

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 16

(TUESDAY 22 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 the Attorney General, Hon Dawn J Smith.

Mr Richard Rowe of Silk Legal appeared for those members of the House of Assembly who are not members of the Government.

Counsel to the Commission Mr Bilal Rawat also appeared.

Hon Dawn J Smith gave evidence.

Hon Julian Fraser gave evidence.

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Those present:

Session 1

Mrs Jo-Ann Williams-Roberts, Solicitor General

Sir Geoffrey Cox QC, Withers LLP

Ms Lauren Peaty, Withers LLP

Mr Bilal Rawat

Hon Dawn J Smith

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

Session 2

Mr Richard Rowe, Silk Legal

Mr Bilal Rawat

Hon Julian Fraser

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

P R O C E E D I N G S

Session 1

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3 COMMISSIONER HICKINBOTTOM: Good morning, Attorney.
4 Good morning, everyone.

5 HON DAWN J SMITH, COMMISSION WITNESS, CALLED

6 COMMISSIONER HICKINBOTTOM: I think we're ready to
7 start.

8 Mr Rawat.

9 MR RAWAT: Yes, Commissioner. If I could just, for
10 the purposes of this Transcript, just record the names of the
11 legal representatives present today.

12 COMMISSIONER HICKINBOTTOM: Yes, thank you.

13 MR RAWAT: The Attorney General is actually appearing
14 as a witness today, but she is supported by Sir Geoffrey Cox QC
15 and Lauren Peaty of Withers; and also the Solicitor General,
16 Ms Jo-Ann Williams-Roberts.

17 COMMISSIONER HICKINBOTTOM: Yes.

18 MR RAWAT: No other participants have instructed their
19 legal representatives to appear this morning.

20 Commissioner, as you have indicated, the Commission is
21 progressing by way of considering a series of topics. One of
22 those was issues arising out of the Position Statements. You
23 had invited participants and a number of other relevant actors
24 to submit Position Statements to you on specific questions
25 relating to governance and also the systems concerning law

1 enforcement and justice. Those have been submitted. They have
2 been published and were published yesterday on the Commission's
3 website. The plan was to call a number of individuals to give
4 further evidence to you from their particular perspectives on
5 the Position Statements. It's not for the Position Statements
6 in--or go through the Position Statements in detail, but to ask
7 ancillary questions.

8 As you explained for reasons that you gave, we had to
9 put back the evidence of the Governor and the Premier, which
10 means that we won't complete this topic in one go, but what we
11 are attempting to do in the next couple of days is to call other
12 relevant witnesses, and the first of those is the learned
13 Attorney General Dawn J Smith, and if I could begin my questions
14 of the Attorney.

15 COMMISSIONER HICKINBOTTOM: Yes.

16 And the Attorney has already been sworn in a previous
17 hearing, so there's no need to do that. Good. Thank you.

18 MR RAWAT: Thank you.

19 BY MR RAWAT:

20 Q. Attorney, you should have in front of you--you
21 probably brought it along anyway--your own Position Statement
22 submitted, but it should be in the folder there with you.

23 Do you have that?

24 A. Yes, I do.

25 Q. And that, as I indicated just a moment ago, has been

1 published, and so what I'd like to do is not to ask you to read
2 it out or to go through it paragraph by paragraph. It's there
3 not only for the Commission to read, but for everyone else, but
4 to ask you some additional questions, please.

5 My questions are going to focus on two aspects of your
6 role as Attorney General. The first is your constitutional
7 position as the principal legal adviser to Government, and the
8 second is for perhaps more mundane but equally important role as
9 the person who heads a Department.

10 So, if I can begin with the first, when you last came
11 to give evidence to the Commissioner, you explained there that
12 you are appointed under--or an Attorney is appointed under
13 section 58 of the Virgin Islands (Constitution) Order 2007, and
14 that follows, as you explained, a competitive recruitment
15 process which leads to the successful applicant being appointed,
16 but upon the advice of the Judicial and Legal Services
17 Commission. Is that a correct summary of the position?

18 And what your role as Attorney is not dependent on is
19 the election cycle; is that right?

20 A. That's right.

21 Q. And so, you could, for as long as you wish to continue
22 as Attorney, be the advisor to a government where there are
23 different political Parties forming Government?

24 A. Provided I do not misbehave or become unable, yes.

25 Q. The Constitution gives you a number of roles, and if

1 you want to, you should have a copy of the Constitution on the
2 desk in front of you if you need to refer to it, but I'd like
3 just to set out those roles, hopefully in the Order in which
4 they appear in the Constitution.

5 But the first one is that, under section 44 of the
6 Constitution, the Attorney General sits on the Advisory
7 Committee on the Prerogative of Mercy?

8 A. Yes.

9 Q. The second is section 47, which makes you an ex
10 officio Member of the Cabinet?

11 A. Yes.

12 Q. And under section 47(6), that specifies that the
13 Attorney General should not be entitled to vote in the Cabinet?

14 A. Yes.

15 Q. Section 57 makes you an ex officio Member of the
16 National Security Council. And does it also follow that you're
17 not--you don't have a vote on the National Security Council
18 either?

19 A. I do.

20 Q. You do on the National. I see.

21 So, the reason I asked was that we've taken evidence
22 from a former Police Commissioner who explained that he attended
23 the NSC but did not vote. So you're in a different position
24 from him?

25 A. Yes, I am. Apparently.

1 Q. And then, of course, we go to section 58, which
2 appoints or mandates that there will be an Attorney General of
3 the Virgin Islands and describes the Attorney General as, and I
4 quote, "the principal legal adviser to the Government of the
5 Virgin Islands".

6 And finally, under section 63, you are a non-voting ex
7 officio Member of the House of Assembly?

8 A. Yes.

9 Q. Now, other than those roles that I have outlined, does
10 the Constitution provide any other roles for an Attorney
11 General?

12 A. I don't believe so, no.

13 Q. If we take, perhaps, the key roles in turn, because
14 you stand--I think I put this to you on the last occasion,
15 you're sort of at the center of I suppose a triangle where at
16 one point you've got the Cabinet, and another point you've got
17 the House of Assembly, and the third point is the Governor. If
18 we take the Cabinet first, what limitations are placed under the
19 Constitution and laws of the BVI on an Attorney General sitting
20 in Cabinet?

21 A. Under the Constitution?

22 Q. And any other applicable law. Are there any
23 limitations on what you can and cannot do?

24 A. Well, you can't vote. I don't know that there are
25 other limitations placed by the Constitution, but you don't

1 vote.

2 Q. Are you bound by collective Cabinet Responsibility?

3 A. I believe so.

4 Q. Do you consider that, even though you're not--you're
5 prevented from voting by the Constitution that an Attorney
6 General has a right to comment on all matters of policy that
7 come before Cabinet?

8 A. The Attorney General would limit herself not to
9 commenting on policy, but to the legal implications of policies
10 that may come before Cabinet. That is the way I understand my
11 role.

12 Q. And so, continuing with that theme, you would not take
13 your role to include your--your role within Cabinet to include
14 the fashioning of policy?

15 A. What do you mean by the "fashioning of policy"?

16 Q. Well, if the Government of the day brings up a
17 particular policy for a vote before Cabinet, then there may be
18 discussions; there will then be a decision which is a collective
19 decision that everybody signs up to.

20 A. Um-hmm.

21 Q. But the route to that may involve different points of
22 view being expressed.

23 I'll come back to your role as the Legal Adviser to
24 Cabinet, but putting that to one side, do you think that would
25 be appropriate, during those deliberations, for an Attorney

1 General to shape the discussion so that the decision is made in
2 a particular way?

3 A. No.

4 COMMISSIONER HICKINBOTTOM: Can I just go back to one
5 question--to one answer, Attorney. I've got your answer down
6 right, I think; I just want to make sure it's right.

7 You were asked whether you considered you were bound
8 by collective Cabinet Responsibility, and you said yes.

9 THE WITNESS: Um-hmm.

10 COMMISSIONER HICKINBOTTOM: Now, I understand that you
11 may be bound by the--

12 THE WITNESS: I may have misheard you. I'm thinking
13 confidentiality.

14 COMMISSIONER HICKINBOTTOM: Which is the reverse side
15 of the same coin.

16 THE WITNESS: Yes.

17 COMMISSIONER HICKINBOTTOM: I understand that.

18 THE WITNESS: Yes.

19 COMMISSIONER HICKINBOTTOM: And I understand that you
20 are bound by that, but you don't vote, so you're not responsible
21 in that sense, but you're bound by confidentiality, is what you
22 mean.

23 THE WITNESS: Yes, that's my understanding.

24 I mean, certainly, when it comes to providing advice,
25 the Attorney General is always available to provide advice. But

1 in my mind, the bulk of that policy work has to take place
2 before you get to Cabinet, where you would have public officers
3 putting the policy together, doing the research, doing the
4 consultation, consulting with the Attorney General's Office as
5 to legal implications of what they're putting together.

6 And to my mind, before something comes to Cabinet, a
7 considerable amount of work really ought to have been done in
8 terms of fashioning the policy to ensure that it is sound.

9 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

10 THE WITNESS: And the options are properly presented
11 to the Ministers before they make a decision, yes.

12 BY MR RAWAT:

13 Q. And the effectiveness of the Attorney General's
14 Chambers in delivering that aspect of its work is something I'd
15 like to come back to, if I may. But when you say ensuring that
16 the policy is sound, from the perspective of yourself as
17 Attorney General in your Chamber, does it come to ensuring that
18 the policies are legally sound?

19 A. It is legally sound, strictly speaking, in that it
20 cannot be challenged in terms of how it came into being.

21 Q. And so, would a fair summary of how you see your role
22 in Cabinet to be that you're there to give legal advice and you
23 are there to ensure that positions that are made are lawful?

24 A. And made in a lawful way, yes.

25 Q. Made in a lawful way.

1 A. Yes.

2 Q. That's a better way of saying it because I suppose any
3 decision is capable of an attempt to challenge, so your advice
4 is to ensure that they acted, within your judgment, in a lawful
5 way?

6 A. Yes.

7 Q. Now, one of the points that you made--and this is
8 about--it's is going back to the second aspect of what I'd like
9 to ask you about, but the idea that the Attorney General's
10 Chambers have clients--

11 A. Yes.

12 Q. --that concept.

13 Now, for you as the Attorney sitting in Cabinet, who
14 is your client then?

15 A. Who is my client then? Well, I'm advising the
16 Ministers when I'm in Cabinet, so they're the clients at that
17 point in time.

18 It's interesting you used the term "clients" because I
19 don't know that in the--because I use the term, and I don't know
20 that people typically in the public--in the Government would use
21 the word "clients" because I have one client, and that is the
22 Government; right? However the Government is constituted in its
23 different facets, it's made up of different people.

24 So, when I'm in Cabinet, I'm advising the Ministers.
25 My client is always the Government. When I relate to individual

1 persons in the Public Service, individual public officers who
2 come to the Chambers for advice, we may refer to them as
3 "clients" in terms of how we deliver the service to them, but I
4 only have one client, and that's the Government.

5 Q. The other element of your role is as a Member of the
6 House of Assembly. In relation to the House, what role does the
7 Attorney General of the Virgin Islands play?

8 A. What do you mean "what role"?

9 Q. Well, you're a Member of the House.

10 A. An ex officio Member.

11 Q. Yes.

12 And you can't vote?

13 A. Yes.

14 Q. So, I suppose why do you need to be there?

15 A. That's a question many people have asked before.

16 Q. But does your role, for example, extend to advising on
17 issues of parliamentary privilege?

18 A. Right. So I do advise the House of Assembly on
19 matters in the House of Assembly on privilege and so on, yes.

20 Q. And can you give the Commissioner any other examples
21 of--to show the sort of ambit of the role that you have to play
22 in relation to Members of the House of Assembly?

23 A. So, like any other aspect of the client, the House of
24 Assembly might have, you know, numerous issues that come up
25 relating to how the work of Assembly is carried out from an

1 administrative point of view. They may have questions as to
2 parliamentary matters, what they can do, what they can't do and
3 how they can do it.

4 Another role that I play in the House of Assembly is
5 to bring Bills and propose Bills that fall under the areas that
6 would typically, you know, be allocated to the Attorney General,
7 such as the administration of justice, and that's principally
8 what happens there.

9 Q. Are you called upon to advise the House of Assembly as
10 to the meaning and effect of legislation?

11 A. From time to time, yes.

12 Q. So, if, for example, an issue arises under the
13 Constitution--

14 A. Um-hmm.

15 Q. --is that something that the Attorney would be asked
16 to give advice to the House of that?

17 A. Yes.

18 Q. Now, you've said that your one client or--one steps
19 back from it--is the Government of the Virgin Islands. When
20 you're speaking of the Government, are you also including in
21 that the House of Assembly?

22 A. Yes. The Government is the Government is the
23 Government. Yes.

24 Q. Of course, the House of Assembly has an Opposition.

25 A. It does.

1 Q. How does the Attorney's role then play out?

2 A. In the same way. I think in practice, the Opposition
3 is uncomfortable about approaching the Attorney General because
4 they feel that they are the Opposition; but, if the leader of
5 the Opposition or another Member of the Opposition has an issue
6 in the course of executing their responsibilities as a Member of
7 the House of Assembly, the Attorney General is someone that they
8 can--they can call.

9 Q. You've mentioned that you will also take through the
10 House legislation that falls fairly within the role of the
11 Attorney General, and that is--can that be fairly described as a
12 role that involves progressing the policy agenda of the
13 Government of the day?

14 A. What do you mean by "the policy agenda of the
15 Government of the day"?

16 Q. Well, if the Government of the day wishes to bring
17 in--I'm going to try and formulate in my head, as we speak, a
18 hypothetical, but let's say which is to bring in legislation
19 that decriminalises a particular behavior.

20 A. Um-hmm.

21 Q. And that is said to fall within--the Attorney is the
22 best person to pilot that through the House of Assembly.

23 Now, others may disagree with that policy, and in my
24 scenario, it's the proposal of the Government of the day that
25 this be done, and this become law.

1 It's a perception question. As the Attorney charged
2 with--if the Attorney is charged with taking that piece, such
3 legislation through the House, are they not--can they not be
4 said then to be progressing the policy agenda of the Government
5 of the day?

6 A. If they were charged, but in practice it really
7 depends. For example, recently, I would have dealt with an
8 amendment to the Eastern Caribbean Supreme Court Act, which had
9 to do with injunctions. It really doesn't fall under a
10 ministerial portfolio, it doesn't really fit into a policy
11 agenda, but it is something the Attorney General can support,
12 and I was responsible for that, and I took that through.

13 There are other amendments that I would deal with, for
14 example, where it has to do with amending criminal-justice
15 legislation that--and recent--we have recent examples. We
16 had--for example, the Attorney General leads the BVI delegation
17 for the Caribbean Financial Action Task Force, and there was
18 legislation that was to be amended in order to meet our
19 obligations as we saw them, and I was responsible for taking
20 that through.

21 Equally, you may have had legislation recently to deal
22 with an amendment to the Explosives Act. I think that dealt
23 with the definition of "explosives". But I didn't take that
24 one. That one, I believe, was taken by the Minister for
25 Transportation and Works, I believe.

1 So, I don't know that I necessarily get involved with
2 shepherding through the policy agenda because the Ministers with
3 that responsibility typically take charge of it. The areas that
4 I would deal with that fall under my responsibility, whether by
5 Constitution or statute, that is where I would focus my
6 attention.

7 Q. And does this decision fall to you to--I mean, could
8 you say, "I don't think as Attorney General it's appropriate for
9 me to pilot a particular piece of legislation through the
10 House"?

11 A. I believe it is. I mean, we don't typically have
12 those--I mean, I haven't had a situation where it's been
13 contentious, yes.

14 Q. Yes.

15 And you--your Department would give advice across
16 Government, then?

17 A. Yes, it does.

18 Q. And on a day-to-day basis, as you've explained to the
19 Commissioner, before something even reaches Cabinet, that you
20 would expect that they would have--your advice of your Chambers
21 would have been sought, input at least in terms of the legal
22 consequences would have been obtained, and you are at least
23 available to the House of Assembly whether they're in Government
24 or not to also give advice?

25 A. Yes.

1 Q. This is something I'll come back to in more detail,
2 but is your Chambers, is it accountable to the House of Assembly
3 in any way, other than financial?

4 A. Right. So, we've knocked that one off.

5 And I'm not trying to be difficult, but what do you
6 mean by "accountable"?

7 Q. Do you have to answer at all to the House of Assembly
8 for the work that your Chambers do, other than budget, which I
9 will come back to?

10 A. The Attorney General is an independent officer, so I'm
11 not quite sure what you mean by "answer to".

12 Q. All right.

13 A. Do I have to report how many opinions I did or
14 something? Is that what you're talking about?

15 Q. Do you have to in any way explain yourself or the work
16 of your Chambers to the House of Assembly?

17 A. Hmm. I haven't had to, but there is the concept of
18 Annual Reports, which would eventually make their way to the
19 House of Assembly, typically, for any Department in Government.
20 Outside of that, I wouldn't say that I have to report to them or
21 that I'm accountable to them. I'm the Legal Adviser. Under the
22 Constitution, I'm an independent adviser. I don't feel
23 constrained--I don't feel partial to them in any way. I don't
24 know if I'm misunderstanding your question.

25 Q. Let me come back to it in a different way. I'll just

1 deal with the third point of the triangle, which is, of course,
2 that you're also the Legal Adviser to the Governor.

3 COMMISSIONER HICKINBOTTOM: Could I just--just before
4 you move on to that, it's really--actually going really back to
5 the Cabinet, but it touches upon the House of Assembly as well.

6 Is this a fair summary of your role, that you must
7 tell me if it's not: Your, as you say, your role is an
8 independent one.

9 THE WITNESS: Yes.

10 COMMISSIONER HICKINBOTTOM: But the policy agenda of
11 the Government will be determined in Cabinet.

12 THE WITNESS: Yes.

13 COMMISSIONER HICKINBOTTOM: And is it your role, then,
14 in Cabinet to facilitate that policy agenda by making sure that
15 it is brought forward in a lawful way?

16 THE WITNESS: Right.

17 So, I want to go back to the concept of a policy
18 agenda, and again I'm not being difficult, but I don't know that
19 I have seen a policy agenda.

20 COMMISSIONER HICKINBOTTOM: Well, the Cabinet decide
21 that, something in terms of policy.

22 THE WITNESS: Hmm.

23 COMMISSIONER HICKINBOTTOM: Something they want to
24 pursue. I don't mean literally a physical list.

25 THE WITNESS: Right.

1 COMMISSIONER HICKINBOTTOM: But they have a policy
2 that they want to pursue. That is the Government--the policy of
3 the elected Government, the effect of the Cabinet.

4 THE WITNESS: Um-hmm.

5 COMMISSIONER HICKINBOTTOM: I just want to try and
6 determine what your role is initially in Cabinet.

7 THE WITNESS: Yes.

8 COMMISSIONER HICKINBOTTOM: So, that's what they want
9 to pursue, and they'll discuss it in Cabinet and perhaps change
10 it and modify it.

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: But is your role one of
13 facilitating that policy and ensuring that it's pursued in a
14 lawful manner?

15 THE WITNESS: Right.

16 COMMISSIONER HICKINBOTTOM: Or is that not right?

17 THE WITNESS: That--and let me be careful in answering
18 because I think this is very important. That is what my role
19 would be. One of my principal concerns as Attorney General is
20 how we formulate or not or discern what policy is, and that
21 impinges on how well I'm able to carry out my responsibility.
22 One of the difficulties I have as Attorney General is--policies,
23 for some reason, it's very difficult to get them created.

24 I'm very fond of order. I may not be an orderly
25 person, but I'm very fond of order, and one of the things that I

1 would expect to see not only as Attorney General but as a
2 citizen is where you have--a government campaigns, and my
3 understanding--and I, you know, paid attention to this more in
4 recent years than before--is that when a government makes--when
5 a government on the campaign trail creates a manifesto and makes
6 promises and they're elected, they're elected to carry out the
7 things that are in the manifesto.

8 What I would expect as a citizen, what I hanker for as
9 Attorney General is a comprehensive roadmap that comes out of
10 that manifesto that then gets translated into the policy that
11 any particular government or the policies that they're going to
12 be carrying forward over their tenure. I see considerable--I
13 don't know that. And I could be telling tales out of school,
14 but I'm telling the truth. The Attorney General has not seen
15 that sort of roadmap and policy agenda. How policy gets
16 formulated, my only answer to that, and I'm not trying to offend
17 any public officers who are listening, any Ministers of
18 Government or anybody, but policy isn't something that's
19 proliferating through the Public Service as far as I can see it.
20 It is very difficult. Even in drafting legislation, I know you
21 want this particular piece of legislation, but why exactly do
22 you want it, and how should it look and why should it look that
23 way, and what considerations do I need to take into account?
24 Well, quite frankly, what are your drafting instructions?
25 That's actually a real difficulty that I have.

1 So, when you speak about my role in relation to the
2 policy agenda--and I hesitate--it's because I think that really
3 and truly setting the policy agenda of the Government, it must
4 be difficult because I don't see that it's done very well, if at
5 all, and that is a difficulty that I have.

6 COMMISSIONER HICKINBOTTOM: That's really--that's
7 very, very helpful. It actually answers a question--and this is
8 not a criticism--it answers a different question, a very, very
9 important one because you picked up on the word "agenda". I
10 simply meant a policy, not necessarily within the context of a
11 roadmap or a general plan.

12 THE WITNESS: Um-hmm. Right. But my responsibility
13 as Attorney General is to understand. Inasmuch as I'm
14 independent, I'm a legal practitioner. That's what we do. We
15 be independent. But what as Attorney General, my responsibility
16 is, is to work out what the Government wants to do.

17 COMMISSIONER HICKINBOTTOM: Yes.

18 THE WITNESS: What it has promised to do, and to
19 ensure that it does it lawfully, and that it's not frustrated
20 from doing it by, you know, any other means that people may seek
21 to employ. That's my role.

22 COMMISSIONER HICKINBOTTOM: And that's, as I said,
23 that's really helpful.

24 So, is your concern that expressed in your previous
25 answer, that when you are drafting a measure, when you're

1 drafting a Bill or something, that you really need to know its
2 full context within--again, this is a mixed metaphor, but you
3 need to know the full context within the roadmap--

4 THE WITNESS: Absolutely.

5 COMMISSIONER HICKINBOTTOM: --to be able to do your
6 job properly?

7 THE WITNESS: Absolutely.

8 COMMISSIONER HICKINBOTTOM: And that's a very, very
9 important point.

10 The question went to a different point--I think you've
11 answered it--and that is: Leaving aside agendas and the roadmap
12 which you dealt with very helpfully, if the Government have a
13 particular policy, they decided that they want to do X, then is
14 your role in Cabinet--no, is your role in Cabinet to ensure that
15 they do X, whatever it might be, in a lawful and proper way?

16 THE WITNESS: Yes.

17 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

18 MR RAWAT: Thank you, Commissioner.

19 BY MR RAWAT:

20 Q. Just to finish with the Governor, you are the adviser
21 as well to the Governor. Again, it's the client point. Do you
22 just see the Governor as an aspect of the Government of the
23 British Virgin Islands, which is your true client?

24 A. Yes, I do.

25 Q. These questions are leading to one point, which is:

1 Because it can be fairly said that the Attorney General under
2 the Constitution of the Virgin Islands, as we said, you stand at
3 sort of center of the triangle, and one of the points that you
4 canvassed, Attorney, on the 4th of May when you made submissions
5 to the Commissioner was that you recognised before the
6 Commissioner, and I quote your words, you said the issue of
7 conflict is inherent in the responsibilities given to you as
8 Attorney General under the Constitution.

9 A. Um-hmm.

10 Q. And what you went on to say is that there were
11 safeguards to protect your independence and to protect your
12 ability to be independent.

13 A. Um-hmm.

14 Q. And it's quite clear from your evidence that you've
15 given today that independence is something you cherish.

16 A. Yes.

17 Q. But which particular safeguards did you have in mind?

18 A. Well, the safeguards relate--the safeguards for the
19 Attorney General under the Constitution is her security of
20 tenure. That is a safeguard. She has responsibilities as a
21 legal practitioner. She's bound by the Code of Ethics.

22 And you can't underestimate the importance of the
23 security of tenure because you're constantly put in, you know,
24 very difficult positions. You have to sit in a room and say to
25 the Ministers, "you are correct", and the Governor is sitting

1 there and you say, "you are wrong", all of whom I believe
2 consider themselves to be very powerful people, and they might
3 not like what I have to say.

4 And sometimes, you know, it has gotten quite frosty
5 because, you know, you can't please everybody every day, and at
6 the end of the day you do have to come back to what your
7 responsibility is, and you find your solace, really, in the law
8 and speaking truth to power because that is your job.

9 Q. So, the one key safeguard you would point to is
10 security of tenure?

11 A. Yes.

12 COMMISSIONER HICKINBOTTOM: If what--if the role of
13 the Attorney General is, as you've set it out--I think it
14 is--and that is an independent--an independent role doing some
15 fairly difficult things and saying some fairly difficult things,
16 as you put it.

17 THE WITNESS: Every day is a difficult conversation.

18 COMMISSIONER HICKINBOTTOM: I know, exactly.

19 THE WITNESS: Um-hmm.

20 COMMISSIONER HICKINBOTTOM: But the role of the
21 Attorney General, as you've casted it, and--and as I said, I
22 think you've cast it very well, if I might say so--is an
23 incredibly important one in the Constitution.

24 THE WITNESS: Yes.

25 COMMISSIONER HICKINBOTTOM: An incredibly important

1 one in the Constitution.

2 THE WITNESS: It is, yes.

3 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

4 BY MR RAWAT:

5 Q. Again, returning to the difficult conversations you
6 have to have every day, but as Attorney under this Constitution,
7 how are--how do you deal with potential conflicts of interest
8 where you have on a different day you may be telling the
9 Governor, "you're correct", and the Minister "you're wrong", and
10 on a different day vice versa, but--

11 A. Okay, so, we should be careful with terminology
12 because I don't consider that to be conflict of interest.
13 That's just my job. So, are you asking about how do I deal with
14 the tensions between the people in the triangle or how do I deal
15 with conflicts of interest?

16 Q. Let's deal with the tensions first and then we'll go
17 to conflicts. So, how do you deal with the tensions between the
18 three points of your triangle--

19 A. Speak truth to power. You don't have a choice. I
20 mean, the issue comes up, it's not always going to favor all
21 three Parties or both Parties, but my responsibility is to
22 ensure that I give the correct advice, properly informed advice.
23 And there is really nothing else to do.

24 Q. Then move on to the potential conflict-of-interest
25 point.

1 COMMISSIONER HICKINBOTTOM: I'm sorry, just before we
2 do, if--again, if that's right, which I think it is, the
3 constitutional role is not only a fundamental one. I can't ask
4 this question without a slightly personal element, but the
5 Attorney General needs to have a certain amount of strength of
6 mind as well as independence?

7 THE WITNESS: Yes.

8 COMMISSIONER HICKINBOTTOM: Okay.

9 THE WITNESS: Thank you very much for that compliment,
10 Commissioner.

11 COMMISSIONER HICKINBOTTOM: It was a compliment--no,
12 it was a compliment but--

13 THE WITNESS: So great.

14 COMMISSIONER HICKINBOTTOM: It's actually--no--well,
15 it seems to me that it's a necessary characteristic of the job
16 to be able to do it--

17 THE WITNESS: It is a very necessary characteristic,
18 and also because, on a practical level, I have difficult issues
19 to deal with. I mean, I believe that I'm possibly one of the
20 most annoying people, for example, to the Department of Human
21 Resources. I do not let up because I have to do my job and I
22 have to do it properly, and I know full well what it entails,
23 and I've spent as much time as I can--and I'm sure I haven't
24 done it to the fullest extent, trying to understand what the
25 Government of the Virgin Islands needs by way of legal support.

1 And I know I'm far from having it, and that troubles
2 me a great deal which is why I am persistent as I am.

3 COMMISSIONER HICKINBOTTOM: And that' a core point in
4 your Position Statement.

5 THE WITNESS: And that is why I am as annoying as I am
6 because I think it is very important to my client given what I
7 know about the aspirations of the people of the Virgin Islands,
8 given what I know about the characteristics of the people of the
9 Virgin Islands, those who have been here for a long time, those
10 who have become people of the Virgin Islands, and their dreams.

11 You know, we have to be properly equipped to deal with
12 the issues that faces a small jurisdiction, and an aspirational
13 jurisdiction at that, and the fact that, you know, we--our loins
14 are not as girded as they should be, is, you know--it's a very
15 unhappy situation for me, I think, is how I would put it.

16 COMMISSIONER HICKINBOTTOM: Thank you very much.

17 Yes.

18 BY MR RAWAT:

19 Q. So, I think what we were going to move on to was the
20 second question I was going to put, but it was just how do you
21 as Attorney General approach potential conflicts of interest?

22 A. Right. Very easily. We live in a small community.
23 We know a lot of people. A lot of us are related, and I've had
24 them come up. I moved them on to another Senior Attorney,
25 principally the Solicitor General. Likewise, if she has

1 something that she cannot touch, she would do the same thing.

2 So, you have to be very adept at recognising it, and
3 it's not difficult for me--well, I don't know if it's difficult
4 for other people because I've always lived in a small community,
5 I've always lived in a big family, you know, not because you're
6 related to somebody you agree with them, but you know that there
7 are certain situations where it's not appropriate for you to be,
8 and you distance yourself from it.

9 Q. One of the matters that I've canvassed with over the
10 last few days with a number of different Ministers and, indeed,
11 former Ministers, was the approach to declaring an interest in
12 Cabinet.

13 A. Um-hmm.

14 Q. More than one spoke about family, how you can be
15 related to a very large number of people, and that led to
16 questions about where they draw the line, and the Commissioner
17 has received different answers on that.

18 As Attorney General, and any Attorney General in the
19 Virgin Islands, may face the same difficulty. There may be an
20 item on the Cabinet agenda in which the Attorney General, just
21 like another Minister, has an obvious interest. In those
22 circumstances, what can the Attorney do? What's the process?

23 A. Well, what the Attorney General does is particularly
24 when she has read the papers ahead of Cabinet, is that she
25 informs the Cabinet Secretary and the Chairman that she has a

1 conflict. When the matter comes up for hearing, she's asked to
2 leave the room.

3 Q. But then who steps in to give advice to the Cabinet in
4 the absence of the Attorney?

5 A. Well, nobody stepped in when I stepped out, and that
6 might not be--that's a good question because I stepped out in
7 the situations where it has happened, but I believe if that--if
8 they do need advice, we would have to request a Solicitor
9 General to come and deal with the matter or in her absence
10 somebody else who's appointed to act in her stead.

11 Q. Which is something that you could anticipate depending
12 on the particular agenda item?

13 A. Um-hmm.

14 Q. Now, you are obviously--you're appointed upon the
15 advice of the Legal Services Commission?

16 A. Yes.

17 Q. Going back to safeguards, do you have a view about how
18 effective that process is as a safeguard in terms of ensuring
19 that the Virgin Islands has an Attorney General not just a
20 strength of mind, but a commitment to independence?

21 A. The Judicial and Legal Services Commission is a very
22 strong body. It's comprised of the Chief Justice of the Eastern
23 Caribbean Supreme Court. It has a judge--it could be a High
24 Court Judge or Court of Appeal, the Chairman of the Public
25 Services Commission. I think it's a Member of the Bar

1 Association, but one person who has to be a lawyer and another
2 person.

3 And I think it's composed that way because you need to
4 have a body whose normal mode of operating is to be able to
5 identify those types of people or to interact with those types
6 of people. You know, a Chief Justice, to get there, you would
7 have to have, you know, some sort of independence of thinking,
8 strength of mind. Judges, the same thing, you have to exercise
9 that on a daily basis. Lawyers, you have to be able to see
10 several sides of the coin.

11 When it comes to the Judicial and Legal Services
12 Commission, certainly as it's currently comprised, I think it's
13 a very strong body. The process of getting to the Judicial and
14 Legal Services Commission is where the issue is, but I don't
15 know that I have an issue with their decision-making. I just
16 know it takes way too long for matters to get to them.

17 Q. You said you have no issue with how they come to a
18 decision.

19 A. Well, not having been in the room.

20 Q. No.

21 A. Right, I wouldn't know how they came to the decision,
22 but I believe that they would do it following the best
23 principles given the composition of the persons.

24 Q. But as to composition, do you think that there
25 is--would you accept an argument that an expanded Commission

1 with perhaps Members drawn from the private sector would be a
2 helpful development?

3 A. Not necessarily, no.

4 Q. And would you say "not necessarily"?

5 A. I would say "not necessarily" because I think the
6 composition of the body now in the persons who are represented
7 there, there is the ability for the private sector to be
8 represented because there is one person who doesn't need to be a
9 lawyer, for example.

10 So, I don't have an issue with that composition,
11 particularly if you are appointing judicial or Legal Officers.
12 I think that is a good composition, and I don't know that I
13 could think of a better one. I'm afraid I just can't.

14 COMMISSIONER HICKINBOTTOM: The composition of the
15 Committee that makes the appointments is almost bound to be a
16 mix of judges and lawyers and non-lawyers.

17 THE WITNESS: Right.

18 COMMISSIONER HICKINBOTTOM: And it's just an
19 assessment as to whether the mix is right and is--

20 THE WITNESS: I think the mix is right.

21 COMMISSIONER HICKINBOTTOM: And you think it's right.

22 THE WITNESS: I think the mix is right.

23 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

24 BY MR RAWAT:

25 Q. Thank you.

1 The other point that you've made again in submissions
2 to the Commissioner, Attorney, and it's a legitimate one,
3 whether an Attorney General is seen as the guardian of the
4 public interest.

5 A. Hm-umm.

6 Q. For yourself as Attorney in the Virgin Islands, how
7 does that manifest itself?

8 A. Right.

9 So, under several legislations--and that's probably
10 the best place to look for it-- different legislation prescribed
11 for the Attorney General responsibilities that--well, I suppose
12 they only prescribe to the Attorney General so they are unique
13 to the Attorney General; for example, to prevent vexatious
14 litigation or--nothing else is coming to mind. I know, for
15 example, there are responsibilities under the Coroner's Act, and
16 so on.

17 Q. So, you can have responsibilities to intervene in
18 certain types of cases?

19 A. Right.

20 So, most of the public interest concerns would be
21 embodied in that legislation, for example, to be a path to
22 General Legal Counsel or, you know, matters like that. A lot of
23 that is prescribed in the legislation.

24 Other times, a matter of importance may come up,
25 general public importance, you may appear amicus or the Court

1 may want to hear your view on a particular matter, so that is
2 typically how it is represented.

3 Q. And so, there will be, in terms of representing the
4 public interest, there will be prescribed roles in statute--

5 A. There is prescribed--

6 Q. --which sits on the shoulders of the Attorney General?

7 A. Yes. There are prescribed roles, and there are also
8 responsibilities that you have as Attorney General--it's in your
9 job description, for example--that would assist the public
10 interest, like one of my--one of the concerns that I've had and
11 has been expressed by the public for quite some time and which
12 I'm hoping to be able to make some progress on, for example, is
13 simply making the laws of the Virgin Islands accessible. You
14 know, that's a problem because we have lots of legislation, lots
15 of rules, but people don't always know where they are, where to
16 find them. And even if they find them, they're not necessarily
17 finding the correct version of something, and I'm sure you've
18 had this difficulty.

19 So, you know, there are issues like that, that given
20 what my responsibilities are, I am the person uniquely placed to
21 do something about it, so in areas like that as well I would say
22 that the public interest is what the Attorney General is there
23 to support.

24 Q. And a point you also made in submissions was that, as
25 Attorney General, you are well-placed to assist the Commissioner

1 in understanding where the public interest lies. My question
2 isn't focused on this element on the Commission itself, but
3 taking it as your experience now as Attorney General, aside from
4 the statutory obligations on you, your commitment perhaps to
5 engaging with the public in terms of assessing their own laws,
6 where else does the public interest lie, for you?

7 A. I don't know if I understand the question.

8 Q. It's taking--using as its jumping-off point, your
9 submission to the Commissioner that, as AG, you can assist in
10 understanding where the public interest lies.

11 A. Um-hmm.

12 Q. And so, that prompted for me the question, well, in
13 your view, where does it lie?

14 COMMISSIONER HICKINBOTTOM: I think the question,
15 Attorney, is: In what other circumstances would you consider
16 that your intervention into something in the public interest, in
17 what other circumstances might that arise. You've mentioned
18 that the statutory circumstances and the circumstances in
19 particular claims where you might be amicus, and also in terms
20 of the legislation, making it accessible to the public. But are
21 there any other circumstances in which your role in promoting
22 the public interest would arise?

23 THE WITNESS: Again, the answer must be yes. I don't
24 know I could list them for you right now. I mean, I would
25 benefit from some context.

1 BY MR RAWAT:

2 Q. That's the best I can do.

3 (Laughter.)

4 Q. I'm taking it as far as I can, I'm afraid.

5 But I think perhaps where we can agree is that it's
6 not necessarily something that you can set boundaries to as a
7 question, and as an issue, but would you accept that this is, as
8 Attorney General, it is a matter that you have to keep at the
9 forefront of your mind of the public interest?

10 A. I would accept that. I would accept that, yes.

11 Q. Thank you.

12 Now, we've discussed safeguards that apply to the
13 Attorney. You obviously have a Solicitor General who--it's not
14 a position under the Constitution. You also have Crown Counsel,
15 and the Commissioner has heard--

16 A. You make it sound like I have a lot of people.

17 COMMISSIONER HICKINBOTTOM: We've read your Position
18 Statement.

19 THE WITNESS: Thank you.

20 BY MR RAWAT:

21 Q. But the Commissioner has also heard from the Solicitor
22 General and Principal Crown Counsel, so you have at least--

23 A. You've seen the bulk of my team.

24 (Laughter.)

25 Q. You have one Solicitor General and one Crown Counsel?

1 A. Two, two Principal Crown Counsel.

2 Q. For those lawyers, they obviously come under the
3 umbrella of the Attorney General's Chambers, but what safeguards
4 are they available to them as Members of the Attorney General's
5 Chambers?

6 A. That's a good question.

7 The safeguards that would be available to them would
8 be, of course, the appointment and removal procedures that fall
9 under the Constitution, and I think that's principally where it
10 is because it would also generally be public officers, but I
11 think that is really within the umbrella because their
12 particular appointment and removal provisions fall squarely
13 within the Constitution whereas for other public officers it
14 also falls under the Constitution but the--in the Public Service
15 Commission whereas the lawyers would be under the Judicial and
16 Legal Services Commission.

17 Q. Thank you. We'll turn to, if you like, paragraph 21
18 of your Position Statement, please, Attorney.

19 A. 21?

20 Q. Yes.

21 It's on page 6 that I want to take you to, but it's
22 what you described as your immediate priorities when taking on
23 your office, and you've listed them there as staffing and
24 expertise, processes and procedures and consolidation and
25 revision of the laws of the Virgin Islands. And this is now

1 moving on perhaps away from the role as Legal Adviser to
2 Government, but the other side of your job, which is to manage a
3 Chambers that has a fixed budget but has to deliver legal
4 services across a range of entities, all of which form one part
5 or another of the Government.

6 So, you're the accounting officer under your job
7 description, aren't you?

8 A. Yes, I am.

9 Q. And you have responsibilities for preparing your
10 budget?

11 A. Yes.

12 Q. What is the current budget allocated to the Attorney
13 General's Chambers?

14 A. I don't recall, but I can tell you it's not enough.

15 Q. Yes.

16 A. Yes.

17 Q. But I think that shines clear from the Position
18 Statement. But one of the--

19 A. I would have to consult the budget document, but it's
20 not a figure that's in my mind.

21 Q. That's fair enough.

22 Now, the point you've made--and it starts with--from
23 paragraph 16 of your Position Statement, that's where you
24 address the--you've described as an intractable challenge, which
25 confronts your Chambers, and that is that you are severely

1 understaffed.

2 A. Yes.

3 COMMISSIONER HICKINBOTTOM: Sorry to interrupt,
4 Mr Rawat. Just going back to the budget, particularly as you're
5 the first witness to deal with general matters, although we've
6 heard some evidence, not very much, but some evidence--about the
7 Finance Select Committee in relation to the budget for the
8 Registrar of Interests.

9 THE WITNESS: I think there's a Standing Finance
10 Committee.

11 COMMISSIONER HICKINBOTTOM: Sorry, the Standing
12 Finance Committee?

13 THE WITNESS: Yes.

14 COMMISSIONER HICKINBOTTOM: You're correct.

15 But could you just tell us the--quite briefly, the
16 process. You're the accounting officer. You have to prepare a
17 budget.

18 THE WITNESS: Um-hmm.

19 COMMISSIONER HICKINBOTTOM: Do you essentially have to
20 go to the Standing Committee, which as I understand it is the
21 House--

22 THE WITNESS: Um-hmm.

23 COMMISSIONER HICKINBOTTOM: --to justify the budget
24 and answer any questions that they have? How does it work?

25 THE WITNESS: Right.

1 So, that is part of the process, and it's interesting
2 you should raise that because it is also something that
3 perplexes me a bit, one aspect of it. What happens in practice
4 is that the budget is prepared in My Chambers, and for a reason
5 I'm not quite sure that I understand, but this is what happens,
6 it goes to the Deputy Governor's Office. And I'm not quite sure
7 why this happens, but apparently they can subtract. Then it
8 goes to the Ministry of Finance who actually prepares the budget
9 document.

10 And then--this isn't my strong point--then it goes
11 to--I think it goes to the House of Assembly the first time, and
12 then after that it goes into the Standing Finance Committee
13 where the Members of the House of Assembly hear from various
14 Departments and Ministries as to--well, they have to answer
15 questions on the budget that they have presented and that
16 they're seeking to have the House of Assembly approve.

17 And I say there that I don't know that I'm the best
18 person to explain the budget process, but--

19 (Overlapping speakers.)

20 COMMISSIONER HICKINBOTTOM: That is broadly the
21 process.

22 THE WITNESS: Broadly, who has been through it a few
23 more times, he would be able to be more explicit on those
24 points.

25 COMMISSIONER HICKINBOTTOM: So, the--it starts with

1 you, it goes to the Deputy Governor's Office.

2 THE WITNESS: Yes.

3 COMMISSIONER HICKINBOTTOM: And we're hearing from the
4 Deputy Governor later this week, I think. It then goes to the
5 Ministry of Finance, as it were, prepares the budget.

6 THE WITNESS: Um-hmm.

7 COMMISSIONER HICKINBOTTOM: And then it goes to the
8 House of Assembly.

9 THE WITNESS: It would have to pass through Cabinet
10 first, I believe, yes.

11 COMMISSIONER HICKINBOTTOM: So, Ministry of Finance
12 prepares the budget, Cabinet, House of Assembly--you're thinking
13 it goes to the House of Assembly, then it goes to the Standing
14 Finance Committee which comprises all the Members of the House
15 of Assembly?

16 THE WITNESS: Yes.

17 COMMISSIONER HICKINBOTTOM: Ultimately, it's voted on
18 by the House of Assembly?

19 THE WITNESS: Yes, it is.

20 COMMISSIONER HICKINBOTTOM: And others, I'm sure, will
21 give evidence.

22 THE WITNESS: Yes, and they will give lots more
23 evidence than I have.

24 And then, after it's approved by the House of
25 Assembly, then it has to be assented by the Governor.

1 COMMISSIONER HICKINBOTTOM: And again, I'm sure
2 Mr Rawat will come on to some details, but to put it bluntly,
3 does your budget start at 10 X and come out at the other end of
4 something less than 10 X? When you put your budget in, because
5 you say that the budget isn't enough for your purposes.

6 THE WITNESS: Right.

7 COMMISSIONER HICKINBOTTOM: And we will come on to the
8 details of that, but as it were, how is it not enough? Why is
9 it not enough?

10 THE WITNESS: So, what happens is you put in your wish
11 list, so to speak, and I imagine in arranging priorities,
12 because the people in finance would know better than me what
13 they project to be available they may have to make adjustments
14 along those lines.

15 And that's one place where it happens, but it's also
16 interesting to me that it happens before then as well or that
17 persons outside of my--well, outside of me can see to reduce it.
18 What I can say this year--and I have to be fair about this--is
19 that the Minister of Finance was very accommodating, is the word
20 I can use, and very helpful as he seemed to have understood the
21 points that I made about being able to provide the appropriate
22 level and amount of legal services that the Government required.
23 I still have--

24 COMMISSIONER HICKINBOTTOM: This is for '21-'22.

25 THE WITNESS: '21. Yes, I still haven't been able to

1 access the provisions that have been made, but the provision was
2 made for me.

3 COMMISSIONER HICKINBOTTOM: This is 2021.

4 THE WITNESS: Yes, yes.

5 COMMISSIONER HICKINBOTTOM: Because I know Mr Rawat
6 will ask some specific questions about that, but just looking at
7 the vacant positions in your Chambers--

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: --23 positions with regard
10 to counts is what you should have?

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: And you have--

13 THE WITNESS: It's nine now, I believe.

14 COMMISSIONER HICKINBOTTOM: It was seven, is now nine.

15 THE WITNESS: Yes. But then it's going to go back
16 down in a few days' time to maybe eight.

17 COMMISSIONER HICKINBOTTOM: But you also say that as
18 well that people are going?

19 THE WITNESS: Yes.

20 COMMISSIONER HICKINBOTTOM: And that is, to a large
21 extent, money-driven, is it?

22 THE WITNESS: To a large extent, it is money-driven,
23 because you're not able to entice people, you're not able to
24 attract them, you're not able to keep them because this is the
25 Virgin Islands. Legal profession is very strong in the Virgin

1 Islands, a thriving legal profession, so people have options.
2 And it's disturbing when you can't even recruit from overseas,
3 and that's the position that we've come to.

4 Like I said, it's disappointing.

5 COMMISSIONER HICKINBOTTOM: Yes. And as I say, that
6 is clear from your Position Statement. Thank you very much.

7 BY MR RAWAT:

8 Q. To pick up on the point that you made about the
9 difficulty in recruitment, is it simply--is it coming out
10 effectively that someone can earn more and have better support,
11 better work-life balance, better facilities in the private
12 sector than in Public Service?

13 A. Does it come down to only that?

14 Q. Or is that one key aspect of it?

15 A. That is one key aspect. And until I clear that up, I
16 don't know that I can point to anything else critically because
17 I know it is a factor. If somebody says to you, "I would really
18 love to work with you, but I can't afford to work for that".
19 That's the answers I get. It's not "I don't like where your
20 office is. I don't like the people in the office. I don't want
21 to work hard. It's just you're not paying me enough".

22 And it's not--and it's a difficult position to be in,
23 and I say this because I know that no Government of the Virgin
24 Islands has ever shied away from paying legal services, so it
25 boggles my mind why that money can't make it into my budget, why

1 the positions for Legal Counsel in My Chambers cannot be
2 remunerated at the rates that we would be happy to pay
3 consultants at, that we as persons who frankly should know what
4 every person paying payroll tax in the Virgin Islands earn. Why
5 can't the Government figure out what is the correct level,
6 feasible level, even if it's not as much at which to pay
7 counsel.

8 So, it bothers me greatly, and it's not a new problem.
9 And I know it's not a new problem because I have been practicing
10 for quite some time, and that's always been one of the things
11 that we've heard about. But it's an intractable problem that I
12 cannot understand because I am satisfied it is not that the
13 Government of the Virgin Islands does not want to pay for legal
14 services. I do not understand why it is--why it would be
15 acceptable or even countenanced because the resources are there.
16 You just need to reallocate them to the Legal Department, not
17 just the Attorney General's Office. And I don't want to speak
18 for anybody else because that gets me into trouble, but I'm not
19 the only Legal Department that would be having that problem.

20 I don't know what to say else.

21 COMMISSIONER HICKINBOTTOM: That's very helpful in
22 expanding on what's said in the Position Statement.

23 So, Mr Rawat.

24 BY MR RAWAT:

25 Q. Attorney, just you've made clear, you're not the only

1 Legal Department, but we obviously are aware of the Office of
2 the DPP. Which other legal departments do you have in mind?

3 A. Well, there are also the registries where legal
4 practitioners would have to be employed.

5 Q. Can you confirm this--is there also parliamentary
6 counsel?

7 A. Parliamentary counsel are part of the Attorney
8 General's Office.

9 Q. So, within the ambit of the Attorney General's Office,
10 your work will encompass parliamentary counsel, it will
11 encompass principal current counsel undertaking litigation,
12 giving advice. Does it encompass also drafting legislation?

13 A. It does.

14 Q. So, all roads lead to the Attorney?

15 A. All roads lead to the Attorney General's Office, yes.

16 Q. And you've candidly said--but your preference would be
17 that, rather than pay consultants, money be found--and it comes
18 from your Witness Statement--money be found to allow you, as
19 Attorney, to build a sustainable Chambers?

20 A. Right.

21 So, I have no objection to spending money on
22 consultants because sometimes they're necessary, so I don't
23 think I quite said that. I think I said I don't understand why
24 some of those funds can't be reallocated to Chambers, and I
25 certainly believe that you have to find the expertise that you

1 need for any particular situation that you are dealing with, so
2 I actually do not mind consultants. I'm actually proposing a
3 panel of counsel where we can make sure that we identify very
4 early on people who have particular expertise that we may be
5 able to call on from time to time as part of what we do to
6 complement the Chambers. That is one proposal that I've made.

7 But I do think that we need to--you get out what you
8 put in. There is only so much that eight people can do. And if
9 we are serious about--if we are serious about "governance",
10 there is that word that we use--there is really no way around
11 it. You do need a strong sustainable team, not just of lawyers,
12 but of policy-makers, of people who can analyze the mountains of
13 data that comes into the Government of the Virgin Islands every
14 single day.

15 You have to ensure that the workforce, the lawyers who
16 have real estate--the workforce that is there to serve the
17 Government of the Virgin Islands, has to be able to do so in the
18 most efficient and relevant way, so I'm going to hold my corner
19 when it comes to the lawyers. But I look throughout the service
20 all the time because I have to get instructions, and when I get
21 instructions, there is other information that I need. It's not
22 always easy to get. It's not always readily available. That
23 compromises the strength of the advice that I'm able to give.
24 It might be accurate on the basis of what I know.

25 But is it as strong as it would be if the other areas

1 that were critical to the proper, efficient, and ideal--and
2 "ideal" is probably not the best word to use because people
3 would say things can never be ideal--but to the best functioning
4 of Government in the circumstances, those resources have to be
5 there as well.

6 So, I talk about the lawyers because that's my corner,
7 and I think lawyers are important--not everybody agrees--but
8 they are important. You can't go very far wrought them. You
9 know, you always have to check the rules. Do I have rules? Am
10 I applying them properly? Can we take another course of action
11 and not break the rules? These are the questions that everybody
12 needs to be able to answer.

13 And I cannot say it enough: It concerns me that I'm
14 not able to do more lawyering, that I'm not able to reach
15 further down into the Public Service and say to people, "You can
16 come to me because I have time to listen to you. You don't have
17 to sit on that matter for three, four months because you don't
18 know what to do. You can ask a lawyer a question. And they
19 will be available, they can guide you, they can help you". We
20 can train people to be able to recognise things that you don't
21 necessarily need to come to me for but you need to be trained to
22 understand that you must follow a particular process in a
23 particular way, you know, without undue delay.

24 So, you know, I talk up for the lawyers, but I'm
25 concerned, like I said, as well about the lack of policy-makers.

1 I say policy people, people who understands how do you translate
2 a vision into a policy into action, into results? Those things
3 concern me as Attorney General as well because sometimes we end
4 up in court. Sometimes we end up having to pay out money and
5 settle things because we just didn't get it right internally
6 when we needed to get it right. We didn't have the right people
7 in the right place doing the right things, and so we end up
8 making a mistake, and it's costly. I don't--I think--believe
9 that prevention is better than cure.

10 COMMISSIONER HICKINBOTTOM: Or you end up with a
11 policy which doesn't work.

12 THE WITNESS: Right. But then you also need--you end
13 up with a policy that doesn't work but you also need people who
14 are able to pivot and to see this isn't working, time to do
15 something else.

16 And processes and energy in place to just ensure that
17 we can pivot when we need to pivot. Small jurisdictions, you
18 have to be able to pivot very quickly, or you will lose
19 yourself, and that's another reality of being in a small
20 jurisdiction, and which is why, to my mind, it is so keen to
21 have the right people in the right place doing the right things,
22 and to make sure that all the stakeholders who are responsible
23 for making Government work, can see eye to eye, can frankly
24 sometimes get over their differences for the greater good.

25 So, like I said, I'm focused on the lawyers, but

1 overall functionality is important to me because, if you don't
2 have that overall functionality, it compromises my client
3 completely, which makes my job a bit more difficult.

4 COMMISSIONER HICKINBOTTOM: Thank you very much.

5 BY MR RAWAT:

6 Q. I should have rephrased my question a different way,
7 but I accept, Attorney, that there will always be a need for
8 consultants, but the point seems to rise up from your Position
9 Statement that what you believe--and with some passion--is
10 necessary in order for you to deliver the service that you wish
11 to deliver.

12 A. Um-hmm.

13 Q. Is, as I thought you said, a sustainable team that
14 exists over a period of time builds up its internal expertise?

15 A. Absolutely, yes.

16 Q. You said, and I appreciate that there's been a change
17 there, but you have 23 positions in your Department, and how
18 many are currently filled?

19 A. I believe it's nine.

20 Q. And that's your lawyers?

21 A. That's my lawyers.

22 Sorry, I think I have 16 counsel positions, nine
23 lawyers, yes.

24 Q. Nine filling those seats?

25 A. Yes.

1 Q. To--

2 A. But overall, it's probably half of them are empty.

3 Q. Right.

4 And so, just to get back to where--to your starting
5 point, that's the first step, to fill those positions.

6 A. Um-hmm.

7 Q. And that involves making--finding a way to make them
8 attractive to candidates.

9 A. Yes.

10 Q. Which--and as you've said, the first step in that is
11 persuading people or getting round the fact that they say,
12 "Well, I'd love to work for you but I can't afford to work for
13 you".

14 A. Um-hmm.

15 Q. But if we go to paragraph 20 where I'm perhaps going
16 to suggest that that's where you set out your hopes for the
17 future because what you seem to set out there is that what you
18 would like the service from the Attorney General's Chambers to
19 do is not just to be a full complement of lawyers working as
20 they are now. You want them--from my understanding of what you
21 say there--is that you want them to be policy-makers that you
22 embed within other areas of the Public Service; is that right?

23 A. That--

24 Q. You used the phrase "To reach deep into the Public
25 Service to identify and address areas requiring attention". I

1 wondered whether one of the plans, along with your panel of
2 external counsel that you can draw on was whether you would
3 have--you would like to succumb Members of your Chambers to
4 other Government Departments so that they gain experience there
5 and they are there in that Department giving advice?

6 A. Right.

7 So, to answer your question, no, I don't want my
8 lawyers to be policy-makers. I want them to be lawyers. Do I
9 think it would benefit--because you see, this is a running
10 conversation we have, and I don't know that I necessarily agree
11 with the solution that comes up of having a lawyer in every
12 Ministry. I think people associate that with getting the
13 service that they need. What I would like to see is that
14 Ministries can't tell if there's a lawyer in their Ministry or
15 not, that they get serviced when they need to, how they need to
16 in a responsive way. Reaching down into the Public Service
17 means for me not necessarily that I take a lawyer and I put in
18 every Ministry, but I admit that the Ministers, for example, and
19 Permanent Secretaries and other people have lobbied me, and they
20 said over and over, "What we need is our own lawyer", right?
21 What the lawyers will say is "No, I don't want to do that
22 because they'll want me to do everything. They won't just want
23 me to be a lawyer, they'll want me to write every paper.
24 They'll want me to prepare ever policy".

25 Because, you know, lawyers are multi-talented, and I'm

1 not saying that to be--I see some people are shaking and nodding
2 their heads because you are very versatile, and sometimes what
3 happens is if you have a particular level of talent or skill,
4 then you default to it.

5 So, I'm on the fence about the lawyer in every
6 Ministry, because I think what is most important is that the
7 Legal Services are available, not necessarily that the lawyers
8 are available to the people in the Ministries to do whatever
9 they think a lawyer can do, if you understand the distinction
10 that I'm making.

11 Q. Yes.

12 A. But when I say "reach down", I mean we get up from
13 where we are in the Attorney General's Chambers. We do
14 outreach. We do more what I call "consultations". If you have
15 something that's on your mind, you don't quite know what to do
16 with it, you don't know if you should reduce it in writing, come
17 and have a consultation for half an hour, an hour or something,
18 and then you can decide where to go with it. I feel that that
19 would be of enormous assistance to a lot of people.

20 COMMISSIONER HICKINBOTTOM: You, as I understand your
21 evidence, you've considered that legal services should be
22 available to all of the Ministry, but having a lawyer in each
23 Ministry is only one way of doing that.

24 THE WITNESS: It's only one way of doing it, and I
25 don't know that it's the best way of doing it.

1 COMMISSIONER HICKINBOTTOM: Right. Thank you very
2 much.

3 BY MR RAWAT:

4 Q. One of the points you make at your paragraph 20 is
5 that what you would like to do is--and why you want to effect
6 change, and one of the reasons is to eradicate self-lawyering.

7 A. Um-hmm.

8 Q. I wonder if you could just expand on that a little bit
9 more for the Commissioner?

10 A. That happens. If you have an Attorney General's
11 Chambers or any Legal Department that's not responsive, I can
12 write that contract, just change the numbers. It looks the same
13 every time.

14 So, the person who may say that or who says that is
15 not a lawyer, and they believe that because the document comes
16 back looking the same every time it means that all the lawyer
17 did was change the numbers; right? So, I believe that these
18 things happened, and I would like the legal services available
19 to the Government to be such a position to be of such a standard
20 that people don't feel the need to do that. If it's only a
21 small contract, somebody will get back to me in a relatively,
22 you know, short time. You know, it's not something that would
23 frustrate what we're trying to do, you know? So, that's the
24 type of thing.

25 These things cause problems because you would have

1 situations. A contract comes back to you and you're thinking,
2 why is the contract looking like that? Would we have really
3 done that or said that? But at that stage, you're in a
4 full-blown case so it's at that point the damage done, and I
5 would prefer to prevent as much damage as possible.

6 Q. And that damage is a consequence of you're being
7 understaffed, as a Chambers?

8 A. Partly as a consequence, yes.

9 Q. You cannot--you can't give the service that you feel
10 you should.

11 A. Um-hmm.

12 Q. The space is created in which self-lawyers--

13 A. Self-help.

14 Q. --emerge. That means mistakes are repeated because,
15 to use your example, all that happens is the numbers are
16 changed, and some--the importance of the AG's Chambers
17 diminishes as a source of assistance?

18 A. Yes.

19 Q. So, it takes you back always to the point that as an
20 urgent need, you need to be able to find a way to bring your
21 complement of lawyers back up to strength?

22 A. To bring it up, yes.

23 Q. Now, you've also said at paragraph 23 you've listed
24 the areas where governance in the Public Service would also
25 benefit from sustained expertise, access to expertise.

1 Now, I've taken that as meaning the expertise that you
2 would have--you would like for the Public Service to be able to
3 get from the Attorney General's Chambers?

4 A. Yes.

5 Q. Not from the sort of ad hoc outside consultants but
6 that they could have access on those areas to a sort of
7 sustained team that would be able to give them advice?

8 A. Yes.

9 Q. In order to do that level of service, do you envisage
10 a need to go beyond the numbers that you have that you're
11 allowed in the Chambers?

12 A. I think it's a real possibility, but, of course, I
13 would be reluctant to say I need more than I'm allocated if I
14 actually don't have what I'm allocated.

15 And that may well be the case, but I would be
16 grateful, frankly, to get to full complement and then be able to
17 make that decision because you can't just say you need for the
18 sake of needing; you have to establish that you need them, and I
19 believe over many years, successive Attorneys General, the org
20 chart is where the org chart is because there was a demonstrated
21 need for it to be there, because you don't just ask for it and
22 you get it. You sort of have to justify why it's necessary.

23 So, if I could get there and then make that
24 assessment, that would be--that would be the best thing because
25 additionally you don't know who you're going to get.

1 So, depending on what the pool looks like, depending
2 on how you rearrange your records and the other tools and your
3 work flows and whatever, to deal with it you may need less
4 people or you might need, not necessarily more lawyers but you
5 might need more of another skill set that keeps things moving
6 along a bit more because your lawyers are lawyering and somebody
7 else is doing the other work that supports what you do. So, I
8 may well need more.

9 I mean, one of the things you may have noticed, for
10 example, is that the law reform commission function has now been
11 completely depleted, so that doesn't exist anymore--well, it
12 exists on paper but not in people, and that is a critical
13 function as well for a jurisdiction that aims to, so far as
14 possible, remain current with, you know...

15 Q. You've already mentioned it, and it's at your
16 paragraph 25, you refer to the establishment of a panel of legal
17 practitioners to provide drafting civil specialists, legal
18 services at published standard rates. Where would that panel be
19 drawn from?

20 A. Wherever they can be found. And I say that because
21 traditionally--well, I suppose it is a tradition now. In the
22 Virgin Islands, you will have seen that the Bar is very, very
23 cosmopolitan, comes from all over the place. Depending on the
24 skill sets that you want, you're not going to find them in the
25 BVI. If you're looking for drafters, for example, you're going

1 to look far and wide all over the Commonwealth to try to locate
2 drafters. Wherever I can find them.

3 Q. I see. The second element of what you've set
4 yourself, if you like, your vision for all your immediate
5 priorities was one, that it's at your 26, and it's that you're
6 undertaking a review of business processes, record management
7 procedures, Human Resources and Information Technology, and you
8 say: "This has resulted in staff training, three reports
9 assessing the status quo, mapping mission-critical processes and
10 analyzing associated workflows and then making recommendations".

11 Has that review been completed, or is it ongoing?

12 A. The review has been completed, yeah.

13 Q. Can you explain some of the sorts of details behind
14 the process or the approach in terms of the review, in
15 particular, for example, the phrase "mission-critical
16 processes"?

17 A. What happens a lot, not just in the Public Service but
18 other places, there are certain things that we do, and they are
19 all of great importance, but sometimes they're maybe assessed on
20 certain aspects of your work more than you are on others, and
21 what that would mean, mapping mission-critical processes is
22 identifying those areas of work that most--"popular" is not the
23 right word--we do most and that we have to do all the time, and
24 to make sure that we are doing those as efficiently as possible.

25 Q. You refer in that same paragraph to staff training.

1 In terms of staff training--and I'm broadening it, not just
2 training for your non-lawyers but also for your lawyers, where
3 has the funding or where is the funding coming from for staff
4 training?

5 A. It came from the budget.

6 Q. Your own budget?

7 A. Yes.

8 Q. Are there any other sources or areas of support,
9 financial and non-financial, that you can draw upon as Attorney
10 General?

11 A. Not that I'm aware of. It's just the budget.

12 Q. But in terms of, for example, is it open to you to
13 work with the Governor to develop or to seek to get assistance
14 in terms of staff training, are there sort of other law bodies
15 that an Attorney General can draw support from?

16 A. I would believe so. The primary financing for the
17 Chambers comes from the budget. That's the reality. This year
18 I don't know that I have benefited from any external funding. I
19 don't believe, if the proper procedures are followed, that there
20 is an objection to it because, from time to time, I guess,
21 different international external bodies may offer training in
22 different areas, but I haven't had the benefit of that this
23 year. Everything has been done from the budget.

24 Q. And so it's down to you to decide how much you
25 can--balancing priorities, how much you can allocate to staff

1 training because you might be taking from something else
2 that's--

3 A. Well, not quite because you do that in the budgeting.
4 Your budget says what you're allowed to spend under each
5 particular head, and then if you exhaust that, then you have to
6 seek permission to reallocate funds to--from somewhere else to
7 go as well.

8 Q. Provided that the proper priority--you know, properly
9 appropriate to do so, you don't have an objection in principle
10 to receiving support from another source? I mean--

11 A. Is that a trick question?

12 Q. No.

13 A. No.

14 Q. I hope it's a carefully crafted question. You
15 provided that you will be well aware of the potential
16 conflicts--

17 A. Yes.

18 Q. --provided that wasn't an issue. In principle, you
19 don't, as AG, object to support from other sources that will
20 help you develop to meet your priorities?

21 A. No, I absolutely do not. Of course, it is on a
22 case-by-case basis you would have to, you know, determine that
23 it would be appropriate, also consensus considered, but no, I
24 don't.

25 Q. Just to turn to law enforcement and justice quickly.

1 You've listed at paragraph 30 the agencies of law enforcement
2 and justice, and you've also--and this is at
3 paragraph 32--you've set out where you're responsibilities lie.

4 A. Yes.

5 Q. We've gone through some those, but the Director for
6 Public Prosecutions is also a constitutional position.

7 A. Yes.

8 Q. What does the Attorney General have or does the
9 Attorney General have any role in relation to the work
10 undertaken by DPP?

11 A. Well, the Director of Public Prosecutions, I think you
12 will appreciate from the Constitution, it says that she's not
13 subject to the direction of any person, but there may be issues
14 on which she needs to seek legal advice. There may be issues
15 that really are not for her but that come up in the course of
16 what she's doing, in which case she may need to refer it to our
17 Chambers in respect of certain issues, for example--in respect
18 of certain issues, I reconsider saying that. In respect of
19 certain issues, we may need to collaborate. There might be an
20 exchange of ideas between professionals or something like that
21 but the Director of Public Prosecution works independently, not
22 subject to anybody's direction. You know, if we can offer
23 advice on some aspect of her work, then, of course, we are
24 available to do that.

25 Q. Are there particular aspects of the criminal process

1 or quasi-criminal process that fall within the ambit of the
2 Attorney General's Chambers rather than the DPP? I'm thinking
3 of, for example, extradition. Is that for the DPP or does it
4 come--

5 A. Right.

6 For extradition, it's interesting you said because in
7 some ways--I suppose it is criminal, but I don't see it as--

8 Q. Quasi-criminal?

9 A. Right.

10 It's more to my mind an international issue than a
11 criminal issue where there may be--underlying circumstances may
12 involve criminal elements.

13 So, in a case like that, we may have occasion to, you
14 know, interface with the Director of Public Prosecutions, but
15 you will appreciate--and I think the Constitution says that
16 she's responsible for the prosecution of criminal offenses.
17 That's how I remember it; I could be wrong. So, it's not
18 necessarily any and everything that's criminal, but rather the
19 prosecution is how I understand her role works. I'm sure she
20 will be very firm as to what her responsibilities are.

21 But as a matter of law, as a matter of practice, in
22 fact, the Director of Public Prosecution works very
23 independently under the Attorney General's Chambers.

24 Q. But in terms of drafting legislation, even if it's
25 criminal legislation, that still comes to the Attorney General's

1 Office?

2 A. Yes.

3 Q. As to drafting generally--and you've spoken of having
4 drafters in the team and wanting to recruit them to your panel,
5 are there or is the practice that somebody drafting a piece of
6 legislation can draw on model samples, if you like, if you take
7 an example of a statute that you're asked to draft as a
8 Chambers, are there, for example, model acts that are produced
9 by the Commonwealth Secretariat or other bodies which you can
10 take as your starting point and adapt, or is it sometimes that
11 you have to start with a blank sheet of paper? Which is more
12 common?

13 A. What actually happens?

14 Q. Yes.

15 A. I think I should say firstly what should happen;
16 right? There is a general legislative process that should be
17 followed when you are composing or you're drafting legislation,
18 and it has to start with setting out the circumstances giving
19 rise to the need for legislation. It has to do with developing
20 the policy; right? Once that is done and you get your approval
21 from wherever you need to get it--for example, Cabinet--to
22 proceed, you're supposed to come up with very precise drafting
23 instructions, which are then given to the Attorney General's
24 Office so that the Parliamentary Counsel can get on with the
25 drafting. That is what is supposed to happen. That is the

1 proper legislative process.

2 In terms of using model legislation, model legislation
3 is developed regionally, for example, by the OECF, might be
4 development in the Commonwealth as well; but even if you're
5 looking at model legislation, you still need to make those same
6 decisions because of your local circumstances as to what is the
7 policy surrounding the adoption of any particular legislation.
8 And the legislation can't simply be adopted. It has to be
9 complementary to the existing laws of the Virgin Islands. It
10 has to not offend the Constitution and all the rest of it.

11 If you're asking me if, in practice, we get model--we
12 get draft legislation to look at, the answer is "yes", but is
13 that the ideal situation, no. Do I like it? I do not. Do I
14 wish the process was followed properly? Absolutely. Do I
15 understand that there are difficulties with following that
16 process properly? Yes, I do, and I think that they ought to be
17 rectified. So, that is my answer to that which I hope answers
18 your question.

19 Q. Very completely. Thank you.

20 Could I just move to what's likely to be my last
21 topic.

22 There is a loose-leaf piece of paper on the desk in
23 front of you. If I can give this some context. On Day 6 of the
24 Commission's hearings, which was the 18th of May of this year,
25 the Premier gave evidence and in that, in the course of giving

1 evidence, he referred to advice and standard advice that was
2 given by your predecessor in relation to the waiver of the
3 tender process for contracts over a value of \$100,000. And then
4 his attention was drawn to the document in front of you, which
5 is a memorandum from the former Attorney General dated the 25th
6 of October 2019. And he confirmed that that was what he was
7 referring to.

8 A. Um-hmm.

9 Q. The question I wanted to ask is firstly, are you aware
10 of this memorandum?

11 A. I have seen it before, yes.

12 Q. The Premier's evidence was that this formed parts of a
13 standard pack or it was part of a sort of information pack that
14 would have been provided to Cabinet when they were considering a
15 contract, where the possibility of waiver was on the cards.

16 A. I don't recall it from that context, but I will take
17 your word for it.

18 Q. You may have answered my next question, but it's
19 whether this memorandum from the former Attorney General is
20 still current or is now a different process being adopted?

21 A. Okay. So, if I may take a minute.

22 Q. Of course.

23 (Pause.)

24 A. Okay. I've read it. I believe it's still--

25 Q. Still current?

1 A. Still current.

2 Q. Thank you.

3 COMMISSIONER HICKINBOTTOM: When you say it's still
4 current, and this is my recollection of the Premier's evidence,
5 and somebody will correct me if I'm wrong. When he was asked
6 about reasons for waiver, he said that they were "cut-and-paste"
7 reasons, I think was his phrase, but then he said that this is
8 what me meant, this memorandum was in the pack, so this--

9 THE WITNESS: Well, I'm not--

10 COMMISSIONER HICKINBOTTOM: This represents the
11 reasons, he said, for waiver of the tender process.

12 THE WITNESS: Well, I'm not comfortable with the term
13 "cut and paste" reasons because I believe every contract must
14 have its own justification for entering into the contract and if
15 the tender process is to be waived--for it to be waived. And
16 when I say I think that the advice is still current, maybe I
17 should be clear that the position is still and is still accepted
18 to be--that decisions made by Cabinet to waive the tender
19 process in any given case should and ought to be supported by
20 very strong reasons since the default position under
21 paragraph 172 of the regulations is the tender process.
22 That's--when I say it's current, that is what I mean.

23 COMMISSIONER HICKINBOTTOM: That's clear and helpful.
24 Thank you. Yes.

25 MR RAWAT: Commissioner, may I just have one moment,

1 please.

2 (Pause.)

3 MR RAWAT: Commissioner, those are my questions.

4 Can I conclude by thanking The Honourable Attorney
5 General for returning to give her evidence but also for the very
6 helpful way in which she has done so today.

7 THE WITNESS: Thank you.

8 COMMISSIONER HICKINBOTTOM: Could I just ask one last
9 question, Attorney, if I may. It's actually set out in
10 paragraph 15 of your Position Statement, but you also referred
11 to it when you last gave evidence to us, that governance was a
12 main part of your function. This is governance across
13 Government, not simply in your Department, and here you say that
14 the vision statement of your Chambers is to uphold good
15 governance and the proper and adequate administration of
16 justice. Does that mean for good governance you need a strong
17 and well-functioning Attorney General's Chambers?

18 THE WITNESS: Right. So, I remember that conversation
19 that we had the last time very well, and I think at the time you
20 challenged me as to who is responsible for good governance,
21 whether it was myself or the Governor. I believe the Governor
22 is the top of the chain when it comes to good governance, so I
23 should be clear on that. I believe that it is critical to good
24 governance that anybody--or that the Government simply does have
25 access to a fully staffed and responsive legal team.

1 COMMISSIONER HICKINBOTTOM: That again is a very clear
2 and helpful answer. Thank you very much.

3 Can I just echo Mr Rawat's comments at the end. Thank
4 you very much for your time. Thank you very much for your
5 helpful and eloquent responses, and they really have been very
6 helpful. Thank you.

7 THE WITNESS: Thank you, sir.

8 (Witness steps down.)

9 COMMISSIONER HICKINBOTTOM: Mr Rawat?

10 MR RAWAT: We now, I'm afraid, Commissioner, because
11 of various scheduling issues, will have to have a rather longer
12 break than we would have wanted. Our next witness, I don't
13 think is due until half past 3:00.

14 COMMISSIONER HICKINBOTTOM: Good. And that is--

15 MR RAWAT: That's The Honourable Julian Fraser.

16 COMMISSIONER HICKINBOTTOM: Mr Fraser.

17 MR RAWAT: If I said the fourth, Marlon Penn, The
18 Honourable Marlon Penn, was due to come today, but for personal
19 reasons has been rescheduled.

20 COMMISSIONER HICKINBOTTOM: Good. Thank you very
21 much. Thank you, again.

22 (Recess.)

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Session 2

COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

MR RAWAT: Thank you, and good afternoon,
Commissioner.

Our next witness is The Honourable Julian Fraser.

HON JULIAN FRASER, COMMISSION WITNESS, CALLED

MR RAWAT: Mr Fraser was affirmed on the last
occasion, so there's any need for him to take an oath or affirm
again.

And if I may, I'd just like to start with my
questions.

COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

BY MR RAWAT:

Q. Mr Fraser, thank you very much for returning to give
further evidence to the Commissioner.

The purpose of this afternoon is to ask you questions
about a Position Statement that you submitted to the
Commissioner. As you'll remember, the Commissioner sent a
number of questions on governance to a range of actors,
including Members of the House of Assembly, and you were good
enough to provide your response to those. Your Position
Statement has been published on the Commission's website. I'm
not going to ask you to read it out or to go through it in
detail, but there's one short but important point that I would
like to develop with you through my questions, and that is

1 that--and it's a point that you return to more than once in your
2 Position Statement, but if you turn to page 3 of that Position
3 Statement, it is what you described as a fallacy at the heart of
4 the Constitution of 2007, and which arises from section 47(3) of
5 the Constitution, and you dealt with this when answering a
6 question addressed to you, which was: As a Member of the House
7 of Assembly, what role, if any, do you have in ensuring that
8 there is good governance and how have you carried out that
9 role?" And you returned to it at your page 9 when you were
10 answering the question: "What steps do you as a Member of the
11 House of Assembly consider should be taken to promote the
12 strengths and remedy the weaknesses you have identified so as to
13 sustain public confidence in all elements of government?"

14 Now, what I'd like you to do, the point that you make
15 is that, put simply, the Constitution vests a great deal of
16 power in a Premier; and if I may, can I ask you just to develop
17 that a little and explain to the Commissioner the basis on which
18 you make that assertion?

19 A. Thank you, Commissioner, for the opportunity to be
20 here today and express my thoughts verbally as I have in
21 writing. I went to the Constitution--

22 (Pause.)

23 A. If you look at--

24 Q. If you look, Mr Fraser, I'm sorry to interrupt you, if
25 you look just on that top of that grey bundle, there's another

1 bundle headed "Legislation and--"Constitution and Legislation
2 Bundle". If you go to that.

3 A. I can deal with this.

4 Q. Yes. You set out, and you're wanting to go to page 3
5 of your Position Statement?

6 A. Yes, page 3.

7 Q. And that's section 47(3) of the Constitution.

8 A. It says--I said that in 4(ii)(3): "The Cabinet shall
9 have responsibility for the formation--formulation of policy
10 including directing the implementation of such policies insofar
11 as it relates to every aspect of government except those matters
12 for which the Government now has special responsibility under
13 section 6, and the Cabinet shall be collectively responsible to
14 the House of Assembly for such policies and their
15 implementation".

16 Then that's when I said: "This is what I consider to
17 be a 'Got You' provision, because it says everything that needs
18 to be said, unfortunately the most important part of it is
19 devoid of reality".

20 Still on page 3.

21 It's devoid of reality. Yes, the Cabinet, which
22 essentially are all the Ministers, makes those policies
23 mentioned. Yes, the Cabinet, which is essentially the
24 Ministers, direct the implementation of those policies. But the
25 fallacy is that part about Cabinet which are the Ministers shall

1 be collectively responsible to the House of Assembly for such
2 policies and the implementation.

3 And I said as far as the question--as far as this
4 question--now ask yourselves this question: Who makes up the
5 House of Assembly? And the answer which is the Cabinet mainly,
6 the five Ministers and the Attorney General, and the cast of
7 supportive namely the junior Minister, the Deputy Speaker, and
8 another back-bencher plus the Speaker. That is a total of 11 of
9 15 Members, so who are you kidding when you're trying to pin an
10 unrealistic responsibility on the House of Assembly to hold the
11 Cabinet to account?

12 You know that this is nonsense, and you didn't need to
13 ask or you didn't need me to tell you when you asked, but I told
14 you anyway.

15 COMMISSIONER HICKINBOTTOM: But just on with the
16 mathematics, which is not a strong suit of mine, Mr Fraser, but
17 in terms of the House of Assembly and the elected Ministers, the
18 elected Ministers, under the Constitution, with the amendment to
19 the Constitution, there are seven Ministers: Five Cabinet
20 Ministers and two Junior Ministers. So, there are seven
21 Ministers.

22 THE WITNESS: Right.

23 COMMISSIONER HICKINBOTTOM: The house of Assembly in
24 terms of elected Members, voting Members, are 13.

25 THE WITNESS: Yes.

1 COMMISSIONER HICKINBOTTOM: So, the Government
2 Ministers are always in a majority.

3 THE WITNESS: Absolutely.

4 COMMISSIONER HICKINBOTTOM: That's the point, isn't
5 it, that you make in this paragraph?

6 THE WITNESS: Well, the Government Ministers--okay,
7 it's seven because you include the junior Minister, so it's
8 seven. They're always in the majority.

9 COMMISSIONER HICKINBOTTOM: Yes.

10 THE WITNESS: So, the point I am making is that there
11 is no diversity in the House, no contrariness in the House, and it
12 makes for bad policies, bad legislation. There is no need
13 negotiate, there is no need to come to agreement on anything.
14 It's only at the whims and fancy I should say of the Premier, if
15 he wished, to entertain the thoughts and objectivities of the
16 other Members in the House who are not part of his group, and
17 that's a flaw a small democracy such as ours should try to
18 address by remedying it, and there are remedies for it. The
19 only question is whether or not those who are responsible for
20 making those hard decisions are prepared to make them. And I
21 see--I see this Commission as a vehicle for making these things
22 happen. If I am to be correct in my interpretation and my
23 observation and my perception of the purpose of you being here,
24 which is to seek out the shortcomings in our system and make
25 recommendations to fix them, then I think this is--this is the

1 root of the matter, the problem. This is the root of the
2 problem.

3 COMMISSIONER HICKINBOTTOM: And it's a problem, as you
4 see it, arising out of the Constitution because the Constitution
5 does two things which seem to me to be fundamental to your
6 Position Statement:

7 Firstly, it's the Premier, in effect, under the
8 Constitution who appoints the Ministers, and there are seven
9 Ministers out of 13 elected House of Assembly Members, hence
10 always a majority, but any--if that is a problem, any solution
11 must involve changes to the Constitution. I mean, you've
12 suggested one in your addendum, in your addendum report.

13 THE WITNESS: And again, that's--in 2004, which was
14 the first time I made representation regarding this issue, there
15 was a Constitution Review Commission, and that was the
16 catalyst--that Commission was a catalyst for the Constitution
17 review that we had in 2007. And by bringing forward matters
18 like this, I was--I hope that was what the outcome the 2007
19 Constitution review was.

20 Now, whenever this new Constitution Review comes
21 about, you just happen to be in a critical position right now to
22 influence it. I don't--the leaps that are needed to be taken in
23 our Constitution in order to avoid having you come back here
24 some years from now--I don't know how many people are prepared
25 to make those leaps, but the way I see it, I'm going to say it.

1 BY MR RAWAT:

2 Q. But the thrust of--to pick up from the Commissioner's
3 question, the thrust of what you've said--and you find that at
4 your page 8, and that is whether--you say whether people are
5 aware that our current system imposes legal dictatorship powers
6 on our Premier?

7 A. Right.

8 Q. And so irrespective--on your analysis under the
9 Constitution, irrespective of Party, the Premier--because the
10 Premier selects the Cabinet Ministers and because the Premier
11 selects the Speaker, there is an in-built majority that is
12 accountable only to the Premier and which, therefore, silences
13 the House of Assembly as a body that holds the Executive to
14 account?

15 A. Exactly.

16 Q. Now, before we get on to--I would like to canvass with
17 you your alternative proposal, but before we get on to that, you
18 also, and I'll take you back to page--I think it's your
19 page 4--you also made comments about committees, and you say:
20 If I was to elaborate on the many committees of the House, you
21 would be equally impressed with their mandate and sorely
22 disappointed with their powers, which are non-existent".

23 And you then give the example of the Public Accounts
24 Committee which is set up according to Standing Orders, and you
25 conclude in relation to the Public Accounts Committee, it needs

1 real power if it's supposed to be meaningful.

2 So, in terms of the Committees of the House, what
3 changes would you want to see in terms of the committees of the
4 House?

5 A. The Standing Orders prescribes that just about every
6 Committee except for the Public Accounts Committee and the
7 Privileges Committee be chaired by a Minister. Now, that's a
8 basic no-no. You're not going to find that too many places that
9 you travel. The Opposition chairs committees, and also the
10 back-benchers chair committees, not Ministers.

11 So, it becomes almost impossible for a report to
12 emerge from a committee that is not already the Minister's
13 position, the Government's position.

14 And I've said to current Ministers and Ministers who
15 served before them, I said if there is no other lesson that I
16 can take away from my service is what I gained from a senior to
17 me at the time. He said to me, "never wish for the Opposition
18 what you wouldn't wish for yourself". and I had never understood
19 what he meant until I got into the Opposition, and then I was
20 able to see the Legislature no matter what side you sit on as an
21 institution, and that's a point I'm trying to get across to
22 Ministers today, who don't see it because they can't. They
23 cannot see it from what they sit. And that's what happens with
24 the committees. It's a part of why you can't get a Committee to
25 sit right now, and not just in this Government but past

1 governments as well. Ministers are preoccupied with their
2 duties as a Minister and they see the world from a different
3 perspective.

4 Q. And so the value, if any, of Committees is neglected
5 because of Ministers' other commitments?

6 A. It's--I wouldn't--I would not blame it on the
7 Ministers. I think that it's the position that they find
8 themselves in. They can only see one side of this institution
9 and what they're supposed to do.

10 The other part about my problem with the committees
11 are, that when you come out of committee with a report, it's
12 asking the same Government that--whose inefficiencies you've
13 discovered to fix them. The committee has no real power to
14 mandate that they be fixed except to come back to the entire
15 body again, the same body that I spoke of, and asking them to
16 vote in favor of having it--the Committee's recommendations
17 acted upon.

18 COMMISSIONER HICKINBOTTOM: Isn't--couldn't it be said
19 that one inevitability about such a small Territory or such a
20 small electorate is that the number of elected Members is going
21 to be relatively small. I know that you've put forward your
22 addendum, and we'll come to that as one way around that, but
23 where you've got, as you have--as we have under the
24 Constitution, 13 elected Members, given that there's
25 considerable burden on the Government, you can expect a

1 substantial number of Ministers to be in place--the Constitution
2 says five plus two junior Ministers--and, therefore, isn't that
3 weakness inevitable?

4 THE WITNESS: It sure is. It sure is. But it
5 assumes--the Constitution assumes that everyone would act in the
6 best interest of the--I shouldn't say in the best interest. I'm
7 sure everyone is acting in the best interest of the Government,
8 of the country, but in their way, the way they see it, and only
9 the way they see it. It's 13--if you've got 13 Members in the
10 House, the opinion of our 13 Members should matter, not just one
11 side.

12 And this is not a knock on this Bill for the
13 Government. It's what I see from the time I've been in the
14 House of Assembly, and the only way you're going to get
15 diversity is true--or the only way you're going to get good
16 policies coming out of the House of Assembly and legislation is
17 through diversity, and that diversity has to be--it can't come
18 from a single side. It has to be among all Parties, all
19 Members. In this society, the society we are in, I believe the
20 best functioning government would be a coalition government in
21 this society that we are in.

22 COMMISSIONER HICKINBOTTOM: I do understand that
23 observation.

24 So, is your point that the current system of
25 government, which has, you say, huge amounts of power in the

1 Premier and in the elected Ministers, and I think this is
2 right--you'll correct me if I'm wrong because you will have the
3 numbers, but I think in the previous administration, the NDP had
4 11 members to two?

5 THE WITNESS: Right.

6 COMMISSIONER HICKINBOTTOM: And so, that was, as you
7 say, power very, very much focused somewhere in the NDP. After
8 the election, 9:4, power focused very much somewhere else and,
9 therefore, that in some way results in stable policies?

10 THE WITNESS: Even if you take the contrast--take the
11 contrast between the 11:2 that the NDP had and the 9:4 that this
12 Government has, which is now 10:3, even as it is right now
13 because the Premier can't pick up the phone and call the leader
14 of the Opposition and say, "Let's do this". or, "I plan on doing
15 this". and it happens where the leader of the Opposition now has
16 to consult because it's three bodies in the Opposition, or else
17 he would be on his own, he'd be out there by himself. I don't
18 think he wants to be there. He wants us to work together. For
19 us to work together in the Opposition, there must be
20 consultation. And that's the point I'm trying to make. Even
21 that makes it better than two guys getting together on the phone
22 and making a decision.

23 COMMISSIONER HICKINBOTTOM: And I understand the
24 point, yes. Thank you.

25 BY MR RAWAT:

1 Q. One of the other points--before we leave committees,
2 you make is--

3 A. Well, before we leave the committees, Mr Commissioner,
4 if I may, you mentioned the Public Accounts Committee. The
5 Public Accounts Committee, what I said in that regard is and I'm
6 saying now, we need to have a Public Administration and
7 Appropriations Committee, PAAC, which will examine public
8 expenditures on an ongoing basis. While the PAC has an ex post
9 responsibility, essentially examining the accounts after the
10 fact, after the expenditure has taken place, in our case, it's
11 probably years down the road. I think probably we have--we have
12 the audited accounts of 2017, something like that.

13 COMMISSIONER HICKINBOTTOM: They're outstanding, I
14 think, yes.

15 THE WITNESS: Yes, sir.

16 And if we had a Public Administration and
17 Appropriations Committee to make sure that spending is in line
18 with the budgeted--the budget that they gave--the budget? Yes.
19 Would serve the country better because, at the end of the year,
20 we have money that has not been spent, projects that have not
21 been developed. Who is making sure that these things happen?
22 There isn't a committee for oversight in such matters.

23 BY MR RAWAT:

24 Q. And you make the point that the Public Accounts
25 Committee, this House of Assembly, does not sit in public?

1 A. No.

2 Q. In principle, are you in favor of all committees
3 sitting in public?

4 A. I don't know about all. I know about the Public
5 Accounts Committee. I'm in favor of that being public. I would
6 say that if it's going to be--if it's going to be public, it has
7 to--it has to be known by all that this is what's going to
8 happen. You can't have a public hearing tomorrow of people who
9 has projects or whatever it is yesterday, they were not aware
10 that this is what's going to happen. But once they become aware
11 that this is what's going to happen, then I'm in favor of that.

12 Q. And you've said that your view is that a coalition
13 government is the best form of government for this jurisdiction.
14 Do you--given the flaws you've identified in the committee
15 system in the current House of Assembly, is improvements in that
16 system, in your view, dependent upon ending up with a move
17 towards coalition government becoming the norm?

18 A. If things remain the way they are, if the system
19 remains the way they are, outside of the addendum that I've
20 submitted, then yes. With the addendum that I've submitted, you
21 don't need to have a coalition government. It's built into the
22 system.

23 Q. Your alternative proposal creates coalition as a
24 situation, the permanent state of affairs?

25 A. Even if it's not a coalition, the diversity is so

1 great you can't avoid having discussions, negotiations, and
2 such.

3 Q. So, you favor a system that effectively promotes
4 bipartisanship--

5 A. Absolutely.

6 Q. --and consultation?

7 A. Absolutely.

8 Q. Can we look at some of the detail of the alternative
9 proposal, please, Mr Fraser.

10 What you've suggested is--I'm going to try and
11 summarise it, and please correct me if I get it wrong, and also
12 if you want to add detail, please do so. But the Parliament of
13 the Virgin Islands just consists of a House of Representatives
14 and a Senate?

15 A. Right.

16 Q. And that in terms of the House of Representatives,
17 there will be nine Electoral Districts as they are now.

18 A. Yes.

19 Q. So, nine Representatives will be returned, one for
20 each District.

21 A. Right.

22 Q. But what you are proposing is a change to the at-large
23 system?

24 A. Yes.

25 Q. And what--

1 A. Which by the way I'll prefer to see gone but because
2 of the certain dynamics and intricacy, I think this is more
3 palatable for people, out of the 13 plus 4--of the 13 Districts.

4 Q. That would be your ideal?

5 A. Ideal would be just Districts.

6 Q. Yes.

7 A. And get rid of the at-large system.

8 Q. And flaws do you see in the current at-large system?

9 A. Purpose. I haven't been able to determine the
10 purpose, except for what it was intentionally intended to be.
11 The only purpose I see in the at-large system is what it was
12 intended to be, and that was to create diversity, which it
13 didn't, and other than that, no other purpose.

14 Q. What your alternative proposal is that, rather than
15 have at-large--four at-large seats, you will divide the Islands
16 into three regions.

17 A. Yes.

18 Q. And there will be three representatives, one for each
19 region. And then the fourth seat would be the only at-large
20 candidate, and that person would be a full Member of the House
21 and would take on the role of Speaker?

22 A. Yes.

23 Q. What you also say, I think, about these Regional
24 candidates, so that would be--that would include the person
25 slated to be the Speaker, is that none of the four would be

1 associated with or a part of any political party contesting the
2 District seats?

3 A. That is--that is represented by any of the Members
4 contesting a District seat.

5 Q. So--

6 A. They can have a Party of their own--the four of them
7 could have a Party of their own, or they could be Members of any
8 Party except they can't be Members of any Party that has persons
9 contesting for those District seats.

10 Q. So, if you are a Party leader, you have to choose:
11 You either go for the Regional seats or you go for the District
12 seats?

13 A. Right.

14 Q. And so, what you would introduce is, I suppose--this
15 is your way of introducing diversity?

16 A. Yes. And that's what the at-large system was intended
17 to be. When it was conceived that they would have four people
18 running at-large, they were thinking--their thoughts were that
19 these four people would just be totally independent of what
20 existed, the Parties that were there before, who had their
21 Members running for Districts, and these four people come into
22 the House, whether they were together or they were separate, and
23 they will have independence.

24 What happened was that the Party leaders at the time
25 decided to, okay, get four people doing at-large on their

1 ticket, and it has been that way ever since, and I don't think
2 too many people understand that that's not the way it was
3 supposed to be.

4 Q. Under your alternative system, a Party--the Premier
5 still gets selected from the membership of the House of
6 Representatives for which he is recommended by majority?

7 A. Yes.

8 Q. Under your system, would the Premier still appoint the
9 Cabinet, still appoint junior Ministers?

10 A. Yes, he will.

11 Q. So, for someone to become a Premier, they would have
12 to run for the District seats, wouldn't they?

13 A. Yes.

14 Q. And they would have to hope, if they got all nine
15 District seats, then wouldn't you be back into the situation
16 that you are now where you have a Premier with very great
17 powers?

18 A. That becomes a big "if" now.

19 Q. What makes it a big "if"?

20 A. The challengers would be greater.

21 Right now--definitely, you're going to have at least
22 three groups competing. You're going to have those at-large,
23 you're going to have the Opposition, the other part--two
24 Parties, three groups competing as opposed to two groups
25 competing right now. So we know for a fact that up to four

1 at-large that we're going to end up with, that's not part of the
2 Government's group. And it's not going to be part of the
3 Opposition's group, whoever the Opposition is. It's a separate
4 group of people in there, 4 out of 13, so we've already--we have
5 already almost crossed the Bar 4 of 13. How much do we need in
6 order to keep the Government in check?

7 And besides, we've got the Speaker, who is independent
8 as opposed to the way it is right now.

9 Q. What you've said is that the Regional candidates
10 cannot be associated with a Party that's putting up District
11 candidates.

12 A. Right.

13 Q. But does your system envisage, if you assume that
14 Party A wins the District elections, Party B gets the Regional
15 seats, would your system still allow those two Parties to form a
16 coalition, for example?

17 A. They can. They can form a coalition. And like I
18 said, with the coalition, the way the coalition is going to work
19 is that we have to--there are trade-offs. You can't just jump
20 right up and do it. We have to discuss it, we have to agree on
21 it, with a coalition, because up to nine seats, one Party would
22 have to win five, six, seven seats. One Party would have to win
23 seven out of nine seats in order to form the Government. And
24 then after they form the Government with those seven seats, they
25 have to contend with two Parties, the other Party that won the

1 two seats plus the one that won the four seats at-large.

2 So, it's not that simple as it is--it's not as easy as
3 it is right now to conceive of a policy, take it to Cabinet,
4 come to the House of Assembly and just get a rubber-stamp.

5 Q. And how does your system deal with the problem you've
6 identified that communities are effectively chaired by the
7 Government?

8 A. Simple. The Ministers will not be chairing any
9 Committee, any Committee Ministers will not be chairing. Right
10 now we have the Standing Orders Committee chaired by a Minister.
11 It's not the only time, it's always been the case. But emerging
12 from the Standing Orders Committee will definitely be a
13 government policy emerging from it because it's shared by a
14 Minister.

15 Q. The other aspect of your alternative system, as I
16 mentioned, is a Senate, which you would have a seven Member
17 Senate with one President, and I think the Senate would be
18 elected on a regional basis, so each region would elect two
19 Senators.

20 A. Yes.

21 Q. Giving you a total of six, and the Senate President,
22 who would both preside and be a full number of Senate--

23 A. Right.

24 Q. --would again be elected from an at-large balloting.

25 So, in each case, the presiding officer of your House

1 of Representatives and your Senate will be the one at-large
2 candidate that will be retained in your system; is that right?

3 A. Right.

4 Q. In that case--and that's in your system. In terms of
5 dealing with legislation, can you explain to the Commissioner
6 how the two Houses of that Parliament would interact.

7 A. Yes.

8 A Bill could originate from either house, except for a
9 Money Bill, and the Bill must be passed by both houses in order
10 to get a cent, except that if the Senate rejects a Bill for some
11 reason on two occasions, two occasions, the House of
12 Representatives, can in fact advance that Bill towards the
13 Senate. So, there is no--there is ample time and room for
14 discussions, negotiations, and agreements over a Bill as opposed
15 to what happens now. I mean, we can have Bills right now, three
16 meetings and one sitting, and we could have Bills that, you
17 know, comes to the House of Assembly with zero amendments,
18 despite what others might think. I don't see that happening
19 under this system.

20 And the Senate will have committees as well for
21 oversight, and they will have joint sessions when called. Both
22 houses are technically equal except that the House of
23 Representatives will be basically--the relationship will be
24 almost basically to that of the United Kingdom. Someone has to
25 take the lead, and it's going to come from the House of

1 Representatives.

2 Q. And in terms of the makeup of your Senate, could that
3 come from any Party?

4 A. Yes.

5 Q. You wouldn't have to choose as you would when running
6 for the House of Assembly, and there wouldn't be any--you
7 wouldn't--it would just be all Parties could run for the Senate.

8 A. Yes.

9 Q. So, there wouldn't be any machinery at that level for
10 introducing diversity in the way that you proposed with the
11 Regional candidates?

12 A. No. The Senate will be--just any Party can field
13 candidates, one Party can win all the seats, and--the purpose of
14 the Senate is primarily to bring diversity to the electoral
15 system.

16 Q. And what you've proposed is that the House of Assembly
17 would have a fixed term of five years?

18 A. Yes.

19 Q. But the Senate would--the Senate's membership would
20 not run in parallel with that but would be on a rotating basis?

21 A. Right.

22 Q. So, if--so, every two-and-a-half years there would be
23 elections for half of the Senate?

24 A. Right.

25 Q. So, the two houses of Parliament would not run

1 parallel to each other. There would be--and that's the way you
2 would introduce diversity in the Senate?

3 A. The two houses can run parallel. It's just that in
4 the Senate they will have election two times to the House once.

5 Q. I see.

6 A. Only half of Senate would have election.

7 Q. Except for you would keep your President for the full
8 five-year term?

9 A. Right.

10 Q. I see.

11 Save for the introduction of the Senate, overall, the
12 size of your House of Assembly doesn't change?

13 A. Doesn't change.

14 Q. You've still got 13, I suppose it goes down by one,
15 doesn't it, because you haven't got an appointed Speaker
16 anymore, you have an elected Speaker?

17 A. Well, this person who is elect--this one that we speak
18 of, that's why I say is a full Member of the House. He has full
19 voting rights and all that.

20 Q. But at the moment, you have nine District candidates,
21 four territorial, a Speaker can be appointed, and then you have
22 the ex officio Attorney General, which gives you your 15.

23 A. And we can--and we can also elect a Speaker from
24 within.

25 Q. From within your--but what your alternative system

1 would do would be--

2 A. Eliminate that--

3 Q. The possibility of appointing a Speaker?

4 A. I'm saying it.

5 Q. Do you see any benefit in widening the size of the
6 House of Assembly?

7 A. From what it is now?

8 Q. Yes.

9 A. The benefit would be for the same thing I mentioned:
10 Diversity. But just doing it just for the sake of doing it,
11 it's not--it's not something that I would subscribe to. I would
12 subscribe to having two Districts, which is Joost Van Dijk and
13 Anegada, making it 11 Districts as opposed to the nine that we
14 have right now. And period, end it right there. Like I said,
15 we had four at-large seats as it is right now, and trying to do
16 that, trying to eliminate them would not be the easiest thing in
17 the world to do, so we have to make a--we have to find a way to
18 accommodate them.

19 Q. So, in terms of expansion of the House of
20 Representatives, the furthest that you would go is going from 9
21 to 11 Districts?

22 A. I can't justify anything other than that. I have to
23 make a case for making Anegada and Joost Van Dijk a District,
24 which the case is easy to make, but I can't justify breaking up
25 any other Districts. I see nothing wrong with managing the

1 Districts the way they are right now.

2 Q. Thank you.

3 MR RAWAT: May I just have a moment?

4 COMMISSIONER HICKINBOTTOM: Certainly, yes.

5 MR RAWAT: Commissioner, those are my questions. Can
6 I conclude firstly by thanking The Honourable Fraser for coming
7 here and developing the points set out in his Position
8 Statement, but also for the detail that he's given and the way
9 he's given his evidence this afternoon.

10 COMMISSIONER HICKINBOTTOM: And again, can I echo
11 that, too. Thank you, Mr Fraser. Very interesting, very
12 helpful. Thank you for your time.

13 THE WITNESS: Thank you.

14 (Witness steps down.)

15 COMMISSIONER HICKINBOTTOM: Good. Mr Rawat?

16 MR RAWAT: We start again at 10:00 tomorrow.

17 COMMISSIONER HICKINBOTTOM: Good. Thank you very
18 much.

19 (Whereupon, at 4:15 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