be appointed and the House of Assembly needed to pass
24 the relevant act. Mrs Romney-Varlack also noted that the
25 Registry could be extended to senior and Government employees,

1 who would have to declare their interests, but the Act needed to
2 be amended to accommodate them. Additionally, Mrs
3 Romney-Varlack told the FFC that she suggested the Register
4 become public record. However, the Member of the Third
5 District, Honourable Julian Fraser RA expressed that he did not
6 think that the Registry should become public record immediately
7 and suggested that it should only do so after seven years.

8 Honourable Fraser also noted that Members of the House
9 SSC could request the information confidentially.

10 Ms Romney-Varlack told the committee that there was a conflict
11 of interest if a Member was in default. She noted that was why
12 she was proposing a standdown of an FCC of House, and in turn
13 appoint a committee comprised of private citizens.

14 Ms Romney-Varlack also noted that the United Kingdom Registrar
15 of Interests laws which she looked at are restricted to elected
16 Members of Parliament only and not senior public officers.

17 And the Report concludes by setting out some parts of
18 section 112 of the Constitution. If we go over to the next
19 page, and that's page 4, we turn to the BVI Beacon of March 12,
20 2014, a report headed, "Eight Years Later Register of Interests
21 still not fully operational". and it continues: When Victoreen
22 Romney-Varlack was appointed Registrar of Interests in 2008, she
23 worked full-time for a month setting up shop as keeper of the
24 Register of Interests, a log meant to help hold Legislators
25 accountable by requiring them to state their financial interests

1 such as Directorships, employment, clients, sponsorship, gifts
2 received and land and shareholdings. Once she had the Register
3 established, however, Ms Romney-Varlack began working three days
4 a week, and last year when her contract was renegotiated, she
5 was given a reduced salary, reduced her working days to just two
6 days a week she told Legislators during the Standing Finance
7 Committee deliberations earlier this month.

8 Then it continues over, Legislators questioned the
9 reasoning behind her pay cut were told it was inaction by
10 lawmakers that led to it. After Legislators passed the Register
11 of Interests Act in 2006, they next needed to create a Standing
12 Select Committee to help bring the Act into force, but this
13 hasn't been done because the House of Assembly's Standing Orders
14 need to be updated. Ms Victoreen Romney-Varlack is recorded as
15 saying in the report on the deliberations of the FFC, these
16 factors have left her post for the smaller workload than had
17 been anticipated under the Act, she explained.

18 The final report is at page 6, and it's now from the
19 Island Sun. It's dated April 27th, 2016, and it's headed
20 "Register of Interests be fully implemented". After many
21 promises on Monday, 25th of April, six Legislators were
22 appointed as Members of the Register of Interests Standing
23 Select Committee. The new committee will be chaired by Minister
24 of Communications and Works Honourable Mark Vanterpool and will
25 include leader of the opposition Honourable July Fraser, Junior

1 Minister of Tourism Honourable Archibald Christian, Junior
2 Minister of Trade, Honourable Marlon Penn, Sixth District
3 Representative Honourable Alvera Maduro-Caines, and First
4 District Representative Honourable Andrew Fahie. Premier and
5 Minister of Finance, the Honourable D Orlando Smith moved the
6 motion, explained that the Register of Interests Standing Select
7 Committee will carry out and exercise all the functions
8 stipulated under the Register of Interests Act 2006. The
9 Register of Interests which created for legislators to state
10 their personal interests, assets, et cetera, but in 2012,
11 Registrar of Interests Victoreen Romney-Varlack during her
12 appearance before a Standing Finance announced there is no
13 Register of Interests, only a blank book. At that time the
14 Registrar told the Standing Finance Committee that Members of
15 the House of Assembly should be thankful that the Register was
16 not a public document because if it were, there would be nothing
17 to inspect because she has a blank register book.
18 Romney-Varlack said that it's been fore years since the Register
19 of Interests Act had been brought into force and since the
20 Registrar had been appointed. However, a Standing Select
21 Committee was not appointed to work with the Register. She
22 explained that there can't be a Register of Interests without a
23 Standing Select Committee. It was stated that the Standing
24 Orders of the House of Assembly need to be amended and brought
25 into line with the current Constitution, and until this is done,

1 the Standing Select Committee cannot be appointed and,
2 therefore, she has no Register. Romney-Varlack said that
3 successive throne speeches mentioned the amending of the Act
4 include senior public servants and making it necessary for such
5 civil servants to make Declarations. However, it was noted that
6 such inclusion would require that the Act be replaced or
7 repealed. It was even suggested that we agree to a short-term
8 Select Committee was brought in because the Registrar stressed
9 that something needed to be done soon. She explained the
10 failure to act would result in all of the relevant persons being
11 seriously criticised at the end of the day.

12 And it then concludes with a date as to when the--to
13 the reference to the Register of Interests Act 2007, which was
14 passed on the 27th of December 2007.

15 A. Yes.

16 Q. That amended the 2006 Act to make references, prior
17 references to the Legislative Council to become House of
18 Assembly.

19 A. Yes.

20 Q. Slightly long introduction to what I hoped may be
21 short questions, but taking it together, you're sitting in the
22 House between 2011-2019, and so let's say '15-2016, you were
23 entitled to sit on the Standing Finance Committee.

24 A. Yes.

25 Q. With those reminders from those press reports in mind,

1 and I will caveat it that sometimes press reports can be
2 inaccurate, but were you aware from 2012 to 2016 of the
3 importance of a Standing Select Committee?

4 A. I was aware later on of the issues. I mean, what I've
5 read here I cannot say that I remember hearing it at the time it
6 was being said, but I do understand what she's saying and I was
7 aware later on of the need for the Committee.

8 Q. When you say later on, when did you become so aware?

9 A. I don't want to hazard a guess because I may mislead
10 you and mislead myself.

11 Q. Were you aware of the Registrar's concern that the
12 Register of Interest itself was a blank book?

13 A. I never heard her use that term before.

14 Q. You've explained that you only--I think later on in
15 time became aware of your own obligations under the Act?

16 A. Yes.

17 Q. Do you think that you were the only Member of the
18 House of Assembly in that situation?

19 A. I don't think so. I think a number of other Members
20 were under that same--that same thought. Weren't aware of the
21 timelines.

22 Q. Because then I can show you the Resolution, but--and
23 it's amongst the loose-leaf papers in front of you.

24 A. Yes.

25 Q. What we know and what Commissioner knows is that the

1 Act came into force on February the 18th, 2008.

2 A. Yes.

3 Q. Ms Romney-Varlack was appointed as the first Registrar
4 on that date and she has remained in that post only retiring
5 very recently.

6 A. Yes.

7 Q. I think it's the 1st of this month when she stepped
8 down.

9 As she explained and under the Act, as well as
10 Declarations needing to be made, a Standing Select Committee is
11 an important part of the process?

12 A. Yes.

13 Q. On the undisputed facts, it took over eight years to
14 establish a Standing Select Committee. Were you, during your
15 time--I'll put it this way. Does that not indicate that at
16 least the Houses of Assembly of which you were a Member took a
17 rather relaxed attitude to the importance of the Register of
18 Interests?

19 A. I would--I wouldn't say that entirely. I can see how
20 you can arrive at that thought. What I did know because a
21 Standing Orders Committee was put in place, I think, around 2015
22 or so. I was a Member of it. And that is when we really
23 started to look at the Standing Orders because they weren't
24 revised in a while.

25 And one of the key things that we were very keen to

1 get done when that was put in place was to have the Select
2 Committee for the Register of Interests put in place. I know we
3 did a significant amount of work, meeting very late in the
4 evenings trying to at least get some of the--not just the
5 Registrar of Interests' issues addressed but other issues that
6 we knew needed to be addressed because the Standing Orders were
7 so dated.

8 Q. Prior to that Committee beginning to do its work, when
9 had the Standing Orders last been revised?

10 A. It could have been--I remember making a joke to myself
11 when I read it, I think--I think I was four years old at the
12 time when it was last revised. I remember that specifically, I
13 think.

14 Q. Was there--I think your evidence is that there was a
15 lot of work to be done on the Standing Orders?

16 A. Yes, there was quite a bit of work to be done.

17 Q. And the evidence of Ms Moses-Scatliffe was that they
18 have to then be laid before Parliament?

19 A. Yes.

20 Q. And presumably there is opportunity for Members to
21 object to some of the Standing Orders or require further
22 amendments or revisions; is that right?

23 A. Yes.

24 Q. Was there not scope to--in order to progress the
25 Select Committee--

1 A. Yes.

2 Q. --for the Standing Orders to be partially amended and
3 then put before the House so that the House could at least agree
4 to that and the establishment of that?

5 A. In retrospect, yes, we could have taken that approach.

6 Q. Was there any reason why you didn't take that
7 approach?

8 A. I think--well, as I said, I was--I was a Member. I
9 was not the Chairman, but I think we were just trying to be
10 ambitious in addressing some of the long-standing issues that we
11 know needed to be addressed, and perhaps rather than taking it
12 in bite-size pieces, we just went fully into trying to address
13 those things that we knew should have been addressed a long time
14 ago.

15 Q. When, over what period were you a Member of the
16 Standing Orders Committee?

17 A. I think I was in that Committee from 2015, I think.

18 Q. So--

19 A. Up until the House dissolved, yes.

20 Q. In the Third House?

21 A. Yes.

22 Q. Were you a Member of it in the Second House?

23 A. I don't recall. I don't recall.

24 Q. Did you appreciate that the reason why the Committee,
25 the Select Committee for Register of Interests is so important

1 is because it has to actually--under the Act, it has to approve
2 the format of the Register?

3 A. Yes.

4 Q. And when did you come to appreciate that?

5 A. At the time when we were doing it.

6 Q. But there still doesn't seem to have been any real
7 urgency within the House to progress this?

8 A. I wouldn't say that is necessarily so. I said what I
9 said, when I became a Member of the Committee in 2015, I think
10 it was, we started to move assiduously to try to address that
11 issue.

12 I know I did hear other Members speak about it before,
13 but as I said, I can't remember who the Members were of the
14 previous Committee. But I do know that right after the
15 relations and the new committees were formed, we really worked
16 as quickly as we could to try to get it established.

17 Q. Who was the Chairman of your Committee?

18 A. If my memory serves me right, I think it was
19 Honourable Ronnie Skelton who was the Chairman of that
20 Committee.

21 Q. Because the countervailing view, which I would ask you
22 to respond to, is that you have an act which is passed in
23 the--which comes into force in the first House of Assembly.

24 A. Yes.

25 Q. February 2008, which requires, as part of its

1 mechanism, a Standing Select Committee which is not established
2 until the Third House of Assembly of 2016.

3 A. Yes.

4 Q. Which, on the evidence the Commissioner received--has
5 received in that Third House met only once, and there is no
6 evidence that it agreed the format of the Register.

7 A. Okay.

8 Q. And now, in the Fourth House of Assembly, which I
9 appreciate you were not a Member--you are not a Member of--has
10 yet to meet and therefore has yet to approve the format of the
11 Register.

12 A. Yes.

13 Q. If one takes that timeline, Mr Walwyn, it does
14 suggest, doesn't it, Members of the House of Assembly
15 irrespective of Party, irrespective of experience, irrespective
16 of status or office just really not appreciating the importance
17 of a Register of Interests?

18 A. I would say that Members could have acted with a bit
19 more haste on it, but to say that they were not interested, I
20 wouldn't think that that's entirely correct because, in many
21 instances, even though Members were delinquent, they did still
22 file the requisite information. Some are more delinquent than
23 others, I assume, but the overriding objective of the Register,
24 to make sure that Members' interests were properly documented, I
25 think by and large that was complied with.

1 COMMISSIONER HICKINBOTTOM: But the--well, there are
2 two separate issues, firstly the Declarations.

3 THE WITNESS: Yes.

4 COMMISSIONER HICKINBOTTOM: And we've heard evidence
5 from a lot of Members and former Members as to delays, but
6 that's one issue.

7 THE WITNESS: Yes.

8 COMMISSIONER HICKINBOTTOM: And they then put in their
9 Declarations.

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: The second issue is the
12 Register.

13 THE WITNESS: Yes.

14 COMMISSIONER HICKINBOTTOM: 2006 Act came into force
15 in 2008. There is still no Register.

16 THE WITNESS: Yes.

17 COMMISSIONER HICKINBOTTOM: So, if anybody wants to
18 look at the Register, like a court, there is no Register to look
19 at.

20 THE WITNESS: Yes.

21 COMMISSIONER HICKINBOTTOM: And I think Mr Rawat's
22 point is that that doesn't suggest any urgency in complying with
23 the Act or the underlying Constitution.

24 THE WITNESS: I see how you could form that view.

25 COMMISSIONER HICKINBOTTOM: Thank you.

1 BY MR RAWAT:

2 Q. You've said that Members could have acted with more
3 haste.

4 A. Yes.

5 Q. Well, what's your definition of sufficient haste?

6 A. It should have been done. There is no excuse for it.

7 Q. I mean, take the first--take the Select Committee. It
8 took eight years. In what timeline, in your view now, looking
9 back, should it have been done?

10 A. It should have been done at the time when it was
11 required to be done by law.

12 Q. Can I turn to the form itself?

13 A. Sure.

14 Q. Now, we just need to take one of your forms as an
15 example, and the way we can do it is to look at page 39, please.

16 A. Okay.

17 Q. Now, this form, it is in the form that is prescribed
18 by the Act.

19 A. Yes.

20 Q. So it repeats the wording of schedule 1 of the Act.

21 Now, you are a lawyer by training and a lawyer by
22 experience. When you on the four occasions that we have seen
23 you had to fill in the form--and there may have been earlier
24 occasions and earlier forms, but did you, looking--when you
25 approached it, did you consider that there were any doubts or

1 ambiguities in what the form was requesting of you?

2 A. Not--not entirely, not entirely.

3 Q. Not entirely is a qualification, so were there things
4 where you would think--that you thought that that could lead to
5 either the wrong information being given or too little
6 information being given or even too much information being
7 given.

8 A. What I can do, I can answer you looking back now,
9 properly directing my mind to the form over the last couple of
10 weeks since you sent me the bundle. When you look, for
11 instance, at the main purpose of the Register, which is at page
12 39, I have gathered from what I've read in the news that there
13 seems to be, for instance, an interpretation that this section
14 or this revision includes spouses and children and so forth, and
15 that interpretation is then expected to assist in filling out
16 Part 10 of the form under "Miscellaneous".

17 If you notice in all of my forms I didn't fill out 10.

18 So the interpretation of including spouses, your
19 spouse and your children and so forth, to me, is not immediately
20 evident upon reading this section, and there are other areas
21 within the form that I see could have been improved.

22 The reason why I say that is because the issue of
23 properly capturing any interest that spouses and close family
24 members should have is too important an issue for the letter of
25 it not to be written down clearly and in an unambiguous way, and

1 so it leaves people or Members now to sort of interpret or think
2 what the form might be trying to say.

3 Q. And it creates the uncertainty of when do you stop
4 with family?

5 A. It does that.

6 Q. One of the points that has been made to me by more
7 than one witness is that at which point do you stop sort of
8 referring to a particular cousin.

9 A. Yes.

10 Q. Now, did you take the form as being limited to
11 yourself, a spouse, and dependent children, or did you construe
12 it more widely than that?

13 A. I took it to mean myself because that's what it says.

14 Q. Yes. But the form in general in terms of the sources
15 of information, was it interests held by you as a Member of the
16 House of Assembly--

17 A. Not in relation to the entire form.

18 Q. No?

19 A. I tried to be as helpful as I could except for when I
20 came to 10 and the interpretation of the main purpose. I look
21 at the main purpose to be myself.

22 If there are other interests that perhaps my spouse
23 may have had, I think I would have found a way to include those.

24 Q. And if we look at Para 39, and the question that is
25 being asked of a Member completing this form is this isn't it,

1 that when you are making a Declaration, you have to keep in mind
2 what might reasonably be thought by others could influence your
3 conduct as a Member of the House?

4 A. Yes.

5 Q. It's in effect that you've got to have someone sitting
6 on your shoulder, you've got to imagine what would someone else
7 think if I did put this information in or if I didn't put this
8 information in.

9 A. Yes.

10 Q. That's the sort of the guiding thought that a person
11 completing the form should have, isn't it?

12 A. Yes.

13 Q. Can I ask you, though, you've declared, if we look
14 through it and deal with it briefly, you declared Directorships,
15 so N.V.W. International Co. Limited, hotels and restaurants, The
16 Pub restaurants, Travers Thorp Alberga law firm, and Harcourt
17 Services, a trust company. You also referred to the restaurant
18 business under remuneration.

19 A. Yes.

20 Q. And then you also referred to the same companies under
21 Shareholders.

22 So, when you were completing the form, did you
23 appreciate that, the same sources, the same interests, might
24 need to be mentioned more than once?

25 A. Yes.

1 Q. And was that, in your mind, approaching it was it
2 clear to you that that's what the form required?

3 A. Yes.

4 Q. If I take you, please, to 45, not asking about
5 overseas visits, which is what we see here, but rather about if
6 you see the Explanatory Note in italics at the bottom, can you
7 see that the last thing that is referred to is a Guidance
8 Pamphlet on Registration and Declaration of Members' Interests?

9 A. Yes.

10 Q. Did you ever on either occasion that you were sworn
11 into the House, did you ever receive a Guidance Pamphlet?

12 A. No.

13 Q. Did you at any time during your tenure at the House of
14 Assembly receive a Guidance Pamphlet?

15 A. No.

16 Q. Did you hear of anyone mentioning to you or around you
17 a reference to a Guidance Pamphlet?

18 A. No.

19 Q. I take you--just jump back to page 42, please, and
20 this is Part 3, "Clients". You've mentioned--it refers a person
21 completing the form back to what is called categories 1 and 2,
22 which is Directorships and then the remuneration category. And
23 you were asked to declare any paid employment that entails a
24 provision to clients of services which depend essentially upon
25 or arise out of your position as a Member of the House of

1 Assembly. And I won't read it out but you will see the
2 Explanatory Notes at the bottom.

3 What did you understand this section to be targeted
4 at?

5 A. Any paid employment that you would get by virtue of
6 being a Member of the House of Assembly.

7 Q. But can you give some examples, I mean?

8 A. For instance, if you're maybe doing lobbying, and
9 you're lobbying the same Government that you're a part of. I
10 think that would fit properly here.

11 Q. So, to give an utterly hypothetical example, if you
12 were to intercede with the Minister on behalf of a client of
13 your law firm--

14 A. Um-hmm.

15 Q. --that would have to be recorded here, wouldn't it?

16 A. I think it would be proper to do that.

17 Q. Well, there is a difference between being proper to do
18 so and being required to do so.

19 A. Well--

20 (Overlapping speakers.)

21 Q. You may make a Declaration--

22 A. Of course, it depends because if the intercession
23 doesn't amount to anything, then it's up to the individual in
24 terms of their interpretation of a section whether or not they
25 have to put it in. Certainly it amounts to something and you do

1 receive the services and you're being remunerated for it, you
2 should put it here.

3 Q. If you look, you're being asked about clients to whom
4 you have personally provided such services. Isn't the point
5 that, if you can use your access as a Member of the House of
6 Assembly to allow a client access to a Minister, for example,
7 which access would not be available to an ordinary Member of the
8 public, that's something that should be declared here, isn't it?

9 A. Well, it depends--it depends, Commissioner, and you
10 have to look at the nature of the relationships in the British
11 Virgin Islands because many persons, for instance, who end up in
12 political parties and groups and different things are primarily
13 friends most times before they even become colleagues at that
14 time. So, it wouldn't necessarily follow that because somebody
15 makes an intercession that it's being done simply because
16 they're part of the same political party of the same Government,
17 they probably could have gotten the same thing done whether they
18 were part of the Government or not. Depending on relationships
19 that exist here.

20 Q. It's not necessarily about the relationship between
21 you and a Member of your political party. It's about what you
22 do on behalf of a client. What I'm suggesting to you, and I
23 will put it as a hypothetical.

24 A. Yes.

25 Q. If we assume that a client of one of your businesses

1 says to you, "Mr Walwyn, you're a Member of the House of
2 Assembly. Can you arrange a meeting for me with the Minister of
3 X Government Ministry?"

4 A. Yes.

5 Q. "Because I tried, myself, as an ordinary member of the
6 public and I just can't get a meeting".

7 A. Yes.

8 Q. And you are able to engineer that meeting for this
9 client.

10 A. Yes.

11 Q. And it takes place. That's something that you can
12 only do because you are a Member of the House of Assembly?

13 A. Not necessarily.

14 Q. Well, let's assume if it were something that you could
15 only do because you were a Member of the House of Assembly, you
16 would have to declare it here, wouldn't you?

17 A. Yes.

18 Q. And you said "not necessarily". Please explain the
19 "not necessarily".

20 A. Because it doesn't necessarily follow that because you
21 are a Member you can get a meeting with somebody who is your
22 colleague means that it's because of the position because there
23 are times, depending on the relationship that exists between
24 even people who are part of the Government or not, relationships
25 here in the British Virgin Islands are very strong and very

1 important, so it doesn't necessarily mean that the client would
2 be able to get to see that Minister necessarily because the
3 person they're dealing with is a Member. If that is the reason,
4 then yes, they should declare it, but I'm submitting that that
5 is not always the reason.

6 Q. Well, in those situations where it's not always the
7 reason, does this part of the form give sufficient guidance to
8 the Member completing?

9 A. It should give some guidance, but I think it needs to
10 be a bit tighter because, if you look what it says, does any of
11 the paid employment registered in categories 1 and 2 entail a
12 provision to clients of services which depend essentially upon
13 our rise of the opposition. So, it presupposes that something
14 should have happened, whatever the contact or intervention would
15 have been should have been something material that you would
16 have benefited from. Sometimes you may have not benefited from
17 it, so I'm saying that perhaps the form needs to be a bit more
18 clearer in terms of what it's trying to achieve here. That's
19 one of those areas that caught my eye when I sat down and took a
20 look at it.

21 Q. Stepping back from the form and at the distance of
22 some years from the House of Assembly, would you accept that, as
23 it stands now, it does need reviewing?

24 A. It does. It absolutely does. And other areas, too.

25 Q. Well, can you just assist the Commissioner with the

1 other areas which prompt concern in your mind?

2 A. If I can go--if I can show you four, for instance.

3 Q. That's sponsorship, page 43?

4 A. And the interpretation of 4, and I did read the
5 interpretation that you are giving, counselor, to it, and I
6 think that there is a misdirection somewhere. If you read what
7 4 says, 4(a) says, did you benefit from any sponsorship before
8 election where, to your knowledge, the financial support in any
9 case exceeded an aggregate of 2,500. Before election could be
10 four years before. Could be three years before. But it's being
11 interpreted as during when the form does not say during. It
12 should be to say before and during or during. So, gain, that's
13 another weakness of the form, I think. I guess some work needs
14 to be done on it as we move along.

15 Q. Leaving aside the wording, what do you think 4(a) is
16 targeted towards? What is it asking a Member to declare?

17 A. It's asking a Member to declare any sponsorship
18 whether in money or in kind that they would have received before
19 election or before election cycle.

20 Q. Again, what does sponsorship cover for you?

21 A. Whether the monetary or as I said, in kind.

22 Q. So it includes donations?

23 A. Donations, yeah.

24 Q. Could I quickly just move on to another topic, which
25 is something on which the Commissioner now has a great deal of

1 evidence, but I want to take you back to your experience as an
2 elected representative, and that is the question of assistance
3 grants.

4 A. Yes.

5 Q. Now, hopefully amongst the loose-leaf material, and I
6 think it's still there, there is guidelines for processing
7 assistance grants.

8 A. Yes.

9 Q. The information that has been provided to the
10 Commission is that these were issued between 2003 and 2007.
11 During your time as a territorial representative, did you have
12 access to these guidelines?

13 A. Yes, I did.

14 Q. And how soon after taking office were they sent to
15 you?

16 A. I can't recall, but as far as my memory goes back, I
17 knew of them, and I read them.

18 Q. We've been told as a territorial candidate you would
19 have \$150,000 a year?

20 A. Yes.

21 Q. Now, and in terms of the process--and please correct
22 me if this is not your recollection and doesn't match what you
23 did, but applications would be made to you?

24 A. Yes.

25 Q. You would have to carry out a due-diligence exercise?

1 A. Yes.

2 Q. And make an assessment of the merits of the
3 application?

4 A. Yes.

5 Q. If you approved the application, it would go to the
6 Clerk of the House of Assembly?

7 A. Yes.

8 Q. If it passed beyond the Clerk of the House, it would
9 go to the Treasury Department to issue the funds?

10 A. That's correct.

11 Q. But, in your experience, did the Clerk of the House
12 ever send back an application to you with a query?

13 A. I think so, but a couple of times, I think it may have
14 happened.

15 Q. And what sort of queries were raised?

16 A. Perhaps if she required more information from persons
17 because you don't just to send the form in, you have to put the
18 documentary evidence with it to support what the need is.

19 And then there have been times, I think I remember
20 once or twice, where somebody may have submitted to other
21 Members trying to perhaps get help more two or three times, and
22 it was sent back.

23 Q. And did the Treasury ever send any back to you?

24 A. Not to my knowledge, no.

25 Q. Now, is this right, that these guidelines are in

1 effect the only guidance that is given to Honourable members as
2 to how to distribute this money?

3 A. It is.

4 Q. And so would this be a fair assessment, that it falls
5 down to you--it falls on your shoulders as an elected
6 representative to assess the merits of an application and decide
7 one way or the other whether it will go forward?

8 A. Yes.

9 Q. And so you are exercising a discretion as to whether
10 someone will receive a sum of money or not, aren't you?

11 A. One that it should exercise properly.

12 Q. And this is the guidance that you have to make sure
13 you do exercise that properly?

14 A. In addition to your conscious, yes.

15 Q. You'll see at 10, that there is reference there to
16 district offices expenses relating to rents, staff, and
17 operating expenses are allowed, up to a maximum of \$24,000 per
18 annum. So, it would seem that from within that amount of money
19 you could take some running costs as a district--as an elected
20 representative; is that right?

21 A. For your office, yes.

22 Q. Did you ever do that?

23 A. No, I never did that.

24 Q. Sorry, your voice dropped again?

25 A. I never did.

1 Q. Thank you. One final matter, please. The
2 Commissioner has heard evidence about section 67 of the Virgin
3 Islands Constitution.

4 A. Yes.

5 Q. Which put, I hope, fairly but in summary, allows for
6 the House to vote to exempt a Member from the requirement to
7 vacate his or her seat.

8 A. Yes.

9 Q. And it's a decision for the House. They may say
10 "yes". they may say "no"; that's right, isn't it?

11 A. That's correct.

12 Q. And it arises in connection with government contracts?

13 A. That's correct.

14 Q. During your time as a Member of the House of Assembly,
15 were you ever the beneficiary of an exemption under section 67?

16 A. No, I was not.

17 Q. Did you ever seek such an exemption?

18 A. No, I wasn't. I never did, sorry.

19 Q. Did you ever vote in favor of motions to grant others
20 the exemption?

21 A. I can only remember one, and to be quite honest, it
22 was not necessary to bring it to the House of Assembly.

23 Q. Why wasn't it necessary--

24 A. Because it was a statutory cooperation.

25 Q. And that falls outside--

1 A. It falls outside section 67, I think it's clear on
2 that.

3 Q. So, you have a recollection of one during your entire
4 tenure in the House of Assembly?

5 A. Just one I can recall, yes.

6 Q. And in terms of what information was available to you
7 as a Member of the House to make that decision, what were you
8 provided with?

9 A. I can't remember, but I know there was some
10 documentation that we were given to understand what was being
11 done. On the surface of it on what I saw the Member was perhaps
12 given more of community service than actually making any money
13 from it itself. Yes.

14 Q. So, was it something that you could only decide on a
15 case-by-case basis?

16 A. I'm sorry?

17 Q. Was it something you could only decide on a
18 case-by-case basis?

19 A. Yes, with the requisite information to support it,
20 yes.

21 MR RAWAT: Commissioner, those are my questions. Can
22 I conclude by thanking Mr Walwyn for coming in and giving his
23 evidence and also for the way in which he has done so.

24 COMMISSIONER HICKINBOTTOM: Yes. Can I echo that to
25 thank you, Mr Walwyn, and thank you for your time and thank you

1 for the way in which you have given your evidence.

2 THE WITNESS: Thank you.

3 COMMISSIONER HICKINBOTTOM: Which has been very
4 helpful.

5 THE WITNESS: Thank you.

6 (Witness steps down.)

7 MR RAWAT: Can we rise, sir, for five minutes so we
8 can reset for the next witness.

9 COMMISSIONER HICKINBOTTOM: Yes, thank you.

10 (Recess.)

Session 4

1
2 RONNIE W SKELTON, COMMISSION WITNESS, CALLED

3 COMMISSIONER HICKINBOTTOM: Mr Skelton, sorry to keep
4 you waiting but we are now ready to take your evidence.

5 Yes, Mr Rawat.

6 MR RAWAT: Commissioner, our next witness is Mr Ronnie
7 Skelton. Can I ask that he be asked to either take the oath or
8 to affirm.

9 COMMISSIONER HICKINBOTTOM: Yes, thank you.

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

12 THE WITNESS: Affirm.

13 COMMISSION SECRETARY: If you could turn the page
14 around. Thank you.

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 very much.

19 MR RAWAT: Thank you, Commissioner.

20 BY MR RAWAT:

21 Q. Mr Skelton, thank you for coming to give evidence
22 today.

23 Could we start with some formalities. First of all,
24 could you give the Commissioner your full name, please?

25 A. My name is Ronnie Walston Skelton.

1 Q. As I've told other Witnesses, I do try and keep the
2 questions short and simple. It doesn't always work, but if at
3 any time you would like me to repeat or rephrase the question,
4 please don't hesitate to ask.

5 You will see there are a number of bundles on the
6 table in front of you. We don't need to look at all of them; we
7 might not need to look at some of them. But what I'll do is
8 I'll take you to the documents as we go through. One of those
9 bundles carries your name, but it should match the bundle that
10 you would have received, so please use whichever one you want
11 to.

12 A. Okay.

13 Q. The last thing to remind you of is to ask you to keep
14 your voice up and speak slowly. The microphone that's
15 positioned in front of you does not amplify your voice. It just
16 records, but it is important that the staff can hear you so that
17 your answers are clearly and accurately recorded.

18 Could I ask you, first of all, to begin by giving an
19 outline--and this is a question I've put to others--an outline
20 of your professional background before you came into politics?

21 A. I graduated from Tuskegee University in Alabama with a
22 degree in electrical engineering, with high honors, so I'm an
23 chartered electrical engineer by profession.

24 I worked for Electricity Corporation in different
25 capacities culminating in the General Manager of BVI Electricity

1 Corporation.

2 How did I get into politics? I got ill, and I was
3 planning to retire, and my friends think that I had a set of
4 skills that I can use to help my country develop, so we formed a
5 political party, and this is--I was the--that's how I got here.

6 Q. And was that political party the National Democratic
7 Party?

8 A. The National Democratic Party.

9 Q. And is it right that, as a Member of the National
10 Democratic Party, you were elected in 1999 to the Legislative
11 Council?

12 A. Yes, I was.

13 Q. And you remained in legislative politics until 2019;
14 is that right?

15 A. No.

16 Q. Well, then correct me.

17 A. I was elected in 1999 and again in 2003. In 2007, I
18 was fired in 2007, and came back in 2011, if I got that right,
19 2011, and then I remained until 1999 and was fired again.

20 Q. By legislative politics, I meant as an elected
21 representative rather than being in Cabinet Government, so I
22 think from 1999 through to 2019, were you an at large
23 representative?

24 A. I think I'm misunderstanding your question.

25 Q. So, let me try and take you through your career and

1 you tell me if I've got it right?

2 A. Yeah.

3 Q. So, in 1999, you were elected as a territorial Member
4 to the Legislative Council?

5 A. Yes.

6 Q. And then, in 2003, you were re-elected?

7 A. Yes.

8 Q. And at that point you became Deputy Chief Minister,
9 Minister for Finance, Health and Social Development?

10 A. Yes.

11 Q. You then were in opposition between 2003 and 2007?

12 A. No.

13 Q. You left--

14 A. I was a private citizen.

15 Q. I see.

16 Well, we found one fault, so 2003 to 2007 you stepped
17 out of politics?

18 COMMISSIONER HICKINBOTTOM: 2007 to 2011 you were not
19 elected?

20 THE WITNESS: That's correct.

21 BY MR RAWAT:

22 Q. And then when you returned, were you re-elected in
23 2015?

24 A. 2011 I was re-elected.

25 Q. I see. Right.

1 And did you become a Member of the Cabinet then--

2 A. Yes, I was.

3 Q. And did you remain in Cabinet in the 2015
4 administration?

5 A. Yes, I was.

6 Q. But is it right that in, I think, November 2018 you
7 left Cabinet and you left the National Democratic Party?

8 A. Yes, I did.

9 Q. And you then formed the progressive Virgin Islands
10 movement?

11 A. Yes, I did.

12 Q. And it was under that banner that you contested the
13 2019 election?

14 A. Yes, I did.

15 Q. But you, yourself were unsuccessful in that effort?

16 A. Yes, I was unsuccessful.

17 Q. The issue--one of the prime issues that the
18 Commissioner has been taking evidence on is about the Register
19 of Interests Act of 2006.

20 Now, although that was an act in 2006, it didn't come
21 into force February 18, 2008. And under the provisions of the
22 Act, an ordinary Member of the public cannot come in off the
23 street and inspect the Act.

24 A. Yes.

25 Q. It's only in very limited circumstances that it can

1 be--the Register can be inspected other than the Act.

2 Now, you were for most of a significant period of time
3 a Legislator?

4 A. Yes.

5 Q. Including from the time that the Act came into force.
6 What was your view--

7 A. No, I was not when the Act came into force.

8 Q. Fair enough. I'm trying to take you shortly, from
9 2011 certainly?

10 A. Yes.

11 Q. After the Act had come into force, you were in
12 legislative politics?

13 A. Yes, I was.

14 Q. And from that time, did you have a view about the
15 merits of making the Register open to public inspection?

16 A. Yes. I had a view, but it never get to the point
17 where what the Register will be, what will be the content of it.

18 There is some concern that I have making Members'
19 information public. It all depends on the content, what we
20 provide now I don't have a problem making it public.

21 Q. On the form as you had to fill in at that time, that
22 didn't cause you problems--

23 A. That did not cause me problem based on what I
24 understand it--

25 Q. Require?

1 A. Yeah.

2 Q. But your concern is that a circumstance could arise
3 where if more information--

4 A. Yes.

5 Q. --were required--

6 A. Yes.

7 Q. --there would be risks associated with that?

8 A. Yes.

9 Q. And what sorts of risks do you anticipate, Mr Skelton?

10 A. It depends on the information that is required. If
11 you are required a lot of financial information, then it opens
12 families to all sorts of, for want of a better word, kidnapping,
13 so to speak, people holding your family for ransom for all sort
14 of reasons, so I would be worried about that.

15 Q. So, taking that forward, bearing in mind the form that
16 you had to fill in, but do you think that there would be a
17 benefit, then, in giving clear guidance as to what information
18 is actually required and what shouldn't be declared?

19 A. I would say "yes".

20 Q. Now, taking it from 2011, when you returned to
21 legislative politics through to the time that you left, were you
22 aware during that time that the Act placed you under an
23 obligation to declare--to make a Declaration of your interests
24 as of the date you were sworn into office?

25 A. No, I was not.

1 Q. Did you at any time become aware that that was the
2 obligation on you?

3 A. No, I was not aware.

4 Q. Were you aware that as well as doing it on the date
5 that you took your oath, you also had to do it on every
6 subsequent anniversary?

7 A. Every subsequent anniversary. I understood that.

8 Q. That you understood?

9 A. Yes.

10 Q. Were you aware that, under section 7 of the Act, if
11 you didn't file a Declaration within three months of the date
12 that it was due, then the Registrar had to write a report to the
13 Standing Select Committee?

14 A. Yes, I was aware.

15 Q. When did you become aware of that provision?

16 A. I think I was aware of it from the inception.

17 Q. From the time that you returned back to politics?

18 A. It you go back to 2006--not for to you ask me more
19 questions but to clarify what you were saying, I was in the
20 Legislature in 2006 when the Bill was being discussed, and the
21 Bill was being prepared to move forward.

22 So, during the Committee Stage, there was a lot of
23 questions asked and a lot of concerns about the Bill. But it's
24 a long time ago. I can't recall specifics.

25 Q. But from that process, was it clear in your head what

1 obligations confronted Members of the House of Assembly in terms
2 of the Acts that came into force?

3 A. Based on my questions at that point in time and the
4 explanation given based on my presentation, that's what I
5 understand that you had to do.

6 Q. Can I take you through some of your forms, please.

7 A. Yes.

8 Q. I'm going to do this in two parts. The first is to
9 look at the dates on which you filed your form, but then the
10 second is to just ask you some questions about the questions
11 themselves that you were confronted with.

12 If you go, please, to page 179 in the bundle, it's a
13 form stamped by the Registrar of Interests with the date
14 October 7, 2015.

15 A. Received.

16 Q. Do you see it?

17 A. Yes.

18 Q. And is that your handwriting there, that gives your
19 name and records that you're--

20 A. Yes, it is.

21 Q. If you go to page 189.

22 A. Yes.

23 Q. Is that your signature?

24 A. Yes.

25 Q. And it's dated by you, is it, October 5th, 2015?

1 A. Yes, it is.

2 Q. Now, the Due Date for that form applying the Act,
3 section 3 of the Act was the 23rd of June 2015, so you were
4 obliged to file it by the 23rd of June 2015. Would you accept
5 that you missed that date?

6 A. Yes, I will accept I missed the date.

7 Q. And because you hadn't under section 7 filed it within
8 three months of June 2015, you also breached section 7, didn't
9 you?

10 A. What does section 7 say again?

11 Q. Let me take you to it. You should have on your table
12 a bundle that headed "Constitution and legislation".

13 A. If you read it, I can understand it.

14 Q. All right. Okay. I'll put it to you--I'll read you
15 section 3, first of all.

16 Section 3 says: "A Member shall make a Declaration in
17 the form set out in schedule 1". which is the form that we've
18 been looking at, "on the date on which he assumes the functions
19 of his office, and on each subsequent anniversary of that date".
20 So, that's obligation one. Do it on the date you assumed
21 office.

22 And then there is obligation two, do it on every
23 subsequent anniversary?

24 A. Yes.

25 Q. And that's section 3. So, if you don't comply with

1 that--

2 A. Yes.

3 Q. --you breached the Act.

4 Section 7 and it's 7(a) says that: "Where a Member
5 fails to make a Declaration within a period of three months from
6 the date on which the duty to make that declaration accrued, the
7 Member shall be in breach of the provisions of this act, and the
8 Registrar shall within 14 days of the knowledge of such breach
9 submit a report of such breach to the Committee". And that's
10 the Standing Select Committee that deals with the Register of
11 Interests, so that's a second way in which you can breach the
12 Act or not comply with it?

13 A. Yes.

14 Q. So, with that explanation because I'm going to say
15 because you've dated yours on the 5th of October, you were three
16 months, over three months after June 2015, and, therefore, you
17 hadn't--you were in breach of section 7.

18 A. What time in June it was?

19 Q. Twenty-third of June 2015 was the first meeting of the
20 House, so that's when you were sworn in?

21 A. Yeah.

22 Q. If it helps you, that's the date that applies to all
23 the Declarations that we have for you.

24 So, at least in 2015, you didn't comply with
25 section 3, and you were in breach of section 7. Do you accept

1 that?

2 A. Yes, I accept that.

3 Q. If you go to your 2016 Declaration, you'll see it at
4 page 168, it starts there. That's stamped by the Registrar
5 July 26, 2016.

6 Do you see that?

7 A. Yes.

8 Q. But if we go to page 178, you signed that, haven't
9 you, that page, and you dated it June 8, 2016; is that right?

10 A. Yes.

11 Q. So, it would follow that you filed ahead of the Due
12 Date in that year, didn't you, because the Due Date was the 23rd
13 of June, so you filed on the 8th of June?

14 A. Yes, I did.

15 Q. If we go to your 2017 Declaration, that's at 157?

16 A. Yeah.

17 Q. Again, stamped by the Registrar, she's put the date on
18 there of 1st of August '18, and it carries your name on it, but
19 if we go to 167, which is the last page of this particular
20 Declaration, you've signed it, haven't you, Mr Skelton?

21 A. Yes.

22 Q. And you dated it in your own hand June the 3rd, 2017.

23 Now, can you explain the difference between dates?

24 You're dating it 3rd of June 2017 and the Registrar is dating
25 hers the 1st of August 2018.

1 A. Yes. I can give a simple explanation.

2 The Registrar of Interests, she sent out these forms
3 to all the Members, including myself. I would get the form, and
4 I would fill out the form because she probably sent it in
5 advance of the Due Date, and I would fill out the form and I
6 wrote--sign it.

7 And sometimes I forgot--forget to hand it in to her,
8 and this could be--I know a couple of times it happens. I was
9 traveling, I was busy doing something, it ended up under the
10 pile in the desk, and when I realised it was there, pick it up
11 and give it to her. I guess she could only stamp it when I gave
12 it to her.

13 Q. Yes.

14 A. Yeah.

15 Q. So, the explanation for the difference is just because
16 you filled it in before the Due Date, just didn't get to her?

17 A. Didn't get to her.

18 Q. Fine.

19 Let's go to the last form of yours that we have at
20 145. This is your 2018 form. Registrar stamped it dated it "18
21 of July 2018". And if we look at page 155, that's your
22 signature?

23 A. Yes.

24 Q. And you dated it July 17, 2018? So, it got to her
25 pretty quickly on this occasion, didn't it?

1 A. Yes.

2 Q. But what's right is that because you had to file it by
3 the 23rd of June 2018, you hadn't filed it--you hadn't completed
4 it in time, had you?

5 A. Yes.

6 Q. Now, you mentioned that the Registrar would send
7 correspondence out. Do you have a clear memory of her sending
8 the form out to Members and asking them to complete it?

9 A. Not--I can't speak to other Members, but I know in my
10 office I get a package from the Registrar of Interests with all
11 of this information. And whenever she sends it, I know it's
12 something is close to being due to process, so I do what I have
13 to do. I can't speak intelligently with other Members.

14 Q. Did you discuss the Register of Interests with other
15 Members at all in terms of completing the form and the need to
16 do it by certain dates?

17 A. I know--I know a couple of times I discussed it with
18 the Premier. If we make a law--if we make laws for other
19 peoples to follow, we must also follow our laws that we make for
20 ourselves.

21 Q. Can I show you some correspondence to you, I think
22 which you'll find; on the table there should be a folder
23 headed--it might be labeled "Governor's Disclosure". If you go
24 to, please, go to page 99 in that bundle.

25 A. Yes.

1 Q. You were there when the Act was first being discussed
2 as a bill. The evidence before the Commissioner is that comes
3 into force on the 18th of February 2008. The evidence is also,
4 from that date, the Registrar pressed for a Standing Select
5 Committee to be established because that's part of the necessary
6 mechanism under the Act. And what I'm showing you is a letter,
7 and I showed this to the former Premier. It's a letter from the
8 then-Governor Boyd McCleary to the Premier dated the 9th of July
9 2014, referring to the importance of the Register of Interests
10 legislation, the need for a Register of Interests Committee, and
11 the Governor attached a letter to you from the Registrar dated
12 the 19th of February 2014. We'll look at that in a moment, and
13 asked for assurances that the Register of Interests Committee
14 will be established and concludes: "I trust that this will not
15 be much further delayed".

16 Now, the letter that is referred to which is addressed
17 to you is found at page 97. It states 9th of February 2014 as I
18 mentioned; it's addressed to you as Chairman of the Standing
19 Orders Committee. Now, that was in the Second House of Assembly
20 2011 to 2015. Were you the Chairman of the Standing Orders
21 Committee in that session of the House?

22 A. I think I was.

23 Q. And to your recollection, were you the Chairman
24 throughout the period?

25 A. I think I was also.

1 Q. If we look at the letter from the Registrar to you, it
2 says: "Dear sir, I write in connection with the Standing Orders
3 Committee"--

4 A. Where are you?

5 Q. I'm sorry, Mr Skelton. Page 97.

6 A. Page 97, yeah.

7 BY MR RAWAT:

8 Q. Do you have it?

9 A. Yes, I've got it.

10 Q. I will read it into record: "I write in connection
11 with the Standing Orders Committee, the draft Standing Orders of
12 the House of Assembly. As you are aware, having been Chairman
13 of the Standing Orders Committee for the period August 2003 up
14 to March 2007, the Report of the Standing Orders Committee was
15 laid on the table of the Legislative Council of the Virgin
16 Islands at the 48th sitting of the first session of the 15th
17 Legislative Council on 20th of March 2007. Since then and up to
18 present there has been no forward motion on the Report. You're
19 also aware that the Register of Interest Act 2006 was brought
20 into force on 18th February 2008. Simultaneously the Registrar
21 of Interests was appointed, too, among other things, maintain
22 and keep the Register in accordance with the Act. Section 4 of
23 the Act speaks to how the Register shall be maintained and shall
24 be in such format as the Committee shall approve. Section 77(a)
25 of the draft Standing Orders of the House of Assembly make

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

15 This was sent in 2014, early 2014.

16 Is it right that a report in relation to the Standing
17 Orders Committee had been laid before the House and was still
18 there without forward motion as from March 2007?

19 A. I honestly can't recall, but I know the Committee for
20 the Standing Orders made several, several amendments to the
21 Standing Orders. I don't recall. I would have to go back and
22 look and think about it whether or not--I can see the election
23 process overpowering anything on the table, table of the House,
24 and I don't think it was a deliberate act that at that point in
25 time the Standing Orders amendment that were being requested

1 were not approved. But again, my recollection I would need to
2 go back and think about.

3 But I remember the letter I read, and the Registrar of
4 Interests know that I was one of those people who want to make
5 this process happen, so--and I think the Committee--the
6 amendment was made, but I don't remember exactly when the
7 amendment was made.

8 Q. You will have--we can give you a range at least. You
9 will have amongst the loose papers in front of you probably just
10 underneath your folder there, amongst those is a resolution of
11 the House no. 3 of 2016. The Standing Select Committee was
12 first established on the 25th of April 2016, and so--and to give
13 it further context, Mr Skelton, the Registrar, on the totality
14 of the evidence that the Commissioner has received, was pressing
15 for this Committee from the beginning of her appointment, and
16 she appeared, as we canvassed with the previous witness before
17 the Standing Finance Committee, and it was a point she raised,
18 amongst other matters that she raised.

19 Can you just--it might be said that, to go from 2008
20 when the Act comes into force to 2016, that that length of time
21 which spans more than one House of Assembly, taking that amount
22 of time to get the Standing Orders amended and establish this
23 Committee was a sort of inexcusable period of time, an
24 inexplicable period of time. Can you give the Commissioner some
25 insight into why it took so long?

1 A. All I can do--all I can do at this point in time is, I
2 was the Chair, just apologise for the inaction. Because I know
3 when I got this letter I think election was shortly, so it went
4 to the next--the next administration, which I was a part of, and
5 then we--by then the Committees were formed and get moving
6 again. We addressed this matter.

7 There is no excuse for it really, that I can come up
8 with.

9 Q. Because I think Ingrid Moses-Scatliffe, who is the
10 Speaker--

11 A. At this time, yes.

12 Q. Told the Commissioner that the Standing Orders, as
13 they were, had last been revised in 1976. Was that your
14 recollection?

15 A. No, it was not.

16 Q. Well, prior to--prior to you becoming Chair of the
17 Standing Orders Committee and then undertaking a revision, when
18 was the last time, to your recollection, that the Standing
19 Orders had been amended?

20 A. There was some minor amendments to the Standing
21 Orders. I can't recall exactly when, but before the major--the
22 major amendments, there were some minor amendments to the
23 Standing Order.

24 And when--I don't recall exactly the dates and the
25 times.

1 Q. Would it have been--would one possibility have been
2 for the Standing Orders Committee to have made an amendment and
3 laid it for the House just in relation to the Standing Orders
4 Committee?

5 A. That's exactly what I'm thinking. A resolution would
6 need to come to the House to amend a Standard Order, just to
7 reflect that one provision.

8 Q. Was that ever considered as an option whilst you were
9 the Chair of the Standing Orders Committee?

10 A. I think it was. The Members wanted some amendments to
11 the Standing Order, so we had to go through a long process, but
12 this one provision, like you said, would have taken a resolution
13 to the House and get it approved. I don't know why it wasn't
14 done.

15 Q. Can you kindly confirm this, that once a Select
16 Committee is established--in this case we're looking at the
17 Register of Interests Committee--is it simply down to the
18 Chairman to decide how often that Committee meets and what work
19 it does?

20 A. Not necessarily, no. It's up to the Members.

21 Q. Of the Committee?

22 A. The Chairman doesn't have any special powers except to
23 convene meetings and make sure the meetings are run in an
24 orderly way.

25 Q. Now, when we--we've looked at the letter of

1 February 2014 addressed to you. Can you recall what
2 discussions, if any, you had with the Registrar of Interests at
3 around that time?

4 A. No, I don't recall.

5 Q. If you go back to page 99, it's not a letter that's
6 copied to you, but it's the letter I started with, which is the
7 memorandum from the Governor to the Premier in July 2014, so a
8 few months later than the letter addressed to you.

9 Do you recall if in July 2014 you had any discussions
10 with the then Premier about establishing a Register of Interests
11 Committee?

12 A. No, I don't.

13 Q. In terms of--you've explained that you chaired the
14 Standing Orders Committee, but whether or not you could take the
15 quick route of making one amendment that comes before the House
16 or the longer route of sorting out all the necessary amendments,
17 who decides that?

18 A. The House of Assembly is made up of three leaders:
19 The Speaker, the Premier, and the leader of the opposition. The
20 Premier normally determines government business, and it's--it's
21 basically the Premier and the Speaker mix up the Agenda of what
22 will be on the next meeting.

23 Q. But could you, as Chair of the Standing Committee,
24 have determined by yourself that the Committee would approach
25 the Standing Orders in a particular way? Could you have sort of

1 ruled to that effect?

2 A. Not by myself, no.

3 Q. Would it depend on a vote of the Members of that
4 Committee?

5 A. Yes, it would.

6 Q. Thank you.

7 You said that the Registrar knew you as one of the
8 Members who wanted the system in place?

9 A. Yes.

10 Q. Were there alternative concerns or opposition voices
11 at that time to putting this in place?

12 A. No. I don't think so. I don't think there were any
13 opposition. I think the format--the final format of what is in
14 the Register of Interests, I think most people had their own
15 opinion not that they did not agree for the Register of
16 Interests and its Committee to be in place, I don't think that
17 there was any dissenting voices.

18 Q. So, it wasn't your impression that there was
19 resistance to moving it forward. It was just that it took an
20 awfully long time?

21 A. Yeah, yeah.

22 Q. Would you turn to 145 of the bundle, please?

23 A. In which book?

24 Q. In your bundle, the one of papers related to you.

25 A. 1...

1 Q. ...45.

2 I just want to ask for your assistance just now in
3 terms of how easy you found the form in terms of what
4 information it was asking you. You were, by some stage, you
5 would probably be described as a senior member of the House of
6 Assembly. Did other Members approach you for guidance in
7 relation to how to fill in the form?

8 A. I think they would have asked questions.

9 Q. And I appreciate it's over a few years ago now, but
10 what sort of questions were being raised about the form?

11 A. Probably what does this mean and how do you go about
12 filling it out.

13 The questions were mostly general questions, but one
14 thing they know, they have to file--they had to submit this form
15 as provisions of the Act prescribes.

16 Q. So, from your time in the House of Assembly, whilst
17 there may have been uncertainty about what information to
18 provide, there was no uncertainty about when it had to be
19 provided by?

20 A. I don't think it was uncertainty when it was supposed
21 to be provided by. I know there was the provisions you read
22 where you had to submit it on the date of election. I think
23 that no one realise that. It's basically impractical provision.
24 If it had said 21 days after being sworn in or something it
25 makes more sense, but on the date, I think that's one of

1 those--one of those mistakes that was made in drafting. I don't
2 think it was willful that Members didn't want to do it.

3 Q. And what did you take to be the purpose of the form?
4 What was the point of making a Declaration?

5 A. The point of making a Declaration is so that the
6 public, if the need did arise, will see what you had Day 1 and
7 10 days after whether or not you have been abusing your position
8 of power to amass riches. I think that's what it's trying to
9 do.

10 Q. If you go to page 151, you will see there it's not the
11 reference to overseas visit that I want to draw your attention
12 to, Mr Skelton. Do you see this wording in italics which begins
13 with the word "note". Can you see at the tail end of that
14 paragraph there's reference to a Guidance Pamphlet on
15 Registration and Declaration of Members' Interests?

16 A. Yes.

17 Q. Did you, in your time--and this would probably be from
18 2007--did you ever receive a Guidance Pamphlet?

19 A. No.

20 Q. Did you ever hear of one?

21 A. No, never.

22 Q. Being in existence?

23 A. No.

24 Q. Did any Member ever ask you, have you seen a Guidance
25 Pamphlet?

1 A. (Witness shakes head.)

2 Q. If you could just go back to page 146, please.

3 Now, if we look at 146, under Directorships, you've
4 listed--and you gave the same information throughout your
5 Declarations. But you've listed Directorships as Skelton Quarry
6 Limited, Skelton Concrete products 2010 Limited, Skelton
7 Development Limited, Skelton Properties Limited, Skelton, is it
8 Bay Lot Limited, and then CRC, a retail company. Now, you list
9 them under Directorships. You also list some of these companies
10 under number two, remunerated employment, which is whether
11 you're remunerated or you have a pecuniary interest.

12 A. Right.

13 Q. And you also list them under shareholdings.

14 A. Yes.

15 Q. Now, were you clear in your own mind when you were
16 filling these forms that information about the same company or
17 interests might have to be put in different parts of the form?

18 A. Repeat it again?

19 Q. What you've done is, in relation to some of the
20 interests you have, you've declared them as a director, as a
21 source of remuneration and as a shareholder?

22 A. Yes.

23 Q. When you approached the form, were you clear in your
24 mind that the same interests might need to be referred to more
25 than once?

1 A. Based on the form, yes.

2 Q. Yes, because you could be a shareholder in a company
3 and you could also be a director?

4 A. Yes.

5 Q. And for you, there was no ambiguity about that?

6 A. Not--not to me.

7 Q. Now, if you look at page 156?

8 A. 156?

9 Q. Yes. We're looking at your 2018 Declarations.

10 A. Okay.

11 Q. One of the things you provided, at least in 2018, to
12 the Registrar was the Declaration that you have to give when you
13 stand as an election candidate?

14 A. Yes.

15 Q. Why did you decide to do that?

16 A. Why?

17 Q. Yes.

18 A. To be abundantly clear that there was no--I just
19 wanted to be beyond any reasonable doubt that this is my life.

20 Q. When you cross refer, you refer to some of the
21 interests that are on your Election Notice in your--

22 A. Yeah.

23 Q. But you don't refer to all of them, so for example
24 Skelton Investments Limited or Skelton Enterprises Limited and
25 P&3R Company Limited don't appear in the form itself. Was there

1 any reason you decided not to do that?

2 A. Skelton Investment and Skelton Enterprises Limited are
3 dormant companies, but yes, this should have been on the form.

4 Q. But taking it more widely, if you have dormant
5 companies, do you think that the form could benefit from making
6 clear to the person filling it in whether dormant companies
7 ought to be declared or not to be declared?

8 A. Yes. The form could be more explicit.

9 Q. If we go, please, to 153, that's the section you have
10 to fill in on land, and you were asked: "Do you have any land
11 other than any home used solely for the purpose of personal
12 residential purposes of you or your family?"

13 A. Yes.

14 Q. Firstly, did you take that to mean that there was no
15 need to mention your own residential home?

16 A. Yes, I do.

17 Q. And did you take it to mean to be directed to land
18 that you, yourself, owned rather than your spouse, for example,
19 or did you read it more widely than that?

20 A. I thought it was land--land that I have an interest
21 in.

22 Q. Any land that you might have an interest in. I see.

23 So, what you declared was a commercial property in the
24 valley in Virgin Gorda, estate in Great Mountain Tortola and
25 then a timeshare in Mexico.

1 A. Yes.

2 Q. Now, in relation to the last of that, was it your
3 understanding that it wasn't limited to interests in land in the
4 BVI? It was wider than that?

5 A. Again, no, I thought it was just land wherever you own
6 it, from the property wherever you own it.

7 Q. Right.

8 Could you just go to 155, please.

9 It's "Miscellaneous", which says "bearing in mind the
10 definition of purpose set out in the instructions form, do you
11 have any relevant interests which you consider should be
12 disclosed but which do not fall within the nine categories set
13 out above, please list them". What did you think the point of
14 this paragraph was? What was it asking you to do?

15 A. That's a good question. Now that you're asking, I
16 really--I can't say I do.

17 Q. Do you think, then, looking at it, that as a
18 paragraph, it's unclear about what it's expecting a Member to
19 declare?

20 A. Exactly. I think that's correct.

21 Q. Other parts of the form refer to your spouse, they
22 refer to you, they refer to your minor children. If you read
23 this, it refers to relevant interests--you have any relevant
24 interests which you consider should be disclosed. Would you
25 read that as being directed to interests that you, yourself,

1 have or interests held by your immediate family?

2 A. During the Committee Stage of the Bill in 2006, a lot
3 of questions were asked and if the verbatim reports could be
4 had, the whole discussion around the Register of Interests Bill
5 which became an act, members were extremely concerned about
6 exactly what needs to be on the forms, and one of the things I'm
7 noticing which the questions being asked is that some of the
8 concerns that were raised back then and approved by the House at
9 that point in time could have been lost in translation because
10 Members never get the Bill back to see what it was, what was
11 exactly--what was the final document before us the Governor has
12 sent it.

13 So, I hear even some questions that were questions
14 back then, but it seemed that they never--the amendments were
15 never made, so to speak.

16 This Clause could have been lost in translation based
17 on the advice given to us by the drafters and the Attorney
18 General of the day. There is some drafting concerns there that
19 needs to be addressed.

20 Q. So, distilling that down and stepping back, is it your
21 evidence to the Commissioner that the form does need looking at
22 again?

23 A. In order to be more specific after '86, now it's what
24 30 years? It's overdue for amendments.

25 Q. Can I turn to another matter.

1 You sat in Cabinet?

2 A. Yes, I did.

3 Q. During your time in Cabinet, what was the process for
4 declaring an interest in any item on the Agenda?

5 A. The process was for Members to declare an interest if
6 something came to Cabinet concerning any close friends of mine
7 or family members, I would declare the interest and walk out.
8 Rather than having an interest, but I'm closely associated with
9 these people.

10 It's a small country, and, you know, I came from a
11 family of eight aunts and uncles, 11 brothers and sisters, I
12 have hundreds of nieces and nephews. My family is huge, so most
13 people are related, and they do talk to each other. But if I
14 ask my families for information to put on this form, I think I
15 would not get information, so we have to be measured in the
16 information we're asking for.

17 Q. But turning it to what you have to do if you're a
18 Cabinet Minister and you've got to declare an interest in
19 Cabinet, accepting that the wider family exists, where did you
20 personally draw the line? You said "if I had family members or
21 close associates". but what criteria--

22 A. Close friends.

23 Q. So, if you had a close friend who was a potential
24 appointee to a Board, in those circumstances would you declare
25 an interest?

1 A. No. If--if the friend has the skill set to be on that
2 Board, I would say this is my friend, and I would stay. I'm
3 talking about monetary remunerations and stuff like that, but to
4 sit on a Board and he's properly qualified to be on that Board,
5 I don't think I would declare it and stay.

6 Q. What about family members? Where does, given that you
7 have, obviously as you said a wide--large family, where did you
8 draw the line in terms of declaring an interest?

9 A. Children, my wife, probably my brothers and sisters,
10 depending on what is happening.

11 Q. So, after your wife and your children, at that point
12 would you just make an assessment based on the particular
13 circumstances?

14 A. Yes.

15 Q. Thank you. The next topic is that the Commissioner
16 has been hearing evidence about the operation of section 67 of
17 the Constitution of 2007, and what that does is that it allows,
18 in part, the House to vote to exempt a Member of the House of
19 Assembly from vacating their seat.

20 A. Yes.

21 Q. So, it could be in circumstances, for example, where
22 you have a contract with the Government. During your time in
23 the House of Assembly, were you ever exempted from vacating your
24 seat?

25 A. No.

1 Q. Did you ever seek such an exemption?

2 A. No, I try not to do business with the Government.

3 MR RAWAT: Commissioner, I have reached the end of my
4 questions. Can I conclude by thanking Mr Skelton for coming
5 this afternoon to give evidence to the Commission and for the
6 way he has done so. Thank you, sir.

7 THE WITNESS: Thank you.

8 COMMISSIONER HICKINBOTTOM: And can I add to that,
9 Mr Skelton, thank you very much for your time and thank you for
10 the manner in which you have given your clear answers.

11 THE WITNESS: Thank you.

12 COMMISSIONER HICKINBOTTOM: Thank you very much.

13 (Witness steps down.)

14 THE WITNESS: I can go with this or leave it?

15 MR RAWAT: If you wish to leave it you can do so.

16 COMMISSIONER HICKINBOTTOM: Thank you, Mr Skelton.

17 MR RAWAT: Thank you very much.

18 COMMISSIONER HICKINBOTTOM: Now, we're due to hear
19 some legal submissions.

20 MR RAWAT: Could you rise for five minutes so we can
21 reset the room?

22 COMMISSIONER HICKINBOTTOM: Thank you very much.

23 (Recess.)

1 the last week from various current and former Members of the
2 House of Assembly on a number of matters including things like
3 the form of the Declaration and the "assisted grants" scheme.
4 But, really, the legal submissions that I would benefit from, I
5 think, relate to criticisms, particular criticisms, of
6 individuals as opposed to systemic problems. And I think this
7 is right, I'm sure that you have been following--

8 SIR GEOFFREY: As much as I can.

9 COMMISSIONER HICKINBOTTOM: Exactly. I'm sure you
10 have been instructed as to what's been said in the evidence over
11 the last week.

12 SIR GEOFFREY: Yes.

13 COMMISSIONER HICKINBOTTOM: And, generally speaking,
14 there are one or two exceptions, but literally one or two. Most
15 of the Members firstly appear to be in breach of section 3 by
16 not filing on the Due Date. Just in brackets, that seems to me
17 to reflect section 112 of the Constitution which imposes the
18 same duty. And many of them also accepted that they were at
19 times over three months in breach, which triggers the sanction
20 in section 7 of the 2006 Act. So, those breaches were, very
21 frankly, accepted by most of the Members.

22 And we have a schedule of them, as we've taken them
23 from the evidence, including the evidence of today. And,
24 really, it's those approach to criticisms, those breaches, that
25 I would like to hear legal submissions on first, perhaps, from

1 you.

2 SIR GEOFFREY: Well, I'm going to have to,
3 Commissioner, if you want to, I'm equally happy to defer to
4 Mr Hunt, who is a very distinguished local practitioner, and so
5 I'm in your hands, really.

6 COMMISSIONER HICKINBOTTOM: We don't want to fight,
7 Sir Geoffrey.

8 SIR GEOFFREY: I don't want to fight to let someone
9 else--

10 COMMISSIONER HICKINBOTTOM: I'm very happy for you to
11 go in whichever order you feel most appropriate.

12 MR HUNT: Commissioner, I prefer Sir Geoffrey to make
13 the submission.

14 COMMISSIONER HICKINBOTTOM: And then I will hear from
15 you, Mr Hunt, after Sir Geoffrey.

16 SIR GEOFFREY: Let me accept the challenge.

17 May I say straightaway that I would like to develop
18 the submissions as a whole, so I will, if I may, get to those
19 parts, I think, in which you're most interested, but there are
20 certain matters that I'm instructed--

21 COMMISSIONER HICKINBOTTOM: Just one moment. I think
22 it may be-- is it feedback?

23 SIR GEOFFREY: We're good to go.

24 There is a context which I would like to supply.

25 COMMISSIONER HICKINBOTTOM: Yes.

1 SIR GEOFFREY: And I think it fairly ought to be
2 supplied, so let me begin by saying to you, if I may, that those
3 I represent, I think, accept entirely that it is central to the
4 democratic idea that the purpose of elected office is to serve
5 the public, it is not to enrich the office-holder, and it is not
6 to enrich the office-holder's personal connections. And Members
7 should not use their position, plainly, to influence the
8 legislative process for their own advantage or for someone to
9 whom they are connected.

10 And for this purpose, as you know, sir, many
11 Parliaments, most frankly, in democratic countries have now
12 provided for Members to make periodic returns of pecuniary
13 interests to be recorded in a Register, and the purpose of that
14 Register is to strengthen public trust and confidence in
15 parliamentary process, and those I represent fully accept that
16 principle.

17 But let me commence, if I may, first by orientating
18 ourselves as to the nature of the Inquiry that you have been
19 undertaking in the last few days. Let me state it in case I got
20 it wrong because I invite correction. We understand the
21 relevance of the recent inquiry into Members' interests and of
22 the submissions I make to you today to be to the
23 Commissioner's--your--duty, to inquire into and make
24 recommendations as to improvements in governance that would
25 increase public confidence in the institutions, and in this case

1 the House of Assembly. The criticism seems to be, as you have
2 been kind enough to delineate it just a moment ago, that Members
3 were late, sometimes very late, with the registration of their
4 interests.

5 But a clear distinction, I would respectfully submit,
6 must be drawn between a failure to comply with the rules
7 relating to timely Registration of Interests and conduct of the
8 kind that you, sir, charged with examining under paragraph 1 of
9 the Instrument of Commission. And I see nod, and I didn't
10 expect, if I may say so, anything different. That conduct is,
11 of course, combined criminal wrongdoing. One can debate whether
12 it fits perfectly within any criminal offense in this
13 jurisdiction--one could argue that it would--but certainly it is
14 conduct of a character of a wholly different nature and
15 character to that with which we are dealing today.

16 Now, the statutory sanction, sir, for failure to make
17 timely registration is, of course, that the Registrar would
18 submit a report to the Standing Select Committee of the House of
19 Assembly charged for the time being with the consideration of
20 matters relating to the Register, and the Committee must then,
21 by statute, meet within 21 days of the submission of the report;
22 and then may, in their discretion, direct the Member to remedy
23 his defect within a maximum of 28 days. If the Member fails to
24 comply, the Committee must report to the Assembly, which must
25 debate the Report within 14 days of the Report. And the House

1 of Assembly may fine or suspend a Member for up to two
2 consecutive sittings.

3 Now, sir, addressing section 3, without taking you
4 directly to the statute--but we can look at it in a moment, if
5 we need to--I would respectfully submit that there is the
6 potential issue relating to section 3 because it seems to have
7 been drafted from the point of view of a sitting Member at the
8 time of its enactment, because if you recall, the section reads
9 that, "within thirty days of the Act coming into force there
10 must be a registration and then thereafter at every election".

11 Now, practices vary, but Legislatures invariably--I
12 have not been able to discover a single one that hasn't thus
13 far--allow some time for submission to the Registrar of
14 Interests of newly elected Members. The House of Commons allows
15 one month. I think the Parliament of Australia allows 28 days.
16 One can look through the Commonwealth and find no jurisdiction
17 easily--I haven't discovered, but your team may look--discover
18 one that requires mandatorily registration on the first day of
19 the election of the Member.

20 My submission is that it makes no sense to require the
21 registration on the day of being sworn in. It will inevitably
22 place an arguably unreasonable burden on the Member. A newly
23 elected Member who may not, at the time of election, even know
24 of the obligation will have many unfamiliar responsibilities and
25 demands on their time. And as the Honourable Flax-Charles

1 observed, it is nowadays usual in many Commonwealth
2 Legislatures, if not all--and BVI is, of course, a Member of the
3 Commonwealth Parliamentary Association--for induction and
4 training sessions to take place, some of which specifically deal
5 with the Register of Interests. And, in addition, the Registrar
6 will often hold individual meetings with newly elected
7 representatives to assist and answer questions and give guidance
8 about how they should meet their obligations in what is, to
9 many, a complicated subject. The absence of such features, I
10 would submit to you, is a flaw in the system under your Inquiry.

11 COMMISSIONER HICKINBOTTOM: Can you just give me one
12 moment because I would like the statute, please.

13 SIR GEOFFREY: May we return to it in a moment? I am
14 going to address it.

15 COMMISSIONER HICKINBOTTOM: Yes, but I know I'm going
16 to need them.

17 SIR GEOFFREY: Yes.

18 (Pause.)

19 COMMISSIONER HICKINBOTTOM: Just to confirm one
20 point--

21 SIR GEOFFREY: Yes.

22 COMMISSIONER HICKINBOTTOM: If you're going to deal
23 with this later, tell me.

24 We've referred--you've referred to paragraph 3, but in
25 the Constitution paragraph--

1 SIR GEOFFREY: 112.

2 COMMISSIONER HICKINBOTTOM: --section 112, that
3 imposes--it's really an amalgamation of subsections 2, 3, and 4,
4 but it imposes a duty, "charged with the duty of any person to
5 whom this section applies to defer to the Registrar". et cetera,
6 et cetera. 3 is: "A person shall make that declaration upon
7 assuming the functions of his or her office and at such
8 intervals thereafter being no longer than 12 months as may be
9 prescribed by law".

10 That's--now, I mean--I understand what you say about
11 the practicalities, but that's a duty to make a Declaration on
12 the day.

13 SIR GEOFFREY: Well, it's a question of construction.
14 If you--Commissioner, of course, if you take that view, then
15 it's a matter entirely for you.

16 COMMISSIONER HICKINBOTTOM: But--

17 SIR GEOFFREY: My submission--well, my submission on
18 this is that the better view, if not for pragmatic reasons, it
19 seems--with respect, I would submit, if you force a newly
20 elected Member to make registrations on the day, he or she may
21 not know she's going to be elected, they may or may not even
22 know of the obligation. You may say what that should require is
23 a programme of education to candidates. But it doesn't happen
24 even in the United Kingdom.

25 COMMISSIONER HICKINBOTTOM: When you say "on the day".

1 this isn't on the day of the election.

2 SIR GEOFFREY: It's on the day of being sworn in.

3 COMMISSIONER HICKINBOTTOM: Yes, exactly.

4 SIR GEOFFREY: Forgive me. Not much happens to a
5 newly elected Member of Parliament after he's just been elected
6 between having the writ handed to him and turning up. You don't
7 get much induction or training in that period.

8 COMMISSIONER HICKINBOTTOM: I understand that.

9 SIR GEOFFREY: Yeah.

10 COMMISSIONER HICKINBOTTOM: But just looking at
11 the--just looking at the Constitution as opposed as to the
12 practicalities, just looking at the Constitution, what can be
13 clearer than "a person shall make a Declaration upon assuming
14 the functions of his or her office"? What can be clearer than
15 that?

16 SIR GEOFFREY: Well, I would argue that one has to
17 read it together with sections 3 and 7, and Section 7--I'm not
18 going to develop an analysis that you haven't already
19 considered, but the express reference in section 7--I mean,
20 which you will have, I hope, before you, but where a Member--and
21 for this purpose let's just look at 7(a)--fails to make a
22 declaration within a period of three months from the date on
23 which the duty to make that declaration accrues--

24 COMMISSIONER HICKINBOTTOM: Just pausing there.

25 SIR GEOFFREY: Yes.

1 COMMISSIONER HICKINBOTTOM: Section 7 doesn't impose
2 any duty.

3 SIR GEOFFREY: No. What it does is declare the
4 consequence of not making a Declaration.

5 COMMISSIONER HICKINBOTTOM: It declares the
6 consequence--

7 SIR GEOFFREY: Yes.

8 COMMISSIONER HICKINBOTTOM: Or sometimes a sanction.

9 SIR GEOFFREY: Yes.

10 No, it doesn't just outline a sanction. It declares
11 the consequence. It says "the Member shall be in provision of
12 this Act". then it describes the sanction.

13 COMMISSIONER HICKINBOTTOM: But 7(a), "first make a
14 Declaration within a period of three months from the date on
15 which the duty"--

16 SIR GEOFFREY: The duty arose.

17 COMMISSIONER HICKINBOTTOM: The duty arose under
18 section 3?

19 SIR GEOFFREY: Yes, but there is no reason why a
20 statute shouldn't consider a breach only after a particular
21 period. The duty arises--and is a continuing duty--it goes
22 beyond three months.

23 COMMISSIONER HICKINBOTTOM: Yes.

24 SIR GEOFFREY: But the Act has adopted the policy of
25 saying, "You will only be in breach if you are three months

1 late".

2 Now, it seems to me that that is a perfectly
3 legitimate policy for the Act to adopt. And if it weren't that
4 policy, why would it adopt the language of saying "the Member
5 shall be in breach"? You could say, "Well, he's already been in
6 breach". It's saying it--and I submit this is the better
7 view--it's it because what it's saying to the Member is, "You
8 have the duty the moment you assume your office, but after three
9 months you will be considered to be in breach".

10 COMMISSIONER HICKINBOTTOM: I'm sorry, I'm sure it's
11 me. I seem to don't understand that. You have a duty under the
12 Constitution, and the Act can't override the Constitution. You
13 have a duty to make a Declaration upon assuming the functions of
14 office. That's on the date you're sworn in. That's when you're
15 duty arises. If you don't comply with the duty, you're in
16 breach of that duty.

17 SIR GEOFFREY: Well--

18 COMMISSIONER HICKINBOTTOM: Forget about section 3 and
19 section 7.

20 SIR GEOFFREY: Well, if you refer to the Constitution,
21 then--and I'm not saying for a moment, Commissioner, I may say
22 straightaway, but the matter is not interpretable if the
23 manner--

24 COMMISSIONER HICKINBOTTOM: Yes.

25 SIR GEOFFREY: The question is what is the better

1 view, having in mind the purpose that the Act is designed to
2 achieve and the Constitution. Yes, normally I grant you, if I
3 may put it in an impertinent way--I "concede", is the better way
4 of putting it, but usually the expression "upon doing something"
5 means at the time or immediately after doing it.

6 But what the Act does, in my submission, is further
7 define what is meant by section 112 and what it means to
8 say--and this was clearly the way that some of the Witnesses had
9 interpreted it before you, whether they were right or wrong,
10 which is that they would only be considered to be in breach of
11 the Act for the purposes at least of any sanction if they
12 transgressed section 7 and with the 3 months.

13 COMMISSIONER HICKINBOTTOM: We could check the
14 Transcript. There was certainly one witness--

15 SIR GEOFFREY: There was certainly one, I think.

16 COMMISSIONER HICKINBOTTOM: One today.

17 SIR GEOFFREY: One who said it, and there may be one
18 other. And forgive me--

19 COMMISSIONER HICKINBOTTOM: No, no.

20 SIR GEOFFREY: I don't propose, if I may, to
21 individualise these sections.

22 COMMISSIONER HICKINBOTTOM: No, no.

23 Sir Geoffrey, let me say that--let's say that the
24 statutory provisions have more than one interpretation.

25 SIR GEOFFREY: Yes.

1 COMMISSIONER HICKINBOTTOM: That they're ambiguous.

2 Does that hugely matter for my purpose?

3 SIR GEOFFREY: No, and that's what I'm going to come
4 on to say, if I may.

5 COMMISSIONER HICKINBOTTOM: Certainly.

6 SIR GEOFFREY: The point is, what I would submit is
7 that, having regard to the reality of a new Member's experience,
8 having regard to the practice of other Legislatures which do
9 allow time, the scheme and policy of the Act was probably
10 intended--I grant that there are problems that exist on this
11 interpretation, but I submit it's a tenable one--was to say,
12 "You have a duty the moment you enter into your office, but if
13 you don't--have not done it within three months, you will be
14 considered to be in breach". That's the meaning--that's the
15 meaning of saying "shall be in breach". It's a tenable
16 interpretation. I grant it may not be the one, sir, that you
17 would have preferred either today or when you were sitting in
18 the Court of Appeal.

19 But it's certainly a respectable argument because it
20 doesn't make sense to place a Member in the invidious position
21 of facing such moral obloquy as a tract to being in breach at
22 one minute past midnight on the day that they're being sworn in,
23 when the complexity of their registrations could be quite
24 considerable, when it may depend on third-party inquiries, when
25 it may require advice. The practicalities as such that the

1 scheme of the Act must, I submit, whether felicitously worded or
2 not, have been intended to allow a period of time for the
3 Members to make those registrations, whether or not, as a matter
4 of literal construction, you prefer my submission or you adopt
5 the position that you have adumbrated so far. But I need to
6 move on from there.

7 COMMISSIONER HICKINBOTTOM: Yes.

8 SIR GEOFFREY: Because perhaps it doesn't matter very
9 much. I was made aware of the observations you made to the
10 Honourable Carvin Malone earlier about constitutionality and the
11 importance--perhaps the elevated importance of observing a
12 constitutional obligation. My submission is there may very well
13 be such moral importance, but frankly, the ignoring of a statute
14 obligation is an important matter in itself, and particularly if
15 you're a public officer, elected or otherwise. And I'm not here
16 instructing on behalf of those I represent to say anything
17 different.

18 So, may I move on to this. What I have submitted--and
19 I leave it in your hands, if I may, to determine--that the
20 better view of the legislation may be, even if this requires a
21 purposive approach to it, is to receive a Member only being in
22 breach once section 7 is triggered. And for the reasons that
23 I've given that frankly practice all the way around the world is
24 to allow that time, and it really does place a Member in a very
25 invidious position, indeed, as I sat in the House of Commons

1 laws 28 days; and there is a programme, as I shall describe in
2 due course of quite intensive these days, familiarization and
3 training.

4 COMMISSIONER HICKINBOTTOM: But in the UK.

5 SIR GEOFFREY: In the UK, yes.

6 Now, in the case of many past and current Members of
7 the House, as I've just said, the registrations were much later
8 than three months. And while most Members newly elected in 2019
9 appeared to have made efforts to comply--I speak perhaps if The
10 Honourable Flax-Charles, the Honourable de Castro, who clearly
11 made sincere efforts, conclusion is certainly open to you that
12 the system never functioned properly.

13 COMMISSIONER HICKINBOTTOM: I'm sorry, which system?

14 SIR GEOFFREY: The whole system of Registration of
15 Interests, the Act never functioned properly.

16 COMMISSIONER HICKINBOTTOM: Well, that's not a
17 difficult conclusion to draw.

18 SIR GEOFFREY: As I said, it's clearly open to you.

19 COMMISSIONER HICKINBOTTOM: Because there was no
20 system.

21 SIR GEOFFREY: No. And I'm going to come to that, if
22 I may.

23 We submit--I'm going to submit there are three
24 possible reasons, each of which are relevant to the question of
25 criticism for this. There can, of course, be no basis for a

1 public servant, elected or otherwise, to ignore an unequivocal
2 statutory obligation. Statutory obligations, however, are
3 ignored every day in every society from speed limits on the
4 roads to the submission of tax returns to a whole variety of
5 activity, sir, which you, particularly with your experience,
6 will be very familiar. It doesn't excuse it, but they are.

7 So, the question to which I hope now to turn is why
8 the statutory scheme was constituted and designed in a manner
9 that it was and whether it enhanced the prospects of compliance
10 and why it hasn't appeared to function at all or properly.

11 And first, I submit, the ROIA adopted a fundamentally
12 flawed design to achieve its purpose; rendering the Register,
13 even if it had been maintained perfectly and fully up to date,
14 practically useless; a Register that was not a useful tool for
15 democratic purposes was likely not to be regarded as a high
16 priority. This is simply a matter of human nature.

17 I repeat, which you bear in mind I have said straight
18 from the very beginning as those instruct me accept that there
19 is never a basis for ignoring a statutory obligation. But what
20 this seeks to do--what my submission seeks to do--is to give you
21 three reasons for your consideration as to why that system
22 didn't operate:

23 First, it adopted a fundamentally flawed design.

24 Secondly, the Registrar, though diligent in her
25 attempts to chase repeatedly Members through successive

1 Assemblies, appears not, at least from 2016, to have been given
2 the appropriate advice as to what to do to enforce the Act and
3 its provisions at least once the Committee envisaged by the Act
4 had been constituted.

5 And, thirdly, there seems to have been no preparatory
6 programme of education and training in the importance of a
7 Registration--a Register of Interests and to achieve the culture
8 change necessary for it to be successful, either when the Act
9 was passed or subsequently for Members after each election.

10 And the reason--let me address those in turn, if I
11 may, a fundamentally flawed design. The Register was only ever
12 ordinarily accessible to a Member on the payment of a fee.
13 Other than a court or a criminal investigation, no one else
14 could ever see it. No questions, I think--well, I may be wrong,
15 but my learned friend Mr Rawat has asked whether any Member ever
16 asked to see the Register. I can't remember such a question,
17 but I don't think that they ever did.

18 COMMISSIONER HICKINBOTTOM: But there is no Register.

19 SIR GEOFFREY: Well, to see the record at least
20 because, as I understood the evidence before you, there was a
21 meeting in 2016 when the evidence of the Witness was that the
22 Register format had been approved, but I may be wrong.

23 COMMISSIONER HICKINBOTTOM: Sorry, you are--

24 SIR GEOFFREY: In that case--

25 MR RAWAT: Just to assist Sir Geoffrey with two

1 points.

2 SIR GEOFFREY: Yes.

3 MR RAWAT: The evidence is that, as of 2016, that was
4 the first point at which there was a resolution to establish the
5 Standing Select Committee. It met in 2017. The evidence of The
6 Honourable Mark Vanterpool and the Honourable Marlon Penn was
7 that it did not go so far as to establish the format of the
8 Register.

9 SIR GEOFFREY: Right.

10 MR RAWAT: That's similarly evidence from The
11 Honourable Andrew Fahie, which didn't say anything to the
12 contrary. The other two Members of that Committee, that 2016
13 Committee, were The Honourable Alvera Maduro-Caines and The
14 Honourable Julian Fraser, but neither of them remembered being
15 on a committee.

16 SIR GEOFFREY: I thank you.

17 MR RAWAT: I don't have the name but it is one of Sir
18 Geoffrey's clients, but there have been a number of Honourable
19 Members, and certainly I can think of one of the elected
20 Ministers who have, as a result of perhaps being asked to come
21 to give evidence, have approached the Registrar of Interests for
22 their own documents both for correspondence records and for
23 their Declarations and been provided to them.

24 SIR GEOFFREY: Since the Inquiry?

25 MR RAWAT: Since the Inquiry.

1 SIR GEOFFREY: I have the point, but let's look, if I
2 may--and I'm grateful for that.

3 COMMISSIONER HICKINBOTTOM: Yes, because you said
4 there was a fundamentally flawed design, but what's the
5 fundamental--

6 SIR GEOFFREY: The flaw is that nobody ever got to see
7 the Register. The fact is that a Register can only work if it's
8 (a) kept up to date and accurate; and secondly, somebody can see
9 it, so that the second function, the second function--I'm saying
10 what may be banal, but the fact is that this needs to be
11 stated--the design of this scheme was stillborn because only if
12 it's a democratical tool, a Register, can it ever justify its
13 existence. Somebody needs to be able to look at it and say,
14 "But that person hasn't declared in oral debate". It needs to
15 be able to be referred to by at least the Members in debate, if
16 necessary. It needs to be able to be seen so that those can
17 inform themselves as to whether the speeches or the votes are or
18 are not consistent with the interests.

19 COMMISSIONER HICKINBOTTOM: Yes.

20 SIR GEOFFREY: So, I'm saying nothing that I suspect
21 will be controversial, but I think it's important we state it.

22 Now, what is the effect of this? My submission is
23 that it was made extremely difficult even for a Member to see
24 it, at least on the Act because first you have to pay a fee.

25 Secondly, you didn't even have a right to see it.

1 Under section 9, the Registrar had to be satisfied that the
2 purpose of the request had been made out, that the request
3 wasn't frivolous and vexatious but against what standards and
4 criteria. But it was made in good faith, how would you judge
5 that? What is a good-faith reason and what is not?

6 But it was intended for a purpose that is consistent
7 with the objectives of the Act. Well, those were never
8 expressly set out.

9 And then if she's not satisfied as to those matters,
10 then she can decline to grant the inspection of the Register at
11 all, and she, of course, must notify the Member whose Register
12 is to be inspected.

13 Now, all of those things presented very serious
14 hurdles in the way of the only class of persons who can see the
15 Register, namely the other Members, in the way of looking at it
16 at all, so that this Register would have become some form of
17 Dead Sea Scroll kept in a hermetical cave removed from anybody's
18 sightal gaze, and certainly removed from being an effective tool
19 for the increase in confidence in democracy.

20 COMMISSIONER HICKINBOTTOM: But doesn't that mean
21 that, following section 112, which requires a Register, mandates
22 that there must be a Register, and then says that, in
23 subsection 5, there needs to be a law to implement that, so the
24 law that implemented the requirement of the Constitution
25 implemented, of course, by the what was really implemented by

1 the Legislative Council, but effectively the House of Assembly,
2 was simply ineffective.

3 SIR GEOFFREY: Yes. And that's my submission,
4 effectively.

5 COMMISSIONER HICKINBOTTOM: Yes, but it's--I'm sure
6 you will make it far more attractive than it currently sounds,
7 but it's not an attractive submission because the Act--well,
8 really the Constitution in a sense, but certainly the Act
9 is--requires self-policing in terms of the Register. And what
10 you say, in self-policing, the self-policemen, the Members of
11 the House of Assembly, have create an Act which, in terms of
12 enforcement and implementation, is fundamentally flawed and
13 hopeless.

14 SIR GEOFFREY: Yes, I do say that, and those on behalf
15 of I'm instructed by would entirely accept and endorse that
16 position. The Act itself was not set up in a manner that
17 created the incentives for it to be complied with because,
18 frankly, it was practically useless--I mean for practical
19 purposes. The only class of persons who could to look at it
20 were the other Members, and they even had to pay a fee. And
21 even then they didn't have a right because, as I say, you have
22 to get past the Cerberus watchdog in order to establish your
23 right to see it.

24 And when you saw it, of course, you couldn't copy it.
25 You couldn't take an extract. Query whether you could take a

1 note--I don't know if you reached a conclusion as to that, but
2 it's possible, I suppose--but, certainly, it was enforced
3 pretty--one imagines it would be enforced pretty tightly,
4 copying and extracts.

5 Now, all of that tended to mean that a Member who was
6 elected, it just never was regarded as serious system, I
7 suspect.

8 COMMISSIONER HICKINBOTTOM: But in terms of
9 governance, that's an appalling thing.

10 SIR GEOFFREY: Well, I'm not here--as I started, I'm
11 not here to gloss matters that are matters of clear fact.

12 COMMISSIONER HICKINBOTTOM: But it is, isn't it? In
13 terms of governance.

14 SIR GEOFFREY: Saying plainly, I'm going to come on to
15 that. You see, this is not an uncommon experience in
16 Legislatures.

17 The United Kingdom can't boast about its performance--

18 COMMISSIONER HICKINBOTTOM: Forget about the United
19 Kingdom.

20 SIR GEOFFREY: No.

21 COMMISSIONER HICKINBOTTOM: What we have here, we have
22 a constitutional obligation--

23 SIR GEOFFREY: Yes.

24 COMMISSIONER HICKINBOTTOM: --of a Register and to
25 make Declarations. So far, we've got to the point of firstly

1 there never has been a Register; secondly, that the Act, which
2 under section 112(5) of the Constitution was intended to
3 implement the constitutional requirements is "practically
4 useless", which is your term.

5 SIR GEOFFREY: Yes.

6 COMMISSIONER HICKINBOTTOM: In terms of governance--

7 SIR GEOFFREY: It's poorly designed.

8 COMMISSIONER HICKINBOTTOM: It's not--well...

9 SIR GEOFFREY: Structurally flawed.

10 COMMISSIONER HICKINBOTTOM: Well, as you say, your
11 term, which I think is right, "practically useless".

12 SIR GEOFFREY: Let me carry on.

13 COMMISSIONER HICKINBOTTOM: Yes.

14 SIR GEOFFREY: My point is this to you, sir, is I'm
15 not coming here, nor am I instructed, to attempt to dress up
16 what is clearly an unsatisfactory situation. What I'm here to
17 do is to say to you that there are important contexts that need
18 to be considered.

19 Firstly is that the scheme that was adopted was
20 structurally flawed. Now, if you were going to have any chance
21 of making it succeed, you needed something else. Simply to
22 introduce legislation and tick a box so that's done, Register of
23 Interests legislation, is not going to mean that that
24 legislation embeds itself in the culture of a democratic system,
25 unless with it you have rounded the policies to enable that

1 statutory scheme to succeed; a full understanding of its
2 objectives; the kinds of induction and training of which I
3 spoke; the attempt to make through all sorts of means the
4 culture change necessary to embed that statutory scheme. That
5 was never done.

6 All that was done was that somebody had on their list
7 for good-governance legislation Register of Interests. It was
8 enacted, and it then was stillborn. Why? Because thought was
9 not given to the informing policy context that would be needed
10 to make it successful, and the kinds of ancillary support that
11 would be needed to make it successful.

12 Now, the reason I say that, with respect, is that it
13 is not an uncommon experience for Legislators. Even if the
14 statute had been designed letter, to take time to appreciate and
15 internalise the importance of a Register of Interests, it is a
16 cultural issue for Legislators that is quite difficult for them
17 to assimilate. In the United Kingdom, for example, while it's
18 been the convention that a Member should declare any relevant
19 interests before speaking in a debate for many, many years going
20 back hundreds of years, certainly hundred or more, no resolution
21 was passed in the House until 1974, and a Register of Members'
22 interests was first introduced by resolution of the House in
23 1975. A permanent Select Committee was established in
24 February 1976, but for 20 years that Register was treated with
25 disrespect and disdain by successive--in successive bonds.

1 Famously, sir, you may recall it was, I think the Right
2 Honourable Enoch Powell who refused point blank to register his
3 interests on the grounds that he had not been--that it was not
4 binding on it, the resolution of the House, that it was--he was
5 an honourable man. The Members should be presumed to conduct
6 themselves honourably, and he declined to register his
7 interests. And, of course, many other Members of Parliament
8 did.

9 And it wasn't until the Nolan Committee in 1995 that
10 recommended a complete overhaul that the Register of Interests
11 including the Parliamentary Commissioner, the independent
12 Parliamentary Commissioner, that a satisfactory system was
13 installed with which all Members complied. I think it took 20
14 years for the United Kingdom Parliament, the mother of
15 Parliaments, to recognise and internalise the need for
16 transparent Registration of Interests, not because those incited
17 were dishonourable, but because they found it hard to
18 acclimatise themselves for the new need for transparency and for
19 reassuring the public as to the central principle I started my
20 submissions with.

21 It is, I submit, not wholly surprising that, in this
22 jurisdiction it's taken 13, and without any form of training,
23 induction, resources invested into and creating the culture
24 change necessary, Members found it--Members have found it
25 difficult it comply. I don't excuse it, and none of those whom

1 I represent seek to suggest other than that they were late with
2 their registrations and that those registrations, at least after
3 three months, were in breach of the Act.

4 But one does need to look at the problem here. It is
5 perhaps not surprising when what you're asking the Legislature
6 to do is invasion of their privacy. It's not an excuse I hasten
7 to add; it is a difficult thing for a Legislator to grapple
8 with, but once the training and induction and inculcation is
9 performed, most of them perceive the need for it.

10 Now, there is one final point that I would wish to
11 make, sir, if I may, and that is this: It seems, with respect,
12 that the Registrar decided to approach the current Governor or
13 the previous Governor and possibly Governors before him, to seek
14 their advice as to what to do. In my submission, the best
15 course of action at that point--in fact, the only proper
16 course--would have been to say "take advice" probably from the
17 Attorney General as to what you should do because the Act did
18 offer the Registrar potential remedies.

19 Once at least the Committee was constituted, it would
20 not have--I submit that I take the point about the Register,
21 perhaps if the Register wasn't existing, but would there have
22 been anything to stop the Registrar submitting a report? The
23 Chairman had been selected in 2017, the Committee had been
24 selected, the Standing Orders by then had been changed to
25 constitute the Committee. If the Registrar had submitted the

1 Report, it would have triggered the statutory duty to sit within
2 21 days.

3 In the Committee had not been sat, would there have
4 been any impediment as a last resort to the Registrar seeking a
5 remedy from the Court? I submit, though these are highly
6 undesirable things for any Registrar to have to do, had she been
7 given that advice, had she submitted a report, it would have
8 triggered the statutory duty and would have been judicially
9 enforceable. It was, after all, created under statute the
10 system, not within the Standing Orders of the House as some
11 Legislatures have done.

12 Now, I don't seek in any way to criticise the
13 Registrar, and that is not intention of this because the
14 Registrar has been trying to chase--

15 COMMISSIONER HICKINBOTTOM: The Registrar, in 2008,
16 did at least two things: Firstly, she chased Members. She gave
17 them notice when--

18 SIR GEOFFREY: She did.

19 COMMISSIONER HICKINBOTTOM: --when the Declarations
20 were due. She then chased them, one witness said very
21 "assiduously", but she did, as it were, relentlessly.

22 SIR GEOFFREY: I have seen some of the correspondence.

23 COMMISSIONER HICKINBOTTOM: One of the honourable
24 Members said he didn't open the envelope that she sent him. So
25 the first thing she did was to press for the Declaration.

1 And the second thing she did was to press for some
2 action in relation to enforcement. That is the setting up of a
3 Standing Committee.

4 SIR GEOFFREY: Which was done in 2017.

5 COMMISSIONER HICKINBOTTOM: Which was done in 2016.
6 It took eight years. And it was populated, without mentioning
7 names, both in the last House and this, with several Members
8 who--

9 SIR GEOFFREY: Were in default.

10 COMMISSIONER HICKINBOTTOM: Were in default and, on
11 the face of it, treated the obligation with, as you put it,
12 disdain. They were years in default.

13 And not all of them, I don't think, appreciated the
14 obvious conflict of interest. Some of them did.

15 SIR GEOFFREY: Well, my point is, had the Report been
16 served on the Chairman, the Committee would have had to sit, and
17 these issues like conflicts of interest--

18 COMMISSIONER HICKINBOTTOM: Why did the Committee have
19 to sit?

20 SIR GEOFFREY: Because the section requires it.

21 COMMISSIONER HICKINBOTTOM: The Act requires lots of
22 things which never happened.

23 SIR GEOFFREY: No, but forgive me, with respect, if
24 the Committee had not sat when it had its duty to sit within 21
25 days, it would have been judicially enforceable. It would have

1 been nothing to stop a court issuing an order to compel the
2 Committee and sit in compliance with its statutory duty.

3 COMMISSIONER HICKINBOTTOM: So, that was a burden you
4 would have put on the Registrar?

5 SIR GEOFFREY: Well, what I have said is when the
6 Governor was asked or when the Governor asked for information in
7 November 2020, the better thing to do would have been to have
8 said "take the advice of the Attorney General"--

9 COMMISSIONER HICKINBOTTOM: Who, of course, is a
10 Member of the House.

11 SIR GEOFFREY: Well, the Attorney has to be
12 independent in, of course, all kinds of difficult situations.

13 COMMISSIONER HICKINBOTTOM: I understand that doubt.

14 SIR GEOFFREY: And I have no doubt this Attorney would
15 have been--she would have given her view candidly on what she
16 thought the law was, and I have little doubt that she would have
17 said, "If you serve your Report, there is statutory duty on the
18 Committee to sit. And if it doesn't sit, it would be judicially
19 enforceable but on your action, on your suit'.

20 Now, what I submit, judicially that's what she should
21 have been told to do. She's charged with a constitutional
22 office. Instead of resorting to the Governor and giving him
23 information in breach of her obligation under section 13, at his
24 request, so it doesn't appear the Governor understood the
25 obligations of the Act because there is little doubt that

1 section 13 and the oath of confidentiality that the Registrar
2 took was breached by the conveyance of information connected
3 with the Register to the Governor, and the Governor should have
4 not made that request. What he should have done, I submit, is
5 advise her to seek legal advice.

6 COMMISSIONER HICKINBOTTOM: You say there is no doubt.
7 We don't know because that is a matter that's not put to the
8 Governor yet.

9 SIR GEOFFREY: Well, let's wait and see. It's my
10 submission that section 13 is uncompromising and unambiguous in
11 its terms. And note should have requested information from the
12 Registrar which was manifestly. Or if we don't accept for the
13 moment manifestly, which was at least arguably in breach of the
14 statutory obligations.

15 If the Members have breached their statutory
16 obligations, which they have, then the Governor has breached his
17 obligations--the obligations as well, or at least encouraged or
18 requested the Registrar to do so, and that is at the heart of
19 the problem that exists in this Territory upon which I will
20 submit to you, I hope, later.

21 COMMISSIONER HICKINBOTTOM: But--it is a matter for
22 later, but there is a difference, and this is not a comment on
23 the propriety of anybody's action.

24 But in those circumstances, from what you've said, the
25 Governor was concerned about the system not working, and the

1 Members of the House of Assembly were those not operating the
2 system because they undoubtedly did not operate the system.

3 SIR GEOFFREY: If you mean there may have been benign
4 reason for breaking the law, I've never understood that to be a
5 proper basis.

6 COMMISSIONER HICKINBOTTOM: I didn't say it was
7 because these are matters for another day.

8 SIR GEOFFREY: Quite.

9 COMMISSIONER HICKINBOTTOM: But what I'm saying is
10 that here we had a system whereby the Members of the House of
11 Assembly were obliged to make Declarations of Interest under the
12 Constitution and under section 3. They failed to do so. Some
13 of them failed to do so relentlessly and despite the Registrar's
14 best efforts over years.

15 The--

16 SIR GEOFFREY: And what I'm saying to you,
17 Commissioner--

18 COMMISSIONER HICKINBOTTOM: The House of Assembly
19 Members did not create a Select Committee, which was the first--

20 SIR GEOFFREY: Until 2016.

21 COMMISSIONER HICKINBOTTOM: Until 2016, which was the
22 first step of enforcement.

23 When they--when they had created it, it has met once.
24 It has not approved any format for the Register, so there is no
25 Register. We have no evidence from the Registrar on this, but

1 you can certainly understand her giving up.

2 SIR GEOFFREY: I don't think any constitutional
3 officer has the right to give up. You can resign if you don't
4 think you're having proper cooperation.

5 COMMISSIONER HICKINBOTTOM: She didn't give up in the
6 sense she kept sending her reminders.

7 SIR GEOFFREY: But the proper course after 16 was to
8 have taken legal advice and to have triggered the statutory duty
9 to sit.

10 COMMISSIONER HICKINBOTTOM: I understand that
11 submission.

12 SIR GEOFFREY: And that is what any Attorney would or
13 should have advised, and not to go to the Governor to seek some
14 form of relief, which is not statutorily available from the
15 Governor--

16 COMMISSIONER HICKINBOTTOM: No, but that is for
17 another day.

18 SIR GEOFFREY: It is for another day, but when one is
19 looking at the nature of the default here, you cannot ignore the
20 fact that Legislatures around the world have had similar
21 difficulties, and you have to ask yourself why--why--have even
22 countries of 67 million had difficulties wrestling with this
23 problem? With all of the resources and training, it was only
24 Nolan that introduced the sensible and a system to which the
25 House of Commons was a medium in 1995, and the reason is it is a

1 serious culture, adjustment of thinking, for any Legislature.

2 And this Assembly was given no snow support, no
3 training, no assistance, with adapting and adjusting to that new
4 need. So long as the Act was passed, the box was ticked. No
5 doubt a message flew back that this legislation had been passed
6 and, therefore, one tick was added on somebody's checklist.

7 But what should have been done and what we had to the
8 duty do, as the United Kingdom, was offer practical and real
9 support, not simply stand back and say the legislation is done.

10 We should have had over here Commonwealth Parliamentary
11 Association officials, deputations, assistance, practical
12 programme of support to bring about a mindset within this
13 Assembly of compliance and the understanding of the need for
14 compliance. Good governance too often, sir, is simply a cliché
15 that trips off the mouth. It requires tough and difficult
16 mindset adjustments, and this Assembly and this Territory and
17 this jurisdiction deserved better from the United Kingdom than
18 simply to have the Act enacted with nothing else around it
19 because I have been able to find not a trace of support,
20 practical experience given, wisdom communicated, despite the
21 promises that are so often made.

22 Now, I'm sorry to sound vehement, but I also feel,
23 frankly, embarrassed. You, with Mr Rawat, are doing your jobs,
24 and you've had these Members through this room one by one, and
25 each of them have had to accept, as is right they should, that

1 they failed to comply or most, I think, there may be one or two
2 exceptions that I haven't followed, they failed to comply with
3 their statutory obligations. And I can reflect how many--I
4 certainly have occasion to have fallen down on mine, and so have
5 many of my colleagues in the House.

6 And so, when you--

7 COMMISSIONER HICKINBOTTOM: And--

8 SIR GEOFFREY: But this is relevant because the tone
9 of the Inquiry is important. Of course, it's wrong. It's a
10 statutory obligation, but I don't think we, coming from the
11 United Kingdom, can necessarily afford a moralistic tone.

12 COMMISSIONER HICKINBOTTOM: It's not a moralistic
13 tone. It's looking at what the Register of Interests Act, which
14 was passed by the Legislative Council here, said.

15 SIR GEOFFREY: Yes.

16 COMMISSIONER HICKINBOTTOM: And I'm looking to see the
17 extent to which any attempts have been made to enforce it, and
18 the attempts have been--

19 SIR GEOFFREY: Desultory, at best.

20 COMMISSIONER HICKINBOTTOM: Yes. That's really to put
21 it at its highest.

22 And you've explained in your submissions why you think
23 that is the case.

24 SIR GEOFFREY: Yes.

25 It's simple. The statutory scheme was badly designed,

1 structurally flawed, because you need the incentive of at least
2 easy access to the Member, so--the Members--it's normal in
3 debate to refer to the Register of Interests, but you couldn't
4 in this one unless you paid a fee. It needs to be a democratic
5 tool.

6 Secondly, I don't think the Registrar was properly
7 advised from 2016 onwards. Indeed, I think she was misguided,
8 not personally, not guided correctly. And finally, and most
9 importantly of all, that culture change of which I have spoken,
10 which is a difficult one, needed to have been supported by
11 wrap-around policies and serious investment and support.

12 COMMISSIONER HICKINBOTTOM: Yes.

13 SIR GEOFFREY: And it wasn't.

14 But, with respect, you can't just blame that on this
15 Territory and its jurisdiction. The United Kingdom has a duty.
16 And when it comes to good governance and developing good
17 governance, it must sit by the sides of these territories and
18 lift it up.

19 And I have looked. I have been carrying out as close
20 an examination as I can to see what support has genuinely been
21 given, and at the time I can find almost none.

22 So, I do submit that when you locate the
23 seriousness--and nobody seeks to excuse the failure to abide by
24 a statutory obligation--there are reasons for thinking that the
25 scheme itself was simply not well-designed, and they needed

1 better advice in doing it. It wasn't supported--well, you shake
2 your head. I find that hard to understand. When a judge does
3 it, it always troubles me because you actually speak your mind,
4 which I know you will. I don't have a means of addressing it.

5 COMMISSIONER HICKINBOTTOM: Well, no. I just find
6 that proposition difficult.

7 SIR GEOFFREY: What? Which one? The UK had a
8 responsibility.

9 COMMISSIONER HICKINBOTTOM: That they needed better
10 advice.

11 SIR GEOFFREY: Why not? Why not?

12 Have you seen the Integrity in Public Life Act?

13 COMMISSIONER HICKINBOTTOM: Here?

14 SIR GEOFFREY: Yes. I have the draft one.

15 COMMISSIONER HICKINBOTTOM: We've got it.

16 SIR GEOFFREY: I will commend you see it. It's badly
17 in need of advice.

18 Of course they need advice and expertise. They have
19 excellent advocates and lawyers, but these are matters which
20 this jurisdiction is unfamiliar with, and we have a
21 responsibility. That Act was stillborn. I can't see any sign
22 of anybody saying in 2006-'7 that this Act is unwise.

23 COMMISSIONER HICKINBOTTOM: But are you saying that
24 the BVI Government is incapable of doing--taking these steps on
25 its own?

1 SIR GEOFFREY: As any young nascent country, they are
2 entitled to expect from the administering power support,
3 practical help, a supply of know-how and expertise in order to
4 equip them with the capacity for good governance, yes. I'm not
5 saying they're incapable. They will make their way and make
6 their mistakes like every nation does, if it's free and
7 independent. It will make many mistakes like the UK has made,
8 but that doesn't mean they're incapable.

9 COMMISSIONER HICKINBOTTOM: No, I didn't mean--no,
10 that's probably not the right word. But what you say is that,
11 in respect of the measures now, you've referred to the Integrity
12 in Public Life Bill, which has been referred to by a number of
13 witnesses, but what you're saying--

14 SIR GEOFFREY: It needs more support.

15 COMMISSIONER HICKINBOTTOM: That, as it currently
16 stands, would be inadequate.

17 SIR GEOFFREY: As it currently stands, it clearly
18 needs significant work.

19 For example, it applies, as I understand it, to
20 Members of the House of Assembly, those Members that are
21 subjected to the Code of Conduct or the Schedule of Principles--

22 COMMISSIONER HICKINBOTTOM: In the Ministerial Code.

23 SIR GEOFFREY: Well, no, in the Act itself there is a
24 Schedule of Principles. One of them is to act politically
25 impartially. It would be the first time, in my understanding,

1 that a Member of the House of Assembly had to act politically
2 impartial.

3 So, yes, I'm saying this Territory ought to have the
4 promise made in 2012 in the White Paper of a long-term programme
5 of substantive support, which is what my colleague Lord Hague
6 said at the time, to assist it to equip itself with capacity for
7 these democratic institutions, yes. Just like nations, free and
8 independent nations around the world received it.

9 But this island has been left pretty much to itself
10 except when some trouble arises, and that's why you're here.
11 Yes, I say that.

12 COMMISSIONER HICKINBOTTOM: That's helpful. A lot of
13 those submissions are going to have to be dealt with on another
14 occasion.

15 SIR GEOFFREY: Yes.

16 COMMISSIONER HICKINBOTTOM: I say that they bear--

17 SIR GEOFFREY: They bear on this.

18 COMMISSIONER HICKINBOTTOM: This has to do with
19 governance.

20 SIR GEOFFREY: And you can't. And not a single one of
21 the Ministers I represent will resile from the acceptance made
22 to Mr Rawat and his skillful examination, though the materials
23 were there and spoke for themselves--and I know you will forgive
24 me for saying--I mean, the truth is that not a single one
25 resiled from saying that they accept they were in breach of the

1 Act. Now, whether it's two or one--

2 COMMISSIONER HICKINBOTTOM: And they accept through
3 you that the scheme that has been set up is practically useless.

4 SIR GEOFFREY: Yes. Was in 2006.

5 I think what this Government says and what the Premier
6 says is that they will fix it, and they came into power on a
7 programme of attempting to fix many of these problems.

8 Now, this one is one connected with the House, of
9 course, and the legislative would be the House of Assembly, but
10 I see no reason why that shouldn't be fixed by this Government
11 either.

12 COMMISSIONER HICKINBOTTOM: That that is an issue
13 which I will have to deal with.

14 SIR GEOFFREY: Which is?

15 THE WITNESS: The confidence in which one can have in
16 the promises given by this Government to fix various matters of
17 governance which I suspect, although I don't want to put words
18 in your mouth, in respect--in particular respect of a hearing
19 that's probably some weeks away--it's going to be accepted that
20 the current state of governance is less than optimal.

21 SIR GEOFFREY: Yes, I think it probably will be. I
22 mean, indeed, that's what the Government came into with its
23 programme as saying.

24 I have to say that the latter observation troubles me
25 because, confidence or not, this island through its

1 self-governing institutions, though it's their only hope, they
2 need to be strengthened and they need to be assisted.

3 COMMISSIONER HICKINBOTTOM: I understand that, but
4 some of these matters of governance in respect of which there
5 was legislation in the air--

6 SIR GEOFFREY: Yes.

7 COMMISSIONER HICKINBOTTOM: Well, some more than in
8 the air.

9 SIR GEOFFREY: Coming before the House now.

10 COMMISSIONER HICKINBOTTOM: Some have already been
11 passed, but it is the confidence one can have in this
12 legislation being effective.

13 SIR GEOFFREY: Well, that will require public service
14 reform.

15 COMMISSIONER HICKINBOTTOM: No, no, I understand--and
16 I understand your submissions on that, although the Ministers'
17 Position Statement refers to that.

18 SIR GEOFFREY: Yes.

19 Commissioner, what I wanted to supply is some context.
20 May I say straightaway, none of this is designed to suggest that
21 the individual and personal responsibility of each Member of the
22 House, as any Member of any legislature for their own
23 registrations, is in any way diluted by what I have said.

24 COMMISSIONER HICKINBOTTOM: No, no, and the context
25 that you have made submissions on is useful because it's going

1 to be useful in future hearings, but there are two things. That
2 is one of the submissions that you made with regard to the
3 individual responsibility of the Members. And most--not all of
4 them, but most of the--frankly, accepted that they were in
5 breach and so, but the second one is the Minister's acceptance,
6 the current scheme is--

7 SIR GEOFFREY: Inadequate.

8 COMMISSIONER HICKINBOTTOM: Yes. Worse than
9 inadequate.

10 SIR GEOFFREY: Yes.

11 It doesn't fill a useful purpose.

12 COMMISSIONER HICKINBOTTOM: Yes.

13 SIR GEOFFREY: Because a Register like that ought in
14 some way be accessible, and I think the Premier said that, that
15 he would be minded to introduce public accessibility of the
16 Register.

17 COMMISSIONER HICKINBOTTOM: He did, from recollection,
18 and I think most of them--I'm sorry. And not all embraced it
19 with the same enthusiasm. Some wanted to see restrictions on
20 the openness of the Register, if I can put it like that, but
21 most of them accepted the principle--

22 (Overlapping speakers.)

23 SIR GEOFFREY: Let me be quite candid. There are real
24 drawbacks to open Registers. It becomes a political tool for
25 every--many, many frivolous complaints are made.

1 COMMISSIONER HICKINBOTTOM: I understand that.

2 SIR GEOFFREY: It is a profound invasion into a
3 Legislator's private life because what happens is, as you can
4 imagine, stories get written, minor infractions are written up
5 to be morally shameful or even impute dishonesty. I accept the
6 need for Registers--of course I do; every Legislator must--but
7 there are perfectly understandable reticence to invite that kind
8 of onslaught that that can sometimes mean.

9 COMMISSIONER HICKINBOTTOM: I understand that. I do
10 understand that.

11 SIR GEOFFREY: Sir, unless I can assist you further, I
12 hope that what I have said--I mean to have left with you on the
13 question of the construction of the statute only at least the
14 possible interpretation that I have adopted. Of course, if you
15 prefer--and you may well, and I understand why, the language I
16 agree suggests an obligation arising on the day--

17 COMMISSIONER HICKINBOTTOM: But in the context of what
18 the Commission of Inquiry is doing, it may not matter.

19 SIR GEOFFREY: Well, that's my submission.

20 What you're faced with is manifestly a pattern from
21 the very inception through successive governments, cross-party.
22 This is not confined to one political side or another:

23 (Overlapping speakers.)

24 SIR GEOFFREY: You're faced with a situation where,
25 for some reason, there was a falling down on statutory

1 obligations across the board. I have ventured some reasons why
2 that might have been. Why do some statutory schemes attract
3 high compliance and why do others attract low compliance?
4 Sometimes it's at the design of the scheme, sometimes it's the
5 education and training behind it, and sometimes it because
6 things weren't done at the time but could have increased the
7 compliance.

8 COMMISSIONER HICKINBOTTOM: And here we probably got a
9 full House of those?

10 SIR GEOFFREY: Yes.

11 Those are my submissions.

12 COMMISSIONER HICKINBOTTOM: Thank you very much.

13 Mr Hunt.

14 MR HUNT: Yes. Thank you, Commissioner.

15 I would like to draw a distinction between the
16 outright failure to comply and tardiness in complying. Now
17 here, my client, Dr Pickering, declared his financial interests
18 for every year since the Register of Interests Act came into
19 operation, but concedes that he did not do so in accordance with
20 the provisions of the Act. And the reason why he did not
21 strictly comply with the provisions of the Act are now, for the
22 greater part, academic because he is no longer a Member of the
23 House. However, the fact that your requisite Declarations have
24 all been filed is a strong mitigating factor in his favor, and I
25 raise it on his behalf.

1 Now, as far as sections 66 and 67 of the Constitution
2 are concerned, the evidence before this Commission is that
3 Dr Pickering was above reproach because he was very careful in
4 observing those sections in such a way that he did not even have
5 to seek exemption from the House of Assembly. For this, he's to
6 be highly commended, and it fortifies my submission that on
7 timely filing of Declarations under the Register of Interests
8 Act is an aberration or should be treated as an aberration.

9 No, I'm going to mention something here which take us
10 a little way back maybe to 1979, and what is not generally known
11 is that the Legislature--the Legislative Council that was
12 elected in 1979 was an illegal body. It was elected under an
13 ordinance that was not brought into operation, and that was the
14 duty of the Governor of the day. He was in charge of elections,
15 and it was his function to see that the elections ordinance was
16 brought into force before the elections were held.

17 The Governor ended his tour of duty and left the
18 Territory with a new Governor and a new Attorney General to fix
19 the problem. The new Attorney General gave the Governor certain
20 legal advice which the Governor followed. The result was that
21 the Legislature was allowed to run its full course, and the new
22 Council was then validly elected, unanimously enacted a statute
23 validating its predecessor. That was the advice given to the
24 Governor of the day. The statute called the "Ninth Legislative
25 Council Validation Act 1984".

1 And I mention it to show that as serious a
2 constitutional problem as that, the Territory was able to
3 correct it without any problem because the Territory is a far
4 more mature Territory than people would like to think. And I
5 think it is far more mature, perhaps, than some well-known
6 countries on this side of the Atlantic because you wouldn't see
7 anyone with a battering ram or a machine gun invade the
8 Legislature here.

9 And I mentioned it because all of these problems that
10 we see pale in significance compared to what happened in 1979,
11 and I'm sure that the Territory is mature enough to fix its
12 problems.

13 And those are my submissions.

14 COMMISSIONER HICKINBOTTOM: Thank you, Mr Hunt.

15 Mr Christian, do you want to add anything to what's
16 already been said?

17 MR. CHRISTIAN: Thank you very much, Commissioner, for
18 seeing me this afternoon.

19 I just want to add a small submission to the Hearing
20 based on my bundle on page 166.

21 COMMISSIONER HICKINBOTTOM: We haven't got your
22 bundles now because I'm afraid we've moved on from your bundle.

23 MR. CHRISTIAN: Right.

24 COMMISSIONER HICKINBOTTOM: But refer to anything you
25 want to refer to.

1 MR. CHRISTIAN: You can refer to it afterwards because
2 it was submitted on Thursday.

3 Commissioner, with your kind indulgence, on the 9th of
4 December 2014, the Registrar of Interests Victoreen
5 Romney-Varlack wrote to me, and her letter says: "Dear sir,
6 this acknowledges receipt of your Declaration of Interests for
7 the period 8 December 2014. I am to thank you and express my
8 sincere appreciation for your timely filing of your
9 Declarations. Please accept my best wishes for the Christmas
10 and New Year". I thought I just wanted to submit that into the
11 record as it was part of my bundle.

12 And then, secondly, I know a number of Members and
13 former Members have made suggestions with respect to
14 recommendations, if I could offer one, I suspect that, based on
15 what Members have been faced with once they were elected and the
16 time in which they have to file their Declarations, that perhaps
17 on the day that Members are sworn in, their declarations are
18 presented to them so that that same day, the same time they will
19 be in a position to submit their Declarations. I think that is
20 perhaps one suggestion that could work with respect to timely
21 suggestions of a practical suggestion.

22 COMMISSIONER HICKINBOTTOM: Thank you very much.
23 Mr Christian.

24 It would be better to hear from Sir Geoffrey and those
25 representing the participants first.

1 MR RAWAT: Commissioner, I will note the time, so I
2 will try to keep my submissions short, but no promises can be
3 made.

4 The first observation I would make is that the Act on
5 which you are now receiving submissions is a piece of BVI
6 legislation.

7 The second is that perhaps one needs to be careful to
8 separate rhetoric from logic. I was struck by, from Mr Hunt's
9 observation that, in his submission, that this is a mature
10 democracy, and one contrasts that with Sir Geoffrey's submission
11 which is referred, for example, to the existence of a cultural
12 issue. And at times, Sir Geoffrey spoke of a "they". Perhaps
13 it's helpful to remind you, Commissioner, of who the "they" are
14 that you have heard from over the last few days.

15 You heard from Dr Hubert O'Neal, the first
16 ophthalmologist on the island. You heard from Dr Kedrick
17 Pickering, who was also a surgeon. You heard from Dr Orlando
18 Smith. You've heard just now from Mr Christian, who was able to
19 tell you what role he played. You heard from Ms Flax-Charles,
20 who gave you her experience as a community worker and in
21 tourism.

22 Others who spoke to you were educators. Sharie de
23 Castro began as an educator. Vincent Wheatley, you will
24 remember when he first gave evidence, spoke of his start as an
25 educator. Natalio Wheatley, as he explained, has a Ph.D.

1 Julian Fraser, an architect by training.

2 There is, if one looks--and I accept Sir Geoffrey's
3 point that what we're looking at is a system that spans years.
4 It's the operation of a system that has operated in a way that
5 is flawed irrespective of political party, irrespective of the
6 experience of the Legislatures. But I say we must be cautious
7 about belittling the experience that all those who gave evidence
8 "you bought into politics". They are educated men and women who
9 were, in my submission, well-capable of understanding the
10 obligations they placed upon them.

11 The take-home observation I took from Sir Geoffrey's
12 submission is that you will have to, at some stage in this
13 process, separate the present from the future in relation to the
14 Register of Interests. The last few days have been very much
15 concerned with the present. And whilst you indicated that the
16 future is something that falls to be considered at a later date,
17 there are some submissions I will make.

18 But if I take the first submission of Sir Geoffrey
19 that the Act itself was fundamentally flawed; it was doomed to
20 failure from the very beginning. That is, in my submission, a
21 point that one needs to approach with some caution. I say that
22 because you heard from Julian Fraser and this afternoon from
23 Ronnie Skelton, who, along with others from whom you heard, were
24 part of the 2006 cohort of the House of Assembly debated this
25 what was then a Bill, and Ronnie Skelton himself gave evidence

1 to you about the thought processes that went through the
2 questions that were raised by Honourable Members at the time.

3 You have the timeline of this; and, in my submission,
4 what has to be examined is how the Act was implemented as from
5 2008. It mandated, in my submission, a mechanism. It might not
6 have been the best mechanism. It might be a mechanism that
7 others looking back now--and many of the Witnesses have been
8 candid enough to say that, as they looked at their forms in
9 evidence--and I think Mr Christian was one of them--that there
10 were areas of improvement, and they gave that evidence openly to
11 you.

12 But what the system envisaged, flawed or not, it was
13 the system that the House of Assembly chose to implement. It
14 was a system that established a Registrar who would have the
15 task of checking the accuracy of--the accuracy of entries, but
16 it would also have--it was not left to the Registrar alone.
17 What was important as part of the process was a Standing Select
18 Committee.

19 The Standing Select Committee isn't just there to
20 receive reports from the Registrar as and when she sends them
21 and/or to deal with other breaches under the Act--for example,
22 the failure to comply with notice from the Registrar under
23 section 5(4)--but it also, right from the beginning, has a
24 stand-alone duty, in my submission--and that arises under
25 section 4--because it is the job of the Standing Committee to

1 establish and approve a format of the Register.

2 So, there are a number, in my submission, of clear
3 obligations that arise as one goes through the process, which
4 are not, in themselves, incapable of cogent application. The
5 first is the obligation to make your Declaration on time, and
6 then on every subsequent anniversary of the Due Date, and it's a
7 date on which you're sworn into office.

8 The second is that the Registrar to check
9 Declarations, and you heard evidence, for example, this morning
10 from Mrs Moses-Scatliffe, that there were occasions when the
11 Registrar would return a Declaration and ask the person making
12 it to resubmit. The Honourable Andrew Fahie was another example
13 when he submitted, I think, a total of four in one year all
14 together. They were all returned.

15 It has, but it also importantly provides for a
16 Standing Committee to approve the Register and then to deal with
17 the reports that are submitted to it. And then ultimately it
18 provides for sanctions that the House of Assembly can impose on
19 a defaulting Member.

20 It cannot be simply brushed away that what the
21 evidence has shown is that there was not just a culture of
22 compliance but arguably a culture of indifference, indifference
23 to the importance of the obligation created by the Constitution,
24 indifference to the obligation created by the Act itself, and
25 indifference to the importance of a Standing Select Committee

1 to--as part of the process.

2 Now, I pause there because, in fairness, I would
3 remind you of the attention--the evidence you have received
4 today of Myron Walwyn and, indeed, Mrs Moses-Scatliffe about the
5 difficulties in establishing changes to Standing Orders. It
6 appears that, on Ms Moses-Scatliffe's evidence, that it
7 literally took years for Standing Orders to be amended such that
8 they could then be--the Standing Select Committee could be
9 created.

10 The second point that Sir Geoffrey makes is the role
11 of the Registrar. No one has made a criticism of the Registrar,
12 and I don't understand Sir Geoffrey's submission to imply any
13 personal criticism or, indeed, professional criticism of the
14 manner in which she went about her task, but the suggestion that
15 the most recent and past Governor persuaded her to a course that
16 was contrary to the Act needs to be put into a wider context
17 because what is right is that the Registrar went not only to the
18 past Governors and not the most recent Governors but the
19 predecessors--it likely seems every Governor since 2008--the
20 Registrar also went to the Chair of the Standing Orders
21 Committee, Ronnie Skelton. You will remember the letter of the
22 19th of February 2014 that he spoke to today. She went to the
23 Premier. She went to the Speaker.

24 And perhaps most importantly, she went to the entire
25 House because, as Myron Walwyn explained, the Steering Committee

1 is a committee of the entire House. The evidence that you have,
2 admittedly from press reports, is that, when every year that the
3 Registrar would appear in front of the Standing Committee,
4 Finance Committee, she would remind them as a group that people
5 were not complying with the Register. She would remind them
6 that the Standing Select Committee had not been established.
7 She would remind them that the Register was, in her words, a
8 "blank book".

9 So, my submission, all of that meant that the Members
10 of the House of Assembly themselves were on notice of the
11 obligation. The Members of the House of Assembly themselves
12 were on notice that the system was not complying. And the
13 Members of the House of Assembly, past, present--past and
14 present, were on notice that the first step in beginning to make
15 the system work was filing your Declarations on time.

16 The last point Sir Geoffrey makes was the need for
17 support, and he speaks to the absence of support as a flaw that
18 meant that the Act would never work, but also has spoken about
19 support in the future. If I turn to the first of those, what I
20 would ask you, Commissioner, to bear in mind is this:

21 Firstly, that a number of former Members and
22 Honourable Members have given evidence and, in fact, given
23 evidence in positive terms about the fact that the Registrar
24 would, in advance of the Due Date, send them a notice with the
25 Declaration form to be completed, and there is evidence that

1 that was done even before the first day the Member was sworn,
2 and the best example of that is the Honourable Neville Smith.
3 He came into office elected for the first time in 2019, and he
4 submitted his Declaration on the 12th of March 2019.

5 The second element of this is that you have the--the
6 Registrar was available to give advice, and more than one. I
7 hope I'm not misquoting his evidence, but Mr Christian suggested
8 he could go to the Registrar for advice, and she was available.
9 And in her correspondence, she explains that she's available to
10 assist with any difficulties in completing the form.

11 The third point--and I don't understand Sir Geoffrey's
12 submission to detract from this--is that one cannot dilute the
13 importance of a statutory obligation, and more importantly the
14 importance of an obligation created by the Constitution, not
15 least because it is the trigger to making the Act operate
16 properly.

17 The fourth point--and I think again this is a point
18 that Sir Geoffrey has made, and that is--and it takes from the
19 Attorney General's own evidence that that is the Act does not
20 create a defense of reasonable excuse.

21 What I would also draw your attention to,
22 Commissioner, is this: That with a number of witnesses, I
23 canvassed their obligations under the Constitution to make a
24 Declaration of their interests as an election candidate. That
25 is the constitutional obligation, just as section 112 obligation

1 is. And no witness gave you evidence that they misunderstood
2 the nature of that obligation, that they had any difficulty
3 complying with it.

4 The final point I would make in terms of the support
5 that exists and the degree of knowledge--and I suppose it will
6 be the degree of knowledge within the overall House of Assembly
7 is to return to the Standing Finance Committee because that is
8 the Registrar speaking to the House of Assembly in total.

9 If one looks, then, towards the other limb of Sir
10 Geoffrey's support submission, that is--and he's right to say
11 this, and you are right to say this--a matter for another day,
12 but you will have noticed his impassioned cry here that support
13 is needed, and support is needed going forward from the UK, and
14 it may be something that needs to be considered, but you may
15 wish to take note of the point that Sir Geoffrey made about the
16 Nolan Committee of 1995 recommending an independent
17 Parliamentary Commissioner. That, I don't think, is something
18 that I need to go into, but it's obviously something that we may
19 need to revisit in due course.

20 With no disrespect to my learned friend Mr Hunt, his
21 points were specific to his client, and I don't think I need to
22 address that. And similarly with no disrespect to Mr Christian,
23 his point is one that relates to his own evidence, but he has
24 quite properly read that piece of evidence into the record. And
25 if I didn't do it at the time, can I apologise to him for not

1 having done so.

2 MR. CHRISTIAN: Thank you, sir.

3 MR RAWAT: Other than that, I don't think there is
4 anything more I could usefully add.

5 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.

6 Thank you all very much. Some of the issues which
7 have been discussed today will clearly be raised later on in the
8 Inquiry hearings, but thank you for all of your submissions in
9 relation to the breaches and criticisms that may be made as a
10 result of the evidence I've heard over the last week in relation
11 to the Register of Interests, and I'm very obliged for those.

12 Is there anything else?

13 MR RAWAT: None from me.

14 COMMISSIONER HICKINBOTTOM: I think 10:00 tomorrow.

15 SIR GEOFFREY: With the Attorney General, I think.

16 COMMISSIONER HICKINBOTTOM: Tomorrow, yes.

17 MR RAWAT: Yes.

18 COMMISSIONER HICKINBOTTOM: Thank you all very much.

19 (Whereupon, at 6:50 p.m. (EDT), the Hearing was
20 adjourned.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", is written above a solid horizontal line.

DAVID A. KASDAN