

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 17

(WEDNESDAY 23 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) appeared for various BVI Government Ministers and public officials.

Mr Daniel Fligelstone Davies of Silk Legal appeared for those members of the House of Assembly who are not members of the Government.

Counsel to the Commission Mr Bilal Rawat also appeared.

Mr Mark Collins QPM gave evidence.

Mrs Tiffany Scatliffe Esprit LL.M gave evidence.

Mr Ian Penn gave evidence.

Mr Wade Smith gave evidence.

Hon Marlon A Penn gave evidence.

David D Archer, Jr gave evidence.

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Those present:

Session 1

Mr Bilal Rawat

Mr Mark Collins QPM

Mr Ian Penn

Mr Wade 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 Bilal Rawat

Mrs Tiffany Scatliffe Esprit LL.M

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 3

Mr Bilal Rawat

Mr Ian Penn

Mr Wade Smith

Ms Juienna Tasaddiq, Assistant Secretary 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 4

Mr Bilal Rawat

Mr Wade Smith

Ms Juienna Tasaddiq, Assistant Secretary 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 5

Mr Daniel Fligelstone Davies, Silk Legal

Mr Bilal Rawat

Hon Marlon A Penn

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 6

Mrs Jo-Ann Williams-Roberts, Solicitor General

Mr Bilal Rawat

Mr David D Archer, Jr

Ms Juienna Tasaddiq, Assistant Secretary 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

1
2
3 COMMISSIONER HICKINBOTTOM: Good morning, everyone.
4 I'm sorry about the slight delay in starting, which was a delay
5 caused by various logistical things.

6 This morning, we hope to hear evidence from four
7 witnesses: First the Commissioner of Police, Mark Collins, and
8 in relation to some of the matters that he's raised in his
9 Position Statement and about which he will hopefully answer some
10 questions, there's an overlap with the Position Statements and
11 evidence of Mr Wade Smith and Mr Penn, who are here, and thank
12 you for coming this morning.

13 MARK COLLINS QPM, COMMISSION WITNESS, CALLED

14 COMMISSIONER HICKINBOTTOM: We will have, I think,
15 just a few questions for you later on this morning. But
16 immediately after Mr Collins, we propose to take the evidence of
17 the Director of Public Prosecutions, and so, if you could kindly
18 stay during Mr Collins's evidence and then when that's finished,
19 very happy for you to go and come back if you wish or stay if
20 you wish, and hopefully we'll give you a time when we'll take
21 your evidence. But we are hoping that all of this evidence will
22 be concluded this morning.

23 Yes, Mr Rawat.

24 MR RAWAT: Thank you, Commissioner.

25 Can I ask, first of all, if Mr Collins could be

1 invited to either take the oath or affirm.

2 THE WITNESS: Yes. I swear by Almighty God that the
3 evidence I give shall be the truth, the whole truth, and nothing
4 but the truth.

5 COMMISSIONER HICKINBOTTOM: Thank you.

6 BY MR RAWAT:

7 Q. Mr Collins, thank you for coming to give evidence this
8 morning. There are some formalities that we start with, with
9 all witnesses, and the first one is to ask you to give the
10 Commissioner your full name, please.

11 A. Mark Collins.

12 Q. And your professional address?

13 A. As Commissioner of Police.

14 Q. And where are you based?

15 A. At the Royal Virgin Islands Police Force.

16 Q. I try, and I tell this to all witnesses, to keep the
17 questions short and simple. It doesn't always work, but if at
18 any time I ask you a question that you have any difficulty
19 understanding, please ask me to repeat it or rephrase it, and
20 I'll try and do so. There are a couple of bundles--

21 (Pause.)

22 Q. What I should say in relation to the microphone,
23 Mr Collins, is it doesn't amplify your voice. It merely
24 records, and so it is important just to keep your voice up nice
25 and loud and try to speak slowly so that way your evidence can

1 be recorded.

2 As I was saying, you have a couple of bundles on the
3 table in front of you. One is your Position Statement. I
4 believe you probably brought a copy of that with you?

5 A. I have.

6 Q. If you're more comfortable referring to your own copy,
7 please do so. We may need to look at the other bundle, we may
8 not.

9 Can we start again, as I have done with many
10 witnesses, and that is to ask you to give an outline of your
11 professional background before you took up your current post.

12 A. Yes. Certainly.

13 I've been a police officer for 35 years, started as
14 Special Constable in Sussex in 1985, and I've been really a
15 career detective. I've headed up the counter-terrorism in
16 Wales. I was Deputy National Coordinator for Preventing Violent
17 Extremism in the UK, Borough Commander in northeast London, the
18 Assistant Chief Constable and Deputy Chief Constable in
19 Bedfordshire Police and, more laterally, the Chief Constable for
20 the last five years in Dyfed-Powys Police in the UK.

21 Q. And is it right, you're a recipient of The Queen's
22 Police Medal?

23 A. I'm also a recipient of The Queen's Police Medal;
24 that's correct.

25 Q. And what date were you appointed as the Police

1 Commissioner of the Royal British Virgin Islands Police Force?

2 A. I started on the 15th of April of this year and was
3 sworn in formally on the 19th of April.

4 Q. Thank you.

5 I just want to, for the Commissioner, ask you just to
6 sort of outline your role, and if you want me to take you to the
7 Constitution, I can do so. But 57(4) of the Constitution says:
8 "The Commissioner of Police shall"--do you want--I'll take, if
9 you look at that bundle to page 31, please.

10 A. Yes.

11 Q. And if you look at subsection 4, "Commissioner of
12 Police shall provide regular briefings to the National Security
13 Council on matters of internal security, including Police force;
14 have responsibility for the day-to-day operation to the Police
15 force, and shall report regularly on such operation to the
16 Governor". And last, "inform the Premier of any significant
17 security developments in the Virgin Islands including the
18 occurrence of any significant criminal activity".

19 Now, that section relates to the National Security
20 Council, so first of all, you sit on the Council as an ex
21 officio Member; is that right?

22 A. I have. I do. I've been sworn in. I've attended one
23 meeting so far.

24 Q. But would you say that section 57(4) encapsulates your
25 role as Police Commissioner?

1 A. Yes.

2 Q. And in that role, are you, in effect, the National
3 Security Advisor for the Virgin Islands?

4 A. Yes.

5 Q. You--and this is something I want to come back
6 to--you've set out the Governor's structure relating to
7 different entities of law enforcement in the Virgin Islands, but
8 from your perspective as Police Commissioner, who do you report
9 to?

10 A. The Governor.

11 Q. One of the points you make is that you try to work
12 collaboratively with other agencies. Is that an unofficial
13 collaboration or is there a forum where different agencies with
14 an interest in law enforcement and justice can come together?

15 A. Well, we have the Joint Task Force, and colleagues are
16 here, Mr Wade and Mr Penn. We meet weekly to just discuss the
17 activities of the Joint Task Force. I alluded in my Position
18 Statement that I wanted to review some of the structure and
19 workings of the Joint Task Force.

20 Since I've started the role, I've put a Chief
21 Inspector in charge of my Marine Unit, and I think the unit
22 needs to be more intelligence-driven and intelligence-led.

23 Q. Can I come back to that if I may?

24 A. Yes.

25 Q. Just generally, you've got the Joint Task Force as a

1 forum for agencies to come together. Are there any others?

2 A. That's the main--that's our main collaborative
3 working.

4 Q. Right.

5 One of the--I think one of the other groups that you
6 refer to is the criminal advisory justice group?

7 A. Yes. The Governor chairs the Criminal Justice Board
8 that I also sit on, not really collaboratively working, but it's
9 a Board that gives you the opportunity to discuss the workings
10 of justice on the Islands, yes.

11 Q. All right. And who else sits on that Board?

12 A. DPP, and other colleagues as well. I've not got the
13 full list in front of me. Again, I've only attended one of
14 those meetings so far.

15 Q. Thank you.

16 Well, let's go to page 1 of your Position Statement.
17 One of the questions you were asked--or the first question you
18 were asked was how are the agencies of law enforcement and
19 justice organised in the BVI? And you then set out, if you
20 like, the sort of architecture of it all.

21 The first one was that the Police, for example, sit
22 under the Governor and Deputy Governor. You explained that
23 Customs, Immigration, and the DPP come under the British Virgin
24 Islands Government. Customs fall under the Ministry of Finance.
25 Immigration sits jointly under both the Deputy Governor and the

1 Premier's Office. The Financial Investigative Authority sits as
2 an executive agency under the Deputy Governor's Office and the
3 Premier's Office. And there are some entities which are set out
4 in the Constitution, such as yourself and the DPP, and the
5 Attorney. Others are the products of legislation.

6 You conclude by saying: "There is a Joint Task Force
7 consisting of officers from Customs; the RVIPF"--that's
8 yourself--"and Immigration".

9 And you say this: "I would question the operational
10 effectiveness and value for money the unit provides, and I have
11 commissioned a review".

12 Now, when you're referring to the value for money the
13 unit provides, is that correct a reference to the Joint Task
14 Force?

15 A. Yes.

16 Q. And who have you commissioned the review from?

17 A. Well, what I started to do is to look at the
18 operational effectiveness. As I've said, I've asked for weekly
19 returns now from the Marine Unit and the Joint Task Force, and
20 will continue to review that operation activity. Then I intend
21 to speak with Mr Penn and Mr Wade about commissioning a proper
22 review of the activities of the Joint Task Force.

23 COMMISSIONER HICKINBOTTOM: I'm sorry to break in:
24 The Marine Unit, that's the Police Marine Unit?

25 THE WITNESS: Yes.

1 COMMISSIONER HICKINBOTTOM: And the Joint Task Force.

2 THE WITNESS: Yes.

3 The Police Marine Unit runs separately to the Joint
4 Task Force, but my Marine Unit offices on a rotating basis work
5 on the Joint Task Force as well. So, the concern for me is it
6 sometimes it does deplete my Marine Unit availability.

7 COMMISSIONER HICKINBOTTOM: I understand that.

8 Where you say to assess operational effectiveness,
9 you've asked for weekly returns from the Marine Unit and the
10 JTF. What were the Reports that you were receiving before you
11 asked for weekly returns?

12 THE WITNESS: I wasn't getting any reports at all.

13 COMMISSIONER HICKINBOTTOM: No reports on
14 effectiveness?

15 THE WITNESS: No.

16 COMMISSIONER HICKINBOTTOM: Thank you.

17 BY MR RAWAT:

18 Q. The operation of the Joint Task Force was something
19 that both Mr Smith and Mr Penn have already given evidence about
20 to the Commissioner in earlier hearings which were earlier held
21 in private, but the Transcripts of which are now available on
22 the COI's Web site.

23 You sit as a Member of the Task Force. You don't
24 Chair it; is that right?

25 A. No. Mr Smith is the current Chair.

1 Q. Within the framework of the Joint Task Force, which
2 seems to be the main body by which three agencies can come
3 together, how effective have you found the liaison between the
4 different agencies?

5 A. At our level it's very good. I mean, I speak to
6 Mr Wade and Mr Penn on a weekly basis, and we come together with
7 the Governor's Office, as I say, weekly on a Thursday for a
8 Joint Task Force meeting. At that level it's very good. My
9 concern is the operational level and the day-to-day running of
10 the unit.

11 Q. And the resources that are allocated to the Joint Task
12 Force effectively mean a loss to you and specifically to your
13 Marine Unit?

14 A. Yes.

15 COMMISSIONER HICKINBOTTOM: Again, I'm sorry to go
16 back, but to the weekly reports, you say you've asked for weekly
17 returns from the JTF. And what data--what sort of data do those
18 returns--

19 THE WITNESS: Well, what we want to see is the general
20 activity on the water, so intelligence-led taskings,
21 interactions with vessels on the water, routes that they've
22 taken, training activities, you know, to be fully confident that
23 we are getting value for money and we're--

24 COMMISSIONER HICKINBOTTOM: What's going on?

25 THE WITNESS: Yes, exactly.

1 COMMISSIONER HICKINBOTTOM: And I assume that the
2 joint working is particularly important because of the nature of
3 the Territory, which is in the middle of an ocean, lots of
4 islands, so the joint working is understandable.

5 THE WITNESS: Border security is a top priority.

6 COMMISSIONER HICKINBOTTOM: Border security is a top
7 priority. And it's border security in terms of the sea?

8 THE WITNESS: Yes, indeed.

9 COMMISSIONER HICKINBOTTOM: Thank you very much.

10 BY MR RAWAT:

11 Q. And picking it up from the Commissioner's last point,
12 is part of that review going to look at not only whether border
13 security is effective, but also operationally how it's working
14 if somebody does get through the border? I mean, you're not
15 going to necessarily--with the best will in the world as three
16 agencies working together, it's not necessarily guaranteed that
17 you will stop everything and everyone coming through the
18 border--

19 A. I'm sure we don't.

20 Q. But there are other points at which you can intersect?

21 A. Yes.

22 Q. Including, for example, when something lands on the
23 shore?

24 A. Yes.

25 Q. Something is dropped off on a beach or wherever or in

1 a deserted spot. And is your review going to pick up on that?

2 A. Yes. I've not discussed it in great depth with Mr
3 Penn or Mr Smith as yet. As I say, I only, two weeks ago,
4 appointed a Chief Inspector into the unit. He's carrying out
5 the review for me, will report back to me, and then we'll go
6 look at some wider reviews with other colleagues.

7 COMMISSIONER HICKINBOTTOM: And again, this is
8 probably a completely obvious point, but in terms of border
9 security, you're concerned with people and contraband?

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: Those are the two things--

12 THE WITNESS: Yes.

13 COMMISSIONER HICKINBOTTOM: --you're concerned with,
14 all officers?

15 THE WITNESS: All officers, yes.

16 COMMISSIONER HICKINBOTTOM: Thank you.

17 BY MR RAWAT:

18 Q. I summarised your position statement and your response
19 under this question. It is--has been published on the Inquiry's
20 website so others can read it.

21 A. Um-hmm.

22 Q. But you conclude by, in your answer to Question 1:
23 "With this recommendation"--and I quote--"complete review of
24 government structures across all Departments. As you can
25 appreciate from the aforementioned precis, the lines are very

1 blurred as regards accountability and reporting".

2 Now, "across all departments", when you were referring
3 to departments, were you are referring to the sort of agencies
4 that you've listed in your answer?

5 A. Yes, really, what I found quite frustrating coming
6 into the role is the fact that we've got the Governor's office,
7 the Deputy Governor's office, the Premier's Office, and we'll
8 probably come on to it as I give my evidence, but, you know,
9 simple things like filling a vacancy can take me months and
10 months and months. Simple things like requiring funding to fix
11 a broken boat or to buy a piece of kit or equipment can takes
12 months and months, and the system, I think, I respectfully
13 suggest, does need to be reviewed.

14 Q. Well, perhaps we will get on to funding and
15 recruitment, so perhaps when we do, you can perhaps work in some
16 of the--more of the detail on this in response to specific
17 questions.

18 But if the lines are very blurred regarding
19 accountability and reporting, in your opinion, what risks does
20 that carry?

21 A. Well, first of all, operationally, it's very difficult
22 because I'm sometimes reporting to the Governor's Office and
23 then having to re-report to the Deputy Governor's office, and
24 then it's slightly disjointed.

25 So, for instance, I report to the Governor directly on

1 a weekly basis. Some things that I discuss and agree with him
2 then need to be reverted back through to the Deputy Governor's
3 office because they've got primacy over that side of business,
4 if you like, so it does become quite difficult.

5 And, you know, operationally, it's time-consuming,
6 it's unnecessary, and it's overly bureaucratic.

7 Q. I see. In relation to your function, I mean, you've
8 said earlier that you answer to the Governor, and the Governor
9 has responsibility for security matters, doesn't he?

10 A. Yes, yes.

11 Q. So, what functions specifically do you have to report
12 to the Deputy Governor in relation to?

13 A. So, that will be all--basically funding.

14 Q. Right.

15 A. So, an example would be if I need to go away on
16 business, I need to submit a report, although the Governor would
17 agree it, I need to submit a report through the Deputy
18 Governor's office to be rubber-stamped and agreed. If I want to
19 recruit, all that will go through the Deputy Governor's office.

20 And then, of course, I also alluded to the Police
21 Commission as well, which is another function, and that needs to
22 be joined up, then, with my own HR Department, with the Police
23 Commission, with the Deputy Governor's office, and it does
24 become quite difficult to get business done.

25 COMMISSIONER HICKINBOTTOM: In terms of funding, you

1 say you go to the Deputy Governor's office.

2 THE WITNESS: Yeah.

3 COMMISSIONER HICKINBOTTOM: For approval.

4 THE WITNESS: Yes.

5 COMMISSIONER HICKINBOTTOM: But then presumably it
6 goes to the Treasurer or the Ministry of Finance.

7 THE WITNESS: Exactly, exactly.

8 COMMISSIONER HICKINBOTTOM: The Ministry of Finance
9 who holds the purse strings?

10 THE WITNESS: Yes. So, every vacancy that I've got
11 would need to be requested through the Deputy Governor's office
12 and then on to the Ministry of Finance then for approval.

13 COMMISSIONER HICKINBOTTOM: Yes.

14 THE WITNESS: And that's even with the vacancy that
15 I've got is what I would call a full-time equivalent.

16 COMMISSIONER HICKINBOTTOM: So, you've got the budget
17 funding? You've got the grounds?

18 THE WITNESS: I've got the agreement. There's my
19 full-time equivalent makeup.

20 COMMISSIONER HICKINBOTTOM: Yes.

21 THE WITNESS: But yet I need to still--so, if a police
22 officer retires or transfers somewhere else, I need to get
23 authority to recruit into that post, and that can take months.
24 You know, I'll eventually make the point I'm running on 67
25 vacancies which effectively is a fifth of my workforce.

1 COMMISSIONER HICKINBOTTOM: What is your force? What
2 is your total force approximately?

3 THE WITNESS: 270 officers, is my understanding, is
4 270.

5 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat.
6 I think this is in your Position Statement?

7 THE WITNESS: Yeah.

8 And the 67 vacancies are not all Police Officer
9 vacancies. Some are civilian staff as well.

10 COMMISSIONER HICKINBOTTOM: I understand, yes.

11 BY MR RAWAT:

12 Q. So, what is your total staff complement if you were
13 fully staffed? What would you have? You'd have 270 officers?

14 A. Yeah.

15 Q. And then in terms of support staff, what would you
16 have?

17 A. I think it's around 75 or 80. I've not got that in
18 front of me, sorry.

19 Q. And so--I mean, we're talking probably around 350
20 employees if fully staffed?

21 A. Um-hmm.

22 Q. And within that, you've got 67 current vacancies?

23 A. Yeah.

24 Q. In terms of officers, where would you be recruiting
25 from? Where can you recruit from?

1 A. Well, we recruit locally, obviously from the BVI. We
2 recruit from other overseas Territories and jurisdictions, and
3 we also receive transferees from other forces as well in the
4 Overseas Territories.

5 A number of posts come from the UK. My head of
6 intelligence is a UK post. The Detective Chief Inspector in
7 charge of some of the covert work and intelligence work is a UK
8 post.

9 And then we receive other officers to assist as well.

10 Q. And is that--you can bring in--can you bring in
11 officers on a case-by-case basis?

12 A. Following an application process that we've just
13 referred to.

14 Q. Right.

15 So--

16 A. That I have to justify it and give the reasoning.

17 Q. So, there are specific posts that are UK posts?

18 A. Yes.

19 Q. That require perhaps a specific expertise?

20 A. Yes.

21 Q. And then you can recruit more widely generally?

22 A. (Witness nods.)

23 Q. And then if you wanted an officer or officers for a
24 particular task--

25 A. Yeah.

1 Q. --you'd have to go through the--well, all those roads
2 lead you to the same--

3 A. Avenue of--

4 Q. Of recruitment and process which, in your experience,
5 and from your understanding, speaking to others, can take an
6 awfully long time?

7 A. Yeah.

8 And I think what I would be suggesting is, you know, I
9 need to have an operational budget that I can manage and be held
10 accountable for, of course, but, you know, the very nature of
11 managing that budget with a director of finance, you know, I can
12 buy the kit and equipment that I need and I can recruit to the
13 post that I need to recruit to because the other big issue I've
14 got is I've got some very, very, good local officers here, very
15 good, but they lack training and development, so some of the UK
16 officers that are coming out here are mentoring and assisting in
17 developing, but I need to provide them with the specialist
18 courses that they need to do to fulfill the roles, and sometimes
19 that funding is--it's just not there.

20 COMMISSIONER HICKINBOTTOM: In terms of UK officers or
21 officers from outside the Territory, particularly UK officers,
22 UK support, you've mentioned recruiting UK officers into the
23 force as officers to do various things.

24 THE WITNESS: Yeah.

25 COMMISSIONER HICKINBOTTOM: But does that include, as

1 it were, systemic support? You refer in your Position Statement
2 to a review of Professional Standards, and you're seeking
3 assistance from the UK. That sort of broader assistance than an
4 officer coming in and taking--

5 THE WITNESS: Yeah, so I think what I'm saying is that
6 the officers are coming in as specific to roles and functions of
7 the organization.

8 COMMISSIONER HICKINBOTTOM: Yes.

9 THE WITNESS: But, you know, when I talk about review
10 of Professional Standards, I need to bring somebody in with good
11 Professional Standards knowledge of, you know, the Code of
12 Conduct, of the Code of Ethics, and really to set me up a
13 professional standards Department that's going to be fit for the
14 purpose going forward.

15 COMMISSIONER HICKINBOTTOM: Yes. And that, almost by
16 definition, needs--that expertise needs to come from outside the
17 Territory.

18 THE WITNESS: Definitely, yes.

19 COMMISSIONER HICKINBOTTOM: Yes.

20 And is there any difficulty in your doing that?

21 THE WITNESS: No. I've already had conversations with
22 colleagues, certainly discussed it with the Governor, discussed
23 it with FCDO, great support there, and we'll be looking to bring
24 someone in as soon as I possibly can to carry out that function.

25 COMMISSIONER HICKINBOTTOM: Okay. Thank you. Thank

1 you very much.

2 BY MR RAWAT:

3 Q. You mentioned--and this is moving on to your Question
4 2, where you address the work of the Police Service Commission,
5 and your understanding of what its purpose is, is essentially to
6 be a community voice?

7 A. Well, that's possibly what I think it should be more
8 of. You know, I have great respect for the Police Commission.
9 They appointed me after all--and, you know, and I've already had
10 one meeting with them and due to have another one next week, and
11 my relationship with them going forward is really important. I
12 allude in my Statement to the fact that I see them as what I
13 would call in the UK the old Police authority and--but they
14 lacked some of that Police authority, so they don't hold me to
15 account for finance, for any of the operational activity.

16 But they have a very strong role in the recruitment
17 and retention of officers of the RVIPF. So all appointments
18 above the rank of Chief Inspector are made by the Police
19 Commission--sorry, they are selected by the Police Commission
20 and then finally sanctioned by the Governor for an appointment.

21 So, as the Chief of Police, you know, effectively
22 appointing some of the senior ranks, I don't have a role to play
23 in that, and I think that does need to be reviewed.

24 Q. So, if I can try and summarise it, the way the Police
25 Service Commission currently works is, as you understand it, is

1 that it has a major role in making recommendations for in terms
2 of recruitment?

3 A. Yeah.

4 Q. But there is no input from you as Commissioner in
5 terms of their selection.

6 A. That's right. Everything above the rank of Chief
7 Inspector is carried out by the Police Commission.

8 Q. Would you still see a role for the Commission going
9 forward in doing that, or would you--would you rather a state of
10 affairs where you were able, as Commissioner, to make
11 recommendations?

12 A. I think going forward, a promotion process above the
13 rank of Chief Inspector should be chaired by myself or the
14 Deputy along with someone from the Police Commission, someone
15 from the Police Welfare Association, and probably someone from
16 an external agency to sit on the Board as well.

17 Q. Right.

18 But where you do think a Police Service Commission can
19 bring added value is firstly by being, if you like, the voice of
20 the community having a direct access to a Police Commissioner?

21 A. No doubt, no doubt.

22 Q. But also--and it's not the present state of affairs
23 being the body that holds you to account on a quarterly basis
24 for the way you spend an operational budget?

25 A. No. I don't think they hold me to account at all. I

1 think--I say that but, of course, I would want to work
2 collaboratively with them, so I would want to be telling them
3 about what we're doing in, you know, sort of initially my first
4 meeting with them was to talk about the reintroducing of
5 community policing, some of the work we do around CCTV cameras,
6 some of the works we're doing with rotating policing unit around
7 some of the unlicensed scooters riders and cyclists and things
8 like that. So, it's important that they get a flavor of what
9 I'm seeking to achieve, what my proprietaries are, so they can
10 share that, it goes back out in the community.

11 But, you know, again, we talk about bureaucracy. So,
12 when I went recently went away on business to the U.S. for four
13 or five days, the Police Commission had to sign off, Deputy post
14 for me, and then, you know, that needed to go to the National
15 Security Council, and so that whole process is quite
16 bureaucratic again.

17 Q. I see. But they don't--my understanding of your
18 evidence is that they don't have a role in reviewing your budget
19 or testing whether you are or holding you to account against
20 that budget?

21 A. No. I'm held to account by the Governor.

22 Q. And do you think that there is value in the Police
23 Service Commission having such a role?

24 A. Well, I think that goes back to the bit about what I
25 said at the outset, which is about review of the whole

1 government structure, and I think actually to make their role
2 more meaningful, you know, that would be a better way.

3 Q. I see.

4 In terms of your responsibilities as Commissioner of
5 Police within the overall system of law enforcement and justice
6 in the BVI, is this right, that it falls to you to investigate
7 allegations that a crime has occurred?

8 A. Yeah. I mean, obviously I delegated all that
9 responsibility, but, you know--

10 Q. That's what the Police is there for?

11 A. People come to me and people regularly make contact
12 with me directly if they're dissatisfied with the service they
13 got or they want to report something directly to me.

14 Q. Does the Police Force retain any prosecutorial
15 function?

16 A. So, we have our own prosecutions Department, but those
17 files of evidence then go to the DPP.

18 Q. I see. So, is that the Police prosecution unit?

19 A. Yes.

20 Q. What's the remit of the Police prosecution unit?

21 A. File and case preparation.

22 Q. I see?

23 A. And providing advice and guidance to officers in file
24 preparation and meeting the evidence threshold.

25 Q. Are there any--taking you back--well, many, many

1 years, I suppose, if you're in England or Wales, sort of the old
2 Police Force, but are there any cases which the Police still
3 take to court?

4 A. I don't think we do now. I think we can take traffic
5 matters, and I think there is still the Commissioner's right to
6 charge without direct recourse to the DPP. Of course, that
7 would be a very strange thing to do perhaps. Again we work very
8 collaboratively with the DPP's office. We've had discussions
9 about my Police prosecutions Department, actually becoming part
10 and working alongside the DPP's office. File quality is very
11 poor leer, so there's the whole training agenda as well, but we
12 could still prosecute traffic matters, as I understand it, and I
13 still have the right to authorise the charge, if necessary.

14 Q. You say you could still prosecute, but is it--

15 A. My understanding--

16 Q. You don't do it?

17 A. Yeah.

18 Q. But in terms of the work of the Police prosecution
19 unit, its job is to--so, if there is--it prepares the file and
20 prepares the case?

21 A. Yes.

22 Q. To then submit to the DPP?

23 A. Yes.

24 Q. And from the inquiries you've made since taking up
25 your post or from your own direct experience, have you found

1 that there are any difficulties or flaws in the way that that
2 work is being done?

3 A. So, I think what I've alluded to in my statement again
4 is that a number of--well, a lot of our investigations are DPP
5 office-led, and the reason for that is again a lack of
6 experience and an over-reliance on putting a skeleton file,
7 perhaps, into the DPP and letting them come back and say where
8 the evidence gaps are, what we need to fill in. We need to be
9 much more robust at the very outset in presenting our files to
10 the DPP's office and making them as fully complete as we
11 possibly can and not over-relying on that office's support, if
12 you like.

13 Q. The DPP will fill in the gaps for you?

14 A. Exactly. Come back with a list of where the evidence
15 should be.

16 And you mentioned my experience in the UK. That would
17 never happen there because the Police Prosecutions Department,
18 you know, there would be many occasions where you'd want an
19 early dialogue with the Crown Prosecution Service, of course
20 they would, to make sure, you know, in some of the complex cases
21 that you're getting your evidence right from the very outset.
22 But actually on some of the more minor cases, criminal damage
23 perhaps, with low-level assaults, you know, officers should be
24 able to put a file of evidence in through the Police
25 Prosecutions Department and get the advice and guidance from

1 them before it goes to the DPP.

2 Q. I see.

3 And I mean, leaving aside that you can still in law,
4 prosecute, would you agree with the principle that the Police
5 shouldn't be prosecuting because of the potential conflict of
6 interest?

7 A. Definitely.

8 Q. So, you should be the investigative arm--

9 A. Yeah.

10 Q. The DPP will be the arm--

11 A. The decider.

12 Q. The ultimate decision as to whether or not to charge
13 should sit with the DPP?

14 A. Yeah.

15 Q. Does the difficulties that you've identify with in
16 relation to the Police prosecution unit, which is, it seems,
17 perhaps a consequence of a lack of training, does that cause
18 delays in taking matters to court, to trial?

19 A. Undoubtedly it will. It will.

20 Q. And is there a risk, therefore, that some cases which
21 ought to be taken to trial don't because they're just not
22 prepared properly, or they fall through the cracks or a case
23 isn't properly put together and, therefore, a trial can't be
24 run?

25 A. Or time limits have run out, or things like that.

1 Q. Yes.

2 A. I mean, the DPP would be better to answer that than
3 me, because certainly from my discussion and conversations with
4 her, I mean, that is a fact, for sure.

5 Q. And from those discussions, you don't disagree with
6 the DPP in terms of the concerns she has about--

7 A. No, we've discussed better training and working
8 collaboratively on training and things like that.

9 Q. If we go just in helping you to navigate your Position
10 Statement, I just want to take you through to your question 5.
11 Question 5 asked you: "What processes and systems are in place
12 to detect and investigate matters relating to corruption, abuse
13 of office or other serious dishonesty that may have taken place
14 in public office, include within the Police Force in recent
15 years?"

16 It's a question that's directed, I suppose, both to
17 internal mechanisms within the Police Force and then external
18 processes which would be the Police Force acting as an
19 investigative agency, so let's take the internal first.

20 The position is that you have a very small
21 professional services Department?

22 A. Professional Standards Department.

23 Q. Professional standards, yes.

24 A. Yes, one inspector and one sergeant.

25 Q. And that's something that you are keen to change?

1 A. I am.

2 Q. And that takes us back to a question that the
3 Commissioner raised with you. The way that change is going to
4 be effected is by you bringing in external support to train your
5 officers and build up a proper Department?

6 A. Yeah, without a doubt.

7 And actually I think what I've been very keen to do
8 since I arrived in office is to set out my role in terms of
9 standards and my expectations. And without going to the detail,
10 I think I've started to do that over the last few weeks in
11 office because I have got some concerns about some officers.

12 Q. And what sorts of concerns do you have?

13 A. Dishonesty.

14 And I'd like to be careful with my language here,
15 because, you know, it's a small Police Force, but, you know, on
16 any given day, 80 percent of my officers will come to work and
17 do a very good job and support and protect the communities, but
18 I have got concerns about a number of officers in terms of their
19 honesty, the way that they carry out business interests, the way
20 that they interact with the public, and when I say "the public",
21 I mean with some criminal fraternity as well. So I've got some
22 concerns, and that is why I want to review the Professional
23 Standards and be very clear about what my standards and
24 expectations are.

25 COMMISSIONER HICKINBOTTOM: As well as standards, what

1 about the systems? What systems are in place, or is it--I just
2 wondered, as well as standards, is that sufficient or are the
3 systems that are in place adequate.

4 THE WITNESS: When you say "systems"...

5 COMMISSIONER HICKINBOTTOM: Well, at the moment,
6 you've at least got concerns about particular officers.

7 THE WITNESS: Well, I've got nine officers that are
8 suspended from the force, Commissioner.

9 COMMISSIONER HICKINBOTTOM: And those are referred to
10 in the Position Statement.

11 THE WITNESS: Yeah. Nine officers that are suspended
12 at the moment, and to dictate nearly all of those, if not all of
13 them, will be facing court cases. There will be more to come,
14 and there is other investigations ongoing at the moment, so the
15 system I have is depending on the degree of the level of
16 criminality. It could either go to the Professional Standards
17 Department, my Deputy Chief Constable or Deputy Commissioner,
18 who I give the authority to, to be the appropriate authority
19 under my discretion; or, depending on the level of the matter, I
20 would need to go outside of the Territory but to potentially the
21 national crime agency or another overseas Territory to assist me
22 in an investigation.

23 COMMISSIONER HICKINBOTTOM: So, your plan is to
24 upgrade your Professional Standards Department?

25 THE WITNESS: Yes.

1 COMMISSIONER HICKINBOTTOM: To address your concerns?

2 THE WITNESS: Yes.

3 COMMISSIONER HICKINBOTTOM: And so the Standards
4 Department will probably increase in number, I guess.

5 THE WITNESS: Without a doubt.

6 COMMISSIONER HICKINBOTTOM: But what else will change
7 other than pure numbers?

8 THE WITNESS: Well, it's about the culture of the
9 organization as well, and you know, as I said, it's about
10 holding people to account. One of the things I found quite
11 difficult coming here was looking at the different business
12 interests that people have got outside of their working as a
13 police officer, so you've got people working in security, their
14 own security businesses. I was certainly as a chief counselor
15 in the UK wouldn't be signing those off as a business interest
16 that was compatible with being a police officer.

17 COMMISSIONER HICKINBOTTOM: And that, as I understand
18 it, is because of the risk?

19 THE WITNESS: There's a conflict between being a
20 Police Officer and a private security officer.

21 COMMISSIONER HICKINBOTTOM: So, it's the risk that,
22 something, in fact, will happen.

23 THE WITNESS: Yes.

24 COMMISSIONER HICKINBOTTOM: So, the systems in place
25 at the moment do not adequately address that risk.

1 THE WITNESS: And I think to go further on that, the
2 systems that we've got in place, vetting, I don't think we vet
3 and do enough background checks on officers that are
4 transferring into the organization or new recruits. So, one of
5 the things I put in my Position Statement is the desire to
6 recruit--or recruitment officers/vetting officer so we can be
7 very clear about who we are recruiting and making sure that they
8 are suitable individuals to be a serving police officer.

9 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

10 BY MR RAWAT:

11 Q. Because, if you can--focusing on the internal
12 challenges to your organization, your point is that, if you can
13 enhance your Professional Standards Department, they will then
14 better be able to investigate complaints, internal complaints?

15 A. Yeah. And deal with things more robustly and in a
16 timely fashion because depending on the allegation I get against
17 someone, I would want to do a severity assessment and look at
18 suspending that individual, taking him out of frontline duties.

19 Q. In terms of suspending an individual, is that a
20 straightforward process? Is that just down to you to make a
21 judgment?

22 A. Yes. Yes, straightforward.

23 Q. The other side, which goes back to your reference to
24 culture, is there at present within the Police Force a written
25 Code of Conduct or a written Code of Ethics?

1 A. There is a Code of Conduct, and they have actually
2 embraced the UK Code of Ethics as well.

3 Q. I see. As it applies to the Police Force?

4 A. Yes, exactly.

5 Q. If it's here--if it's here--tell us if you don't know
6 when it was introduced but can you say when it was introduced?

7 A. I think within the last two years. I think my
8 predecessor brought the Code of Conduct and the Code of Ethics
9 in.

10 Q. Two years sometimes is a short period of time. But
11 what's your perception of how well that has been embraced?

12 A. I think some get it, some understand it. As I said, I
13 need to be very careful how I phrase this. I've got a lot of
14 very good officers that are out there working, you know, over
15 and above every day, doing some fantastic work. I've also got
16 some other officers that I don't think pay attention to any Code
17 of Ethics, any Code of Conduct at all, and those are the people
18 that I need to root out of the organization.

19 COMMISSIONER HICKINBOTTOM: Given that concern, my
20 understanding of you evidence, including your Position
21 Statement, is that you propose to address that in three ways,
22 but there may be others which is why I'm putting this to you,
23 Commissioner, firstly vetting.

24 THE WITNESS: Yeah.

25 COMMISSIONER HICKINBOTTOM: So, to ensure that, as far

1 as you can, that people who come into the Police Force are going
2 to make good--

3 THE WITNESS: Right caliber.

4 COMMISSIONER HICKINBOTTOM: --of the right caliber.

5 And have the right characteristics and so on.

6 THE WITNESS: Yeah.

7 COMMISSIONER HICKINBOTTOM: Secondly, and this is
8 something in your Position Statement, that you're putting into
9 place, as I understand it, mechanisms which make reporting of
10 officers easier.

11 THE WITNESS: Yeah.

12 COMMISSIONER HICKINBOTTOM: Better.

13 THE WITNESS: Yes.

14 COMMISSIONER HICKINBOTTOM: And, thirdly--and this
15 goes back to the--what we've been discussing--you're going to
16 have a department which is capable of investigating those
17 reported.

18 THE WITNESS: Yes.

19 COMMISSIONER HICKINBOTTOM: Are those the three main
20 strands?

21 THE WITNESS: Yeah. I think you mentioned one thing
22 that I've also put in my Position Statement, certainly within
23 all UK police forces, you would have a hotline available--

24 COMMISSIONER HICKINBOTTOM: Yes.

25 THE WITNESS: --to serving officers and serving staff

1 Members, to report what we used to call the Bad Apple Reporting
2 Line, if you like, and I would like to introduce that in the
3 force.

4 I've got a number of officers that come to speak to me
5 with concerns. I've got many, many Members of the public that
6 stop me in the street and to speak about concerns of
7 confidentialities. And a complaint that they might make would
8 be dealt with by the RVIPF.

9 You may have seen I also that launched a hotline
10 number in my first press conference. I had a number of calls on
11 that number if people wanted to speak to me directly. There is
12 a big concern around confidence and satisfaction within the
13 public on the British Virgin Islands, and that is going to be a
14 huge task for me during my tenure to turn around.

15 COMMISSIONER HICKINBOTTOM: But the three--

16 THE WITNESS: The things I put into place.

17 COMMISSIONER HICKINBOTTOM: The three planks are
18 vetting.

19 THE WITNESS: Yeah.

20 COMMISSIONER HICKINBOTTOM: Access--

21 THE WITNESS: Vetting, access, and investigation, and
22 also holding to account of the whole appraisal system of
23 officers going through as well, because we lack that.

24 BY MR RAWAT:

25 Q. Can you elaborate on that a little bit more. As they

1 go through their career holding them to account for the quality
2 of the work they produced?

3 A. Yes.

4 Q. Appraising their performance?

5 A. Yes. So, here, different to the UK, an officer joins
6 the organization and is subject to a three-year probationary
7 period. So I would want to make sure that during that
8 three-year probationary period, we are absolutely confident that
9 that individual has got the right to the next 30 years of
10 service with the RVIPF. If they're not coming up to the
11 standard, then we need to, you know, let them go actually within
12 that first three years.

13 Then, after that, on an annual basis, the appraisal
14 that's done by the sergeant and the inspector, needs to be
15 accurate, timely and honesty. And that's something that I need
16 to ensure is happening as I go forward.

17 COMMISSIONER HICKINBOTTOM: There are two points,
18 obviously associated points, that you've made, firstly the
19 importance of having good officers and a good Police Force--in
20 fact, a Police Force which does its job, in fact, well.

21 THE WITNESS: Yeah.

22 COMMISSIONER HICKINBOTTOM: There is a second issue
23 there, isn't there, not unrelated to the first, and that is
24 public confidence in the Police Force.

25 THE WITNESS: Yeah.

1 COMMISSIONER HICKINBOTTOM: Obviously, if the public
2 thinks that--see that the Police are doing a good job, then,
3 they're more likely to have confidence in it, but they're two
4 separate points, aren't they, that need to be addressed.

5 THE WITNESS: They're two separate points but they go
6 hand in glove.

7 COMMISSIONER HICKINBOTTOM: I understand that.

8 THE WITNESS: You know, you're going to get increased
9 reporting. I mean, again, I mentioned in my statement a number
10 of high-profile investigations that the Police Force is running
11 at the moment, the number of murders that we've had, the number
12 of robberies, burglaries of business premises. Not many people
13 come forward and want to speak to the Police and give them any
14 information or intelligence, and that's a huge issue.

15 Why? Because they've got no trust and confidence and
16 faith in what's going to happen with that information.

17 Secondly, is the officer they reported it to going to
18 tell everyone else that they were given that information. It's
19 a huge issue. It's an island of 28,000 people, roughly, and yet
20 we get some of these big, big investigations and high-profile
21 cases but the support from the public is underwhelming, and, you
22 know, I was certainly not used to that in the UK.

23 You know, the tragic murder--I can surely say the
24 tragic murder of Katherine Pickering, a robbery victim and then
25 the shooting then thereafter provoked no response from the

1 community at all in terms of wanting to come forward and give
2 information and intelligence.

3 COMMISSIONER HICKINBOTTOM: So, you need both. You
4 need a properly functioning Police Force, and you need
5 confidence in that force from the public?

6 THE WITNESS: Definitely.

7 COMMISSIONER HICKINBOTTOM: Thank you.

8 BY MR RAWAT:

9 Q. Before we move on, Mr Collins, if you look at your
10 Question 5, two questions: One is that you've said that RVIPF
11 proactive team has the capability to investigate as well. I
12 just wanted you to clarify, what is the proactive team?

13 A. It's major investigations team.

14 Q. I see. And they would be involved when an allegation
15 against a police officer moved from being a Professional
16 Standards point to a possible criminal prosecution; is that
17 right?

18 A. Depending what the crime was and the investigation
19 was, yes.

20 Q. What you say, though, is clearly the mechanisms in
21 place at present are not fit for purpose.

22 You've been giving some answers to the Commissioner
23 and to me already, but aside from those matters that you've
24 already discussed in which the Commissioner has summarised, are
25 there any other mechanisms that you would want to draw to the

1 Commissioner's attention that are not fit for purpose?

2 A. I think I've probably mentioned what I need to
3 mention. I think, you know, the bit that's not fit for purpose
4 is probably the training and development and opportunity to
5 actually get those officers match fit in the investigations they
6 need to carry out. That is an issue for us.

7 You probably need just to look at my statement there,
8 of course. Commissioner, just going back to what you were
9 saying about trust and confidence, we're also looking to
10 reintroduce Crime Stoppers here as well.

11 COMMISSIONER HICKINBOTTOM: Yes.

12 THE WITNESS: Which is a really important step
13 forward, I think.

14 Putting my contact number out by putting the crime
15 stoppers number back out again, people can anonymously make
16 contact with the Police and give information and intelligence,
17 and I see that as an important step forward.

18 COMMISSIONER HICKINBOTTOM: Yes.

19 BY MR RAWAT:

20 Q. I want to move on to the second aspect because I think
21 we focused about sort of the internal difficulties of your own
22 organization, but the second aspect is their ability to then, as
23 an--your ability as an organization to investigate crime.

24 A. Yeah.

25 Q. Now, you've spoken of the lack of trust, and you've

1 said there is no trust and confidence in the Police Force.

2 A. (Witness nods.)

3 Q. And part of that seems to be that someone--there is a
4 reluctance to come forward because there is a fear that if you
5 do, your name--you'll be named to others; that the Police can
6 give you no guarantee of anonymity, basically?

7 A. Well, I don't think I'm saying there is no guarantee
8 of that. I think the perception in the public, with many
9 members of the public, is that is the position.

10 I mean, let me be very clear. Coming into the role I
11 had a briefing from my major incident team on every live
12 investigation they've got going at the moment, and I've got
13 complete trust and confidence in that team and their ability to
14 bring to justice some very dangerous offenders in some very
15 high-profile cases. Without a doubt on that.

16 I think what they need is the development and
17 opportunities to have some of the courses that my colleagues in
18 the UK had. I mentioned at the start, I'm a career detective,
19 so the SIO courses, Senior Investigating Officers courses, the
20 evidence-gathering courses, the interview skills course, these
21 are really--sexual offense courses that you have. These are
22 really important courses to enable our officers to get the very
23 best evidence and information from people, from victims and
24 witness, so we don't always have that available to us.

25 But I have got a very dedicated team there. The

1 resource numbers are low. If I was in the UK and I was running
2 seven or eight murders, I would have probably one hundred
3 detectives working on those seven or eight murders. Over here,
4 I've probably got a team of eight or nine people.

5 Q. How big is your major investigations unit?

6 A. I've got an inspector, I've got a major investigation
7 team of about eight or nine people.

8 Q. So, wherein for the level of serious crime that you're
9 now currently presented with, you would have a team of a hundred
10 in the UK?

11 A. Oh, I would think you would have five or six different
12 teams working on those murder investigations.

13 Q. Yes.

14 A. And you'd have a full office there of, you know, of
15 what we would call a "Holmes incidents room", a Holmes office
16 large inquiry system, where you'd have--you know, read and
17 receive, action allocators. You'd have a proper team of people
18 investigating those type of crimes.

19 COMMISSIONER HICKINBOTTOM: But you're investigating
20 seven murders with a team of eight or nine people?

21 THE WITNESS: Yeah. That's the dedicated resource,
22 Commissioner.

23 COMMISSIONER HICKINBOTTOM: Yes.

24 THE WITNESS: Of course we will bring extra officers
25 and staff in to help with that.

1 COMMISSIONER HICKINBOTTOM: Yes.

2 THE WITNESS: It goes back to my point earlier, if
3 you've got an organization that's got 67 vacancies--I need extra
4 staff on the Marine Unit. I need extra staff on the Major
5 Incident Team. I need more ARV officers, you know, they've
6 already come from somewhere. Where did they come from? They
7 come from the frontline. So, you are depleting your frontline
8 availability to actually fill some of these gaps.

9 BY MR RAWAT:

10 Q. Which undermines your desire to introduce and your
11 plan to introduce community oriented--

12 A. Well, I've already gone ahead and done that. 16
13 dedicate officers. We launched that quite successfully, and my
14 commitment is they will stay there and do that role, but it does
15 mean your response function is, you know--

16 COMMISSIONER HICKINBOTTOM: Stretched?

17 THE WITNESS: Extremely stretched.

18 BY MR RAWAT:

19 Q. To return to lack of trust, trust is sometimes more a
20 consequence of perception than it is of reality. I accept your
21 point that you have dedicated and committed officers--

22 A. Yeah.

23 Q. --who want to do the very best job they can for their
24 community.

25 But would it be right to put it that way, that you and

1 they, battle against the perception of the Police Force, that
2 people do not trust the Police Force?

3 A. That's a very fair assessment.

4 Q. And would it also fairly describe that that is a
5 mountain that you have to climb?

6 A. Huge mountain.

7 Q. And you've outlined to the Commissioner the steps that
8 you're thinking of taking to try and build a relationship of
9 trust with those that you serve, but can you assist with, how
10 long do you think this lack of trust, this atmosphere of a lack
11 of trust has been in place?

12 A. Well, I have been here for ten weeks.

13 Q. Yes.

14 A. I think this is probably something that's been growing
15 and building for some time. You just don't suddenly have a
16 small population like this that comes out and says it's got no
17 trust and confidence in the police service. I think it's
18 probably been brewing for some time, that's why it's really
19 important that we are very open and transparent with the media
20 and do regular press conferences, and we need to tell people
21 what's going on. As a police service, there's always a good
22 news story to say, and it's a mountain to climb, but it is
23 climbable with a kit and equipment to do it.

24 Q. Can we turn to kit and equipment. You've explained
25 that you are understaffed, and that there is--recruitment is

1 slow because it's a bureaucratic process to recruit.

2 In terms of funding, what is the level of funding that
3 the Police Force has?

4 A. It's around 18.5 to \$19 million annually.

5 Q. And, for you, how is that budget allocated to you?
6 How do you get your budget?

7 A. Well, I have a small team of people that manage that
8 for us. Much of it is on a bid basis. So, it's not actually
9 the money that's given to us. It's allocated as the overall
10 budget. But, as I said earlier, we still need to write in, put
11 business cases in for kit and equipment. We were talking
12 earlier about one of my boats is off the water for some time
13 because it needed, you know, some parts and some equipment at
14 the cost of \$12,000. That took about four or five months to
15 actually overcome.

16 COMMISSIONER HICKINBOTTOM: And that money
17 essentially, as I understand it, is sort of in the budget?

18 THE WITNESS: It's an allocated budget.

19 COMMISSIONER HICKINBOTTOM: So--

20 THE WITNESS: Yes.

21 COMMISSIONER HICKINBOTTOM: --you go and--presumably
22 each year you go and justify your budget to whoever it is.

23 THE WITNESS: We're in the stage now for budget
24 planning for next year, yes.

25 COMMISSIONER HICKINBOTTOM: You have to justify that--

1 THE WITNESS: Yes.

2 COMMISSIONER HICKINBOTTOM: --to the Executive, which
3 is fine, and you're allocated \$18.5 million or whatever it is.

4 THE WITNESS: Yes.

5 COMMISSIONER HICKINBOTTOM: But then when you get, for
6 example, a requirement, whether it's in terms of equipment or, I
7 guess, training, but personnel as well, you then have to, as it
8 were, draw down actual money; and, to do that, you go through
9 the route that you've identified through the Deputy Governor's
10 office to the Treasurer?

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: And then that either--that
13 at least takes time.

14 THE WITNESS: (Witness nods.)

15 COMMISSIONER HICKINBOTTOM: But you don't actually get
16 the cash until that's been done.

17 THE WITNESS: No. Very often--very often you will be
18 turned down.

19 COMMISSIONER HICKINBOTTOM: Right.

20 THE WITNESS: Certainly in terms of personnel and
21 filling vacancies. Very often the answer is we've got the
22 vacancy factor that we've got.

23 COMMISSIONER HICKINBOTTOM: Right.

24 So, again, let me make sure I've got this absolutely
25 clear. So, you've got the allocated budget?

1 THE WITNESS: Yes.

2 COMMISSIONER HICKINBOTTOM: And that's for however
3 many people.

4 THE WITNESS: Yeah.

5 COMMISSIONER HICKINBOTTOM: Three hundred people or
6 whatever it is, so you've got that.

7 But if you get a vacancy for which you've got the
8 allocated budget, you send a request for the--in respect of the
9 vacancy through the Deputy Governor's Office to the Ministry of
10 Finance, and the response may still come back, no--

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: --the actual funds are not
13 available.

14 THE WITNESS: Yes.

15 COMMISSIONER HICKINBOTTOM: So, the allocated budget
16 no doubt is very important but it's not the be-all and end-all.

17 THE WITNESS: No, no.

18 COMMISSIONER HICKINBOTTOM: Thank you very much.

19 BY MR RAWAT:

20 Q. Who allocates the budget? Is it the Ministry of
21 Finance?

22 A. My understanding is it is.

23 Q. So, effectively, each year, the Fiscal Year, you will
24 make a bid of sums?

25 A. Yes.

1 Q. You will then be notified of your allocated budget?

2 A. Yes.

3 Q. And then you have to then seek funds against that
4 budget?

5 A. Yeah.

6 Q. Be it for recruitment, be it for boat repair--

7 A. Vehicles, guns, everything, yes.

8 Q. And it goes through the process the Commissioner has
9 outlined?

10 A. Yes.

11 Q. Now, can the Deputy Governor's office reject it at
12 that point, or are they just processing it through to the
13 Ministry of Finance?

14 A. My understanding is they're a processing unit.

15 And let me be very clear, they have been nothing but
16 helpful. And I've had a number of meetings with the Permanent
17 Secretary there and the team there, and they are very, very
18 supportive and very understanding of our issues, and, in fact,
19 I've got a meeting diarised this week with the office in terms
20 of--you know, with my HR Manager and business manager, again to
21 discuss some of the vacancies that we've got. Very, very
22 supportive, very, very helpful but, of course, they are a
23 processing unit working with us, and the money needs to come
24 from somewhere, and that's with the Ministry of Finance.

25 Q. And the Ministry of Finance either say "yes" or "no"?

1 A. Yes. Their office says "yes" or "no".

2 Q. And your experience is that often, when you have made
3 the case for a vacancy to be filled, the answer will still come
4 back no, there isn't any money for it?

5 A. Yes.

6 So, this year, for instance, we have been allowed to
7 recruit 17 vacancies, so we're in the process of doing that now.
8 But, of course, we are constantly playing catch-up because that
9 67 will go down to 50, and then what will happen then is I know
10 that I've got a number of retirements, people that are
11 finishing, so soon it comes back up to 67 again. So, I've got
12 no ability to succession plan and manage.

13 And the other big thing, of course, is I could have
14 somebody--there are two things. One is annual leave. I've got
15 people within this organization that have got 300 days of annual
16 leave to take, an allocated holiday to take. So, that person
17 effectively could say tomorrow, "I want to leave your
18 organization, I'm going to take my 300 days pre-retirement leave
19 now". I cannot fill that vacancy until those 300 days are up
20 and that person is gone. I wouldn't be allowed to do it. I
21 understand that. But, of course, I've inherited something here
22 now which is, you know--you know, hundreds and hundreds of days,
23 thousands of days of leave for people to take, and they get
24 stacked up and stored up and when they leave, then, they create
25 a huge backlash in terms of being able to fill that vacancy.

1 Q. In the case of an officer taking that leave before
2 retirement, you're also losing experience?

3 A. So, you lose experience, and you lose someone from the
4 frontline because we need to have an acting up again or a moving
5 into position there, yes.

6 Q. So, if you can, you can't tell me, but measuring
7 allocated budgets against actual spend, what does your actual
8 spend come down to?

9 A. Without having that in front of me, Mr Rawat, I
10 wouldn't know.

11 Q. Would it be fair to say that it's going to be less
12 than the 18 to 19 million that you are allocated?

13 A. Well, for the vacancy factor that we've got, yes.

14 Q. You mentioned one, it took four to five months to fix
15 one of your Marine Unit boats. Could you just give the
16 Commissioner the timeline on that. When did you roughly, I
17 don't need the specific dates but when did you actually put in
18 the request for--when this year did you put in the request--

19 A. It was done probably before I got here, obviously
20 before I got here, so I think that's just one example.

21 And what I should say here is that we have had some
22 great support from the FCDO and also the Governor's Office in
23 terms of some kit and equipment and some funding that's been
24 made available for the Marine Unit for us and some training as
25 well, which has been really well-received.

1 But, for instance, my understanding is that that would
2 have gone in--it's only just been fixed actually, so probably
3 April, April time. I'm just waiting for that to be signed off,
4 just to get the funds released to pay for it.

5 COMMISSIONER HICKINBOTTOM: And this is, what, an
6 interceptor or something?

7 THE WITNESS: Yes, one of our Marine Unit boats,
8 Midnight Justice, yeah.

9 BY MR RAWAT:

10 Q. Can I pick up on a couple of points then. Firstly,
11 you've discussed vetting of candidates, but does the Virgin
12 Islands Police Force also get asked to vet candidates in other
13 agencies?

14 A. I don't--I'm not--well, well, we haven't got a vetting
15 unit. We've got an intelligence team.

16 Q. Right.

17 A. There have been some requests to provide some
18 assistance around that.

19 Q. Given that you don't feel that your own organisation
20 vets itself properly, do you think you have the capacity to
21 provide a proper vetting service to other agencies?

22 A. No, not without some increased numbers. No.

23 Q. And you've talked about appraising and a probationary
24 counsel during their three-year period. But would you be in
25 favor of regular vetting checks throughout an officer's career?

1 A. Without a doubt, yes. I think certainly as people
2 move within the organization, its different roles, you know.
3 So, if you move, for instance, from being a beat officer perhaps
4 into one of the specialist's Departments, then I think you
5 should go through another vetting process then and perhaps more
6 enhancing as well, very similar to what the UK does. I think
7 that's really important.

8 Q. You've mentioned the problem of second jobs.

9 A. (Witness nods.)

10 Q. Which does not appear to be something that you're in
11 favor of because of the potential for conflict of interest.
12 Would you like to see that phased out as a practice?

13 A. I think I'd like to certainly introduce a Business
14 Interest Register and set some parameters and some reviewing
15 time scales in there, and I see this very much as a function for
16 the Professional Standards Unit going forward. And that's one
17 of the things I'll be asking to do. So, I will be seeking
18 people to register business interests through my office, making
19 a comment on it.

20 And this is going to be quite difficult because I've
21 got people that have got their own businesses, of course,
22 external to being a police officer, up and running and
23 functioning. But I do think that there will be some conflict--I
24 mean, training--I mean, people that are training within the
25 organization, and then do private training, people with their

1 own security business, anything which has got conflict, I think,
2 again, leads to that trust and confidence issue as well.

3 So, this is something that needs to be looked at but
4 it needs to be looked at, I think, with the Professional
5 Standards experience and ability from overseas.

6 Q. I see.

7 A key theme that we've explored with you and emerges
8 from your evidence is the need for better training of your
9 officers.

10 A. Yeah.

11 Q. And you've given some examples of the courses that you
12 would like your officers to go on.

13 A. (Witness nods.)

14 Q. You have spoken of sort of obviously the money come
15 from your budget, and under your present situation you have to
16 make an application for that money, wouldn't you?

17 A. Yeah.

18 Q. You've alluded to some other sources, but are there
19 other sources of--financial sources and also in terms of sort of
20 training sources that you could go to to support your officers?

21 A. Yes.

22 A part of our annual bid will include some training,
23 so--but there are--you are right. I've just mentioned the
24 Marine Unit training. Some of that has been supported by the
25 UK, and certainly we've got some firearms training I'm going at

1 the moment, that's been supported by the UK. We could look at
2 some of the Overseas Territories to assist us with training as
3 well, and they do, but it will come at a cost, so the course may
4 be free, but then the flights and the accommodation need to be
5 pay for, and again that would be a bid in to get that paid for,
6 which would be a struggle.

7 Mr Rawat, I wanted to mention one other thing, if you
8 don't mind.

9 Q. Please.

10 A. Because it comes under the arena of second jobs,
11 coming out here and speaking to people, of course, the level of
12 pay and remuneration is very different to the UK, so the salary
13 scales are very different. But I'm also acutely aware that
14 officers have waited for increments on their salary and pay
15 scales for some time. And I'm also aware, of course, all
16 Government--my understanding is because it's reported to me, is
17 that all Government working staff have not had a pay raise for
18 the last three years or an incremental raise for a three-year
19 period. So, whilst I'm acutely aware of the business interest
20 conflict, I'm also acutely aware of the cost of living and being
21 able to maintain a standard of living for the family, as well.

22 Q. Yes.

23 A. And that all needs to be born out and taken into
24 consideration.

25 Q. Just finishing off that point about support, though.

1 You said that there's been some support from the UK for firearms
2 training. You've given the example of firearms training and the
3 Marine Unit.

4 A. Yes.

5 Q. Just be a bit more specific.

6 Firstly, which arms of the UK does support come from?

7 A. Yeah, so that would be from the FCDO.

8 Q. And was it financial support, or was it providing a
9 trainer? What was the nature--

10 A. Both. The trainer has been provided to us, certainly
11 when the Marine Unit stuff, and some of the financial cost as
12 well.

13 Q. I see.

14 So, were you able to--did you have, in those
15 instances, to facilitate that training by a combination of using
16 money from the FCDO and money that you bid for?

17 A. Yes. So, we put in an extra bid certainly for the
18 firearms training. We put in an extra bid, and we got that--we
19 got that signed off by the Ministry of Finance. And that was
20 paid for. But certainly the marine training, we're working with
21 colleagues in the UK on that. That's been very supportive.

22 (Overlapping speakers.)

23 Q. Can I move on to your question seven, please, which
24 is--you begin your answer to Question 7, saying there's a lack
25 of joint working and trust across all law-enforcement agencies.

1 Could you just expand on that, please. What did you have in
2 mind when you wrote that?

3 A. I don't believe that we maximised the opportunities
4 around prison intelligence. We've discussed, certainly myself,
5 Mr Penn and Mr Wade about Joint Intelligence Unit for the Joint
6 Task Force. We need to further that and make that happen.

7 But there is a reluctance, I think, to share some
8 intelligence for reasons of that intelligence being divulged and
9 information being divulged, and it's a concern.

10 Q. So, it's not just of lack of trust between the public
11 and the Police Force; there is a lack of trust between different
12 agencies?

13 A. Potentially, yes.

14 Q. About the confidentiality of information sharing?

15 A. Yeah, and the levels. And again, I think that comes
16 back to an earlier point about our vetting position, not just
17 within the RVIPF but within other agencies as well. If we're
18 going to operate at that level and trust people, we need to be
19 assured that they are vetted to those levels and we've got trust
20 and confidence in them as an individual to function in those
21 roles.

22 Q. One of the other issues that you've discussed is the
23 difficulties with the jury system. And I totally appreciate you
24 have been here for ten weeks, and obviously some of the
25 information you've gleaned comes from--

1 A. Yes.

2 Q. --speaking to fellow officers.

3 A. Yeah.

4 Q. But from what you've learned and from what you've
5 seen, what are the particular difficulties that you've
6 identified in relation to the jury system?

7 A. Well, I think this is a very small group of islands,
8 as we've said. I think there are a number of things.

9 We have a number of very high-profile cases going
10 before the Court. My understanding is that the jury system here
11 is that, unless you're a believer, you're not selected for a
12 jury position. I think the definition of that equates to around
13 4,000 people possibly being on a jury list.

14 However, my understanding also is that legislation
15 allows people that lived on the islands for more than ten years
16 to be selected for jury, for jury service. My understanding is
17 that doesn't happen and hasn't happened. And furthermore, I
18 don't believe jurors are selected from other islands, either.
19 So I don't believe--and I can be stand to be corrected on this,
20 and the DPP and other colleagues will correct me if I'm
21 wrong--but this is, as you've said, I've been here for ten weeks
22 and this is what's been presented to me, and that fundamentally
23 is a huge issue for the justice--judicial system of the Islands.
24 Of course it is. A very pool of people to call from for jury
25 service and not maximising the opportunities of expanding that

1 and extending it.

2 MR RAWAT: Sir, could I just have one moment?

3 COMMISSIONER HICKINBOTTOM: Certainly.

4 MR RAWAT: Commissioner, those are my questions. Can
5 I conclude by thanking Mr Collins for coming to give his
6 evidence today and also for the way in which he has given that
7 evidence.

8 COMMISSIONER HICKINBOTTOM: Yes. Thank you,
9 Commissioner, for your time.

10 THE WITNESS: Thank you.

11 COMMISSIONER HICKINBOTTOM: And also for your
12 evidence, which has been very, very clear, very helpful and very
13 interesting.

14 THE WITNESS: Thank you very much.

15 COMMISSIONER HICKINBOTTOM: Thank you very much.

16 THE WITNESS: Thank you all.

17 COMMISSIONER HICKINBOTTOM: Now, Mr Rawat?

18 (Witness steps down.)

19 MR RAWAT: Could I ask you just to rise for five
20 minutes. Our next witness is the Director of Public
21 Prosecution, but we just need to reset the room.

22 COMMISSIONER HICKINBOTTOM: Now, in terms of Mr Penn
23 and Mr Wade Smith, I think it has been helpful for you to hear
24 the Commissioner's evidence, but if they would like to go away,
25 they can probably go away until quarter past 12?

1 MR RAWAT: Yes, yes, I think that's a sensible interim
2 time for--

3 COMMISSIONER HICKINBOTTOM: So, obviously stay if you
4 wish, but if you would like to go and have a break, we'll not
5 take any of your evidence until quarter past 12:00. It may be
6 after that, but it will not be before. Yes, thank you both very
7 much. Thank you all very much.

8 (Recess.)

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Session 2

TIFFANY R SCATLIFFE ESPRIT, COMMISSION WITNESS, CALLED

COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat, I think we're ready to continue. Thank you.

MR RAWAT: We are, Commissioner. Our next witness is Tiffany R Scatliffe Esprit, the current Director of Public Prosecutions. And can I ask that she be sworn or take the affirmation.

THE WITNESS: I will take the affirmation, please.

COMMISSION SECRETARY: If you could turn that piece of paper on the other side.

COMMISSIONER HICKINBOTTOM: The sheet in front of you. That's it.

THE WITNESS: You need me to stand?

COMMISSION SECRETARY: No. That will be fine. Thank you.

COMMISSIONER HICKINBOTTOM: If you could turn it over. That's the oath.

THE WITNESS: I'm sorry.

I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.

COMMISSIONER HICKINBOTTOM: Thank you very much.

MR RAWAT: Thank you, Commissioner.

BY MR RAWAT:

1 Q. Director, thank you for coming to give evidence to the
2 Commissioner today. I need to start with two formalities. The
3 first is to ask you to give the Commissioner your full name,
4 please.

5 A. My name is Tiffany Rachel (phonetic) Scatliffe Esprit.

6 Q. And your professional address?

7 A. My professional address is the second floor of the TTT
8 Building, Wickhams Key, Road Town, Tortola.

9 Q. There are a number of things I have been explaining to
10 all those who have come to give evidence to the Commissioner.
11 And that is, firstly, that I try to keep my questions short and
12 simple, but it doesn't always work. So if you have any
13 difficulty understanding a question, please don't hesitate to
14 stop me, and I will try and repeat it or rephrase it.

15 A. Thank you.

16 Q. And the second is that you will see there are two
17 bundles on the desk in front of you. The first contains your
18 Position Statement. You may have brought a copy along with you.
19 So, if you prefer to refer to your own copy, please do so.

20 And the second is what we've called Our "Constitution
21 and Legislation Bundle". We may need to look at that. It may
22 not be necessary.

23 The final point is that microphone that's in front of
24 you does not amplify. It records. This will, I'm sure, be an
25 easy thing for you to, but can you remember just to keep your

1 voice up and speak slowly so we can record your answers on the
2 Transcript.

3 A. Noted. Thank you.

4 Q. Thank you.

5 Can I ask you to begin, and this is a question I've
6 put to, I think, every witness that has come before the
7 Commissioner, and that is to give an outline of your
8 professional background before you assumed the position of
9 Director of Public Prosecutions?

10 A. Okay.

11 I have a Bachelor of Arts degree in political science
12 and Public Administration from the University of Cincinnati in
13 the United States.

14 My Bachelor's of Laws degree was awarded to me by the
15 University of Cardiff in Wales in United Kingdom. I completed
16 my Bar Vocational Course now called the Bar Practitioner
17 Training Course from what was formally called the Inns of Court
18 School of Law, now the City Law School which is located in
19 London. I completed my Master's of Laws degree from the
20 University of Liverpool, Banking Law with an emphasis in
21 money-laundering.

22 I became qualified in the United Kingdom as a
23 barrister for The Honourable Society of Grace Inn, and I was
24 called to the Eastern Caribbean Supreme Court Bar, the Territory
25 of the Virgin Islands.

1 Before I was DPP, I worked at the BVI Financial
2 Services Commission as a regulator in the Investment Business
3 Division, which was formerly referred to as the Mutual Funds
4 Division.

5 I then went on to the Legal Counsel Division. While I
6 was doing my law degree, I would return and assist the
7 Commission in the Legal Department, then I became a legal
8 counsel with them.

9 And in 2006 I transferred to the Government of the
10 Virgin Islands to the Criminal Division of the Attorney
11 General's Chambers, which then became the Office of the Director
12 of Public Prosecutions on the 15th of June 2007.

13 And then I have been Crown Counsel, Senior Crown
14 Counsel, Principal Crown Counsel for ten years and six months
15 before I was promoted to the Director of Public Prosecutions.

16 Q. Thank you.

17 And when were you appointed as Director of Public
18 Prosecutions?

19 A. I was formally appointed on the 5th of May 2020, but I
20 was holding the post in the acting capacity from the 17th of
21 December 2019.

22 Q. You have very helpfully put in a position statement to
23 the Commission, and that was in response to specific questions
24 that the Commissioner asked of you. That statement has been
25 published on the Web site for all to see.

1 What I would like to do today, with your assistance,
2 is to develop some of the points that you made and ask you
3 further questions about the Position Statement. I'm not going
4 to ask you to read it all out nor am I hopefully going to read
5 it all out to you.

6 I appreciate that, quite properly, you will not wish
7 to speak about specific investigations.

8 A. Yes.

9 Q. What I will try to do is direct my questions towards
10 the system in which you exercise your function as Director of
11 Public Prosecutions and particularly focusing on what you have
12 identified as the strengths and weaknesses of that system.

13 A. Yes.

14 Q. If as we go through, you feel able to illustrate your
15 evidence with specific examples that you consider appropriate to
16 do so, then that will, of course, be helpful. But if at any
17 time a question that I ask you, in your view, crosses the line
18 into requiring of you to give details that you cannot and cannot
19 properly do so as Director for Public Prosecutions, then please
20 do indicate that to the Commissioner and to me, and I will put
21 the question in a different way.

22 A. Okay. Thank you.

23 Q. Now, if we start off with the constitutional position,
24 you are a public officer, and your office is one of those that
25 is set out in the Constitution, is it not?

1 A. Yes.

2 Q. And it identifies the office of the Director of Public
3 Prosecutions as the sole prosecution authority in the Virgin
4 Islands?

5 A. That is correct.

6 Q. And it is down to you to decide whether a criminal
7 prosecution should be initiated or indeed whether it should be
8 discontinued; is that right?

9 A. Yes. And I also take over other private prosecutions
10 or other criminal proceedings.

11 Q. Can you help the Commissioner just in relation to the
12 other criminal proceedings that you take over, where would those
13 emanate from?

14 A. They normally will emanate from private prosecutions.
15 Private prosecutions do not frequently happen in the BVI, but
16 they have happened in past, and what will happen, depending on
17 the nature and the circumstances, if the DPP feels fit, they
18 will take over those proceedings and then continue prosecuting
19 those.

20 In my tenure, we have not had any reason to take over
21 a private prosecution. The other situation is with Police
22 Prosecution.

23 Before 2007, there was the procedure where the Police
24 Prosecution Unit would commence minor prosecutions of minor
25 matters: Traffic offenses, indecent language, very minor

1 offenses. What would normally happen if we see something that's
2 going on with a matter that's been instigated or instituted by
3 the Police Prosecution Unit, we will take that over. I will
4 give the Director to take over as well. But that does not
5 happen as frequently because one of the things that has
6 happened, I have made the ruling that the Police Prosecution
7 Unit have to pass matters through me; I do review and check
8 them. They're only permitted to prosecute now the breach of
9 curfew offenses and minor traffic offenses. If another offense
10 is coupled with a traffic offense or a breach of curfew offense,
11 it automatically comes to me, and then I will assign a counsel
12 to deal with it.

13 Q. And do cases come to you and to your office from
14 agencies other than the Police?

15 A. Yes.

16 If I could explain, when I answered my Position
17 Statement, I took it from the point of view of criminal
18 prosecutions and criminal offenses. I received files from Her
19 Majesty's Customs, the Department of Immigration. I received
20 files from the International Tax Authority. I also received
21 files from the FIA, but they would normally take their matters
22 through the financial crime unit of the Royal Virgin Islands
23 Police Force, and, of course, the Police are my main--I would
24 call them my main customers. Most of my files come from them.

25 Q. The Attorney General gave evidence to the Commission

1 yesterday.

2 A. Yes.

3 Q. One of the areas I explored with her was cases
4 involving extradition, what I described to her as quasi-criminal
5 work. She explained those are areas that she did not see as
6 strictly criminal cases, and, therefore, they fell within her
7 remit as Attorney and not yours as Director of Public
8 Prosecutions. I mean, are there areas which might be described
9 as criminal or quasi-criminal which fall outside your remit as
10 DPP?

11 A. As far as I'm concerned, no. Once it's criminal, it's
12 under my remit.

13 The point with extradition is a very ticklish little
14 subject that we're trying to work out. What used to happen is
15 before the constitutional split in 2007, extraditions and MLATs
16 were done by the Criminal Division of the Attorney General's
17 Chambers. When we broke off, there was supposed to be an
18 arrangement between the then-DPP, which would have been
19 Mr Williams, Terrence Williams, and the then-Attorney General
20 which I believe was Ms Quarty (phonetic). I do not know what
21 happened, but one of the things that were being negotiated who
22 does what because you have the International Cooperation
23 legislation, which speaks about criminal matters, and what
24 happened is that the AG continued doing them.

25 But what happens is that when you--under previous

1 Attorney Generals, what would happen is, we get extradition.
2 Next day the DPP's office is being called to go deal with bail.
3 They're being called to sometimes deal with significant parts of
4 the extradition. Another example, there was an extradition from
5 the United States that occurred I would say between 2012 and
6 2015. In that particular matter, external counsel was hired by
7 the Government to deal with it on the basis that the then-AG
8 felt that his office did not have the proper expertise in
9 criminal law to deal with it. What ended up happening, was that
10 when counsel could not travel to the Territory, could not
11 appear, it was the DPP's office that was holding, whether it was
12 bail, significant submissions, even the decision the
13 then-Director, Ms Hollis, Queen's Counsel, actually went to take
14 the decision for a matter that should be rightfully under the
15 AG.

16 My position on extraditions is this: The AG is what
17 is referred to as the central authority. The central authority
18 is the person responsible. But, of course, criminal law is not
19 their remit. What would happen is that we are consultants, per
20 se, for lack of better phrasing. In the last few extradition
21 requests we've received, I have taken on the role of giving
22 assistance by providing a prosecutorial certificate, which will
23 say why the matter could not be heard in the BVI because
24 jurisdiction is always an issue that comes up in extraditions.

25 Another thing we'll do is schedule offenses. So,

1 let's say it's coming from the United States as an example. The
2 United States will send their legislation. I will go through it
3 and see what it is in our country and make sure that we have
4 enough evidence, that if it was to happen here, we could have
5 prosecuted it because that's what you need to be able to prove
6 to the Magistrate in order to justify the extradition.

7 So, that's where we go. It's supposed to be
8 consultative. It's a consultative thing. It's not a matter of
9 AG DPP. It cannot be seen that way because it would never work
10 that way, but it has to be a joint function, and there's also a
11 function with the Governor's Office. The Governor's Office
12 plays a very pivotal role in extraditions as well.

13 So I consider extradition to be a quasi-criminal
14 matter, but it's not something that I'm completely ruled out of.
15 I'm not aware of any other matter that will be considered
16 quasi-criminal such as an extradition, but once it involves
17 criminal litigation, criminal procedure, criminal law, the
18 Office of the DPP is the appropriate authority to deal with it.

19 Q. Thank you.

20 And in terms of the size of your office, especially
21 between lawyers and non-lawyers, how big is your complement of
22 staff?

23 A. Oh, complement is very tiny compared to other DPPs in
24 the region. I have--I want to make sure I'm accurate, I have a
25 larger lawyer complement than administrative complement. Just

1 so you can understand the background, when the office was formed
2 in 2007, there was no proper Strategic Plan in place. It was
3 like an afterthought. The Constitution--because the
4 Constitution passed the dissolving of that Government at that
5 time, and it happened very quickly. So, we went in to work. On
6 the 14th of June we're AG. On the 15th of June, we were the
7 DPP's office. So things did not get properly set up as they
8 should have. So, therefore, as time went along, it was just
9 that core staff who was the Criminal Division, and the one or
10 two secretarial staff that we had, that became the Office of the
11 DPP.

12 Over time they joined on persons, but a proper
13 restructuring of the office is required for us to function
14 properly.

15 I can say on record that we have complement for one
16 Director, one Principal Crown Counsel, four Senior Crown
17 Counsel, one Senior Crown Counsel Financial--that's a specialist
18 post; six Crown Counsels, one paralegal, and that is the legal
19 complement.

20 For the administrative complement, one Senior
21 Administrative Officer, one Executive Officer, a Personal
22 Assistant to the DPP; a Case File Manager, which is equivalent
23 to an Administrative Officer; and Accountant or Accounts
24 Officer, and two Office Journalists. One is an Office
25 Journalist III, and the other Office Journalist II. Office

1 journalist III will work in the case file management unit, and
2 the Office Journalist II is the receptionist/messenger and also
3 secretarial support. We only recently within the past year
4 received two legal Executive Officer posts, which will be
5 secretarial assistants for counsel, and they have yet to be
6 filled.

7 As regards to what we have outstanding, we have four
8 open positions for Senior Crown Counsel that are current in
9 recruitment. My two earlier posts remain vacant and waiting on
10 Human Resources to advertise. The Office Journalist II is still
11 vacant. The Administrative Officer is on rotation, but we need
12 to unrotate someone else in within the Government. Rotation is
13 when you have someone that's working Government and they want to
14 try something else or you want to give them another opportunity,
15 different reasons, and they will rotate for a six-month period
16 to another Government department, and then you will allow
17 someone from another Government department to rotate in to you.
18 You will still be paid by your main or original department.
19 However, if the person wants to stay, then we will probably make
20 arrangements for them to stay if they work out well.

21 But it's a way of people being able to do different
22 things within Government without having to resign from their
23 post to just go and get another post, and then they realise I
24 don't like this job, I want to go back to my old one, so that's
25 why you have the rotation process, but that is where we are with

1 complements at the moment.

2 I do have all my Crowns, counsel staffs are filled,
3 all six positions, and my Principal Crown position is filled as
4 well as the Senior Crown Financial.

5 COMMISSIONER HICKINBOTTOM: Just I'm trying to work
6 out the math, which is not a strength.

7 THE WITNESS: I'm sorry.

8 COMMISSIONER HICKINBOTTOM: No, no, not at all.

9 By my calculation, your complement of lawyers should
10 be 14, including yourself, Director?

11 THE WITNESS: Yes, sir.

12 COMMISSIONER HICKINBOTTOM: And of those, you've
13 gotten 10; is that right?

14 THE WITNESS: I've gotten it.

15 COMMISSIONER HICKINBOTTOM: Yes.

16 THE WITNESS: I've actually requested because ideally
17 my complement should be 25 lawyers, including myself.

18 COMMISSIONER HICKINBOTTOM: When you say "should be",
19 by what measure?

20 THE WITNESS: By what measure, what I--the best way to
21 explain what the site or the future site of the office is, it is
22 intended by, within the next 10 years, to have that complement
23 because, of course, you just can't ask for all the posts at
24 once. You have to ask gradually and get them filled. Ideally
25 it should be one Director of Public Prosecutions, two Principal

1 Crown Counsels, seven Senior Crowns, eight Crowns, and then you
2 will have, well, paralegals and what we call Junior Crown
3 Counsels. So those are persons who are doing their pupillage
4 stage. They will come in. We call them legal cadets at the
5 moment in the Government service, but we would call
6 them--designate them as Junior Crown Counsels, and the hope is
7 that once you get in those posts that then you will be able to
8 properly remove any prosecutorial authority or role from the
9 Police because the idea of Police Prosecution is antiquated, and
10 in most Caribbean countries it has been moot because it is a
11 conflict of interest for the Police to investigate and then turn
12 around and prosecute matters. Even if it's a traffic matter,
13 it's a problem, in my view.

14 So, ideally, if we have the proper complement of
15 counsel, we'll be able to remedy or take that responsibility
16 away from the Commissioner, and then we will deal with all
17 prosecution, and then his offices can serve summons, investigate
18 matters and be able to do their role without any form of
19 disruption or distraction.

20 COMMISSIONER HICKINBOTTOM: So, the 14 is what your
21 budget incorporate at the moment.

22 THE WITNESS: The 14 is what I have.

23 COMMISSIONER HICKINBOTTOM: And 25 is an aspiration.

24 THE WITNESS: It's an aspiration.

25 COMMISSIONER HICKINBOTTOM: Over the next few years.

1 THE WITNESS: Because the thing with aspiration, one
2 of the major problems when I get to weaknesses is the poor
3 salary rate that we have.

4 COMMISSIONER HICKINBOTTOM: Yes. Out of the OTs, I
5 think the BVI is the lowest paid when it comes to prosecutors,
6 and the problem is persons do not appreciate the work that goes
7 into prosecution.

8 And also looking at your vacancies, you have, no
9 Senior Counsel out of four.

10 THE WITNESS: Yes.

11 COMMISSIONER HICKINBOTTOM: So, it's not as though
12 your vacancies were spread across the board.

13 THE WITNESS: No.

14 The problem is the--what--you will recruit persons,
15 you will interview with the processes, we recruit them. They
16 submit. I will do a preliminary interview to short list
17 persons. The persons that I short list will then go to Judicial
18 Legal Services Commission for further review, and then the
19 problem starts when they're successful and it goes to Human
20 Resources, and we start negotiating salaries.

21 Based on the 2021 budget, the range for senior crown
22 counsels are between 50- and 60,000 U.S. base. That is
23 unconscionable. Because when you match it against other
24 jurisdictions, Senior Crowns are starting at at least 75-80,000.
25 So, if I have a very good candidate and they want to work in the

1 BVI and then they get an offer from another jurisdiction, I
2 cannot compete because I'm limited by my budget in giving them
3 the salary they deserve.

4 The other also problem with recruitment is it is
5 public knowledge that the prosecution staff do not have
6 important adequate security. Prosecution is an extremely
7 dangerous job, and I do not think people realise that. People
8 of the public who do not understand the criminal-justice system
9 look at prosecutors as the ones attacking them, attacking their
10 family members. We're just doing our job to protect the
11 community as a whole. It is not a personal thing. We receive a
12 case file. We have to take it forward to court once those two
13 tests, the evidential test and the public-interest tests, have
14 been met.

15 So, it's not a personal thing. My prosecutors, past
16 and present have reported instances of receiving threats, people
17 interfering with their vehicles, and these different things, and
18 I think security needs to be a priority. It's not a priority.
19 Even in our offices, I do not think the security is sufficient.
20 So, you're asking people to do a very dangerous job. It is not
21 a 9-to-5 job. It is what I call a "26-hour a day" job because
22 you're always at it, so you're asking people to give all their
23 time to this, and you're not giving them proper financial
24 remuneration to match it. And it's not just the Senior Crowns.
25 It's also with the Principal Crown, the Crown Counsel, and it is

1 my goal to recruit or eventually have an office where everyone
2 is a Virgin Islander. We have imports from Senior Crown Counsel
3 who can teach and train and give expertise, but when young
4 people come from the university and they want to work for the
5 DPP's office and they see the salary and then the private sector
6 is offering about \$30,000 more, entry-level forced Crown is
7 about 43 to 45,000, when I have the private sector giving a
8 range of 60 to 75. They will look and say, sorry, Madame DPP, I
9 really want to prosecute, but I have my school loan to pay, I
10 want to build a house. I want to have a life. I can't do that
11 working for Government. So, the low salaries is something that
12 needs to be done.

13 And not just from my office alone. The judicial
14 assistance in the High Court, the legal staff within the
15 Magistracy also need to have their salaries reviewed. The
16 salaries for all the legal offices, respectfully, are grossly
17 too low.

18 COMMISSIONER HICKINBOTTOM: Thank you very much.

19 BY MR RAWAT:

20 Q. Director, you've mentioned security. Is that also a
21 deterrent to recruitment?

22 A. Yes. It's one of the biggest deterrents, I find,
23 second to the salary.

24 People do not understand, as I stated before, how
25 prosecutors operate. It's not personal. We don't have a dog in

1 the fight. We're ministers of justice. But when you're in the
2 public element and you have the media taking pictures of your
3 vehicle at court or taking pictures of you as you are going from
4 court or--because the criminals know what you look like, but you
5 don't know what they look like, so someone could approach you in
6 the supermarket or anywhere and you do not know who they are,
7 and it is a reality that we face. It's a concern that my
8 counsel have faced, even when you share accommodation with other
9 officers. You have a certain level of security, but they don't
10 share that same concern for security, so they think you're being
11 a nag when you're just trying to make sure that every person
12 that works in your office is safe. Security is a big problem.

13 Q. And stepping back from that, is it your view that your
14 office, the office of Director of Public Prosecutions, is not
15 valued by others within Government?

16 A. I don't think we are properly valued because people do
17 not properly understand what we do, and it's not just
18 Government. It is the public. The public do not understand
19 what we do.

20 When a crime occurs, I don't show up with a magic wand
21 and say, poof, you're in court. It does not work that way. You
22 would not believe how many people believe it works that way.
23 Just because you think it's a crime, you just don't simply write
24 me an e-mail or a letter and say, "DPP, a crime has happened,
25 prosecute it". It does not work that way. We are a

1 prosecutorial agency. We're not an investigative body. We act
2 on files submitted to us by the law-enforcement agencies, being
3 the Royal Virgin Islands Police Force, Her Majesty's Customs,
4 the Department of Immigration, the Financial Investigative
5 Agency, and while they're not a traditional law enforcement
6 agency, the ITA, which deals with corporate matters and tax
7 matters.

8 Once a file has been submitted to us, there is a
9 process of vetting it to make sure that the two-tiered test--and
10 this is a test that is applied in most Commonwealth
11 jurisdictions, and it's actually based on the Crown Prosecution
12 Service test where you have the evidential burden, which is, is
13 there sufficient evidence that will more than likely lead to a
14 conviction, and then the second test is was it in the public's
15 interest to do so? Once those two tiers are met, then you can
16 commence by the laying of complaint in the Magistrate's Court.

17 People do not understand the importance of the DPP's
18 office, and this was evident in the post-hurricane period and
19 also in the pandemic period. After the Hurricanes passed in
20 2017--after Irma passed on the 6th of September 2017, the
21 Government put in curfews and other things to stop looting.
22 But, as one of the problems, they didn't consult the people that
23 have to take it to court, and there you have people who were
24 looting and who were breaking curfew, but because they have not
25 allowed the ODPP to open, and at that time I was Principal Crown

1 Counsel, the head of office of Ms Kim Hollis, Queen's Counsel,
2 who actually got stuck outside the Territory during the
3 Hurricane, so she was not able to get back in, and we were aware
4 of matters that happened, criminal offenses that happened, and
5 we were able weren't able to take them to court because the
6 Police investigate, they arrested, there is no one to bring the
7 file to because you haven't allowed us to open our office there
8 or given us facilities.

9 Actually, I can say this with confidence--two weeks
10 after the Hurricane, my office was the back of my vehicle
11 because my house was destroyed--and even though Police were
12 still coming to us and asking us to give advice, and those
13 things, so, it's a very important thing.

14 Also in the pandemic period when COVID started to shut
15 us down around March 2020, it was the then-AG, Mr Aziz, when
16 upon looking listing of who was exempt and who would be allowed
17 to come out, the DPP's office was not originally on that list.
18 It was Mr Aziz that said the DPP has to be able to move because
19 she's the one that has to vet the file, she has to take it to
20 court, so she has to be one of those persons exempted.

21 And, of course, when it goes to funding, the Police
22 get funding, the Courts get funding, and you forget the
23 middleman.

24 It cannot--the Police cannot take anything to court.
25 It has to come through the DPP. And in order for the DPP to do

1 our job, we need proper funding. We need equipment. We need
2 staff, we need administrative support, and those things are
3 lacking.

4 And even with different matters, it is evidence when
5 you go to stand in Finance, when you go to House of Assembly,
6 when you present your Annual Reports that it is clear that there
7 is not a proper appreciation and respect for the DPP's office
8 and appreciation of our role.

9 Q. In terms of the budget that--are you the accounting
10 officer for your Department?

11 A. Yes, I am.

12 Q. And you may have heard some of the Police Commissioner
13 Mark Collins' evidence. He says the Police have an allocated
14 budget and then they have through the years to make bids for
15 funding against that budget, some of which are sometimes turned
16 down.

17 In the Office of DPP, do you get a budget over which
18 you have operational control?

19 A. No. Nobody really gets a budget they have full
20 operational control. You're given allocation of a budget. For
21 example, my 2121 budget is estimated at 1.569 million
22 approximately. What happens is, is that you have the money to
23 do as you please or to do what you're supposed to do with it,
24 and normally, if it's a business that the Government's
25 accustomed to dealing with, you will do a purchase order, and

1 then, of course, you have to put in your vote book to show how
2 you spent the money.

3 Now, I think what Mr Collins may be referring to is
4 when you need funds outside of that. For example, I do
5 have--I'm not going into it, but when I've had to have certain
6 prosecutions done and we have to engage exterior counsel,
7 Queen's Counsel, what would happen is that you have to submit a
8 paper to the National Security Council and then to Cabinet to
9 get approval for additional funding in addition to your budget
10 that you have been allocated to be able to pay for it. I have
11 never had the experience of it being turned down, but then
12 again, we don't normally ask too often.

13 COMMISSIONER HICKINBOTTOM: But if you have someone
14 within your allocated budget, so a Crown Counsel--

15 THE WITNESS: Yes.

16 COMMISSIONER HICKINBOTTOM: --or if you're Crown
17 Counsel, then, and they're in your budget, how do you actually
18 get the money for that? Because you don't hold the money, as I
19 understand it.

20 THE WITNESS: What would happen, for example, if
21 you're recruiting a Crown Counsel, you have the monies there.
22 Once a person has been hired, you will fill out a form that goes
23 to the Ministry of Finance that would then release that money
24 for you to be able to pay that person.

25 COMMISSIONER HICKINBOTTOM: And have you had any

1 difficulties in getting that release of money?

2 THE WITNESS: No, I have not had any--when it comes to
3 getting salaries paid, I've never had any issue with that. I
4 have never had any issue with the Ministry of Finance.

5 What the problem we would have is at the recruitment
6 stage within the past two years, at least as I've become aware
7 of it, taking over in 2019, when you're going to recruit
8 someone, you have to do a recruitment requisition form that
9 would go through Human Resources and then to the Ministry of
10 Finance for approval before you can even advertise that post.
11 The problems I faced is the length of time it takes to get back
12 to us from Human Resources and the Ministry of Finance.

13 But as regards to actually getting the funding, I have
14 not experienced any difficulty.

15 COMMISSIONER HICKINBOTTOM: And in terms of
16 requisition, delays in requisition, but not refusal, just delay.

17 THE WITNESS: Just delay.

18 COMMISSIONER HICKINBOTTOM: Okay.

19 THE WITNESS: One of the things you have to sometime
20 explain to the Ministry of Finance, it goes back to their
21 understanding. They like to treat the DPP's office as a regular
22 Government department. But we are a law firm within the
23 Government service. We have a different role.

24 For example, I would have an administrative post open,
25 and they would send people to me to select someone from it. The

1 problem I have is everybody that works in the DPP's office, I
2 subject them to Police screening. That means I send your name
3 and your information to the Commissioner who takes it to his
4 Intelligence Department, and we're going to find out everything
5 we can about you because this is a small Territory, and we need
6 to make sure that we know who is working for us. The problem
7 is, unfortunately, many people that talk to us, they may be
8 qualified, they may be a great fit personality-wise, but then we
9 find that some things that they're not successful for the
10 screening period.

11 And one of the problems we have is right now
12 currently, there is a restriction on bringing in people from the
13 outside of the Government service. They usually prefer to you
14 recruit from within the service, but the problem is people from
15 within the service who applied have--they either do not have the
16 skill set necessary because the work we do is very detailed. It
17 is a legal post per se. Even if you're not a lawyer, you still
18 have to have certain skills and knowledge to do it, certain
19 training.

20 And then, of course, when it comes to Police
21 screening, sometimes they just don't pass or they don't have an
22 appreciation of confidentiality. Confidentiality is a very big
23 thing for any legal department, especially the DPP's office.

24 So, these are things we need, and this is something
25 they have to understand. Yes, I know you may have restrictions

1 on hiring for whatever budgetary concerns there may be, but you
2 have to appreciate that I'm not a regular department, regular
3 government department. I need to be able to recruit the persons
4 with the skill set that I require and who could pass fully
5 screening to become a part of my office or to join my office,
6 and we can get it done. So that's been another big problem--not
7 so much with the legal recruitment or the recruitment of
8 administrative staff.

9 COMMISSIONER HICKINBOTTOM: Thank you very much.

10 BY MR RAWAT:

11 Q. Leaving aside the--obviously in your office you could
12 be dealing with a case where, for example, as you've given an
13 example, you need to get external counsel, and that's a
14 different process, but other than that, your budget of--your
15 current budget is 1.569 million.

16 A. Um-hmm.

17 Q. Out of that budget, do you have pay salaries of your
18 staff, the running costs of your office, and the costs of
19 bringing prosecutions?

20 A. Yes.

21 Q. So, everything. I mean--

22 A. It's everything.

23 It's difficult. We get to work the best way we can,
24 but as Principal Crown Counsel and assisting former Directors, I
25 have seen the budget for the DPP's office slowly get every year

1 a little more takes off. I understand there are budgetary
2 things you have to deal with. I'm not a finance person, but I
3 think in order for the office to run effectively, we need quite
4 a bit more money than that, even though with forfeitures and
5 cash seizure, we do bring in money towards the Government purse.
6 We're not a traditional revenue-generating body. But we
7 do--through forfeitures under the Procedural Criminal Conduct
8 Act, we do bring in money into the Government, so we think
9 that's something that would be taken into consideration when it
10 comes to dealing with our budget.

11 In past years--I can actually find it for you, if I
12 can--we have successfully forfeited back our budget.

13 Q. And you say the budget, rather than rising over the
14 time that you've been in the office, it's either plateaued or
15 gone down?

16 A. Plateaued or gone down. I've never seen an
17 increase--and I'm talking from the time I became Principal Crown
18 Counsel.

19 Q. And as DPP, when you can obviously submit a budget
20 request, you've always asked for more than you got?

21 A. Yes, always. And that's for every Government
22 department. When you ask for more, you will get it.

23 Q. When--do you then have to--are you required as DPP to
24 go in front of the Standing Finance Committee?

25 A. Yes.

1 Q. So that's an annual appearance?

2 A. Yes.

3 Q. And as we understand it, the Standing Finance
4 Committee is a committee of the entire House?

5 A. Yes, that is correct.

6 Q. So have you, as DPP been able to communicate some of
7 the difficulties that you've seen with your ability to fulfill
8 your constitutional role to the House of Assembly?

9 A. Okay. Let me answer it this way: I have gone before
10 the Standing Finance. I started going before Standing Finance
11 from 2017 with former Directors and sometimes on my own, and I
12 have communicated the needs of the office, what we need--that we
13 need bigger salaries, we need to be able to get security, we
14 need a more secure accommodation for the offices, and I'm always
15 told, "Yes, we will do it", but then nothing.

16 Q. And so keeping to the example of external counsel,
17 you've brought in external counsel on particular cases, and
18 there may be cases where you need specialist services that you
19 need to use in order bring a prosecution. There are all sorts
20 of possibilities when one is prosecuting a case, but presumably
21 external counsel are not--do not charge the same as--

22 A. No, they do not.

23 Q. --hourly rate as a Member of your office. Would that
24 be a fair point?

25 A. That is an accurate statement. That's very accurate.

1 Q. And one can never shut the door on the need for
2 external services.

3 A. Yes. You cannot because it is a small Territory.
4 Everyone knows everybody. If it is a case where everyone on the
5 staff knows the person, out of abundance of caution, we will
6 bring in someone, so it appears--and it is a fair prosecution
7 because justice has to be seen to be done as well as be done,
8 and one of the things that I make sure, even though I have no
9 qualm prosecuting whoever it is, I always have to look at how is
10 this going to look to the public? How is the public going to
11 view how the Office is dealing with the matter? And sometimes
12 we will have to bring in external counsel, but, of course, as
13 correctly suggested, they do not charge the same rate as we have
14 in-house.

15 Q. But your vision for your office is to have a
16 sustainable team of lawyers?

17 A. Yes.

18 Q. With the required expertise who are Virgin Islanders?
19 That's what you--

20 A. That is my hope, and that is one of the things that I
21 would like to see, but of course, we have to be able to train
22 them.

23 Another big problem that I have, or difficulty, is
24 that we do not get sufficient money for training. The one part
25 of the budget that is normally cut is the training budget.

1 Q. Are there other sources that you can go to to get
2 funds to train your staff?

3 A. Yes.

4 Before the pandemic, the Crown Prosecution Service and
5 the Foreign Commonwealth Office used to do trainings in Miami
6 and in other OTs and, of course, you will send counsel to those
7 trainings. But since the pandemic, they haven't posted any, for
8 obvious reasons. We do online trainings now. We had a cyber
9 conference, cyber-crimes conference where counsel, once they
10 were free from court, were able to log in, and that was of
11 minimal charge. It wasn't very expensive. And, of course, the
12 Financial Services Commission has been very supportive in
13 assisting us in getting training to prepare us for the eventual
14 evaluation in the areas of confiscation, forfeitures, general
15 money-laundering, those types of topics, so they give us
16 assistance. They're normally online training, and what we would
17 do is they would invite us, and then we will send counsel or
18 whoever is available from office to do that, and then that
19 person that has to come and teach the rest of us that training,
20 but it's always very--it's always more prudent to have proper
21 in-house training. I do most of the in-house training for the
22 Crowns myself, myself and the Principal Crown, we take turns
23 doing that, but, of course, when things get very busy and
24 especially the fact that we do not have any senior Crown
25 Council, we are usually--Senior Crowns would be the persons to

1 take matters in the High Court.

2 Go ahead.

3 Q. I'm sorry. Finish your answer.

4 A. I was going to say because we don't have that Senior
5 Crown complement that we require. It requires myself and Madame
6 Principal Crown to be in the High Court continuously. And,
7 therefore, we can't be in office--we can't be in office as much
8 as we need to to facilitate training as we would like because of
9 that. But once we get those posts filled, we will be able to
10 then concentrate more on in-house training.

11 Q. And are there--looking at the challenges that your
12 office faces, particularly the types--the degree of cases, are
13 there particular areas where you see an urgent need to bring in
14 training?

15 A. I want urgent need for--not just for my office, but
16 for all the law-enforcement agencies specifically in
17 confiscation; forfeiture; seizure of assets, not just cash
18 items; dealing with items such as covert evidence because that's
19 something new that we're dealing with now; and just basically
20 updating because if you're in the United Kingdom, you would
21 have--will give you sessions to update you on updates in
22 procedures. We don't have that facility here. You're in the
23 majority of the office. Our UK training are still connected
24 with what they're in, you know, to have that actual constant
25 renewed training to show you what's new in the lives developed

1 to keep people fresh. I think that's something that we need.

2 Q. Is that something that you could go either to the
3 Governor's Office or to the FCDO for support for?

4 A. Yes. I actually have had some discussion, not in as
5 much detail, but I have had had discussion with His Excellency
6 on that point.

7 Also I've actually sent proposals to the national
8 Anti-Money-Laundering Committee that is preparing us for the
9 mid-year evaluation, asking them for funding for training
10 sessions with not only my office but all the law enforcement
11 agencies, and including the Port Authority and Airport
12 Authority, as part of the preparation for the mutual evaluation.

13 Q. Could I ask you just to turn to page 3. I just want
14 to look at some of the recommendations you've made for change in
15 your position statement.

16 A. Yes.

17 Q. Some those that you discussed already, but I'd like to
18 focus on the others.

19 You set out in the preceding paragraphs, particularly
20 at four, you set out what you see are the strengths of the
21 system, which are three, and then the weaknesses, which are
22 considerably more than three.

23 A. Yes.

24 Q. But in taking the recommendations you made, the first
25 one is that the criminal procedural rules should be passed as

1 actual legislation.

2 A. Yes.

3 Q. What is the present state of the criminal procedural
4 rules in the Virgin Islands?

5 A. Okay. Currently, we do not have a criminal procedural
6 rules like you would see in St. Lucia or the United Kingdom.
7 What we have is the Criminal Procedure Ordinance, which is CAP
8 18, which is extremely antiquated.

9 In 2018-2019, her Ladyship Madame Chief Justice
10 instigated a Committee to start working on criminal procedural
11 rules to be implemented in the BVI, like they are in St. Lucia.

12 The committee was headed by the--was started
13 Chairmanship by her Ladyship Justice Smith, who was the former
14 residential criminal court judge; and then his Lordship Justice
15 Morley, who is resident in Antigua. House is now chaired by his
16 Lordship Justice Floyd. It consisted of the Magistrates the
17 then-Director Ms Kim Hollis, Members of the Defense Bar, the
18 Police, the Prison, and the Registrar of the High Court.

19 That a finalised document or a final draft was
20 presented in 2019 that was reviewed by Justice Morley and was
21 submitted back to this jurisdiction. Now, in most Caribbean
22 countries, it is a statutory instrument. St. Lucia I believe it
23 is a statutory instrument. However, the problem we have is that
24 our Magistrates are creatures of statute, so you have the
25 Magistrates Code of Procedure which they operate from. And if

1 you really want these rules to work, it needs to be a formal
2 piece of legislation that repeals and replaces CAP 18, the
3 Criminal Procedural Act.

4 Q. Which would then govern all levels of the criminal
5 procedural code?

6 A. Exactly.

7 COMMISSIONER HICKINBOTTOM: Where is it you said it's
8 come back from--

9 THE WITNESS: Well, it's before the Bench and Bar
10 Committee. There was a meeting on it so an action I understand
11 was to be taken, but I have not had a Bench and Bar Committee
12 meeting in recent times. To see what that last meeting we had
13 was, I believe, in early--I would say, late March of this year.

14 BY MR RAWAT:

15 Q. And once the Bench and Bar Committee signed off on it,
16 if there is the will to make it a piece of legislation, it would
17 then presumably have to go through the legislative process?

18 A. Yes, correct.

19 Q. Which would be going to Cabinet?

20 A. Cabinet, exactly, for drafting instruction, and then
21 to be taken before the House of Assembly.

22 Q. Thank you.

23 Now, the other recommendation you made is a proper
24 review and revamp of the 1997 Criminal Code as amended.

25 A. Yes.

1 Q. And other criminal legislation show they're currently
2 developing trends in criminality.

3 A. Um-hmm.

4 Q. Where changes are made to the Criminal Code or an Act
5 is brought in that criminalises activity, it may not be directed
6 to criminal offenses as you may understand it, but it introduces
7 a sanction that is a criminal sanction and involves a
8 conviction. Is your office consulted on that process?

9 A. Not as much as we should be, and I will explain.

10 Where it is necessary to get our support, we get--we
11 are informed--this is a Bill and we want you to look at it, but
12 when it comes to what I refer to as the piecemeal amendments to
13 the Criminal Code, especially to make things right, for lack of
14 better phrasing. For the eventual evaluation or CATF
15 recommendations, we are not consulted. I'm aware of other
16 legislation in the past, firearms, amendments and other things
17 where amendments were made, and we find out, like with the rest
18 of the members of the public, we're not told, and we're the ones
19 that have to go out there and defend this legislation.

20 The most recent one was ex post--that was actually a
21 joint venture between my office, the Deputy Governor's office,
22 and the Ministry of Transport, which--that is supposed to file,
23 under their remit, as the Ministry responsible. But most times
24 we're not properly consulted or after the first reading we'll
25 get something, hey, we have this piece of legislation, what do

1 you think of it, and then sometimes we will literally say, "It
2 can't work" or "It needs to be redone", and that still meets the
3 process.

4 I have been consulted in certain legislation, the
5 terrorism bill, I was a part of that committee and worked to get
6 that thing done, but most times, especially the Criminal Code
7 and those things, the DPP's office has been left out of the
8 equation.

9 Q. The Attorney General, during her evidence yesterday,
10 set out--and it's in her Position Statement--that one of her
11 goals is to have a consolidation of the laws of the Virgin
12 Islands. She's pointed out that the last one is, I think, 1991
13 when it was done, and that she considers that it hinders
14 accessibility to the law because, put simply, you don't know
15 where it all is.

16 A. That's true.

17 Q. And whether some of it is in force or some of it has
18 been repealed.

19 Now, that's obviously something that I'm sure,
20 Director, you would not disagree with--

21 A. I welcome it. I welcome Madame AG's desire not only
22 to make them accessible but to make them electronically
23 accessible to our members of the public. The problem is one of
24 her predecessors tried to consolidate and they tried to
25 consolidate the Immigration Act and the Criminal Code, and they

1 literally made a mess of it. So, if you look at the 2013
2 consolidation of the Criminal Code and you match it to what has
3 passed, the sections don't add up, they change penalties when
4 there's no need to change penalties or there's nothing to show
5 that they were changed. And we don't particularly use that one.
6 We just go through it.

7 There are a lot of unofficial consolidations that are
8 either done by the private sector or different government
9 Departments for their own aid, but I do support that initiative,
10 and I hope that is something that she's able to get done
11 expeditiously.

12 Q. What would you like to happen to the 1997 Criminal
13 Code?

14 A. It needs to be revamped, probably trashed and bring in
15 something completely brand new. It's outdated as it relates to
16 sexual offenses especially.

17 For example, sections 117 to 125, which deal with
18 sexual offenses, they're all gender-based, and that's not how it
19 is now with sexual offenses. Sexual offenses should--someone
20 should be able to be charged with sexual offense regardless if
21 they're a man or a woman or whether that victim is a girl child
22 or a boy child. It should not be gender specific.

23 Also, it's very limited, for example, rape is vaginal
24 rape. Rape has become something universal now that expands
25 that. There is nothing for sodomy, there is nothing for

1 buggery--if there is a buggery charge, we actually have to go to
2 the Offense Against the Person Act which was repealed except for
3 the section on buggery.

4 The sentences are outdated for most offenses. Some of
5 the offenses, I'm not sure where the 1997 was based on. I know
6 we use different legislation of other jurisdictions to do it but
7 some of the things are in there I don't think ever happened in
8 the BVI and may never will. Some of the offense to be
9 simplified, for example, kidnapping needs to be a simplified
10 offense. The way it's written and it's drafted, it's very
11 difficult to prove as it is. Things like common assaults.
12 Let's revamp how those are sentences. Common assault is a
13 regular occurring, unfortunately, offense.

14 Sometimes as a jailable offense we need to be able to
15 work on that, and then, of course, consolidate that with the
16 Criminal Justice Alternative Sentencing Act, where you have lots
17 of different sentencing powers but, because of funding, they're
18 not used.

19 So, that's what I would like to see, that the 1997 Act
20 is 24 years old and has lots of these little, teeny-tiny
21 amendments all over the place. We need to do a proper revamp
22 and make it come into common and modern times to match what's
23 going on in the world. For example, you have the--when they
24 brought in the Computer Misuse and Cybercrime Act, that should
25 have been a part of the Criminal Code instead of being a

1 legislation on its own, it should have been that. We were
2 looking at the Police Act now. The Police Act is something that
3 should have been redone many years ago to combat trends in
4 criminality and so that the Police will be on par with criminal
5 enterprise, so that they will be up-to-date and have the tools
6 that they need in order to get their investigations done.

7 Q. Bearing in mind the two Code tests that you would
8 apply in deciding whether to take a prosecution forward, does
9 the difficulties that you have identified in the 1997 Criminal
10 Code hamper your work?

11 A. I do not think it hampers our work. What we would
12 like to see, though, because when you look at how the law--the
13 common law had defined certain offenses and what is required in
14 law to prove them, we need to make sure that what we have
15 mirrors that as close as possible, but I would not say that the
16 lapses in the legislation prevent us from doing what we have to
17 do in fulfilling those two tests.

18 Q. But taking your example of rape being gender-based,
19 does it mean that there are some offenses--

20 A. Yes.

21 Q. --that in other jurisdictions might be prosecuted as
22 rape but in this jurisdiction simply cannot--

23 A. You have to charge it as something else.

24 Q. Which might obviously receive a different type of
25 sentence altogether.

1 A. Exactly.

2 Q. Your reference to the Criminal Justice Alternative
3 Sentencing Act, did that bring in community penalties or--

4 A. Not to the extent that they are in the UK, but there
5 are some, but the thing is, you have to have the proper
6 structure in place for some of those community sentences, for
7 parole, and those different types of things. I don't think it
8 was properly ever funded. I think there is only one parole
9 officer in the Social Development Department, and if you're
10 going to have people on parole, I think you need more than one
11 to properly manage them properly, to make sure there's effective
12 management of those persons, just as an example.

13 Q. So, from your perspective, there isn't actually the
14 machinery in place to give--

15 A. Exactly.

16 Q. --affect to that Act?

17 A. Yes, that is correct.

18 Q. Now, if we go back to page 3 of your Position
19 Statement, you've dealt with the need for security. If there is
20 anything you wish to say on that point, please do so at this
21 point.

22 A. The security--the main security, I just don't want to
23 limit it to my office. The Magistrates need security, the
24 Magistrates need orderlies. They don't have any orderlies at
25 the moment, they need orderlies. We need proper security,

1 especially at the courtroom adjuncts, there needs more security,
2 especially when you have dangerous prisoners coming in or being
3 used. They need to be there.

4 So, if anything happens, the Magistrate is safe, those
5 of us that are using the Court are safe and feel safe. This is
6 something that I've raised in different venues.

7 The High Court also needs proper security. They
8 usually have police officers to guard the jury, but sometimes
9 you need more manpower, especially if you have a high profile
10 prisoner or a dangerous accused. You need more manpower to man
11 the Court and to make sure that everyone is properly checked
12 when they come in, to make sure no one has anything--not
13 only--not that that has ever happened, but you need to make sure
14 you have enough policing staff to make sure all those concerns
15 are cared for.

16 Q. The next point you make is a reference to a backlog of
17 cases which can only be filled, as you said, you seem to say, as
18 by outstanding posts in High Court Registry and the Magistrate's
19 Court being filled. This is a backlog of criminal cases.

20 What is the state of the current backlog?

21 A. The backlog was created as a result of the hurricanes
22 because when those two hurricanes hit, we were unable to have
23 court until May-June 2018, so you had a significant backlog in
24 the Magistrate's Court, especially, and in the High Court it was
25 caused by more than one problem, first the hurricanes, and then

1 there was an issue with the jury array which had to be resolved
2 by then Justice Smith, and we were not able to have trials
3 between July 2019 and I would say January 2020, when we started
4 having trials, then we went into lockdown. The progress with
5 that, with the Magistrate's Court, my office has been working
6 with the Court Manager of the Magistracy in trying to get the
7 backlog down.

8 I think there has been progress. I do not have the
9 numbers in front of me but I can obtain same. One of the things
10 that I have done to assist in the backlog is a review of cases.
11 So, if a matter is what I would consider old, more than three
12 years old, I will look into it, I will see whether that VC wants
13 to proceed, where is the accused because a lot of persons moved
14 out of the Territory after the hurricanes, including these
15 people. So, if it's a case that the VC doesn't to want go ahead
16 anymore or we cannot find witnesses, then I will make a decision
17 as to whether to enter a Notice of Discontinuance. Notices of
18 Discontinuances have been issued in some matters.

19 Some persons have, like guilty, we have been trying to
20 do--while we do not have a traditional, like in the United
21 States, a plea-bargaining, we do try to work with the Defense
22 Bar, so if a defendant's counsel comes to us and says, "I would
23 like to plead my client to this offense, what would you do with
24 this complaint", we will then negotiate and see if we can
25 get--just to get the matter resolved, speak to the VC, make sure

1 they're comfortable with this position, what are their thoughts
2 on that position, and then we will proceed. So, work is being
3 done with the Magistracy in getting that backlog reduced.

4 As of the High Court, we are working on that. Many
5 people have been asking for what they referred to as "GUCHA"
6 (phonetic) hearings, so that's been shortening proceedings for
7 certain matters, and of course the trials. While we did start
8 having trials, now that our courtroom has now been COVID-ready,
9 we have actually gone back into that court actually Monday past,
10 and we are having trials as much as possible.

11 Q. The next point you raised is witness anonymity.

12 A. Yes.

13 Q. And you touched a little on this, but you referred to
14 making a presentation in 2020 and drafting instructions being
15 submitted to the Attorney General's Chambers. That's for a Bill
16 allowing for witness anonymity?

17 A. Yes, that's correct.

18 Q. And you say no word has been received on this, so your
19 office hasn't been asked to input into the drafting--

20 A. No, I have not seen a drafting bill. It went through
21 the Deputy Governor's office, and the last time I checked with
22 them, which was a few weeks ago, they hadn't heard anything
23 about it either, but it's something that we're pushing for
24 because while we have a justice protection legislation which
25 facilitates the Witness Protection Programme, you really can't

1 have witness protection without witness anonymity. It goes
2 in--hand into hand. And under the unfortunate precedence of
3 murders--of certain murders taking place within the past six to
4 seven months and people want to give information but they're
5 terrified. It is a small community, easy to find out who said
6 what.

7 And people know this, and, therefore, they're
8 reluctant, and I think that's something that's affected not only
9 the progress in these current murders but some of the cold cases
10 as well. People know things, but they're just scared to tell.

11 And I know that the officers that I work with closely,
12 especially in Major Crimes and Criminal Investigations
13 Department, they've also asked me when are we going to get
14 witness anonymity because it will help out in some of our cases
15 being solved.

16 Q. The point that the Police Commissioner, Mark Collins,
17 made earlier was that, he counted the--told the Commissioner
18 that he thought that there was a lack of trust in the Police, a
19 lack of public trust in the Police. And he gave as one reason
20 for that the fact that people did not feel that confidentiality
21 would be respected, that if they gave information to the Police
22 about a crime, any crime. It will be known.

23 And that also--that concern of the confidentiality
24 also hampered information sharing between different agencies.

25 A. Yes.

1 Q. Are those two concerns that you would also share?

2 A. Yes. I have those concerns as well. It is--it is
3 concerning to know that I actually have persons come to me and
4 say I am aware of certain things but I don't want to tell the
5 Police but I don't want my name put on the street or anything.

6 And this is one of the aspects of the Witness
7 Anonymity Programme, that when we get that legislation we're
8 going to have, that there will be a special unit set up, and
9 these will be officers, trusted officers, who have to go through
10 rigorous training in this area to understand how to deal with
11 these people. And that when these people come and they deal
12 with them and then subsequently we have to go into basically a
13 safety assessment into Witness Protection, that that information
14 will remain confidential.

15 As it relates to the sharing of information between
16 the law enforcement agencies, that is something that we as law
17 enforcement agencies need to sit down and work on. The fact of
18 the matter is it is a problem, it does exist, and it
19 subsequently needs to be eradicated.

20 Unfortunately, it's just a matter that some people
21 just do not appreciate confidentiality. The Government service,
22 for example, there is an Oath of Confidentiality, but what is
23 the penalty for breaching it? I think when you're in a law
24 enforcement agency, that you need to make sure that there are
25 certain things in place in your organization to make sure if

1 there is any breach of confidentiality that puts a potential
2 witness in jeopardy or puts an operation in jeopardy or puts
3 your fellow officers in jeopardy, that there should be some form
4 of swift reprimand or swift injunction or punishment so that you
5 understand the seriousness of it, and I think that's something
6 that would have to be done to the respective legislations that
7 govern these organizations so that when officers come to work
8 for them they know if I do this, this is the penalty. I can be
9 fired. I can be criminally charged or something of that nature.
10 That's the only way it's going to stop.

11 Q. And in terms of witness anonymity, a Bill that
12 provides or becomes an Act that provides for the establishment
13 of a unit of trained officers to deal with those particular
14 circumstances, ultimately, does the efficiency and efficacy of
15 such a unit depend in part on adequate funding?

16 A. It will have to be funding, and the Government will
17 have to make sure that funding is put into it.

18 Funding for the law enforcement agencies is required.
19 You just can't give some a lot and some nothing. Everybody
20 needs sufficient funding. And in the first part of my Witness
21 Statement--my Position Statement, I should say, I explained how
22 the different law enforcement agencies and where they are. And
23 I'm of the view--and I have always held the view that, as the
24 Governor is the person for security, that all law-enforcement
25 agencies and the prison should be--and the court system should

1 be under the Governor, not--this is for more than one reason.

2 First of all, when you have--because the Governor's
3 role is security, they have the expertise in assessing and
4 guiding these departments and making sure these departments have
5 the funding that they require, the human resources that they
6 require, and it should be set up in a way that, in order to
7 prevent them from being hindered financially--I won't say
8 hindered financially, but to prevent any hindrance of them
9 getting access to the funds they need, that unit or those
10 offices are all under this one particular arm of the Governor,
11 which would include AG, DPP, all the law enforcement agencies
12 that are listed before the courts under--they will call it the
13 "Ministry of Justice" in other jurisdictions. I know that some
14 people are not comfortable with that phrase, but what I think
15 needs to happen is all of them are under that umbrella, so (1),
16 there is no political influence or apparent political influence,
17 there's a way to make sure everyone gets the necessary funding
18 that they need without hindrance. It will also prevent the
19 issues of sharing information because, on the one hand, everyone
20 should be able to share information without any form of
21 apprehension or hindrance.

22 Q. That's obviously not the situation that pertains at
23 the moment?

24 A. No, it's not. But I can wait for it.

25 Q. From what you're saying, I think I want to put this to

1 you, and that is that, under the Constitution, the Governor does
2 have responsibility for security?

3 A. Yes, he does.

4 Q. What should also be said, of course, is that the
5 Governor doesn't have a separate budget to deal with security
6 matters.

7 A. Exactly.

8 Q. But a criticism could be made of a Governor that,
9 given that role for security, that responsibility for security,
10 then Governors should be more proactive in seeking and obtaining
11 support for offices like yours from the Foreign Commonwealth
12 Development office.

13 Firstly, you would say that that's a fair criticism?

14 A. No, that's not a fair criticism because I cannot speak
15 for the other law enforcement agencies. But for the DPP's
16 office, we've gotten great support from the Governors of past in
17 getting funding for us. In 2013, the then-Governor Boyd
18 McCleary, through the Jubilee Fund, was able to get us criminal
19 justice advisers to help us develop frameworks and policies
20 within the office and that happened between 2013 and 2015.
21 Under Governor Duncan, we received funding for training from the
22 FCDO. Under Governor Jaspert, we've gotten funding from the
23 FCDO to help us with certain investigations, funding and
24 training, and I will say the same for the current Governor,
25 Governor Rankin.

1 Q. You obviously can't speak for other--

2 A. I can't speak for the other. I can only speak with
3 what has happened with my office.

4 Q. Developing your proposal that one brings all the law
5 enforcement agencies under one Ministry, if you like, you've
6 titled it the Ministry of Justice. Aside from sort of dealing
7 with information sharing and confidentiality aspects, are there
8 any other benefits that you would see from taking that step?

9 A. Well, one of the benefits would be that it would be
10 equal training of all law enforcement officers because the
11 reality is the Police have, except training for them, I cannot
12 speak--I know Customs has training for their officers--I'm not
13 sure of the detail of training the Department of Immigration
14 have for theirs. I know some immigration officers are former
15 police officers, so they have that basic training, but the thing
16 is, if you have everybody under that one umbrella, everyone will
17 get the equal opportunity to be trained as a law enforcement
18 officer. So like in the other jurisdictions where you go to
19 other people's jurisdiction, the Police, when you go to other
20 jurisdictions, the Police, Customs Immigration Police officers
21 all have the same basic training. They know how to deal with
22 certain situations. I don't think that's across the board here.

23 Yes, Customs may have that training, the Police may
24 have that training, but I'm not sure the other law enforcement
25 agencies have access or that opportunity to do so.

1 Q. Can I turn, please, Director, to the point you make
2 about the Jury Act and you describe it as antiquated and needing
3 to be updated.

4 A. Yes.

5 Q. Can you explain to the Commissioner, as currently, how
6 are juries selected in the Virgin Islands?

7 A. Okay. Under the current legislation CAP 36, persons
8 under section 4, it speaks to the qualification of jurors,
9 persons between the ages of 21 and 60, provided that they've
10 lived in the Territory for ten years, they are belongers, a
11 citizen, they're not a Member of the House of Assembly
12 Legislative Council in the Virgin Islands is the House of
13 Assembly now, and they do not have a conviction, should be
14 eligible to sit on the jury.

15 One of the problems we've had in the past which led to
16 the judgment by her Ladyship Justice Smith regarding this on the
17 4th of October 2019 was based on an application made by the
18 then-Director of Public Prosecutions Ms Kim Hollis, Queen's
19 Counsel, because it was discovered that the juries were being
20 selected based on the voters list, which means that you are
21 leaving out a significant part--basis of the population because
22 the voters list has a different criteria to what is required
23 under the Act for a juror.

24 Now, that problem has been remedied, but the problem
25 with juries as I see it, this is a very small community. It is

1 very difficult when you're dealing or selecting a jury and you
2 have persons and then you find out that jurors are related to
3 witnesses, related to the accused, related to the victim,
4 related to counsel. I always make a joke of this with my
5 juniors, and I've told them one term I had to stand by about 15
6 people on the list because they were all Scatliffes. I'm not
7 quite sure how that happened, but I said even if I did not know
8 them, the appearance is the person prosecuting them is a
9 Scatliffe, and persons on the jury with the surname Scatliffe,
10 it gives the appearance that something is not right.

11 So, I think one of the things is we need to--once
12 you're a resident in this Territory, you should be able to serve
13 on the jury. Once you don't have a conviction or have any
14 political affiliations as being a Member of the House of
15 Assembly, you should be able to sit on the jury array.

16 And of course, one of the concerns we had--because
17 when there was a jury bill introduced in 2009 and that did not
18 go very far, it was brought back in 2015, and in 2020 the Deputy
19 Governor raised it again to try and see if we can get that done,
20 and I made comments to him, and some of the solutions I've asked
21 for is that jurors should be from 18 up. I don't believe in
22 discriminating on age. The residents, once you have been a
23 resident of the BVI for five years as opposed to ten; and that
24 you source information for a juror Registrar from the Supervisor
25 of Elections, the Registrar General, which would hold persons

1 who are citizens and belongers, the Social Security Board, the
2 Labour Commissioner, and from the Chief Immigration Officer, so
3 those things will all be cross-referenced so you have a full and
4 effective list to pull a jury array from.

5 Q. Going back to the point you made about witness
6 anonymity.

7 A. Um-hmm.

8 Q. Are there any difficulties in the way jury trials are
9 conducted that could put jurors at risk?

10 A. The problem with the current jury system, is unlike
11 other jurisdictions, we cannot sequester our jurors, so even
12 though the learned trial judge will give certain
13 direction--don't speak to anyone, don't entertain this, don't
14 look at this--you know, different warnings; there is no way to
15 ensure that they are doing so.

16 Of course, you have the trust system. You have to
17 trust your jurors. You have to trust that they will listen to
18 the judge, but sometimes we need to sequester them.

19 There have been examples or instances in the past of
20 allegations--and I say "allegations" because none of them have
21 been proved--of jurors being approached, jurors being offered
22 certain things, and that all goes to why you need to be able to
23 sequester your jury, to keep them safe, to keep their family
24 safe as well, and to prevent any form of jury tampering. But
25 it's not in existence on the face of the current legislation.

1 Q. What you've also set out in your remedies section if
2 you like, is that you say there is need for a constitutional
3 amendment to allow an election for a judge-only trial in cases
4 of murder, gang cases, sexual offense, especially with children,
5 and then you say other matters will still be conducted by way of
6 trial by jury.

7 Now, first question is: Why those categories?

8 A. From my experience, when you're dealing with serious
9 murder trials, trials involving purported gang affiliation,
10 there is always reluctance, jurors will find excuses just not to
11 sit because they don't want to be exposed or they think
12 something will happen to them or et cetera, and these are things
13 that I have been told by former jurors of concerns they have
14 had.

15 When it relates to children, in my experience of
16 dealing with sexual offenses, especially with children, even
17 though there are special measures, the fact of the matter is for
18 some strange reason, when a child knows that there are going to
19 be nine pairs of eyes focused on them, it strikes fear into
20 them; they're reluctant, and in many cases persons do not wish
21 to proceed because they just can't. The thought of going before
22 a jury is either very humiliating or it's very scary for them,
23 and they would just rather not proceed. That has been my
24 experience with persons or victims of sexual offenses. They are
25 reluctant to go before a jury.

1 Q. In terms of election, to whom would the right to elect
2 a judge-only trial fall?

3 A. Well, when I made the suggestion, I was doing it based
4 off of the proposed plan in Jamaica where the election could be
5 either raised by the prosecution or the accused.

6 So, if the Crown has certain information where they
7 think that it may be prudent to have a judge-only trial, they
8 will make an application. And then of course, if the other side
9 does not agree, it will be challenged and, of course, there will
10 be submissions made and the trial judge will make the final
11 determination.

12 COMMISSIONER HICKINBOTTOM: So, it wouldn't be a true
13 election. It would be an exercise of discretion?

14 THE WITNESS: An exercise of jurisdiction.

15 COMMISSIONER HICKINBOTTOM: I understand.

16 THE WITNESS: It wouldn't be an election in the
17 traditional sense of the word.

18 COMMISSIONER HICKINBOTTOM: Exactly, yes.

19 BY MR RAWAT:

20 Q. But it is nonetheless a significance departure from
21 what may be said to be a cornerstone of the constitutional
22 protections that are afforded to citizens of the BVI?

23 A. I don't think so because in other jurisdictions,
24 especially in the light of COVID, the debate for judge-only
25 trials has taken up quite a lot of steam. Some accused prefer a

1 judge to do it, that way they can get done expeditiously. Or
2 some of them may think that they have a better chance in front
3 of a judge than being judged by people who may have a
4 preconceived notion of them.

5 So, there is always the to-and-fro for the argument.
6 I don't think it undermines a right to a fair trial but I think
7 that's why I think that we are doing it in the discretionary way
8 described will still give that accused, or even the Crown, the
9 right to say okay, this is a situation where it would be better
10 heard by a judge alone and then let the judge decide whether he
11 thinks it is the proper way to go.

12 Q. Doesn't it risk sort of ancillary litigation because
13 if you are the--if you lose in an application, then you would
14 appeal it, and that introduces delay in the system.

15 A. Well, you put certain procedures in the criminal
16 procedure rules to combat against that. If they want to appeal
17 it, they have to wait until the end of the matter, and then
18 everything goes before the Court of Appeal.

19 It's the same as when I look at a judge-only trials
20 are similar to Magistrate court trials. So, if you're saying
21 going before the Magistrates defers a man's right to a fair
22 trial because it's a summary matter, and he doesn't have a jury
23 at the summary matter, the same thing will go ahead. How would
24 the proposal, of course--these are things that will all have to
25 be ironed out, but as I understand it from other jurisdictions

1 who are trying this discretionary election thing, that there are
2 things in place that, if the trial judge makes a certain
3 determination and proceeds with the trial, then it could be a
4 ground for appeal at that stage. There is nothing to discuss,
5 as Mr Rawat has suggested, that it could be--it could probably
6 cause a delay, but certain things will have to be considered.
7 But remember, this is something, this is an idea; this is
8 nothing that's installed. It's just a suggestion of how to make
9 things better.

10 Q. But as a suggestion, it involves I suppose all the
11 various points that you made?

12 A. Of course.

13 Q. Beginning to interconnect a new Jury Act, a revamp of
14 the Code and Criminal Procedural Rules?

15 A. Um-hmm. Well, the Criminal Procedural Rules and the
16 Jury Act will probably come in before that suggestion even takes
17 root because remember we are having a Constitution review around
18 this time. And even if you suggest something of that nature,
19 it's something that everybody has to be on board with. So
20 that's why I say it's a suggestion, and the Jury Act and the
21 Criminal Procedural Rules would probably come into play long
22 before that's something that's even considered.

23 Q. You mentioned that this was being considered in
24 Jamaica.

25 A. Yes.

1 Q. And you've obviously made inquiries and considered
2 this question. Are there any other Caribbean jurisdictions
3 where this is being considered or indeed any other jurisdictions
4 that--

5 A. I understand Trinidad is considering it. I know there
6 were debates about it in Antigua. The position in Antigua is a
7 little bit different than me because while the judges are for
8 it--it is my belief--it is my understanding that some of the Bar
9 are not for it. They prefer to have jury trials.

10 Q. Can I move on to the next point that you make, which
11 is a need for media legislation on how to properly report
12 criminal trial, and you then say the right of freedom and
13 expression must be balanced for the accused's right to a fair
14 trial and the right to privacy as it relates to witnesses.

15 A. Yes.

16 Q. So, in terms of media reporting, what restrictions are
17 there currently, if any?

18 A. There are none. My office, actually through the
19 Government information service released a booklet earlier this
20 year on the proper way of reporting a criminal trial. For
21 example, I will use this as an example. A few years ago, there
22 was an incident involving a minor, a sexual offense including a
23 minor, the VC was a minor, and the accused was a minor, and it
24 was a High Court matter, and certain publication decided it
25 was--it was a good idea to print the names of those persons,

1 those minors, a few days before the High Court trial. And, of
2 course, being the small Territory it is, you figure out who is
3 who and who is related to who and different things happened as a
4 result.

5 And the then-trial judge called for the meeting and
6 said you cannot do this. This is not--it's reckless to do so.
7 But the main point with the media, it's not so much the media
8 themselves, it's the allowance of blogs. In the blogs, they try
9 the case without any evidence or knowledge of what has really
10 happened, and they determined the guilt of the accused. They
11 criticise victims and witnesses, Police Officers, and it raises
12 something called pre-trial publicity. It has been a ground of
13 appeal that I have fought on more than one occasion, where the
14 accused has been convicted and they say, "Well, on the pre-trial
15 publicity, the jury saw this, they read this and they made a
16 judgment against me based on what they read in this online news
17 publication".

18 One, I understand with political topics people have
19 the right to blog, but they should do so responsibly, and the
20 media houses have a responsibility to ensure that it's not
21 defamatory because that is a crime under the 2019 Amendment to
22 the Computer Misuse and Cybercrime Act. The fact of the matter
23 is you have to remember this is a small jurisdiction. You have
24 a small jury pool. There is a great danger of
25 poisoning-your-jury array with these comments, and that's why I

1 say you have to balance it. How can you get up and allow blogs
2 to say a man is guilty when he's supposed to be presumed
3 innocent? That's--that is the contention or the problem that I
4 have with it. It is for the tribunal of fact being the jury in
5 the case of the High Court or the Magistrate in the case of
6 summary matter to determine where the truth lies and who is
7 telling the truth and who is lying, and who is guilty and who is
8 innocent. That's not for public opinion.

9 It's one thing for the media to report, and when I say
10 "report" accurately, I have no problem with that. What I am
11 concerned with is the published publication of names of minors,
12 especially in sexual offenses and names of victims, names of
13 persons who may have given information because sometimes you're
14 in court, you have to tell the Magistrate or the trial judge
15 certain information. You can't say, "My Lord, I can't say that,
16 let me write his name on a piece of paper and hand it up to
17 you". You can't do that. But at the same time, yes, the
18 Magistrates are very helpful in this, they will say, "Look, the
19 Crown has said this, but we would ask you to use your discretion
20 and not disclose certain things that have been said before
21 because especially with the arrest matter, when bail is being
22 determined, the Court has to have a proper outline of what has
23 happened in the matter".

24 While you may not say names, there may be information
25 that, if published, people can figure out who said what and who

1 is giving information to Police, and those type of things, and
2 it goes always back to witness anonymity because you're then
3 putting people in danger.

4 So, one of the things--I wouldn't say to put
5 legislation or restrict--we're not trying to restrict the right
6 to free press or freedom of expression but it has to be balanced
7 against the section 16 right to a fair trial and due process.
8 It has to be balanced with the Witnesses who have volunteered to
9 come and assist, their right to privacy. The right to free
10 press is not an absolute right. It's a balanced right. It has
11 to be balanced against other things, so that's the point I was
12 making there.

13 Q. But in your experience, has a ground of appeal based
14 on pre-trial publicity succeeded?

15 A. No, it has not. I will not--I will be very
16 straightforward. It's very hard to fight because of--in the one
17 time I did prosecute it or was in the appeal, in that particular
18 case, they reported on one of the deceased--the deceased--it was
19 a murder case, and one of the deceased's family member was on
20 the stand and they were very emotional, and made certain
21 comments, and they did a blow-by-blow account of what happened
22 in court. And then the blogs mounted it on.

23 And, of course, the problem is, as I said before,
24 jurors are not sequestered in our legislation. So, we don't
25 know who and who read that article, read those blogs. And it

1 was very hard to--we succeeded at the appeal in preventing that
2 form of appeal from being successful, but at the same time it
3 was very difficult because you're trying to convince the Court
4 of Appeal that that type of level of emotion and sympathy being
5 eroded into the news article could not have prejudiced a juror,
6 so that's the concern we have.

7 Q. And that's something which, in your view, can only be
8 remedied by legislation?

9 A. I don't--not only legislation. I have been thinking
10 about it. Self-regulation. In other jurisdictions, the media
11 do self-regulate. It is something I raised with GIS: Is there
12 a possibility of there being an association of those persons in
13 the media to come together and regulate themselves?

14 Legislation I think is a draconian step and probably
15 will be a last resort. But they understand and get guidance and
16 understand this is why we should do this, I have brought out
17 guidance to the media and to the general public on the Computer
18 Misuse and Cybercrime Act especially with electronic defamation,
19 general defamation under the Criminal Code, as to what
20 constitutes it and how your electronic documents, being on-line
21 media, Facebook posts, can be construed to be an offense. I
22 have published those statements, and that was published in early
23 2020 right after the lockdown.

24 And they have these materials before them to give them
25 guidance.

1 Q. Can I move on to the last one that--

2 A. Yes, of course.

3 Q. --you mentioned, which you have already spoken to, so
4 hopefully we'll deal with it quickly. It's your recommendation
5 that the Police Prosecution Unit should be transferred to the
6 ODPP. Commissioner Collins, when he gave evidence earlier,
7 agreed that it's an outdated position for the Police to have any
8 prosecutorial function, and he said that--his evidence concluded
9 that one of his concerns was that--areas he sought for
10 improvement was that too often what he's described as skeleton
11 files were given to the DPP, and so it's left to your office to
12 fill in the gaps whereas what he would like to achieve is a
13 position where the investigating authority, the Police, hand to
14 you a file that actually has all of the evidence in it on which
15 you've deemed necessary to make a charging decision.

16 Do you agree that that's the way it should work?

17 A. It should, but the only way that's going to happen is
18 if you have consultations with the DPP's office in the
19 investigative stages of the trial. Now, there are certain
20 divisions within the Police that, I guess, because of the nature
21 of the offenses they deal with they will actually have
22 consultations with us before the file is complete. So, when the
23 arrest happens, we have a complete case file. As it relates to
24 little minor offenses, for example, if you go down the road and
25 you say to a police officer you saw A assaulting B and they

1 arrest him and then they put together the file quickly because
2 they have to do that, then, of course, we have what is called
3 the vetting process where we review the file that's given to us,
4 and then we say, "Okay, this is what you need to complete this
5 file". It's something that's been in place since 2012. It does
6 work for the most part but, of course, it goes back to the
7 Police doing what they have to do.

8 I agree with the Commissioner in part that that is a
9 goal of achievement that we should all strive for, but the
10 reality is an investigator will investigate, but then there's
11 always something else that he may not have put his mind to that
12 when the prosecutor needs it, they will ask for more information
13 or ask for additional information. But as far as possible once
14 they understand one of the things I am working with with the
15 Commissioner is training of the officers so they understand when
16 you put together a case file, this is what should be in that
17 case file to help eliminate skeleton files, to use the
18 Commissioner's phrase.

19 Q. Thank you.

20 Can I deal with one other matter, and that is you've
21 spoken a number of times, Director, about the fact that this is
22 a small jurisdiction. It's a small community. And you've
23 alluded to and given examples of how that can arise in the
24 context of a jury trial.

25 A. Um-hmm.

1 Q. Within your own organization internally, how do you
2 deal with potential conflicts of interest?

3 A. In our office, if there's a conflict of interest,
4 you're supposed to acknowledge it immediately and normally
5 inform me. In the rare times that I have had a conflict, that
6 is why I have a Principal Crown Counsel. My Principal Crown
7 Counsel is not from this jurisdiction. So, if it's something
8 that I cannot deal with, she will then deal with it.

9 But, with the counsel, if counsel cannot deal with the
10 matter because of conflict of interest, they will not see that
11 file. I will not have them anywhere near that file, not even to
12 hold papers if another counsel is sick or in another court. I
13 will always make sure that they do not have any involvement in
14 that file for their own safety and for the safety of the office
15 and the integrity of the office.

16 As it relates to it, of course, being a Virgin
17 Islander, I can't call conflict on every person I know.
18 However, I do make sure that if it's something that is someone
19 that I know very well or someone I'm related to, I make sure
20 that that conflict is noted. I make my staff aware of that
21 conflict. I will make the Commissioner aware of the conflict so
22 they make sure that they don't ask my guidance on the matter.
23 And I always will make the Commissioner aware or the
24 investigating officer aware of any potential conflict with their
25 cases within the Chambers so that they will know who they can

1 ask and who they can ask if they need guidance or advice. So,
2 that's how I would normally deal with conflict of interest in my
3 chambers.

4 MR RAWAT: Commissioner, may I have a moment?

5 COMMISSIONER HICKINBOTTOM: Certainly.

6 MR RAWAT: Commissioner, those are my questions. Can
7 I conclude by thanking the Director for the time that she has
8 given the Commission today and for the detail with which she has
9 given her evidence.

10 COMMISSIONER HICKINBOTTOM: And can I echo that,
11 please, Director, both your time and the way--the helpful way in
12 which you've answered all the questions. It's been very--very
13 interesting and helpful. Thank you very much.

14 THE WITNESS: I was grateful. Glad I could be of
15 assistance.

16 MR RAWAT: Commissioner, if you could rise briefly. I
17 don't know whether we want to have a break for lunch, but before
18 we determine that, if I could just check on the current status
19 of witnesses.

20 COMMISSIONER HICKINBOTTOM: Yes, please do that,
21 Mr Rawat.

22 MR RAWAT: Thank you.

23 (Witness steps down.)

24 (Recess.)

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Session 3

IAN PENN, COMMISSION WITNESS, CALLED

COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

MR RAWAT: Thank you, Commissioner. Our next witness will be the Chief Immigration Officer, Mr Ian Penn.

Commissioner, Mr Penn has previously given evidence, so there's no need for him to either take the oath or affirm, so if I could just go straight to my questions.

COMMISSIONER HICKINBOTTOM: Yes. Thank you.

Thank you, Mr Penn.

BY MR RAWAT:

Q. Mr Penn, do you have a copy with you of the Position Statement that you've submitted to the Commission?

A. Yes, I do.

Q. Can I ask you as we're going through just to remember to keep your voice up, please. The microphone in front of you, unfortunately won't amplify. It just records, but if you speak close to it and keep your voice up, hopefully we'll get an accurate record of your evidence.

Thank you, first of all, for making that position statement and also for the patience you've shown today in waiting to give your evidence. Everyone here will have had an opportunity to read the Position Statement. This has been published on the Inquiry's Web site. What I'd like to do is just ask you some ancillary questions on various points within

1 the statement.

2 Could I take you, please, to your answer to the first
3 question, which was to ask about the system of Immigration, how
4 it's organised in the BVI. And you explained that there are two
5 pieces of legislation that govern the Immigration Department.
6 The first is Immigration and Passport Act, that's cap 130, and
7 the second is the Immigration and Passport Regulations of 2014.

8 You conclude by saying the Chief Immigration Officer
9 is the advisor to Government on matters relative to Immigration.

10 Is that position limited to a particular arm of
11 government, or are you the advisor to whole of the Government on
12 issues of Immigration?

13 A. I am an adviser to the whole of Government on issues
14 of Immigration.

15 Q. So, that includes the Legislature, the Executive, the
16 Cabinet, and the Governor?

17 A. Yes, that's correct.

18 Q. Thank you.

19 If you goto the next question, you were asked about
20 the processes and systems in place to monitor the effectiveness
21 of the Immigration system in the BVI. And, as part of your
22 answer, you explained that that is monitored through the
23 legislative arm of government, so Members of the House of
24 Assembly can question any policy, process, and procedure being
25 undertaken by the Department. Can you give the Commissioner

1 some additional detail as to how that works. Are you summoned
2 in front of a committee of the House of Assembly or is it done
3 in a different way?

4 A. Well, normally what happens, Commissioner, is that,
5 you know, every year we have budget submission, and we have to
6 go before the House of Assembly to, you know, make
7 representation--

8 COMMISSIONER HICKINBOTTOM: That's the Finance
9 Standing Committee?

10 THE WITNESS: Yes.

11 Make representations as to our budgets, and at that
12 particular point in time that is used as an avenue for the
13 Legislators to ask questions about Immigration, the procedures,
14 you know, and a number of questions that they would have
15 concerning Immigration, you know, that I would answer from time
16 to time.

17 BY MR RAWAT:

18 Q. So, the questions go beyond finances, but can you be
19 asked at that point question about the operation of your
20 Department?

21 A. Yes.

22 Q. You also mentioned in the same answer the Immigration
23 Board. You say that it has no executive or administrative
24 function in respect of the day-to-day operations of the
25 Department, but it can give advice on matters within the control

1 of Immigration.

2 Firstly, how is the Immigration Board constituted?

3 A. The Immigration Board is constituted by the
4 Minister--by the Minister of Immigration, and they are appointed
5 and given a Writ of Appointment where it would set out how long
6 they would be appointed for in office, and then they would sit
7 on matters, you know, relating to residency or belonger status
8 in the Territory.

9 Q. I see.

10 What's the kind of advice that the Board would give to
11 you as Chief Immigration Officer?

12 A. The Board can give advice to me as Chief Immigration
13 Officer as it relates to persons entering the Territory, persons
14 who are here in the Territory who are not belongers, who are
15 here on work permits, and from time to time, you know, give, you
16 know, advice as to, you know, any Immigration matters relating
17 to those areas.

18 Q. And does it amongst its number include any specialists
19 on Immigration?

20 A. Any?

21 Q. Is there on the Board is there someone who sits who
22 has specialist expertise in Immigration?

23 A. No.

24 Q. And now giving you advice about policy--general policy
25 or are they referring to specific cases?

1 A. It could be both. It could be both, but even if they
2 give advice, it doesn't necessarily mean that, you know, I would
3 have to take, you know, that advice wholeheartedly and act upon
4 it. I still reserve the right to take whatever advice and act
5 upon it if I see fit; if I don't, then I use my own discretion
6 on the matter.

7 Q. Does it fall to you to bring things to the Immigration
8 Board or are there regular meetings of the Board to which you
9 have to appear?

10 A. Yes, there's regular meetings to the Board, and I am
11 expected to make a presentation at every meeting concerning
12 Immigration matters, you know, within the Territory that is
13 pertinent to the Board for discussion and also for advice on
14 certain matters as well.

15 Q. So, could there be a straightforward matter? And
16 let's take a hypothetical example, somebody who has overstayed
17 their work permit, and from your perspective as Chief
18 Immigration Officer--

19 A. Right.

20 Q. --that's a straightforward matter?

21 A. Right.

22 Q. You're clear in your mind what your powers are, you're
23 clear in your mind what the decision should be. In those
24 circumstances, could that be one of the sorts of things that you
25 wouldn't take that to the Board?

1 A. No. I wouldn't take something that simple to the
2 Board. It would have to be, you know, something more complex,
3 you know, that--you know that I am wrestling with a decision,
4 you know, as to, you know--you know, what decision I should
5 make, and then I would, you know, take it to the Board, and, you
6 know, get their views, their advice, you know, as I said, and
7 then--and then after that, you know, depending on what advice I
8 get, you know, then it can help me, you know, to make my
9 decision or I just make it, you know, on my own, as I see fit.

10 Q. So, would you tend, therefore, you say more complex
11 cases, cases that could impact other cases have wider
12 consequences, are those the sort that you would take to the
13 Board?

14 A. Yes.

15 Q. And separate from getting advice from the Board, if
16 you needed legal advice, if you wanted somebody to tell you
17 about something in the Immigration Act or something in the
18 regulations that perhaps was ambiguous, where would you go for
19 such advice?

20 A. The Attorney General Chambers.

21 Q. If I could take you now to you paragraph 4, which I
22 think is on the second page, you were asked about the
23 responsibilities that you have as Chief Immigration Officer in
24 respect of detecting and investigating corruption, abuse of
25 office or other serious dishonesty that may have taken place in

1 public office within the Immigration system in recent years, and
2 your answer is directed really to the internal situation within
3 your Department, and if you could just remind--I apologise
4 having to ask this, but just remind the Commissioner, how long
5 have you been Chief Immigration Officer?

6 A. Well, I've been appointed to the post in
7 September--the 3rd of September 2020.

8 Q. Were you Acting up before then?

9 A. Yes, I was Acting.

10 Q. And you've been--I think you've been an experienced
11 officer in the Immigration Department for a certain number of
12 years, haven't you?

13 A. Yes.

14 Q. Now, looking at it internally, what you said is that
15 your responsibility includes the investigation of any suspected
16 corruption, abuse of office or dishonesty, and there would be an
17 internal investigation. And then you would--you would be
18 expected under the General Orders, which the Commissioner is
19 aware of those, the General Orders revised in 1982 that govern
20 terms and conditions relating to Civil Service or Public
21 Service.

22 A. Yes.

23 Q. You're expected to report to your parent Ministry by
24 way of the Human Resources Department, and that's why they need
25 to go to the Public Service Commission; is that right?

1 A. Yes.

2 Q. In terms of--and once that referral is made, further
3 action may follow?

4 A. Yes.

5 Q. But in terms of your internal investigations taking,
6 for example, the last three years, how many such investigations
7 have been undertaken?

8 A. There probably could have been--probably two--probably
9 two, to my recollection at this point.

10 Q. Is that something that you can confirm for the
11 Commissioner, if necessary?

12 A. Yes.

13 Q. And do you have--in terms of--the internal
14 investigation part, who within your Department would conduct
15 such an investigation?

16 A. Well, as I outlined here in my position statement, to
17 that there, I believe in chain of command. And if it's an
18 officer who is at a Port of Entry, you know, each port has a
19 supervisor, and it's staffed with that supervisor and then, you
20 know, the supervisor would report upward the chain until it
21 reaches to myself.

22 Q. And are you the ultimate person who makes the decision
23 as to what happens next?

24 A. Yes, to move it--to move it--to move it along further
25 out of the Department, you know, as we described to the parent

1 Ministry, to the HR Department and, you know, to any other
2 agency if needs be.

3 Q. Now, from your recollection, the last three years
4 there have been two--and I appreciate it wasn't something we
5 asked you to confirm before giving evidence, but did
6 those--those two investigations that you can recall, did they
7 lead to any action being taken against individuals?

8 A. Well, the outcome--the outcome of the investigations
9 did not--did not in any way incriminate anyone and,
10 therefore--and, therefore, they were concluded in that manner.

11 Q. If you look now at--before we leave 4 and it's not
12 something you really deal with in your Position Statement, but
13 in terms of sort of external investigations, you know, if there
14 is corruption or abuse of office or other serious dishonesty,
15 would the--could you--would the Immigration Department and
16 yourself as Chief Immigration Officer ever get involved in an
17 external investigation, or would that be a matter that would
18 just immediately be under the purview of the Police Force?

19 A. Right. Right.

20 So, if there is an investigation that warrants
21 external investigation, then that's where I would--you know, I
22 would write to the Police Commissioner and ask assistance in
23 investigating a matter, you know, depending on what it is.

24 Q. What you say at 5 and you were asked about the
25 processes and systems in place to detect and investigate matters

1 relating to corruption, abuse of office, or other serious
2 dishonesty, and you've set out there your point about chain of
3 command. So an officer reports to a supervisor who then reports
4 further up to the chain of command with you sitting at the top
5 of it.

6 What you say is these layers allow for checks and
7 balances to take place at each level, thus resulting in the
8 detection and investigation of any suspected wrongdoing. The
9 phrase "checks and balances", what did you have specifically in
10 mind? What are these checks and balances?

11 A. What I had in mind when I mentioned that is that, as I
12 said, again, with the supervisor, so when it comes up, you know,
13 that chain, you know, all those layers to the chain, it means
14 that, you know, every persons--every person in that chain, you
15 know, would be able to check the supervisor below and make sure
16 that, you know, everything was in place, all the right questions
17 was asked, all stones were overturned and make sure that, you
18 know, everything was done by the book and make sure that we have
19 a solid case if, you know, to go forward if need be.

20 Q. So, it goes from officer to supervisor. If the
21 supervisor were to say: "I don't see anything here worth
22 investigating", that would still be checked by the Unit Head?

23 A. Yes.

24 Q. I see. And it carries on like that?

25 A. Yes.

1 Q. All the way up?

2 A. Yes.

3 Q. So, it's not the case in the Immigration Department
4 that a supervisor could sort of brush something under the
5 counter--

6 A. No.

7 Q. --without the Unit Head knowing?

8 A. No.

9 Q. Thank you.

10 Go now to paragraph 7, please.

11 You were asked about the strengths and weaknesses of
12 the Immigration system in the BVI. What you've said is the
13 strength is the ability to properly detect and manage migration
14 in the Territory, having a highly skilled and trained officer
15 complement for efficient execution of the tasks and benefits
16 working jointly, locally and regionally. And you say the most
17 evident weaknesses faced are technological limitations and
18 limited staffing.

19 Taking that last one first, what is--what is or what
20 is the cause of limited staffing in Immigration Department?

21 A. Well, this can confirm our budgetary constraints,
22 meaning that, you know, from time to time, you know, budgets are
23 submitted every year and, you know, most happen--more staffing
24 is put in there, and it doesn't necessarily mean, you know, that
25 you get the staff, you know, that you allocate or you budget

1 for, so it's, you know, been a continuous matter for years, you
2 know, because of, as I said again, budgetary constraints, you
3 know, in terms of, you know, financing, you know, more staff to
4 the Department.

5 However, I would say that, you know, that the
6 Department is a very big Department because we have a number of
7 ports of entries and, you know, and other administrative duties,
8 and staffing is very important, you know, to have make sure that
9 all those areas are properly covered, you know, but as I said,
10 from time to time, you know, we would make submission for more
11 staff, but it is not always that we always get, you know, the
12 staffing that we need.

13 Q. What is your current staffing level in terms of--I
14 mean, you will obviously have Immigration Officers?

15 A. Right.

16 Q. And support staff. Taking your Immigration Officers
17 first, how many do you have?

18 A. Well, my Immigration complement stands right now at
19 57.

20 Q. And in terms of support?

21 A. And that includes the Deputy and Assistant Chiefs and
22 all the other officers.

23 Q. Yes.

24 A. And my support staff is very small as well, which is
25 six administrative support staff.

1 Q. And how many Ports of Entry does the Immigration
2 Department have to cover? You've obviously got the airport.
3 But where else would you have your--

4 A. I can name them out for you. The airport, Road Town,
5 West End, Jost Van Dijk, Virgin Gorda. There's three areas in
6 Virgin Gorda, the airport and two seaports, and we also have the
7 airport in Anegada.

8 Q. 57 officers. How many should you have?

9 A. How many?

10 Q. Are you understaffed in terms of your--sorry. I will
11 start that all over again.

12 The Commissioner has heard evidence from the Attorney
13 General who says that she is understaffed. He's heard evidence
14 from the Commissioner of Police who says he also has vacancies
15 that remain unfilled. It's the same position with the Director
16 of Public Prosecutions. She's understaffed as well. Is that
17 the same situation in the Immigration Department?

18 A. Yes, it is.

19 Q. And you say you have 57 officers. How many vacancies
20 do you have for Immigration Officers?

21 A. Well, I don't have--I don't have a lot of vacancy
22 because this number--this number have been--have been at a
23 standstill for quite a number of years, and the Department is
24 growing--the country is growing and, therefore, we need--you
25 know, we would need more manpower to, you know, to make sure

1 that, you know, things are--get done efficiently and that we
2 have, you know, more persons to do that.

3 Q. And what is your 2021 budget?

4 A. 2,899,000.

5 Q. And over the last few years, has that budget roughly
6 stayed the same or has it decreased or has it increased?

7 A. Well, in some--in some instances it had--it has
8 decreased because, as I said, you know, budgetary constraints,
9 we had a Category 5 Hurricane in 2017. We're dealing with
10 COVID. So, from time to time, you know, we had to make budget
11 cuts, budget cuts, and so, therefore, our budget number would go
12 down, but not necessarily staffing. I mean, we would
13 maintain--we would maintain the staffing that we have, but in
14 terms of, you know, being able to acquire new staff, you know,
15 that has been the challenge.

16 Q. I see.

17 And one point that both the Attorney General and the
18 Director of the Public Prosecution made was that certainly for
19 lawyers, pay rates are lower in Public Service than they would
20 be in the private sector.

21 Is low pay a deterrent for you as Chief Immigration
22 Officer in terms of recruiting? Does it stop you getting
23 people?

24 A. Not entirely, but it is a factor. It is a factor, and
25 it is something that, you know, is in one of my, you know, one

1 of my plans going forward to, you know, put forward a review,
2 you know, for increase of salaries for officers and even to make
3 it attractive, you know, to, you know, for persons who're coming
4 on to Immigration for the first time.

5 Q. Have you found it difficult to retain staff, or do you
6 find staff will, once they are in the Department, they will
7 stick with the job or do you see people come and go often?

8 A. Well, we don't have come and go often. We have--we
9 have persons who have, you know, been there for a career length
10 of time, but from time to time, you know, based on how things
11 are economically, as I said, you know, and salary-wise and not
12 being able to get a number of things because of budgetary
13 constraints, it can be frustrating, you know, to the officers
14 and persons who work in the Department.

15 Q. In terms of--forgive me if I canvassed you when you
16 last gave evidence, Mr Penn, but the Police Commissioner
17 mentioned the fact that, within the Police, people can do
18 certain jobs. His evidence was that it's not something he
19 necessarily likes, but he understands why people sometimes have
20 to do it and why they have other businesses. Does that happen
21 within the Immigration Department, that you will have people who
22 work in the Immigration Department but may also have an outside
23 business?

24 A. Yes, we have that, and I make sure that, you know,
25 those persons fill out their private insurance forms, and, you

1 know, make sure that they're submitted to the parent Ministry
2 and, you know, and it's been dealt with and, you know, make sure
3 that, you know, that they are checked and upgraded every year,
4 you know, to make sure that they are either doing the same
5 thing, they have stopped, or whether they have added to it.

6 Q. And is it the parent Ministry that can say "yes", you
7 can have a second job, or is it you as Chief Immigration Officer
8 that makes that decision?

9 A. No, no, it goes through a process.

10 Because of the parent Ministry, most things
11 administratively would go to the--would go to the parent
12 Ministry first and then on to HR, and then that's where the
13 decision would be made, you know, from HR, and then the decision
14 would then be sent back from to the parent Ministry and back to
15 the Department.

16 Q. Whether HR is making that Decision, do they consult
17 you at all?

18 A. If they need to, then they would.

19 Q. Two more matters, please. One of the points that
20 Commissioner Collins made was that he felt that, well, firstly,
21 that the Police need a designated vetting officer, and that the
22 Police themselves didn't--their own internal vetting wasn't up
23 to scratch. Now, this was something on which I asked you
24 questions about when you last gave evidence, and that was about
25 vetting of your officers, and correct me if I'm wrong, but my

1 recollection was that your evidence was that where you need to
2 vet officers, you would use the Police, for example, as a
3 service. And if I'm wrong, I'm sure you will tell me if I
4 misremembered your evidence.

5 But in terms of vetting within the Immigration
6 Department, what is the current process?

7 A. Okay. I think what I told you the last time is that
8 persons who apply to the Immigration Officers, they have to
9 submit a Police report, so they would have to go to the
10 Police--to the Police station and get that, so we use that as
11 one point. Then within the Department, you know, we have and
12 somewhat the parent Ministry as well, all applications are
13 vetted and looked at in a number of ways, and then what we do is
14 we short list, you know, based on our vetting process, and then
15 we schedule interviews, you know, for those persons who we have
16 short listed.

17 Q. And once someone is an Immigration officer, has
18 started work, do you periodically vet officers as they go
19 through the organization?

20 A. We do not have such a system in place, but what I can
21 say is that persons are hired mostly on a temporary basis, and
22 then they have to go through an appraisal process, you know, the
23 performance.

24 And once they've passed, you know, their performance,
25 not only at one time, but from time to time, you know, then we

1 can say, you know, that this officer, you know, is a good
2 officer and the officer, you know, knows what he's about and so
3 forth.

4 But the vetting process is done through the
5 performance appraisal process, which is done twice a year, which
6 is done twice a year, and where the officer would sit down with
7 their supervisor and, you know, go through the appraisal
8 process, you know, as to their performance on the job. And if
9 they're underperforming, the, you know, action would be taken.

10 Q. But part of vetting is about asking about someone
11 whether they may have outside interests that could affect how
12 they do their job.

13 Now, I think what you said to the Commissioner is that
14 you vet them in that way when they apply to be an Immigration
15 Officer. My question is that, once they're in and they carry on
16 in the job, do you actually ever periodically go back and check
17 someone's background, check if they have any associations, even
18 if they're ten years into the job, do you go back and go and
19 let's just see whether this person has any associations that
20 could affect their ability to be an Immigration Officer?

21 A. No, we don't--we don't have such a system in place.

22 Q. And in terms of your budget, you've given the figure
23 to the Commissioner. If that budget is sort of allocated to
24 you, is it given to you to spend in the way that you see fit
25 through the year, or do you have to--is it a sort of paper

1 budget and you have applied for funds for?

2 A. Well, how the Department is structured at, you know,
3 right now, we have to apply for, you know, whatever spending
4 that we need to a parent Ministry, and that's the structure as
5 it is right now.

6 Q. So, if, for example, you wanted to recruit another
7 Immigration Officer or buy a piece of equipment that you
8 consider was important to the functioning of the Department, you
9 would make an application to your parent Ministry?

10 A. Yes.

11 Q. And is that where it stops? Do they say "yes" or
12 "no", or does it involve the Ministry of Finance at all?

13 A. No, well, if there--well, if there's no money or if
14 there is not enough money, then the parent Ministry will then
15 petition the Finance Department to see if they could assist or
16 help, you know, get the monies to do so. The parent Ministry as
17 well, if we sent forward our requisition, they have the right to
18 say, you know, whether it is too expensive, whether that we
19 should go and check another supplier and, you know, try to find
20 something, you know, at a cheaper rate. They have the right to
21 do so.

22 Q. Final matter for me. You will remember the evidence
23 that Mr Collins gave about the Joint Task Force, and in summary,
24 he has--he questions his operational effectiveness and value for
25 money, and what he explained to the Commissioner he's done is to

1 have an internal review of the Police element of the Joint Task
2 Force, which he then plans to bring to you and Mr Smith so that
3 you can then have a further review of the overall Joint Task
4 Force.

5 Now, obviously that process is not yet completed, but
6 from your perspective, did you have any concerns about the
7 operational effectiveness of the Joint Task Force at the moment?

8 A. Well, at the moment, the Joint Task Force is operating
9 very well. I've listened to the Commissioner when asked this
10 morning so what I can assume that he's probably getting at is to
11 probably have things more structured, you know, have more
12 reporting mechanism, have more information on hand and, you
13 know, have more recording of information, you know, that
14 actually happened between the Joint Task Force.

15 COMMISSIONER HICKINBOTTOM: What information do you
16 currently have, then? How do you--you say that, as a strength
17 of the Immigration system, the ability to properly detect and
18 manage migration, but what information do you have in respect of
19 the success in doing that?

20 THE WITNESS: Well--well, we have just put into place
21 a new border management system in the Immigration Department,
22 and we also are hoping to have the APIS system put in place
23 where we would be able to have information on persons coming
24 into the Territory even before they arrive, so that information
25 would be very important to us.

1 Persons coming into the Territory would also be--would
2 also go through some law enforcement agency systems where it can
3 detect undesirable persons coming into the Territory, so that
4 information would be vital for the Joint Task Force, Police and
5 Customs as well.

6 COMMISSIONER HICKINBOTTOM: Those management systems
7 for individuals who come into the Territory in legitimate
8 conventional ways. The Joint Task Force, of course, is designed
9 to stop people coming into the Territory unlawfully through
10 non-conventional ways.

11 THE WITNESS: Yes.

12 COMMISSIONER HICKINBOTTOM: How is that measured? You
13 say that the Joint Task Force is working well, and I think the
14 Commissioner of Police said that it works well at your level, at
15 a strategic level, but what about at the operational level?
16 What performance indicators do you use at operational level?

17 THE WITNESS: Well, at the operation level--Police,
18 Customs, Immigration--whatever matters is encountered and dealt
19 with is properly recorded--is properly recorded and--

20 COMMISSIONER HICKINBOTTOM: But what is recorded?

21 THE WITNESS: Well, what has happened are the
22 incidents, you know, that has happened and what action--what
23 action was taken and what was done.

24 So, in all respective Annual Reports, information is
25 put in there as to, you know, as to, you know, operations, you

1 know, that were taking place. Obviously, we wouldn't go into
2 specifics, you know, but we can give numbers and, you know,
3 certain information as to what happened.

4 COMMISSIONER HICKINBOTTOM: You mentioned the Annual
5 Report, so is that information collected annually?

6 THE WITNESS: Yes--yes, as we go and we do operation,
7 whether the operation was successful or not, that information is
8 recorded--is recorded and, therefore, the information is put
9 into an Annual Report which is redacted from, you know, the
10 actual information that it's then.

11 COMMISSIONER HICKINBOTTOM: Thank you.

12 MR RAWAT: Commissioner, I don't have any further
13 questions.

14 COMMISSIONER HICKINBOTTOM: Could I just raise one
15 further question, and that's to do with training, and you've put
16 in here, in your Position Statement, that again as a strength of
17 the Immigration system that you have a highly skilled and
18 trained officer complement.

19 So, do you have no issues with training, other areas
20 of the Public Service so that you may have heard some of this
21 evidence, but they say they find it challenging to find the
22 money to help to train their staff properly?

23 THE WITNESS: Well, there is always--there's always
24 room for training. When I alluded to training there, I'm
25 talking about--I'm taking about train officers, you know, that

1 perform their jobs as they are right now in the normal duties,
2 but there is always room for training in a number of areas, you
3 know, that officers would need--would need. I know that, you
4 know, that Police has a Training Academy that is done here in
5 the Territory.

6 I feel that--I feel that, you know,
7 Immigration--Immigration can benefit from a comprehensive
8 training programme where they would be trained in a number of
9 areas other than what they are actually doing right now.

10 (Overlapping speakers.)

11 COMMISSIONER HICKINBOTTOM: More specialist areas?

12 THE WITNESS: Yes, yes.

13 COMMISSIONER HICKINBOTTOM: Thank you very much.

14 Anything else, Mr Rawat?

15 MR RAWAT: Nothing from me, Commissioner, save to
16 thank Mr Penn for returning to us and also the way in which he's
17 given his evidence again.

18 COMMISSIONER HICKINBOTTOM: Yes. Can I echo that.
19 Thanks, Mr Penn issue for coming and answering our questions.
20 It's very much appreciated. Thank you.

21 (Witness steps down.)

22 MR RAWAT: Commissioner, I'm not going to ask you to
23 rise, but I was going to suggest that if Mr Smith could sit at
24 the other desk there, then he will appear on camera, and I can
25 still put my questions to him. Mr Penn is, of course, is at

1 liberty to--he needs to leave.

2 THE WITNESS: Yes.

3 MR RAWAT: Of course, he can leave.

4 COMMISSIONER HICKINBOTTOM: Do leave, Mr Penn, if you
5 do need to leave. Thank you very much.

6 (Pause.)

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Session 4

WADE SMITH, COMMISSION WITNESS, CALLED

COMMISSIONER HICKINBOTTOM: Yes.

MR RAWAT: Commissioner, for the Transcript, our next witness is the Commissioner of Customs, Mr Wade Smith, who has, like Mr Penn, previously given evidence so there's no need for him to affirm or take the oath again.

BY MR RAWAT:

Q. Mr Smith, if I explain again, it's for those following or those who want to read the Transcript, you have also provided a Position Statement to the Commissioner which answers a number of questions that were put to you. And that was obviously from your perspective as Commissioner of Customs. That has been published on the Commission's Web site.

What I would like to do in the same way that we've done with Mr Penn is just to ask you some additional questions arising from it, if I may.

Do you have a copy of your Position Statement with you, sir?

A. Yes. Good afternoon, Commissioner, yes, I do.

Q. Thank you.

Can we just go straight to--let's go to your paragraph 1.5, please.

A. Okay.

Q. You have explained, and this starts at 1.4, that the

1 Customs Department is made up of a number of individual units
2 that are tasked with specific functions; that's right, isn't it?

3 A. That's correct, Commissioner.

4 Q. The first is the Accounts Department, which you say is
5 responsible for budget preparation, refunds and accounts
6 payable.

7 If we could start off, you could just explain how does
8 Customs get its budget? You are a--your parent Ministry is the
9 Ministry of Finance, isn't it, so how do you get your budget
10 allocation each year?

11 A. Yes, that's correct, Commissioner.

12 Annually, we go through exercise called "budget
13 preparations". Through the budgetary preparation process, it's
14 a Strategic Plan outlining what is needed for the Department to
15 effectively function for, say, a Three- to Five-Year Plan, and
16 our items that are required staffing, training, equipment, those
17 things are itemised, costed, and then we proceed to what is
18 called Standing Finance, which is usually held at the ending of
19 every year usually in December, and you make your case to the
20 Members of the House of Assembly who sits at Standing Finance,
21 which the meeting is chaired by the Speaker of the House, the
22 Chairman, and you make your case, you present your budget, and
23 you make your case for funding.

24 Q. And so, like other Departments, you may not get all
25 that you want? Would that be the outcome?

1 Or by the time you get to Standing Finance, are you
2 fairly confident about what some of the House of Assembly might
3 approve for your Customs Department?

4 A. Commissioner--I think I believe, Commissioner, that I
5 put forward a pretty Comprehensive Plan, and I'm usually
6 satisfied with what is appropriated to the Customs Department.
7 And if there are any shortfalls during the year, if there is
8 any, then we can make--we normally make a strong case,
9 recommendations, put it forward, and usually we are pretty much
10 okay.

11 Q. And do you make that application for additional funds
12 to the Ministry of Finance directly?

13 A. Yes. If there is a need for additional funding, we
14 have to build the case, submit your requirement, your request,
15 and sometimes it's approved, sometimes it's denied, but for the
16 most part I think funding is made available, and we're pretty
17 well satisfied with the funding.

18 COMMISSIONER HICKINBOTTOM: And is the funding drawn
19 down, as we've heard it's drawn down, by other agencies?

20 THE WITNESS: That's correct, Commissioner. The
21 funding is not--is not within the Department. Like we said
22 earlier, it's a paper budget, for lack of a better term, and you
23 would make a request, and if it's approved, then the funding is
24 received.

25 COMMISSIONER HICKINBOTTOM: Yes, thank you.

1 BY MR RAWAT:

2 Q. I mean, obviously you are given a figure to spend
3 against, and now you've explained what could happen if you need
4 to overspend, though you have to make a request.

5 If you underspend, if that ever happened, does that
6 have a negative consequence for you for the next year? Does
7 that reduce the level that you will get next year or do you get
8 the benefit of prudent management of funds by being allowed to
9 keep that sum that you saved?

10 A. That's correct, Commissioner. We're recognised as
11 being financially responsible, and that doesn't affect us the
12 following year.

13 COMMISSIONER HICKINBOTTOM: Can you roll over any
14 shortfall?

15 THE WITNESS: No, Commissioner, it doesn't roll over.
16 You lose it.

17 COMMISSIONER HICKINBOTTOM: But you're not punished
18 for your prudence?

19 THE WITNESS: No, you're not punished.

20 BY MR RAWAT:

21 Q. And that's your entire budget, that covers your
22 staffing levels, that covers any training costs, that will cover
23 the equipment that you might need as the Customs Department,
24 it's everything, isn't it?

25 A. That's correct, Commissioner.

1 And if you make a request, like I mentioned,
2 Commissioner, for additional funding, those are--that's
3 something that's unforeseen, for example, if you have a piece of
4 IT equipment, a server or something that goes down, then you
5 will make a request, and sometimes what is done by the Ministry
6 is they will have to make what they call a SAP, supplemental
7 appropriation, and that's the process that's usually taken.

8 But it's not that every year you run into that
9 predicament. It's something that is usually a major piece of
10 equipment or something that's unforeseen.

11 Q. For 2021, what's the budget for the Customs
12 Department?

13 A. The budget for the Customs Department 2021 is in the
14 vicinity of \$5.26 million.

15 Q. And from that, what's your complement of staff? You
16 obviously have administrative staff and then you have Customs
17 Officers proper. How many sort of operational Customs Officers
18 do you have?

19 A. We are budgeted for approximately 82 Customs Officers.
20 That does not include administrative staff, Commissioner.
21 Administrative may be another 15 or 20, so we're looking at
22 probably a staff complement of pretty close to 100 persons.

23 Q. And the evidence that the Commissioner has heard is
24 that, in some Departments, they are understaffed, there are
25 vacancies that are unfilled. That's been the position of the

1 Police Force, the AG's Department and the DPP. I think
2 Mr Penn's evidence perhaps more pointed to the Immigration
3 Department, it's just stayed static and he hasn't been able to
4 add staff and expand.

5 What's the position in Customs? Do you have vacancies
6 that remain unfilled?

7 A. Yes, Commissioner. We have approximately 18 vacancies
8 that are unfilled which is a combination of a number of factors,
9 employees, officers relocated shortly after Irma and María. We
10 have some due to retirement and some currently may be on
11 disciplinary leave.

12 Q. So, if you had a full complement, you've got 82 now
13 and you've got 18 vacancies, so with a full complement you would
14 be wanting to operate with 100 officers?

15 A. Commissioner, a full complement would give us
16 approximately 100 officers at this time. However, we've made
17 recommendations within the past four to five months to increase
18 the staff complement because of the growing demands of the
19 Customs Department in terms of growing population, tremendous
20 number of increased imports, the opening of the various stations
21 that's coming onstream, so a number of reasons why we've
22 outlined for increase in staff.

23 We're expected to also implement what is called the
24 Caribbean Distribution Center, so that will need to be fully
25 staffed as well. So, yes, and also the Joint Task Force

1 including the Marine Unit, so we're expecting to make a proposal
2 going forward to Standing Finance in the next few months to have
3 an increased staff compliment.

4 Q. What would you increase it to, please, Mr Smith?

5 A. Yes, I would like to see an increase over the next
6 three years for an additional 10 to 15 officers annually.

7 Q. Now, if I take you to--sticking with your paragraph
8 1.5 but number two where you refer to the Enforcement Unit,
9 which you explain serves as a liaison between--with various
10 other government agencies, including the AG's Chambers, the
11 Office of the Director of Public Prosecutions, and the Financial
12 Investigative Agency, the Police Force and Immigration.

13 You also say other private stakeholders like charter
14 companies, shipping companies, and courier services.

15 And probably the clue about what the Enforcement Unit
16 does is in the name, but how does the relationship with, for
17 example, with the other government agencies operate?

18 A. Commissioner, the relationship is a pretty good
19 working relationship with other agencies.

20 Q. And are you--is the Enforcement Unit charged--is it an
21 investigatory unit?

22 A. Yes, Commissioner. There is an investigatory unit,
23 and also deals with internal and external investigations.

24 Q. So, in terms of external investigations, will it take
25 a case all the way to the point where you will hand the file to

1 the DPP, or is there a point where you start to involve the
2 Police Force?

3 A. Commissioner, it depends on the offense that we're
4 investigating. If it's a commercial fraud investigation, then
5 that's something that can be dealt with within Customs all the
6 way to the DPP, but if there is an element that may require
7 Police assistance, then the Royal Virgin Islands Police Force is
8 called in to assist as well.

9 Q. And you've given another agency like the Airports
10 Authority, the BVI Ports Authority, the Virgin Islands Shipping
11 Registry. How do you work with them? Are they information
12 providers, or can they be involved in investigations as well,
13 or?

14 A. Commissioner, both, they can provide information
15 during an investigation. And sometimes we rely on their
16 expertise from those agencies.

17 In addition, they're part of a group that's chaired by
18 the Financial Service Commission, I think it's "JALFAT"
19 (phonetic), where intergovernmental--sorry, Intergovernmental
20 Council, I think it's called, and that involves Ports Authority,
21 Airports Authority, Royal Virgin Islands Police Force,
22 Immigration, Customs, and we look at matters that are raised
23 from--in terms of money-laundering, movement of lives, sums of
24 cash. It's a group that works closely together to share
25 information.

1 Q. Where do the private stakeholders come in in relation
2 to the Enforcement Unit?

3 A. Well, a number of those companies that they mentioned
4 in terms of the private industry. We work closely with the
5 private entities as well. They share information that helps in
6 investigations as well as we have to ensure that they comply
7 with the various laws of the Customs Department.

8 Q. If I can take you to overleaf, you've described your
9 Canine Unit as one of the most successful Canine Units in the
10 region, providing assistance in the search for contraband.

11 Now, leaving aside the work that it actually does as a
12 unit, but in terms of its organization as a unit, what is it
13 that has made it successful? And is that learning that you have
14 been able to apply to other units within the Customs Department?

15 A. Commissioner, the Canine Unit was the first Canine
16 Unit established in the Virgin Islands, and on Day 1 of that--on
17 Day 1 when that unit was implemented, there was a success in
18 terms of contraband detection. That, in itself, defines the
19 unit, the success of a unit, because some units, some canines
20 will go through their entire career without having any hits or
21 being successful in any type of interdiction. In addition, the
22 Canine Unit repeatedly been successful in terms of detecting
23 contrabands at the airport, the ferry terminals. And because of
24 the level of success of this unit, we were--we also provided
25 assistance to an overseas Territory Customs Department, assisted

1 them in their largest drug bust in any of their ports. That was
2 approximately 2007-2008. We sent our unit down there to provide
3 assistance.

4 In addition to that, Commissioner, that unit also
5 provided training to independent countries, as well as another
6 overseas Territory, received training from the Canine Unit here
7 in the BVI, and were able to help them or assist them in
8 developing their own Canine Unit.

9 So, that speaks to the level of success and commitment
10 of the Canine Unit here in the BVI.

11 Commissioner, if I may, that Unit also and the
12 officers we have within that unit also trained and assisted the
13 Royal Virgin Islands Police Force here in the BVI in
14 establishing their Canine Unit as well.

15 Q. If we go to six, you refer to the IT databases that
16 you use, and you've named the systems there.

17 Now, those are your systems. Is there a way for those
18 IT systems to connect to IT systems used by other law
19 enforcement agencies in the Virgin Islands?

20 A. Commissioner, all those systems are not the systems of
21 Customs. I speak to the overseas Territory regional central
22 intelligence system, which is "SULTRES" (phonetic). That's a
23 system that is shared with the Royal Virgin Islands Police
24 Force, Immigration, and Customs, and we're in the process of
25 extending privileges to the Financial Investigation Agency.

1 The regional clearance system, RCS, which is now known
2 as SAIL CLEAR or ECL CLEAR, that system is a Customs system
3 developed by the Caribbean Customs Law Enforcement Council, so
4 that system is utilised only by Customs administrations.

5 So, however, we have been speaking about the
6 development of a joint Intelligence Unit--and these are not new.
7 These have been developed 10, 15 years ago, but we're now coming
8 to the point where we have identified a location, and we're
9 going to have Immigration, Customs, and Royal Virgin Islands
10 Police Intelligence officers working from within the same room.
11 Even though other agencies may not have access to a system such
12 as the regional clearance system, the officer who is going to be
13 dealing with that specific system will be sitting side by side
14 with the officers of another agency, just like some of our
15 officers may not have access to Interpol, but the intelligence
16 person for the Virgin Islands Police Force will be sitting right
17 next to the Immigration and Customs Officers so they can share
18 information.

19 Q. Thank you.

20 Go to your page 4 and your point 9, please. You've
21 referred just at 9(a) to the Internal Audit Unit. You say there
22 is no relation to the Office of the Auditor General. This unit
23 is responsible for the implementation of recommendations made by
24 the Auditor General of the Office of the Director of Internal
25 Audit.

1 So, firstly, what did you mean by there is no relation
2 to the Office of the Auditor General?

3 A. Commissioner, the Internal Audit Unit are Customs
4 Officers: The Office of the Auditor General and the Director of
5 Internal Audit, those are separate Departments.

6 Q. So, what you meant was that the staff in that unit
7 come from Customs, they don't come from either the Auditor
8 General or the Internal Auditor?

9 A. That's correct, Commissioner.

10 Q. Now, what you said is that they are responsible for
11 recommending or making--or responding or implementing
12 recommendations made by the Auditor General. Could you give the
13 Commissioner an overview of the key recommendations that the
14 Internal Audit Unit has implemented in the past two years?

15 A. Commissioner, there has been a system or systems
16 between Government or opportunities within the Customs
17 Department, I must say. Number one, partial payment which gives
18 importers the opportunity to pay over a period where the payment
19 of duty may be amortised once approval is given by the Ministry
20 of Finance or Financial Secretary. That system has been--some
21 recommendations have been put forward in terms of internal
22 audit, the application process, those are some of the things
23 that have been implemented.

24 Currently, the system is on hold right now, but those
25 things were recommended and designed and ready to go.

1 In terms of--in terms of collections, in the past,
2 officers would use what's called a pouch, where they collected
3 duty from the traveling public. Recommendation was that doesn't
4 look good, not transparent, so we implemented a cash sharing
5 system where the Treasury Department now responsible for the
6 collection of Customs duties and other fees. Those are some of
7 the recommendations.

8 Q. Thank you.

9 If you go over to the next page, you should come to
10 your (b)?

11 A. Page 5, Commissioner?

12 Q. Page 5 it is, Customs automated processing systems.
13 You've explained there what the unit does, but I just wondered
14 whether you could give us a sort of layman's translation of what
15 the CAP Units has to do, so to just give it a bit more clarity
16 about what the CAP Units involve, please.

17 A. Commissioner, the CAP Units is designed to simplify
18 the Customs clearance process, and the CAP system is designed to
19 remove officers from doing clerical type work to do more Customs
20 Officer type work, inspections of goods, et cetera.

21 The system allows importers to submit their Customs
22 Declarations online using any smart device, the iPad, the phone,
23 the computer to make a submission to the Customs Department for
24 clearance of their goods. Once that submission is received, it
25 is vetted by the Trader Declaration Unit. It's vetted, it's

1 passed on to--for approval before the payment summary is
2 generated and sent to the importer. The importer receives their
3 payment summary, and proceeds to the Customs Office--nearest
4 Customs Office and makes their payment before collection of
5 goods. Once their payment is made, they receive their goods,
6 and officers are there to inspect, to ensure that the payment is
7 accurate with the shipment.

8 Q. In terms of the Trader Declaration Unit, is that just
9 a processing step or is that there to pick up on instances of
10 any abuse or any fraud or corrupt activity?

11 A. The Trader Declaration Unit also if it detects any
12 fraud, any commercial fraud, any abuse, then it makes a report
13 to the Internal Audit--our Internal Audit Unit, which is Customs
14 Internal Audit Unit. They will then do further investigation,
15 and then make recommendations to Commissioner of Customs. And
16 if we need further investigation, then we will hand it over to
17 the Enforcement Unit within Customs to enforce. And if there is
18 any further action that needs to be taken, the matter is
19 referred to RVIPF, and then advanced to the Ministry of Finance
20 and ultimately on to the Director of Human Resources.

21 Q. In the architecture of government, where does Human
22 Resources Department sit? Is it in the Deputy Governor's office
23 or is it somewhere else?

24 A. Commissioner.

25 Q. It sits on itself?

1 A. They're part of the Deputy Governor's office.

2 (Sound interference.)

3 Q. Now, if you go now to page 6, please, Mr Smith. Do
4 you have it? It's your 1.2?

5 A. Yes.

6 Q. You are asked what processes and systems are in place
7 to monitor effectiveness of the Customs systems, and you talk
8 about--speak of the role of the Internal Audit/Assurance Unit,
9 and then that a post audit team can be used to investigate a
10 complaint, and complaints can include allegations of
11 corruption, fraud, and irregularities.

12 So, is the first, sort of where you have such
13 complaints, does it first start off with the Internal
14 Audit/Assurance Unit looking into it?

15 A. Commissioner, you, mean if a complaint is made, if it
16 starts off at that unit?

17 Q. It's your words because if you look at your 2.1, you
18 say the Internal Audit/Assurance Unit monitors the effectiveness
19 of the Customs Department. Once the information is referred to
20 the Internal Audit/Assurance Unit through the Commissioner of
21 Customs, it will review the complaints and allegations against
22 the requirements of the Customs Department. So, I assume that
23 if a complaint is made internally or externally, it comes to you
24 first, and then you decide whether it should go to the Internal
25 Audit/Assurance Unit; is that right?

1 A. Yes, Commissioner. If it comes from--if it comes to
2 me first, Commissioner, but it can come from anyone within the
3 organization or outside of the organization, and they can make a
4 complaint also to a Customs Officer who may be part of the
5 Internal Audit Unit, but once it's--once it's brought to my
6 attention, if it's a matter relating with Customs processes,
7 Customs automated processing system, or any other law
8 under--that Customs is responsible for, normally we will have
9 the Assurance Unit investigate, and that information then will
10 be presented to enforcement. Enforcement will conduct further
11 investigation.

12 Q. And ultimately, as you said at the end of that
13 paragraph, what you say is where the Internal Audit/Assurance
14 Unit discovers evidence of corruption, fraud, irregularities, et
15 cetera, being investigated, this is reported to the Financial
16 Secretary, the Attorney General's Chambers, and/or the Director
17 of Public Prosecution, depending on the nature of the evidence
18 discovered.

19 The Financial Secretary, without diminishing his role,
20 he's your sort of lineman, isn't he?

21 A. That's correct, Commissioner.

22 Q. Now, in the recent years, have there been any
23 referrals to either the Financial Secretary, the Attorney
24 General, or the DPP in relation to corruption or fraud or
25 irregularities?

1 A. Commissioner, any irregularities regarding officers
2 are referred to--the Financial Secretary is made aware. Once
3 the file is prepared, the Financial Secretary will advance it to
4 the Department of Human Resources. Before it goes to the
5 Department of Human Resources, depending on what the matter is,
6 we will seek advice from the Attorney General Chambers, and then
7 we will advance the matter to the process, the Ministry of
8 Finance and then on to HR, Human Resources.

9 Q. Have there actually been any--to your knowledge, as
10 Commissioner of Customs, have there been any referrals, actual
11 referrals, to the Financial Secretary or to the Attorney General
12 or to the DPP?

13 A. Yes, Commissioner. There has been referrals to the
14 Financial Secretary, on to the Human Resources Department. And,
15 in turn, I believe the HR Department would have sought advice
16 from the Attorney General Chambers in dealing with matters.

17 Q. Can you give the Commissioner a sense of how many in
18 the last, let's say, three years, how many such referrals have
19 there been?

20 A. In the last three years, Commissioner, there has
21 been--there are a couple of matters that are under
22 investigation, they haven't been concluded, but the matter has
23 been discussed with the Financial Secretary, but we're waiting
24 on conclusion of the case by the Enforcement Unit. It's about
25 three--it's about three officers that we are going to advance.

1 Q. So, that's your internal investigation?

2 A. That's the internal investigation.

3 Q. So, those are examples that they're still within
4 Customs?

5 A. Correct, Commissioner.

6 Q. Have there been some in recent years where you have
7 actually left Customs, gone to the Financial Secretary?

8 A. Commissioner, how many years are we--

9 COMMISSIONER HICKINBOTTOM: Mr Rawat suggested three.

10 THE WITNESS: Not in the past three years,
11 Commissioner.

12 BY MR RAWAT:

13 Q. Let's say the past five years.

14 A. Not in the past five years, Commissioner.

15 Q. So, save for the investigations you're currently
16 undertaking, there have been no other investigations that
17 effectively have left Customs and had to go beyond Customs to
18 the Financial Secretary or to anybody else?

19 A. Commissioner, to the Financial Secretary and to Human
20 Resources, Commissioner.

21 Q. I see.

22 One of the points you make is that your officers are
23 guided by the Customs Act. What training is given to them when
24 they first join the Customs Department, what training is given
25 to them in terms of their obligations under the Customs Act?

1 A. Commissioner, once new employees of the Customs
2 Department go through what is called Junior Officer Basic
3 Training. That Junior Officer Basic Training over the years
4 have been conducted by specialist trainers from the Caribbean
5 Customs Law Enforcement Council, and it has been a training over
6 the years that has been in collaboration with other territories
7 that had a number of new officers as well. Whichever country
8 had the most officers is where the training would be conducted.

9 Now I'm proud to say that BVI, we have our own
10 in-house trainers certified by CARTAC, which is a Caribbean
11 Technical Assistance agency that provides the training to ensure
12 that our officers receive proper training, training course, so
13 now they can deliver that training.

14 In addition to that, Commissioner, under my
15 chairmanship of the Caribbean Customs Law Enforcement Council,
16 which comprises over 40 Customs Administration worldwide
17 including in the United Kingdom and the United States, we have
18 established through the World Customs Organisation a training
19 facility in the Dominican Republic, that is there for all
20 Customs Administration throughout the region. They provide
21 on-line training as well to officers in addition to face-to-face
22 training as well.

23 In addition to that, Commissioner, we're in the
24 process of developing or working closely in collaboration with
25 the HLACC Community College to develop what is called a Law

1 Enforcement Training Academy, and going through that Law
2 Enforcement Training Academy there will be core classes or basic
3 classes for all law enforcement officers to receive the same
4 entry level training, and depends on the discipline whether,
5 it's Customs, Immigration or Police, then as you advance in your
6 second year, third year you will be more specialised to the area
7 of expertise you wish to participate in.

8 This it is all intention and in collaboration with the
9 HLACC developers that this--we can develop an associate
10 programme, at the very minimum an associate programme in law
11 enforcement. It is our intention with the development of this
12 training facility, BVI Law Enforcement Training Academy will
13 attract regional and international law enforcement--people who
14 are interested in law enforcement as a career to come and
15 utilise our Training Academy.

16 Q. And how far advanced are those plans?

17 A. Commissioner, those plans are in the embryonic stages.
18 We've met with the Director at HLACC, we're putting the course,
19 the classes together, the curriculum together as we speak, and
20 hopefully we can have something by the spring of next year
21 beginning.

22 We started approximately maybe nine, ten months ago,
23 so that's in the development stages.

24 Q. Have you secured funding for it?

25 A. Funding has not been secured for it, but that

1 information was presented at Standing Finance Committee, our
2 intention, and we've met the support of the Members of the
3 Standing Finance Committee that said that that's something they
4 will support. That was last year's Standing Finance Committee.
5 I hope it's still the Office's stance, Commissioner.

6 Q. Could I, Mr Smith, just take you just to--it starts on
7 441, but let's pick it up at page 8. Just in terms--

8 A. Page 8?

9 Q. Page 8, please.

10 If we take, just to bottom-out the process. So, if
11 there is suspicious activity which is either reported directly
12 to you as Commissioner or an officer picks up, is the first step
13 always to go to the Internal Audit/Assurance Unit within
14 Customs?

15 A. No, Commissioner. Sometimes, Commissioner, these
16 matters, if there is any suspicious activity or anything that
17 concerns me, then we will communicate also with RVIPF. We've
18 utilised the services of RVIPF to assist in a number of
19 investigations. We have close working relationship with the
20 Commissioner of Police and they provide assistance for us.

21 Q. The reason I asked the question is because if you look
22 at your 3.2, you say: "Depending on the nature of the
23 suspicious activity, the Enforcement Unit will be asked to
24 assist by investigating activity, which will then be passed to
25 the Commissioner of Customs for review".

1 I was just picking up on your earlier evidence, it was
2 that the process would be Internal Audit/Assurance Unit gets
3 involved first, then the Enforcement Unit if necessary, but are
4 there ever occasions when you might say this is something the
5 Enforcement Unit has to deal with first of all?

6 A. Yes, Commissioner, immediately. The Enforcement Unit,
7 Commissioner, does the Enforcement Unit of Customs, but as I
8 mentioned earlier, the Enforcement Unit works closely or liaise
9 with AG, DPP, RVIPF, and a number of other--FIA, a number of
10 other agencies, so even under embryonic or the beginning stages
11 of an investigation, depending on the nature of the
12 investigation, if it's a matter that they can get involved in
13 the Financial Investigation Agency, they will contact them.

14 Q. But what types of--and it's your phrase there at 3.2.
15 What types of suspicious activities would lead to something
16 being referred straightaway to the Enforcement Unit?

17 A. If there is allegations of misappropriations you will
18 get the Enforcement Unit involved right away.

19 Q. Anything else?

20 A. Misappropriations, any misconduct or abuse of office.
21 So, we will get them involved right away.

22 COMMISSIONER HICKINBOTTOM: So, the more serious end
23 of the spectrum?

24 THE WITNESS: That's correct, Commissioner.

25 BY MR RAWAT:

1 Q. What you've set out at 5.1 on the same page, Mr Smith,
2 is a number of processes and systems that you say are in place
3 to detect matters raised into corruption, abuse of office or
4 other serious dishonesty, and you then listed, so for example,
5 you give the CAP system, the regional clearance system, the
6 Optix system. You say whistleblowing procedures for other
7 officers or the public. What are those whistleblowing
8 procedures?

9 A. Commissioner, if members of the public or other
10 officers want to raise concern, they have enough confidence in
11 the administration of the Customs Department, they come and they
12 speak confidentially. They come, and the information is kept
13 within Customs, and that's it.

14 Q. One of the points that the Commissioner Mark Collins
15 made this morning was that the Police Force have struggle to get
16 people to come to give them information because of a concern
17 that that information will not be held confidentially, and he
18 also points to that that difficulty concern that confidential
19 information will be leaked, also limits information sharing
20 between agencies.

21 Speaking first about your experience at Customs, have
22 you found that to be a problem, that people are nervous about
23 giving you information in case it's leaked and they are
24 identified?

25 A. No, Commissioner. Actually, it's quite the opposite.

1 The public will share information with Customs on a regular
2 basis.

3 In terms of, Commissioner, you mentioned, difficulties
4 in sharing information across agencies because of fear of
5 leakage.

6 Customs doesn't have any concerns. We share
7 information to other Members of the Joint Task Force.
8 Sometimes, in my opinion, I don't believe those efforts are
9 reciprocated. There is no reciprocity as it relates to that,
10 but we share information, and I can only speak for Customs. We
11 share information with our counterparts all the time.

12 In the JTF meetings, we are very open and we share
13 information at all times.

14 Q. What you also put amongst the mechanisms you have in
15 place are a rotation of Customs Officer's revenue or
16 implementations of audits and then reporting a disclosure of
17 interest, so I leave that--leave out one for a moment, but for
18 the first three, how do you actually monitor how effective these
19 mechanisms are?

20 A. You're talking about, Commissioner, nos. 5, 6, and 7
21 is what we're looking at?

22 Q. Yeah, you can take all of them, if you want, but
23 the--you have these systems in place, but how do you know they
24 work in practice?

25 A. How do we know they work in practice? Number one, the

1 rotation--the rotation of various officers.

2 It's--it's mission-critical in Customs Administration
3 to have rotations to avoid what is called "port shopping", to
4 avoid importers building relationships with Customs Officers, so
5 you have to ensure that they're constantly rotated. They're
6 working with unfamiliar faces. And this will tend to alleviate
7 any thought of wrongdoing, so rotation is critical. I've seen
8 cases where once we've seen rotations, we've seen tremendous
9 surge in revenue as a result of rotations.

10 Q. And in relation to the audits, for example, how do you
11 know that the audits work?

12 A. Commissioner, I just mentioned, after the rotations,
13 you see tremendous increase in revenues. We have the revenue
14 audits at all stations, which is another important function of
15 the Internal--of our Internal Audit Unit to ensure that stations
16 are complying with the policies, the guidelines, and, most
17 importantly, the legislation, and then show officers are doing
18 what they are supposed to do. So, there are revenue audits at
19 all stations, create the environment or the atmosphere to ensure
20 that officers are following the guidelines, the department
21 guidelines.

22 Q. If you go to your page 9, please. You say at 5.2, the
23 Customs Department has a zero tolerance approach and operates
24 transparently. Once corruption and abuse of office or other
25 serious dishonesty is detected using the monitor systems

1 mentioned above, the matter is referred to Internal
2 Audit/Assurance and Enforcement Unit for further investigation.
3 Any type of business conducted outside regular operational
4 procedures will be identified, flagged, investigated, and
5 forwarded to relevant agencies.

6 Again, taking the last three years as a measure, what
7 has been the outcome of that zero tolerance approach? Have you
8 had any officers that have been subject to discipline or
9 proceedings or referred to other agencies or fired?

10 A. Yes, Commissioner. We've had officers that have been.
11 In the last three years, not much has happened in the last three
12 years, but over the years, we've had officers that have been
13 removed from the Department, been disciplined, we've even had
14 officers that have been incarcerated. So we definitely take
15 action, advance it to the Ministry of Finance, which is the
16 parent Ministry, and then to the Human Resources Department.
17 Investigation takes place, if need be, with the Royal Virgin
18 Islands Police Force, and the DPP's office is involved as well.

19 Q. The point you make above is in relation to reporting
20 and disclosure of interests. And can you just explain the
21 process by which--by reference to those--A to D, the process by
22 which officers are expected and required to disclose interests.

23 A. Officers are required to disclose interests through
24 the Department of Human Resources, I think it's called a private
25 interest form, and it clearly spells out what is required and if

1 there is anything that will cause a conflict, then the
2 matter--the form is then sent back to the head of the
3 Department. And if the head of the Department has any concerns
4 with regards to conflict of that particular business, then it
5 will be noted, and the form will be sent back to Human Resources
6 Department.

7 In addition, through the national research assessment
8 that we are going through, it has been recommended that we
9 develop, and it is in draft stages now, a Code of Conduct for
10 the officers, and in addition to that I think it's section 8 of
11 the Customs Management and Duties Act where officers are
12 required to file or make note that they engaged in part owner of
13 any vessel or anything involved in the trade, trade meaning
14 doing business with Customs.

15 We have a form that is also developed and will be
16 circulated for all officers in addition to the Code of Conduct,
17 which they will be expected to adhere to, and their Code of
18 Conduct has been vetted, it's going to the AG's Office for final
19 vetting before it's circulated.

20 Q. When these Private Interest Forms are completed, who
21 checks them? Who vets your officers?

22 A. Commissioner, who vets the officers or who vets the
23 forms?

24 Q. Who vets the forms. The officer submits the form, so
25 vetting the form is vetting the officer.

1 A. Okay, Commissioner. If that's the case, then it goes
2 to the Commissioner of Customs and the management team will
3 review the forms.

4 Q. So, the form is completed, sent to Human Resources, do
5 they do any checking there?

6 A. Commissioner, we're speaking about two different
7 forms. Commissioner, there is a form that's currently utilised
8 by Human Resources, I think it's called a Private Interest Form.
9 And when an officer wants to engage in business or obtain a
10 trade licence, that form comes to--not just an officer but any
11 government employee--that form goes to the head of the
12 Department. The head of the Department will then make the
13 comments with regards to conflict or any challenges they may
14 have regarding the working hours, et cetera. That form is then
15 sent back to Human Resources for approval.

16 The other form that I'm speaking of, Commissioner, is
17 the form that we have developed based on recommendations through
18 the National Risk Assessment which will include our Code of
19 Conduct allows to be circulated with that form, and all--every
20 employee of the Customs Department must complete that form and
21 submit it to the Commissioner of Customs. That form will be
22 kept on file. It speaks about your interests as it relates to
23 any vessels that you may own that's a part of the trade that
24 does business utilising Customs Services. Brokerage, any of
25 those things.

1 Q. So, that's something for the future. That's in draft
2 at the moment?

3 A. That's in draft at the moment, Commissioner.

4 Q. And I will have explored this with you when you first
5 gave evidence, but remind the Commissioner what vetting of
6 employees is undertaken by Customs?

7 A. The vetting of employees that's undertaken by Customs
8 prior to entry into Customs, Commissioner, or while they're in
9 Customs, Commissioner, or a combination of both?

10 Q. Both.

11 A. Prior to entry into Customs, a Police record must be
12 produced by the applicant. Once they're in Customs, there has
13 been no extensive vetting, only follow-up discussions with the
14 officers on the job, but there has been no extensive vetting of
15 that kind.

16 Q. If you go to 6.1 which is on your page 9, you say
17 there the challenges include limited investigative resources and
18 limited Human Resources. Is that a reference to internal
19 challenges?

20 A. Commissioner, that's correct.

21 Q. If you go over to the next page and look at your point
22 six where you're setting out--it's at your 7.1, you set out the
23 strengths and then at 7.2, the weaknesses?

24 A. Sorry, Commissioner, what page are we on?

25 Q. Page 10, Mr Smith.

1 A. Page 10. Okay.

2 Q. What you've put at the bottom is budgetary
3 restrictions which limit and delay the functions of the Customs
4 Department. I'm just trying to reconcile those concerns that
5 you have limited investigative resources, limited Human
6 Resources and budgetary restrictions with your earlier evidence
7 that you have been pretty good at securing the amounts of money
8 that you want from the Standing Finance Committee. Could you
9 just set out what these concerns are about? As you seem to be
10 the one person, Mr Smith, who has been able to get all that he
11 needs from Standing Finance so far.

12 A. Yes.

13 Commissioner, you recall that we said the budget is a
14 paper budget, and you may receive what you ask for.

15 COMMISSIONER HICKINBOTTOM: So, you're happy with a
16 paper budget?

17 THE WITNESS: I'm happy with a paper budget.

18 COMMISSIONER HICKINBOTTOM: But the money you get is
19 restricted?

20 THE WITNESS: Accessing the money, there are a number
21 of restrictions which the delays can affect your operation.

22 COMMISSIONER HICKINBOTTOM: Yes. And that's in line
23 with the evidence of others?

24 THE WITNESS: Yes.

25 BY MR RAWAT:

1 Q. What you also say is that you make a--or what you say
2 is a weakness, and it's also in your recommendations section,
3 but you say that there are blanket policies by Ministry of
4 Finance and Human Resources Department which restrict law
5 enforcement. And when you deal with the recommendations, you
6 say there are some blanket policies which shouldn't apply to law
7 enforcement agencies. Which policies did you have in mind in
8 particular, Mr Smith?

9 A. Commissioner, we just spoke about the restrictions in
10 terms of accessing the funds. That's a blanket policy that all
11 ministries and departments have to go through.

12 Human Resources blanket policies, you speak about
13 leave policies, for example, and I don't think those things
14 should apply to law enforcement because, in law enforcement,
15 funding--they're funding--emergencies arise.

16 You may have--you may need a piece of equipment that
17 is critical for surveillance or an operation to keep us safe,
18 but the funding--the process that you have to go through may
19 take weeks, sometimes months to get the funding for that
20 critical piece of equipment.

21 The blanket policies, say, for leave, for example,
22 it's mandatory that all Government employees must take annual
23 leave at a certain time, but there are peak seasons for Customs
24 in terms of revenue collection and enforcement. You look at the
25 Easter time, Easter holidays, increased large amounts of vessels

1 that come to the BVI. You cannot take leave. Then you go down
2 to the summer months where we are now, and we're looking at the
3 festival celebrations that are on the horizon, massive amounts
4 of people come to the BVI. And then you look at December
5 months, the holidays, leading up to the holidays, massive
6 amounts of visitors, imports, charter boats, massive amount of
7 activities that takes place, and you would need your full
8 complement during those times.

9 So, to force these policies on law enforcement, number
10 one, there is no problem. We can add here, but you lose
11 enforcement capability, and you lose the ability to secure and
12 collect and maximise the collection of revenue at those critical
13 points as well.

14 Also, in terms of hiring, it takes a long period of
15 time to get applicants to get applications moved through the
16 Department of Human Resources to, say, the Public Service
17 Commission to get someone hired. It takes extremely, extremely
18 long. Those things are affecting law enforcement capabilities
19 and operation.

20 Q. Thank you very much, Mr Smith.

21 MR RAWAT: Commissioner, I have reached the end of my
22 questions. Can I conclude by thanking Mr Smith for coming today
23 and also for the assistance he's given and the evidence he's
24 given today.

25 COMMISSIONER HICKINBOTTOM: Yes, and can I echo that,

1 Mr Smith. Thank you very much for your time and the clear way
2 in which you have answered the questions. Thank you very much.

3 THE WITNESS: Thank you very much, Commissioner.

4 (Witness steps down.)

5 MR RAWAT: Could I ask you to rise briefly whilst we
6 reset for the next witness?

7 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

8 (Brief recess.)

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Session 5

HON MARLON PENN, COMMISSION WITNESS, CALLED
COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

MR RAWAT: Commissioner, our next witness is the Honourable Marlon Penn, the Leader of the Opposition. Mr Penn was affirmed, I think, on the last occasion, and there is no need for him to affirm or take the oath again.

COMMISSIONER HICKINBOTTOM: Yes, thank you.

BY MR RAWAT:

Q. Honourable Penn, thank you very much for coming to give evidence this afternoon. I'm sorry that we've kept you waiting longer than we intended.

The purpose of this afternoon is to ask you some additional questions in relation to the Position Statements you have provided to the Commissioner. That Position Statement has been published on the Commission's website. I don't propose to do through it at length or to ask you to read out parts of it. It will form part of the record of the Commission. I just want to ask you some additional questions about particular aspects of the Position Statement.

Now, if I take you to your second page, you have listed those characteristics, and this was in response to a question of what do you understand by the term "good governance", and you've listed a number of what you described as major characteristics that make for good governance, the first

1 of which is participatory. And my first question is this: What
2 did you mean by "participatory"?

3 A. First of all, thank you for the opportunity to give
4 evidence here this afternoon.

5 Participate in terms of entire participatory process,
6 meaning that what the citizens could participate in the process
7 through public meetings, through town hall meetings, through all
8 the different areas I listed into the Position Statements and
9 even from where persons could even recall a Member if they feel
10 a Member is not delivering what they require of him, so there
11 are different aspects of it in terms of full participation from
12 the citizenry. Participation from the legislative point of view
13 and participation from the Civil Service, the entire government
14 system.

15 Q. Now, one of the points that has emerged from the
16 evidence of Honourable Members over the last few days is that
17 the pool of electors is small in the BVI?

18 A. Yeah.

19 Q. You have a larger number of people living on these
20 islands than there are compared to the numbers that have the
21 vote.

22 A. Yes.

23 Q. If you are seeing good governance or major
24 characteristics of good governance to be the ability to
25 participate--

1 A. Yeah.

2 Q. --do you, as Leader of the Opposition, envisage any
3 problem arising from the fact that you have such a small pool of
4 electors?

5 A. No, I don't foresee an immediate problem from that. I
6 think persons who even are residents in the Territory
7 participate in the process. We certainly had had any particular
8 issue that requires the public to engage. You see entire
9 populace engaging. In most recently, after the 2017 hurricanes
10 when there was the issue of the public Registers, and there was
11 a public demonstration. You have participation from across the
12 gamut of the Territory, residents, belongers, non-belongers,
13 visitors, they all participated. So, the system of
14 participation continues, despite the limitations or the
15 perceived limitations as relates to the belongers and persons
16 put forward and participate from that point of view.

17 Q. At the bottom of the same page, what you say is good
18 governance centers on how Government conducts public affairs,
19 manages public resources and the responsibility was governments
20 to meet the needs of the masses as opposed to a select group in
21 society.

22 A. Where are you reading from?

23 Q. Just at bottom of your page 2. Do you have it? I
24 won't read it again but it's the last paragraph of page two. Do
25 you have it?

1 A. I have it.

2 Q. Now, here, you say that Government has a
3 responsibility to meet the needs of the masses. In this case
4 who are the masses?

5 A. The Government represents all the people, all the
6 people in the Territory, and the laws are not just made for
7 persons who are belongers or residents. They are made for
8 everyone in the Territory. So, the Government has a
9 responsibility to represent the needs of all the people in the
10 Territory.

11 Q. And you say, "as opposed to a select group in
12 society". Did you have any particular select group in mind?

13 A. No, just in general. I didn't have a group in mind.

14 Q. On the next page, what you say is--and I haven't read
15 out the characteristics that you have, but you've listed eight.
16 You say, "When all the above characteristics of good governance
17 are in place, decisions made and implemented are always for the
18 common good. There is proper and effective utilization of
19 resources, corruption is minimised, the views of minorities are
20 taken into account, and the voices of the most vulnerable in
21 society are heard".

22 A. Yeah.

23 Q. Again, within the context of the Virgin Islands, do
24 you have--were there any particular minorities that you thought
25 are important to take into account and whose views aren't being

1 taken into account?

2 A. I think the system, as it is, I think we need to have
3 more open dialogue in terms of the issues of the Territory. One
4 of the things that I propose in this Position Statement is to
5 have more engagement on the local level to have what we call
6 District councils within some of the extended communities like
7 the sister islands on Jost Van Dijk, Anegada and Virgin Gorda so
8 that the views come up from the bottom-up to the electorate, to
9 the representatives, as well as having more town hall meetings
10 from the Government's point of view, and all the constituencies
11 whether it's every quarter, whether it's every six months, have
12 meetings so you have engagement, with persons across the gamut
13 of the Territory.

14 Q. And in terms of the makeup of District councils, if
15 you like, or local councils, who would form that local Council?

16 A. The perspective that I'm looking at in terms of the
17 districts councils is persons from that particular constituency
18 or that community that understands the needs of those
19 communities and understand the issues that those communities
20 face. For instance, there are communities where they're
21 predominantly dependent on tourism. Virgin Gorda in particular,
22 Jost Van Dyke, and Anegada, there needs to have someone that
23 brings to bear the concern that they have in terms of economics
24 of viability and survival, bring to bear the social economic
25 issues that they face as a community, a small community, and

1 ensure that their needs are heard in the House of Assembly,
2 heard by the executives, and they represent--and their needs are
3 represented by their representatives.

4 Q. Now, you've put a section in your Position statement
5 which is headed "Constitutional Advancement"--

6 COMMISSIONER HICKINBOTTOM: Just before we move on
7 from the two paragraphs that we've been discussing, Mr Penn,
8 what you say is you list the characteristics of good governance
9 because, like everyone else, and certainly like me, although
10 it's quite easy to define governance, it's not easy to define
11 good governance except in characteristics which you've done.
12 And that's the classic way of doing it.

13 But, you say that where these characteristics are in
14 place, where there is good governance, construction is
15 minimised, so the risk of corruption is minimised, and poor
16 governance is the opposite. So where there is poor governance,
17 the risk of corruption increases; is that fair?

18 THE WITNESS: These are just my thoughts and are not
19 exhaustive in any way. These are some of the things that I
20 think are important for us to have the tenets of good governance
21 in place. We have to ensure that whatever we aspire to we make
22 sure we have the necessary checks and balances to ensure that
23 these particular characteristics and more are executed.

24 COMMISSIONER HICKINBOTTOM: That's right, but if
25 they're not, the risk of corruption, the risk increases.

1 THE WITNESS: The risk is there even if they are
2 executed so--

3 COMMISSIONER HICKINBOTTOM: The risk increases, if
4 they're there--sorry. The risk decreases if these
5 characteristics are there, increases if they're not there.

6 THE WITNESS: That's my submission, that if we put
7 some of these things in place, it helps to put the checks and
8 balances in the system.

9 COMMISSIONER HICKINBOTTOM: Exactly. And I think that
10 has two effects. Firstly, the risk of corruption, in fact,
11 decreases, but it also--and again, this is something which you
12 refer to in those two paragraphs, the confidence in the
13 government, which is a link but is separate strand increases.

14 THE WITNESS: Exactly.

15 COMMISSIONER HICKINBOTTOM: So good governance, less
16 risk of corruption and more confidence in the Government.

17 THE WITNESS: Agree, Commissioner.

18 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

19 BY MR RAWAT:

20 Q. If I--staying on page 3, Mr Penn, but you say that you
21 believe that a constitutional review is necessary as an enabler
22 and prerequisite to deepening of the democratic institutions of
23 government, and you go on to suggest a number of changes to the
24 Constitution that should be explored.

25 Now, one of those is you say the introduction of term

1 limits for certain elect representatives, and particularly the
2 role of Premier. I just wanted to ask you to develop that a
3 little.

4 Firstly, what do you see as the benefit of introducing
5 term limits in principle?

6 A. For me, this is always something that I thought was
7 necessary and something I support. Particularly with the
8 Premier, not that the person who sits in the Premier, I'm
9 looking at the Cayman model, Cayman Islands model, where you
10 have a Premier who can only sit for only two consecutive terms.
11 After that second consecutive term, that person could still run
12 as a Member, but they'll have to sit as a Cabinet Minister or a
13 back-bencher within the Opposition. We see that currently with
14 the current situation in Cayman Islands. The former Premier was
15 Premier for two terms. His coalition lost the majority, and
16 he's now a Member of the Opposition. He's not even a Leader of
17 the Opposition because he relinquished his leadership role in
18 the organization because he was in a consecutive term. It
19 allows some more different perspectives to emerge, specifically
20 dealing with party politics within the process, and persons get
21 the opportunity to get a diverse view in terms of persons and
22 leadership styles as well.

23 Q. One of the--the Commissioner heard from the Honourable
24 Julian Fraser yesterday, and the theme or one theme that he set
25 out in his position paper and in his oral evidence was the

1 importance of promoting diversity within the House of Assembly.

2 A. Yeah.

3 Q. And he has a particular proposal?

4 A. Yeah.

5 Q. In relation to that which you may be aware.

6 A. Yes.

7 Q. But picking up on your proposal here--

8 A. Yeah.

9 Q. --wouldn't you achieve the same effect--diversity of
10 views or a refreshing of the House of Assembly--if you had term
11 limits for all Members of the House of Assembly?

12 A. I wouldn't propose--I wouldn't go that far. I think
13 that you need to have the ability to have a level of continuity
14 in terms of knowledge. You don't want to every four years have
15 fresh elected Members that don't have institutional knowledge of
16 how the system works, the capacity in some cases to do some of
17 the things or to teach the other Members the way to move things
18 forward in the right way.

19 Some may argue--and I might argue this as well, and
20 that's why we're talking about building the institution, the
21 institution needs to have the agility that it doesn't matter who
22 comes. But the reality is that you still need that continuity
23 in terms of leadership, and BVI, at the end of the day, is a
24 small society, and you have to--you know, the--not the options,
25 I shouldn't say the options, but you would want to have a proper

1 transition of leadership than just persons just leaving the
2 scene just like that.

3 Q. What you also argued for is perhaps more prominence to
4 the role of the Leader of the Opposition and perhaps even
5 instituting an office of the Leader of the Opposition.

6 Now, under the Constitution, the Leader of the
7 Opposition does have a--firstly, is constitutional figure, but
8 also has a role, for example, in terms of nominating people to
9 various commissions identified in the Constitution. What
10 benefit do you say there would be in going further than that and
11 creating an office of the Leader of the Opposition?

12 A. For me, I want to make this clear is about the
13 position, not the person, about the institution.

14 Q. Yes.

15 A. We are a small society. These things tend to go a
16 certain way.

17 Q. I'm sure that you plan to be Leader of the
18 Opposition--

19 A. Forever, exactly. When I speak, I speak about the
20 institution.

21 For me, I believe that we need to have an Office of
22 the Opposition, Leader of the Opposition, because it's not just
23 about the Leader of the Opposition, but it's the Opposition in
24 general. There are certain provisions that the Opposition could
25 nominate persons for certain Commissions, for certain Statutory

1 Boards, et cetera, but there is more work than that. The Office
2 of the Opposition has a responsibility to ensure that we call
3 the Government to account, and to do that you need the necessary
4 support, you need the necessary assistance, technical, legal and
5 otherwise to be able to do that.

6 For example, there's a provision in the Standing
7 Orders where Members can bring what you call a private Members'
8 bill. In order to bring a private Members bill you need a
9 technical and policy rating support. You will also need legal
10 support to be able to bring a converse bill, if you want to for
11 argument's sake, to say the government to pick up a piece of
12 legislation. An Opposition may have a different view. It would
13 be good to put that view in writing in form of a legislation,
14 and we could bring up private Members' bill to the House and
15 have it debated for the public, but you need the technical
16 support, you need the legal support to be able to do that.

17 Q. You've also suggested, firstly, that the Speaker
18 should come from the elected Members of the House?

19 A. Yes.

20 Q. And that there is a need for more Ministers?

21 A. Yes.

22 Q. Now, at the moment, the Constitution provides for
23 Cabinets of five, and this is The Honourable Julian Fraser's
24 point, that the Constitution--the Premier picks four Ministers
25 to form the Cabinet with him or her. There are then two Junior

1 Ministers, and then the Speaker and perhaps one or two
2 back-benchers.

3 A. Yeah.

4 Q. The Honourable Fraser's point is that, because of the
5 current Constitution's makeup, you end up with a situation where
6 one person, however benign they are, dictates, and the House of
7 Assembly cannot hold to account, and if you give this House of
8 Assembly as an example, there are nine on the Government side,
9 four on the non-Government side.

10 How would you meet your proposal of expanding the
11 number of Ministers and having a Speaker that comes from the
12 elected membership when, to take a current example, the majority
13 of the Government are Ministers already?

14 A. Well, there's two ways you can do it. As I state the
15 issues of the Ministers expanding the Ministerial portfolio
16 first. I think it was part of the last constitutional review
17 where it was being looked at to have a sixth Ministry to start
18 to divvy up the responsibilities of Ministers. Right now, the
19 ministerial portfolios are overloaded. You have a Minister that
20 has two PSs, because of the workload that he has within his
21 portfolio, fishing, farming, education, sports, youth affairs,
22 very overloaded. The Premier himself has an overloaded
23 portfolio. We need to be able to effectively and efficiently as
24 I outline execute the duties of the Territory and the people of
25 the Territory, so you need to have--and I think one of the

1 recommendations coming out of that review was you need to
2 increase the size of the Legislature to be able to accommodate
3 so that you have a formula that speaks to some type of parity in
4 the House.

5 Additionally, I believe that we need to define the
6 Junior Minister role should not be so infinitely defined. There
7 needs to be some flexibility in terms of assistance being
8 applied to areas where they're needed most. Right now it's just
9 for Economic Affairs, so only the Premier really. Junior
10 Ministers have to be applied directly to the Premier on economic
11 activity, and I believe it is specific. I'll have to look at
12 the amendment that was made to the Constitution to provide for
13 Junior Ministers but I think it speaks to economic activity from
14 economic development.

15 In addition to that, I believe that we need to have
16 those Junior Ministers sit in Cabinet. While they might not be
17 a voting Member of the Cabinet, they have the benefit of the
18 discussions, they have the benefit of the overall policy
19 direction that a particular administration is going, and it
20 gives them--because they're the ones essentially wherever they
21 fit are going to be the ones executing the mandate whether it's
22 on under the Premier, the Deputy Premier, or whichever Minister
23 in a system to execute their mandate for the people of the
24 territory.

25 And lastly, the issue concerning the Speaker, there's

1 different schools of thought in terms of how we're going to be
2 able to do that, but the Speaker needs to be accountable not
3 just to the ruling party. He needs to be accountable to the
4 people of the Territory.

5 So, he needs to get there via vote by the people of
6 the Territory. There are some schools of thought that believe
7 that the Speaker should be run independently. There is a--that
8 you run to be a Speaker versus you run to be a Member and then
9 you're selected to be a Speaker. There is that school of
10 thought. But I think it's something--what my position is, that
11 person, however we construct that particular--however we do it,
12 it has to be an elected Member, is my position versus a
13 nominated Member.

14 Q. Would you be in favor of expanding the membership of
15 the House of Assembly?

16 A. I am. I am in favor of expanding the membership.

17 I've also recommended bicameral .

18 Q. I'll come back to that, if I may. How big would you
19 allow the House of Assembly to become?

20 A. I think just to add the sixth Minister, and I think
21 the numbers, that it was either 15 or 16--15 elected Members, I
22 believe that was necessary to add a sixth Minister based on the
23 calculation that was used--that was back in 2007. I think you
24 might need to assess what is the optimal size of a current House
25 of Assembly to be able to get the resources in place to really

1 execute the duties that we need as a Territory.

2 COMMISSIONER HICKINBOTTOM: For the sixth Cabinet
3 Minister and the Junior Ministers would mean there were still
4 eight Ministers of fifteen Members. So you would still have the
5 issue that Honourable Julian Fraser raised having the
6 Government, the Ministers, the elected Ministers, inevitably
7 being a majority in the House of Assembly.

8 THE WITNESS: Well, the issue of the expanding the
9 Ministries was based on at the time we didn't have Junior
10 Ministers, so that calculation was based on that, so I think
11 we'll have to go back and do whatever calculations to see what
12 is the optimal size to have a big enough Opposition or
13 Opposition in Government to be able to hold the elector to
14 account. We've had situations where we've had seven to six.
15 And when this House actually started, it was seven, seven, eight
16 to five before one Member crossed the floor, so there are--there
17 are areas where you could have a level of parity in the system.
18 We just have to get the right numbers, and there is no perfect
19 system, and we all know that, but we just have to tweak the one
20 that we have to make it work for us and our people.

21 BY MR RAWAT:

22 Q. The Honourable Julian Fraser's point is that the
23 Constitution doesn't allow the House of Assembly to hold the
24 Government to account, and what he favors is a--what he says
25 that the reason for that is that because the concept having four

1 at-large seats has never worked because that was introduced to
2 bring about diversity, to introduce different people into the
3 House, but has never worked because the Parties have been
4 allowed to run for it.

5 And he has--I won't set it out, but he's put to the
6 Commissioner a particular system that--his point is that what a
7 small jurisdiction like this needs, the most stable form is
8 coalition government.

9 A. Right.

10 Q. Now, you take this current House of Assembly as an
11 example it's 9:4. However diligent the Opposition is, there is
12 still a Government majority. It was the same in the Third
13 House; there was an in-built and substantial Government
14 majority.

15 Do you think--other than a bicameral system, do you
16 see any force in the concern that The Honourable Fraser has
17 raised that the system simply doesn't allow any House of
18 Assembly to hold any government to account?

19 A. I mean, my specific position paper was specific to the
20 current construct and how are we going to work to make this
21 construct work and whatever recommendations to enhance it and
22 move forward. I haven't went through the Members' position. I
23 don't want to comment on something that I don't-- haven't really
24 discussed with the Member or whether I don't know what he's
25 proposing, specifically what he's proposing, so I wouldn't even

1 hazard to get into that, but what I would say is that democracy
2 is what it is. Democracy is not perfect. There are times when
3 you have 7:6, there are times when you have 10:2 like we had.
4 You know, you have--these things happen. Our responsibility as
5 an Opposition--and I believe this very strongly, is to hold the
6 Government account. We know that we don't have the number, but
7 we need to bring awareness to the people of what's happening in
8 the Territory.

9 And the key thing is ensuring that we have
10 participation and outreach in terms of reaches out to the people
11 so they can understand what's happening in the democracy.

12 So, tomorrow, the next House of Assembly could be
13 seven to six.

14 COMMISSIONER HICKINBOTTOM: I think your point--I
15 think you agree with Honourable Julian Fraser on this--the
16 Government needs to be held to account in some way.

17 THE WITNESS: Yes.

18 COMMISSIONER HICKINBOTTOM: There are ways in which
19 they might be held to account--

20 THE WITNESS: To some degree, yes.

21 (Overlapping speakers.)

22 COMMISSIONER HICKINBOTTOM: --it may be different.
23 But I think you both have concerns that at the moment, for one
24 reason or another, any government in power here in the BVI is
25 not necessarily held to account as it should be.

1 THE WITNESS: That's not--I wouldn't say that's the
2 case. I think we have a role to play as Opposition. We play
3 our role. We bring awareness to the issues that we think are
4 issues of the people are concerned with. We do our work in
5 terms of Press Releases or a press briefing with the public to
6 keep them accountable. Ultimately people elect the Government
7 to lead. They make their decisions but if we have concerns with
8 those decisions, we will highlight those concerns and that's the
9 role of Opposition, to highlight those concerns. You can't have
10 two governments at the same time. You can only have one
11 Government at a time.

12 COMMISSIONER HICKINBOTTOM: Yes, thank you.

13 BY MR RAWAT:

14 Q. Now, the bicameral system that you proposed to the
15 Opposition, how would that work?

16 A. Well, what I'm proposing--and I looked at the Bermuda
17 model in terms of how Bermuda system works. They have a upper
18 House and a lower House. The lower House is made up of the
19 elected Members who actually usher the laws through the lower
20 House, and then the Senators who make up, I think it's five from
21 the Premier nominates five Members, three are nominated by the
22 Leader of the Opposition, and three are nominated by the
23 Governors, it's an 11-Member Senate. We're not necessarily
24 saying that we're going to go in that size or whatever the
25 construct would be, but it creates a level of accountability in

1 the legislative process.

2 So, if a piece of legislation is passed in the lower
3 House, it has to be ratified in the upper House, so at least it
4 gives the process an opportunity, and the public an opportunity
5 to get a perspective of where the legislation is going, what the
6 legislation means for them as a citizen, what it means for the
7 public, how it's going to impact their lives, whether it's
8 economic or socially. How it's going to infringe on my human
9 rights or anything of the sort, but at least the legislative
10 process gets its due course.

11 Right now, as it stands, the Government could decide
12 tomorrow that they're going to put a piece of legislation on the
13 paper, they're going to bring it and move it in in one, two,
14 three sittings without the level of consultation. I believe
15 it's happening and it's something that I've always had a concern
16 with, not just with this particular administration, in general
17 that the legislative process is our main responsibility. We are
18 elected as Legislators, so we have a responsibility to ensure
19 that we go through a thorough and rigorous process when we are
20 deciding to put legislation in place.

21 One of the things I suggested and we used to do is
22 have what we call informal meetings to discuss clause by clause
23 with the technocrats, with the Party makers, with the drafters,
24 the legislation, so we can understand from a Legislator's point
25 of view what is the true intent of this bill, is what is on

1 paper going to affect the intent of this bill that gets passed
2 in the House of Assembly.

3 So, by the time it gets to the House of Assembly, we
4 have a better appreciation of what is being intended by the
5 bill, and then we could give it a proper debate in terms of the
6 merits and the issues surrounding the Bill and what is intended
7 for the Bill.

8 Q. But you haven't thought about what size a Senate might
9 be--

10 A. No.

11 Q. --for these islands?

12 A. No.

13 I mean, those are things that we have to have a proper
14 analysis. I mean, me writing a Position Paper within a week,
15 and I come up with that level of detail is impossible and it
16 would be irresponsible of me to make suggestions without doing
17 the proper analysis, looking at what the country could bear
18 financially, looking at based on our trajectory, why the thing
19 that we need to move forward, what kind of construct do we need
20 as a Territory, and we need to have consultation with the
21 people. It's important for us if we're going to make these kind
22 of major decisions that it's done through consultation, not just
23 amongst the Legislators and passing neighbors, but people need
24 to be squarely involved in this process.

25 Q. Another recommendation you make is--which is

1 allowing--and you put this under the heading--it's your page 5,
2 if you need it--to allow greater self-government by the local
3 elected government. One of the recommendations, it's your J
4 Roman II, the portfolio of the Civil Service be moved to an
5 elected Member who's been appointed Minister responsible for
6 that subject.

7 As I understand the Constitution at the moment, the--

8 A. Governor.

9 Q. The Governor or on a day-to-day basis the Deputy
10 Governor, leads the Civil Service.

11 What is, in your view, the benefit of essentially
12 having ministerial control of the Civil Service?

13 A. For me, let me go back a step first.

14 When I started to join the Civil Service in '95, when
15 I gave my evidence earlier this week, I started out as a data
16 entry clerk. One of the first things that was done when I was
17 inside the service was there was what we call the "Training
18 Division". There was a team of persons identified to train
19 persons on the service and the system of government and how
20 Government works. I learned that in my very first week and
21 becoming a Civil Service, a public servant within the system.
22 Since I've been elected, I have seen that function disappear.
23 We have a lot of trained persons, educated persons, in the
24 service, very good persons that work within the service, but we
25 need to have a service that is fit for purpose. We need to have

1 a service that has persons on an ongoing basis being personally
2 developed in the skill sets that we need. We need to have
3 persons who are fine-tuned and point out those particular areas
4 of weaknesses within the service. You could have a person that
5 could rotate anywhere within the service because of the level of
6 training and understanding that they have in terms of the
7 service, and that needs to be under somebody who has a level of
8 responsibility not just when you are a long-standing civil
9 servant, you don't have to worry about whether you meet your
10 mandate or not. When you're an elected Member, you have a
11 mandate to the people, and if you're responsible for ensuring
12 that the Civil Service worked the way it should be, that the
13 necessary training is done for them to have the skills that they
14 need to perform their duties, and you don't perform those
15 duties, you will hear about it at the polls in the next
16 election. So, it needs to be in the hands of someone who has a
17 vested responsibility to ensure that it will work like that,
18 assume that the Deputy Governor and those persons don't have
19 that. I would never say that. And I know that the Deputy
20 Governor is someone who has been a long-term servant that has
21 done his work.

22 But what I'm saying that you need to have someone who
23 is accountable to the people, and that when at the end of four
24 years I need to assess your performance in terms of what you've
25 done in rebuilding the service and ensuring that Civil Servants

1 are trained, to ensure that the necessary systems are put in
2 place. For instance, we started the process of government.
3 When I was elected in 2011 because of my background, I was
4 appointed the Chairman of the Government Committee, and one of
5 the first things--and that was just me giving back because of my
6 skill sets to help reform the service that is made in terms of
7 technology. One of the things that we did is that we had over,
8 scattered across the service, some several hundreds--over 100
9 websites, different websites, and the object was to consolidate
10 those websites and create efficiency in the service and how it
11 operates. And one of the things we did is we developed what we
12 call SOPs, Standard Operating Procedures, for all the
13 departments within Government, and did that consolidation.

14 That is something that should be an ongoing process,
15 so there needs to be someone who is accountable, for instance,
16 when we pass a piece of legislation in the House, there has to
17 be someone that says looks, the Governor just passed a piece of
18 legislation, it's been assented, how does this impact how the
19 Service operates? Do I need to change the forms? Do I need to
20 change the information that a citizen when they're doing
21 business with the Government has to change? Do I need to update
22 something else within the Service, do I need to create some kind
23 of synergy between some government Departments. That continuous
24 process does not happen, and there needs to be someone who is
25 held to account to ensure that that happens within the Service,

1 and I believe that it has to be someone who's elected and is
2 being held accountable to the people by the people.

3 Q. Doesn't it already happen because, under the
4 Constitution, under section 56, Ministers have responsible for
5 each of their Departments. So, to take your example, if a piece
6 of legislation comes through the House and it's assented and
7 could impact Civil Service wide--the form needs to be changed, a
8 procedure needs to be changed, a process needs to be brought
9 into fruition--doesn't that responsibility already fall on the
10 shoulders of the Minister running that particular Department?

11 A. I wouldn't say that. There has always been this issue
12 of who is really in charge, so there is always this back and
13 forth between the Ministers and the Governor and the Deputy
14 Governor and we need to have it clearly defined who is really in
15 charge, and we need to put the tenets in place to ensure that
16 whatever needs to be executed, it is executed.

17 I don't blame anyway the Civil Servants, they need
18 direction, there needs to be clear direction in terms of what
19 should happen and the turf war that happens back and forth
20 between the Governor's Office, the Deputy Governor's Office and
21 the Ministries, we need to clearly define who is in charge so
22 there is no ambiguity on who is in charge. We had this back and
23 forth recently in the appointment of PSs. We don't know what
24 really happened. But we need to know who is in charge, we need
25 to clearly delineate the lines of the roles of responsibility,

1 and then hold to whoever that individual is accountable to the
2 people of the Territory because at the end of the day it is the
3 taxpayers' resources that is being used to do these things.

4 And when you put the piece of legislation in place and
5 years after the service has not been updated to reflect the
6 legislative changes, the forms have not been updated to reflect
7 the legislative changes, and you don't get the level of
8 efficiency that you need to offer the service, then we blame the
9 Civil Servants, you can't blame the Civil Servants. You have to
10 blame the person that is responsible for the Civil Servants that
11 why those efficiencies aren't being had.

12 So we need to make sure that whoever is accountable
13 should be held accountable, and we can't continue to have these
14 waffling back and forth and not being clear on who was actually
15 responsible for ensuring that these things happen.

16 And it's certainly not the Civil Servants.

17 Q. From a good governance perspective, are you of the
18 view that what is critical is preserving the independence and
19 impartiality of the Civil Service?

20 A. Impartiality is important and you could do both. I
21 think the institution, and we see it even in other mature
22 democracies. It's like the system is so enshrined, clear
23 policies, clear delineation of responsibilities, everything is
24 clear in terms of what is the role when a Minister comes into
25 office, what is his responsibilities, what he can or cannot do.

1 The Standard Operating Procedures are in place, to govern the
2 way a Minister should operate or the Governor or whomever should
3 operate. And the lines of responsibility are clear so that, if
4 tomorrow the people of the Territory decides it wants a whole
5 new government, those persons come in to assist them, clearly
6 understanding with a trained Civil Service, with a requisite
7 that we have educated civil servants, we need them to be trained
8 and fit for purpose to make sure that we strengthen the parties
9 and the positions in Government, and the institutions within the
10 Government system that when I come, I become a new Member, I
11 couldn't just--just like riding a bike. You never forget how
12 you ride a bike. And the system continues to move.

13 COMMISSIONER HICKINBOTTOM: But how do you square
14 having independent--an independent and impartial Civil Service
15 which you support being under the control of a government
16 Minister, solely under the control of a government Minister?

17 THE WITNESS: I mean, is it truly independent now? I
18 don't know if I could say that it's truly independent--

19 (Overlapping speakers.)

20 COMMISSIONER HICKINBOTTOM: That's a different
21 question.

22 THE WITNESS: Yeah.

23 COMMISSIONER HICKINBOTTOM: My understanding is
24 you--and tell me if I'm wrong.

25 THE WITNESS: Okay.

1 COMMISSIONER HICKINBOTTOM: But the conventional view
2 is that the Civil Service, here the Public Service, should be
3 independent and impartial. Is that something you agree with?
4 You may not.

5 THE WITNESS: Go ahead and finish the point. Are you
6 finished?

7 COMMISSIONER HICKINBOTTOM: Yes.

8 THE WITNESS: I apologise, Commissioner.

9 It should be, I don't see why it can't be under a
10 Minister. If the systems are robust, the systems are plain in
11 terms of what should happen, wide operating procedures and how
12 things should work, I don't see why it can't happen. Just as if
13 it could happen under the Deputy Governor or the Governor, I
14 don't see why it can't happen under a Minister.

15 And at least with a Minister, the Minister has a level
16 of accountability built into the system. He has to go back to
17 the people every four years and reapply for his job.

18 COMMISSIONER HICKINBOTTOM: Yes, thank you.

19 BY MR RAWAT:

20 Q. But what needs would you accept, what the benefit or
21 what the step that would only create a benefit is if the
22 independent nature of the Civil Service was just set out, it was
23 enshrined as a principle to which everyone signed up, that would
24 be a good starting point, wouldn't it?

25 A. It could be. I think those things have to be defined.

1 I think that is where you are growing democracy. We have only
2 been 70 years at it in terms of Ministerial leadership, so we
3 are going through the process. But I think we have made some
4 good strides, and I'm going to stick to my position that I think
5 there needs to be that level of accountability, not just once
6 you build a strong and robust system that would stand whoever
7 comes in and out, that there needs to still be that additional
8 level of accountability to the people of this Territory.

9 Q. Can I move on to just your page 6, please. And it's
10 just proposals that you've made to--for legislative performing
11 and strengthening its usual practices, and you look back to
12 steps that the National Democratic Party Government took,
13 including the Protocols for effective financial management,
14 which further, you say, the objective of achieving good
15 governance.

16 So, just develop a little bit, how did adopting those
17 Protocols further the objective, in your view?

18 A. It put--it put in writing in terms of clearly
19 outlines--before that, we had the Bar and guidelines, which was
20 similar document to the framework of fiscal management. One of
21 the additional features of this is that we defined on the way
22 that relationship works. Additionally where we now have more
23 forecasting in terms of our economic outlook, in terms of
24 budgeting, we now have to do three-year budgets versus doing a
25 budget every year. So then, at least you could adjust when

1 you're seeing where the economic picture is going based on your
2 forecast. And we specifically know where we are with COVID-19,
3 and where we were previously with hurricanes of 2017, our
4 countries were devastated. 2017 we lost our entire tourism
5 infrastructure. Luckily we had the level of redundancy that we
6 needed in our financial sources industry in terms of disaster
7 preparedness and our redundancies in our systems that we would
8 get that economy back up and running within a week.

9 Those are things that--those kind of shifts affect
10 your budgeting, and we are able to now, with the three-year
11 budgeting, be able to do that.

12 We will also be able to know in terms of borrowing
13 guidelines and our ratios we have and when we alter those
14 ratios. It helps us manage better in terms of the--maintain our
15 liquidity as a Territory, so to speak, and those ratios help us
16 and give us a guide, and in any business, if you're going to a
17 bank to borrow and you offset your ratios, the bank wouldn't
18 borrow you any money. It's no different for a country. As a
19 country, I think we have to be responsible stewards of our
20 finances, because it's the people's finances that we're dealing
21 with, so you don't want to have a Government that comes in and
22 just borrows money, borrows money, borrows money. There needs
23 to be some checks and balances, and I'm okay with checks and
24 balances for any system. It's not about whoever put the wheel
25 in needs to put those checks and balances in as well for our

1 systems.

2 COMMISSIONER HICKINBOTTOM: So, what you're saying is
3 that the Protocols increased international confidence in the
4 country which has benefits such as an ability to borrow.

5 THE WITNESS: Yeah.

6 And also it's not perfect, and I'm never saying that
7 the Protocol is perfect, there are some issues that we have to
8 define. I know there's ongoing discussions with the Protocols.
9 But at least it gives us a guide in which we can manage our
10 fiscal affairs.

11 COMMISSIONER HICKINBOTTOM: A sort of framework?

12 THE WITNESS: Framework, yeah.

13 BY MR RAWAT:

14 Q. Final question, please, it's at your page 7, please.
15 You say that you believe it's imperative to enhance the
16 functions of resources of a number of Governmental bodies, in
17 particular the Director of Public Prosecution, the AG's
18 Chambers, the Internal Audit Unit, the Audit General and
19 Complaints Commission. I'll leave the office of the leader of
20 the Opposition out, if I may, but just--

21 A. The institution, not Marlon Penn.

22 Q. As I understood your statement--

23 A. I want to make that very clear.

24 Q. It's an institution that has not yet come into being,
25 so that's why I leave it out.

1 A. Okay.

2 Q. But I accept it's about the office and not the man,
3 but the point is that the others that you list do exist. You
4 say it's imperative to enhance the functions of resources, but
5 how would you enhance those functions and resources?

6 A. I'll take this--I will take a step back first. When I
7 was in--at the Finance Sources Commission, one of the things
8 that we embarked on is from 2006 to 2012 just the change the way
9 that we did business as an entity. In terms of employing
10 technology to create efficiencies in the way that we did
11 business and the way that we worked directly with our customers
12 and internally as well.

13 The one discussion that came out of that is that
14 persons were saying that you're going to send persons home and
15 you're going to lose jobs and the opposite happened. What we
16 did, is that once we put the Virgin system in place, the
17 regulatory systems in place, and a level of optimization and
18 efficiency was the derived, we were able to train persons to use
19 them and facilitate their skills in other areas. So, there were
20 persons who were filing clerks that were trained to be IT
21 technician and advanced to even business development. There
22 were persons who were just maintenance guys and now are in the
23 Registry of Corporate Affairs doing Registry-related work.

24 So what I'm proposing and what I proposed with our
25 Government strategy and all the things that we propose in

1 2011-2015 was to create the level of efficiency that you need
2 within the service, create that efficiency, free up other
3 resources that we are using to do busy work, filing paperwork,
4 that kind of thing, and administrative work that bogs down
5 person's times and retool those persons to be able to support a
6 lot of these institutions that need our support. While some of
7 these are legal institutions, they will need specific training,
8 but throughout the other areas of service, it creates an
9 impetus. You say look, we need these particular skills sets. A
10 person may have ambitions to be trained to be something else,
11 and it creates an opportunity to gets those persons filled
12 within those positions. But these particular institutions are
13 important to the function of good governance. We need to give
14 the necessary financial support.

15 And I know that when the Police has come before the
16 Standing Finance Committee, I have never heard any Premier--I
17 have sat through three Premiers. I've never heard any of the
18 Premiers deny the Police Force any kind of financial support
19 that they asked for. Similarly, one person asked for Human
20 Resources, I have not heard him say no, since I have been there.

21 So, there is something that is happening beyond that
22 process, why this is not happening. Something that creates the
23 bottleneck why the DPP doesn't get the staff that she needs, the
24 AG doesn't get her staff that she needs. The Complaints
25 Commission doesn't get the tools that she needs to be effective

1 and perform her duties as a Complaints Commissioner. All of
2 these particular--the Internal Auditor and the audit function,
3 very important functions for good governance. One of the things
4 that I know in the last administration we had to bring in
5 someone to assist with the Audited Accounts to help bring them
6 up to date.

7 We need to find a way to get that resource trained
8 within the service so that we have the capacity and additional
9 support for the Auditor, the Internal Auditor and the Auditor
10 General to be able to effect these changes within the service,
11 and we need the support, and where is it practical. We get the
12 assistance in terms of training and training all people because
13 we have a lot of educated people who have the capacity to do
14 these jobs. It's just a matter of giving them the fine-tuned
15 training and getting them fit for purpose to fit in these roles.

16 I know it's a difficult task when you see the Standing
17 Finance process, you have every Department competing for
18 financial resources. My contention has always been there are
19 efficiencies that could be had within the service that wouldn't
20 meet the need for so much sometimes and we have a level of
21 redeployment. I'm not sending anyone home. I would never
22 advocate that. Redeployment of resources to the areas where
23 they're truly needed. I know some of these areas are technical
24 areas, but there are other areas that we have deployed the
25 skills. Once we have the level of consolidation within the

1 departments, that needs to happen, create the level of
2 redundancies that need to happen that you don't need to have.
3 Instead of having five persons doing that task, you could have
4 one, and those four persons can be freed up to do something else
5 because they've used technology to create those efficiencies
6 within the operations of the Public Service.

7 So, I support giving these entities. I know they've
8 come before you, and I'm sure that they've said to you that they
9 need the resources, and I no way doubt that they do need the
10 resources, and I know that the Premiers, the one prior and this
11 one is always committed to supporting them, but there is
12 somewhere in the system where there is a breakdown. HR, what is
13 HR, I don't want to point fingers because I myself don't know
14 specifically where the breakdown lies, but there is a breakdown
15 somewhere why that doesn't materialise as quickly as it should.

16 MR RAWAT: Commissioner, I have come to the end of my
17 questions. Can I conclude by thanking The Honourable Penn for
18 coming this afternoon and for the patience he's shown because it
19 took longer to get him on than we said we would, but also for
20 the additional assistance he's given and the way he's given his
21 evidence.

22 THE WITNESS: No problem. I have an uncle named Job,
23 the most patient I know. So, I'm used to patience.

24 COMMISSIONER HICKINBOTTOM: Can I echo that, Mr Penn.
25 Thank you very much for both your time and the helpful way in

1 which you have given the evidence. Thank you very much.

2 THE WITNESS: Thank you, Commissioner. Thank you.

3 (Witness steps down.)

4 MR RAWAT: If you could rise briefly and we'll just
5 get the place reset.

6 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

7 (Recess.)

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Session 6

DAVID D ARCHER, COMMISSION WITNESS, CALLED

COMMISSIONER HICKINBOTTOM: First, Deputy govern,
Mr Rawat, apologise for being patient and sorry to have kept you
waiting.

Mr Rawat.

MR RAWAT: Thank you, Commissioner.

BY MR RAWAT:

Q. Deputy Governor, I do join with the Commissioner in
making our apologies for the time that we have kept you waiting,
but what I can also do and do want to do is thank you for coming
to give evidence this afternoon.

The first thing we need to do is to have you sworn.
You can either affirm or take the oath, whichever you prefer.
There is a card on the table in front of you. One side's for
the affirmation, one side's for the oath. If you read the card
out.

A. I do solemnly, sincerely, and truly declare--

COMMISSIONER HICKINBOTTOM: No, I'm sorry. It is the
other side, Deputy Governor.

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

COMMISSIONER HICKINBOTTOM: Thank you very much.

BY MR RAWAT:

1 Q. Thank you.

2 To deal with two formalities, please, could you give
3 the Commissioner your full name.

4 A. Yes. My name is David Acosta Archer Junior.

5 Q. And your professional address?

6 A. Yes. Please repeat?

7 Q. Your professional address, where is the location of
8 the DG's office?

9 A. Thank you.

10 The Deputy Governor's Office is located in Road Town.
11 Thank you.

12 Q. Thank you.

13 Deputy Governor, the primary reason to ask you to come
14 along this afternoon is to ask additional questions arising from
15 your position statement. I don't propose to ask you to read it
16 out or to hopefully not to read it out myself. There is a
17 bundle on the desk where you will find the Position Statement,
18 but it looks like you've also brought your own copy in any
19 event, so if you're more comfortable using that, please do so.

20 A. Yes, thank you.

21 Q. There may be other documents that I take you to as we
22 go along, but no need to look at them now. I will take you to
23 them as we do go through.

24 I try to keep the questions short and simple; it
25 doesn't work always. If at any time I ask you a question that

1 you find difficult, please do ask me to repeat or rephrase it,
2 and I will do so.

3 And the final request to be made of you is, can I ask
4 you to just keep your voice up and speak slowly. The microphone
5 in front of you does not amplify--it just records--and so what's
6 important is that we can hear you so that your answers are
7 clearly and accurately recorded.

8 A. Thank you.

9 Q. Thank you very much.

10 I start with the question I have put to every witness,
11 and that is to ask you, please, just to give an outline of your
12 professional background before assuming the position of Deputy
13 Governor.

14 A. Thank you very much, Commissioner.

15 I was fortunate to start in the BVI Government as an
16 admin cadet. That was July 14, 1997. I then advanced to be a
17 Personnel Officer. These are both within the Department of
18 Human Resources for the Government.

19 I then advanced to be a Senior Personnel Officer.
20 That's January 1999.

21 I advanced to being a Senior Assistant Human Resources
22 Manager, and that's September 1st, 2002.

23 I then advanced to be the Deputy Director of Human
24 Resources. That's the 1st of January 2003.

25 Then Director of Human Resources the 5th of

1 October 2014.

2 Permanent Secretary, Deputy Governor's
3 Office, 16 August 2010.

4 Senior Liaison Officer, Governor's Office,
5 15 January 2018.

6 And took up the role as Deputy Governor
7 1st March 2018.

8 Q. Thank you very much.

9 The Deputy Governor's post is a constitutional
10 position, and I think it's under section 36 of the 2007
11 Constitution. The Constitution provides that you stand in place
12 of the Governor when required; that's right, isn't it?

13 A. Yes, Commissioner.

14 Q. And you have certain functions under the Constitution,
15 which are set out at sections 38 and 39, and you've also set
16 those out in your page 13 of your Position Statement, where you
17 set out your role, so you can be authorised to take on any of
18 the functions of the Office of Governor.

19 But aside from the Constitution, is your role as
20 Deputy Governor defined anywhere else?

21 A. No, it's not, Commissioner.

22 Q. And so, has the post evolved over time, would you say?
23 Are there now particular responsibilities that you have as
24 Deputy Governor which aren't really set out in the Constitution
25 or anywhere else?

1 A. Well, Commissioner, I can only give reference to my
2 observation having only been the Deputy Governor for three
3 years; and, from my observation, I can conclude that the duties
4 I have currently are some of the same duties that would have
5 been transferred from other Deputy Governors, albeit special
6 assignments such as when I took on the lead to transform the
7 Public Service.

8 Q. But what--it must be a few week ago now we had a
9 number of Permanent Secretaries and also the Cabinet Secretary
10 to give evidence, and this was in private session but the
11 Transcripts are not public. And when asked who the head of
12 Civil Service was, all fingers pointed at you as Governor. And
13 so, whilst it might be that the Deputy Governor is the recorded
14 head of the Civil Service, you had day-to-day headship of the
15 Civil Service; is that right?

16 A. Commissioner, yes. My reference was only in reference
17 to the duties that are documented.

18 Q. Yes, of course, but that is a duty that isn't
19 documented but is, in fact, I would suggest, that perhaps takes
20 up a great deal of your time as DG.

21 A. Majority of my time, Commissioner.

22 Q. Now, as with others--and your Position Statement has
23 been published and is available on the website for others to
24 read. Now, you've address the questions that the Commissioner
25 put to you in detail, so I just want to take you to some aspects

1 of it.

2 If you look at your page 4, you refer to section 60 of
3 the Constitution and you say that your role is to support the
4 Governor through the promotion, development, and enforcement of
5 robust good governance measures.

6 Now, did you consider, from the perspective of being
7 Deputy Governor, that it's the Governor that has primary
8 responsibility for ensuring good governance?

9 A. Commissioner, my belief is based on section 60 of the
10 Constitution. Those are detailed areas which you will find,
11 when you dissect them, spread across main subjects dealing with
12 good governance, and so far I view the Governor as being
13 responsible within those duties for leading in those specific
14 areas of good governance.

15 Q. One of the points you make is about the importance of
16 the public interest, and to quote your Position Statement you
17 speak about acting positively in the public interest at all
18 times.

19 Now, many of my questions, Deputy Governor, are going
20 to seek your assistance about the operations of Public Service.

21 Your Position Statement speaks to an overarching need
22 to always act in the public interest. When you speak of public
23 officers, who you define and mean by the term "public officers"?

24 A. Within my Position Statement, Commissioner, I will
25 reference public officers who are part of central

1 governors--Central Government, sorry, and I will also make
2 reference to the wider persons in public interest. But
3 specifically when I speak about public officers, those are the
4 ones who work for Central Government, Commissioner.

5 Q. And what some of us might describe as the "Civil
6 Service"?

7 A. Yes.

8 Q. And you've, I think, called it the "Public Service" in
9 your Position Paper?

10 A. Yes, Commissioner.

11 Q. Now, how is that need to act positively in the public
12 interest at all times embedded in the work of the Public Service
13 currently?

14 A. Please repeat the question?

15 Q. You speak of the need to act positively in the public
16 interest at all times, so that I take from your Position
17 Paper--and we're looking at page 4--is an obligation that falls
18 on the Public Service, but how is it embedded in the work of the
19 Public Service?

20 A. If I can--Commissioner, as I answer this question,
21 possibly take you to another page where I will draw on the
22 bodies of legislations and policies that guide the Public
23 Service, that will be on page 17.

24 Well, fundamentally, good governance plus the slight
25 involvement involves public trust, and on page 15 I made

1 reference to different pieces of legislations and policies that
2 guide good governance, and those are the fundamentals which will
3 embed good governance within the Public Service.

4 We serve the public, and we serve the public's
5 interests; and, in doing so, those pieces of doc--of
6 legislations and policies which are listed on page 15 are the
7 ones which serve as the root cause for good governance.

8 Q. And you put at the top of that list, before we leave
9 the page, the General Orders, which, as I understand it, were
10 last revised in 1982?

11 A. Yes, Commissioner.

12 Q. But as part of the Public Service Transformation
13 Programme, those will be overhauled; is that right?

14 A. Yes. I do smile, and that is not part, Commissioner,
15 one of the most happiest things I speak about when it comes to
16 General Orders except to say, within the Public Service policy
17 since 1982, we have developed not just the framework for the new
18 Public Service Management Bill and Public Service Management
19 Code but over 30-something policies which guides how we do
20 business within the Public Service, and those are then the
21 foundation for what will serve as the new Public Service
22 Management Code.

23 Q. Can I come back to that because I will have some
24 questions for you on those.

25 One of the pieces of evidence that emerged--and this

1 was questions put to senior public officers--Permanent
2 Secretaries, Cabinet Secretary--and the question I put was were
3 they aware of any additional guidance issued to Civil Servants
4 beyond what was in the General Orders, and back came the answer
5 "no". Is that an answer that surprised you somewhat?

6 A. Yes, Commissioner, it does.

7 Q. And why does it surprise you?

8 A. Well, it surprises me because each public officer,
9 whether junior or senior, when they first take up office or
10 first take up new posts, they are reminded through formal
11 letters of the documents or the policies which will guide their
12 administration or guide their rule.

13 Now, I do say because it might not be, Commissioner,
14 part of their everyday duties. They might not be able to
15 pinpoint all of them, but I can say the framework exists where
16 each public officer, especially the senior officers, are aware
17 of what policies will guide them--General Orders, Public Service
18 Management Bill, Public Service Management Code--but also more
19 specifically as it relates to the financial regulations,
20 procurement legislations, and so forth.

21 Q. But we need to separate future changes to come from
22 the present situation.

23 A. Yes.

24 Q. My understanding from the evidence of the Permanent
25 Secretary was, well, actually, it's the General Orders, nothing

1 more. Is there more already in existence governing how you
2 operate as a public officer in the Virgin Islands?

3 A. Yes.

4 General Orders will be general framework of how we
5 operate. It will consider, Commissioner, as a ruling guide, but
6 I can submit to you, if necessary, all of the supporting
7 policies which support the General Orders, whether they're
8 speaking about sexual harassment, conflicts within the Public
9 Service. I have within my bundles, and I can provide them to
10 you. So, along with the wider, Commissioner, General Orders,
11 there are supporting policies which guides the operations of
12 persons within the Public Service.

13 Q. And it does surprise you that a Senior Civil Servant
14 to reach a Permanent Secretary position is unable to mention
15 that or is unaware of it?

16 A. Commissioner, I'm not aware of the context under which
17 those questions were asked. However, I'm very, very sure, if
18 the PSs were to reflect, they will be able to also mention some
19 of these things I mentioned also.

20 Q. You're a long-serving and now senior Member of the
21 Civil Service, of the Public Service. Do you agree that
22 preserving the independence of the Public Service is a critical
23 aspect of good governance?

24 A. Yes, Commissioner.

25 Q. And how is that preserved currently?

1 A. Well, it's preserved by understanding that there is a
2 partnership with how the Public Service will operate. That
3 partnership is between the elected officials. Section 56 of the
4 Constitution will lay out what rules and responsibilities will
5 guide, like, officials but also relates to the Governor being
6 responsible for the terms and conditions and how the Public
7 Service overall operates.

8 Q. And so it depends on the partnership that involves the
9 Governor, elected officials, and the Public Service?

10 A. Yes.

11 That partnership is embedded within our Constitution,
12 embedded within how the spirit of--how we move forward with the
13 Public Service.

14 Q. This was a question I also raised with Permanent
15 Secretaries and the Cabinet Secretary, but if a public officer
16 of whatever level has a concern over a Minister and over how the
17 Minister is requiring policy to be implemented, so all elected
18 officers or officials will have a policy programme in mind, they
19 will have objectives that they want to achieve, and the job of
20 the Civil Service--of the Public Service would be to assist them
21 to achieve those objectives but within a defined framework.

22 A. Yes.

23 Q. In circumstances where--and this is bringing back it
24 to the Virgin Islands--a public officer has a concern over how a
25 Minister is going about his or her business or what a Minister

1 is requiring of the public officer, how can they raise that
2 concern?

3 A. If an individual public officer has a challenge with
4 that, then they will deal and speak directly with their
5 department head. If it's a department head, then they will
6 speak with the Permanent Secretary. If it's the Permanent
7 Secretary or someone at that level, then they deal directly with
8 the Deputy Governor. If there is not redress at all of those
9 levels, Commissioner, as I just mentioned, and ultimately it
10 will rest with me to provide some of those balance and
11 communication to make sure we get the point of redress, if
12 necessary.

13 Q. And have you, in your time as Deputy Governor, had to
14 provide some balance and redress?

15 A. Yes, I have, Commissioner.

16 Q. Without naming names--I'm not asking you to, but can
17 you give the Commissioner some sense of the circumstances in
18 which you had to intervene?

19 A. Well, I will caution to say intervention except use
20 the word, probably, "guide". Obviously, Permanent Secretaries
21 want to deliver for the governments of the day, so it might be a
22 simple question, Commissioner, as it relates to how does this
23 policy get implemented, is it part of established regulations,
24 how it might be done within the time frame that the Minister
25 requests. That's all done within conversation and

1 communication, so it could be, Commissioner, a decision which is
2 made between the Minister and the official and that individual,
3 the PS will have dialogue with me in terms of whether or not
4 it's going down the right path.

5 Q. Let's take you to your page 5.

6 You refer there--and it's something you develop later
7 in your Position Statement--to the Public Service Transformation
8 Programme. I think it was also called the Transformation Plan,
9 that's borne by you in terms of pushing that through and
10 progressing it, you say "adopted the principles of the Good
11 Governance Framework for Overseas Territories".

12 Starting off with that, can you just explain what is
13 the Good Governance Framework for the Overseas Territories?

14 A. Commissioner, this is the framework from the FCDO as
15 relates to what public services should be working towards.
16 Public Service, by extension public bodies, to ensure that they
17 have a good standing, a good governance framework, a good
18 governance standard; and, by utilising this checklist, we're
19 able to--we're able to ascertain, Commissioner, whether or not
20 we are doing well in those given areas.

21 Q. And when was the framework first promulgated?

22 A. Commissioner, I'm not aware of when it was first
23 developed. However, I can assure you that when I first took on
24 the role of transformation, that is one of the documents that I
25 met as to what standards we should work towards to have a Public

1 Service that would be considered doing well good governance.

2 Q. And was it one of the documents you met immediately
3 upon taking office as Deputy Governor?

4 A. Yes, Commissioner.

5 Q. And forgive me, but it may be because the time we have
6 reached in the day, but just do remind us when you first took
7 office.

8 A. March 2018.

9 Q. So, March 2018.

10 And you then say the Public Service Transformation
11 Programme started in 2018, so do we take it that March 2018 you
12 arrived to take up the new role, and you pretty much quickly
13 after that you were asked to begin developing this programme?

14 A. Yes.

15 Commissioner, after the hurricanes, as the BVI made a
16 decision to develop and to redevelop, one of the critical
17 components which we're saying was that the Public Service also
18 has to move along with its development. And at the time, the
19 Deputy Governor and Director of HR and other professionals saw
20 it fit to have a transformation of the Public Service while we
21 were also transforming the Territory or recovering i development
22 for the Territory.

23 The time was probably coincidental or, as I came on,
24 that would then be the first mandate given to me to lead outside
25 of my normal duties.

1 Q. But was the--did the impetus fall for the
2 Transformation Programme come from the Deputy Governor's Office
3 or were you given it via decision of the Cabinet or via decision
4 of the Governor?

5 A. Commissioner, the transformation of the Public Service
6 was through a Cabinet Decision.

7 Q. And that's obviously in--the previous administration
8 had decided that this should be taken forward?

9 A. Yes, Commissioner.

10 Q. And that--its starting point is it adopts the
11 principles of Good Governance Frameworks and then develops it
12 onwards?

13 A. Yes, Commissioner, along with other points, but yes.

14 Q. And you used the framework, essentially, as a
15 checklist?

16 A. Commissioner, it was a good checklist. It was not
17 just from that standpoint but it was also a good checklist from
18 best practices throughout in the region and globally.

19 Q. I see.

20 And the point is that you want--or would you accept
21 that the aim is to develop a programme that suits the Virgin
22 Islands? It's not a rigid framework. It's not a tick list.
23 It's a guide?

24 A. Yes, Commissioner, it's a guide.

25 Q. And so you start in 2018. Does it just continue

1 through--obviously, there was the change of government in 2019.
2 Did that pause your work or change your work in any way, or does
3 it just continue on?

4 A. Commissioner, the Transformation Programme, as the new
5 government came in, obviously we had to pause because there was
6 a need for us to introduce the programme and the concept to them
7 and get their binding support, and that was done.

8 Q. I see.

9 You should have, Deputy Governor, on the desk in front
10 of you a large grey lever-arch file, you will find it. If I
11 tell you what this is, this is a--please open it. Yes, thank
12 you very much. It's an affidavit from Sandra Ward, who is
13 obviously the Cabinet Secretary, and she assisted the
14 Commissioner by producing those minutes where Cabinet Ministers
15 had declared an interest in an agenda item.

16 I just wanted to take you to page 402, please. If we
17 start at 396, please, Deputy Governor, I will take you to some.

18 A. Allow me, please, to get there.

19 Q. Yes, absolutely.

20 A Cabinet meeting of the 7th of November 2019.
21 Obviously, you would not have been present, but I just wanted to
22 ask your help with this. If you go to 402, please.

23 A. Yes, Commissioner.

24 Q. Are you there?

25 A. Yes, I am.

1 Q. Okay. It's a memorandum at the bottom of the page.
2 It refers to memorandum by the Governor, Integrity in Public
3 Life Policy. If you--forgive me a moment.

4 If you go through, there is then the deliberations,
5 and if you go through to 406 and paragraph 32, in the course of
6 deliberation, the Governor said that the Integrity in Public
7 Life Policy was a component of a wider suite of proposed
8 legislation, including the Public Service Management Act, the
9 Whistleblowers Bill.

10 And if you then go through to page 408, at 38, Cabinet
11 reviewed the draft in public life policy, decided that the Bill,
12 which is Integrity in Public Life 2003, should be reviewed in
13 line with the policy, incorporate a review of the Register of
14 Interests and Complaints Commission Act, and then decided that
15 the Deputy Governor's Office should instruct the Attorney
16 General's Chambers to draft the new Bill. Now, this is in
17 November 2019.

18 So--and correct me if I've misunderstood this, but
19 this is illustrative of the process that has to be taken when a
20 new--a new government comes in, that the Transformation
21 Programme is paused but then aspects of it are brought back to
22 Cabinet for approval as to whether it should continue.

23 A. Commissioner, this appears to be a--the first
24 introduction of the Integrity in Public Life Bill. This is not
25 the introduction of the transformation of the Public Service

1 Plan.

2 Q. I see.

3 So, what you understand what I should was that, in
4 November 2019, the Governor was introducing the Integrity in
5 Public Life Policy?

6 A. As stated--as stated here, Commissioner, yes.

7 Q. Thank you.

8 We can pick it up now, but are you--can you explain
9 what the Integrity in Public Life Policy is or was?

10 A. Thank you, Commissioner. Yes.

11 Q. Please do.

12 A. The Integrity in Public Life Policy is the overarching
13 policy which attempts for the first time in the history of the
14 Virgin Islands to describe the actions, expectations of all
15 persons in public life. It defines behaviors that are expected.
16 It also ensures accountability mechanisms for persons who do not
17 adhere to those particular policies and procedures, and also
18 sets out a commission for monitoring and enforcing those
19 standards for all persons in public life.

20 Q. There is reference in there to a 2003 Bill, which
21 suggests that this is being under consideration, the idea of
22 Integrity in Public Life becoming part of the legislation of the
23 Virgin Islands. It has been something that has been talked
24 about for many years. Is that your understanding of the
25 position?

1 A. Commissioner, can you point me to that reference?

2 Q. If you go back to page 402, please--in fact, let's go
3 to 408. And I'm taking you to the decisions that Cabinets
4 actually made. So, the Cabinet approved a draft Integrity in
5 Public Life Policy at A. At B, decided that the Bill entitled
6 "Integrity in Public Life 2003" be reviewed in line with the
7 policy and then incorporate reviews of other statutes that
8 impact on conduct in public life.

9 And my question was directed to the reference of a
10 Bill which is Integrity in Public Life 2003 and whether that
11 prompted in your mind as Deputy a recollection that the concept
12 of integrity in public life is something that has been talked
13 about in the Virgin Islands for some considerable time?

14 A. Yes, Commissioner, it has been.

15 Q. If we go through to--you're back to your page 5,
16 please.

17 Now, what you have done at page 5 is to set out a
18 table which shows an update on the framework. So, if I
19 summarise, what you do is you have set out a number of statutes
20 that are being considerable in number. In total, you've got 19
21 statutes or codes set out. And these are the steps that are
22 being taken as part of the Transformation Programme to
23 essentially to meet the Good Governance Framework. Would that
24 be a way of describing it?

25 A. Commissioner, not exactly. What you have here is an

1 amalgamation of various steps/policies that make up the overall
2 Good Governance Framework. For example, some of them are
3 already in place, so the attempt here was to demonstrate making
4 the reference to the Good Governance Framework where the BVI
5 currently is, where the Public Service currently is, with
6 certain aspects.

7 So, for example, a Good Governance Framework should
8 have a Register of Interests, and what's here, for example, is a
9 demonstration of where the BVI currently is, so what's listed
10 here are not transformation initiatives only but also a
11 representation of various forms of good governance measures
12 which can lead towards the overall framework which is mentioned
13 on page 5.

14 Q. I see.

15 And if we look at some of these, one of the elements
16 of this is a--I suppose I could describe it as a code of conduct
17 for public officers, that's your 3 on page 6. And
18 that's--you've identified that as a good governance component,
19 and you explained that there were Public Service Standards of
20 Excellent launched in 2016 to align with the Nolan Principles;
21 and that there is now a Public Service Management Bill, which
22 has now been revised to be a Public Service Management Code; is
23 that correct?

24 A. Commissioner, it might be, I think, important if I
25 make the distinction between the Public Service Management Code

1 and Public Service Management Bill, if that might help.

2 Q. Yes, please.

3 COMMISSIONER HICKINBOTTOM: Yes.

4 THE WITNESS: The Code represents all of the good
5 principles which we believe can make up the Public Service
6 Management Bill. It was decided to test, for example, how those
7 policies might impact overall Public Service to first introduce
8 the Public Service Management Code which will replace our
9 General Orders.

10 After a year--hopefully not that long--of reviewing
11 the policies as change impact as well as to look at best
12 practices, we will then transition that code into the Public
13 Service Management Bill.

14 BY MR RAWAT:

15 Q. I see.

16 So, in terms of status or what status does the Code
17 have, as a public officer, can you ignore the Code when in
18 certain circumstances where you cannot ignore the Act, or is it
19 as binding, is a code binding or public officer as an Act would
20 be?

21 A. The Code will be considered internal government
22 policy. The Act, of course, will be linked to legislation, of
23 course, allowing then the right teeth for enforcement.

24 Q. Does the Code, when it eventually comes out of the
25 machine, will that explicitly recognise the independence of the

1 Civil Service?

2 A. Commissioner, can you please elaborate on the
3 question?

4 Q. I'm going to suggest that an independent and impartial
5 Public Service--and I apologise, I default automatically to
6 "Civil Service". but it's important that I use your terminology,
7 but I'm going to suggest that an independent and impartial
8 Public Service is an important component of good governance, and
9 your point 3 says that a Code of Conduct for public officers is
10 an element of good governance, and my question is whether that
11 Code of Conduct will recognise that--it will recognise the
12 independence of the Public Service?

13 A. Commissioner, I'm sorry. Is it the code of Conduct or
14 the Public Service Management?

15 Q. Yes, I'm taking it from your 3, Code of Conduct for
16 public officers, let's call it the "Public Service Management
17 Code".

18 A. Yes.

19 Q. Will the Public Service Management Code explicitly
20 recognise the independence and impartiality of public officers?

21 A. Commissioner, yes.

22 Q. And it will explicitly state that?

23 A. Commissioner, as I have read and I will willingly
24 share the draft with you, I think it is clear in terms of that
25 overall approach.

1 Q. It has been shared with the Commission, so that's
2 helpful.

3 And in terms of preserving that and monitoring its
4 preservation, that independence, how in reality will that be
5 monitored?

6 A. Commissioner, carefully.

7 However, in doing so, we must ensure that the
8 adherence to the Code, and overall within the Code you will see
9 where the Deputy Governor is listed as the individual who is
10 responsible for the overall execution and the management of the
11 Code and its adherence.

12 Q. And as Deputy Governor, how will you perform that
13 task?

14 A. In doing so, Commissioner, you have to ensure first
15 that the wider Public Service is aware of the roles and
16 responsibilities as it relates to working in public life,
17 working in Public Service. Equally, it has to do with how you
18 monitor actions which might go against what's within the Public
19 Service Management Code and ensure the right institutions which
20 are responsible for holding persons accountable are engaged,
21 where necessary.

22 Q. Another aspect of the Transformation Programme and
23 another component you've listed is, of course, the Code of
24 Conduct for Ministers.

25 A. Yes.

1 Q. If you give me a moment, please, DG.

2 Just give me one moment.

3 (Pause.)

4 Q. You should have, I think--there is the smaller grey
5 file, not that big one but if you put the big one away now, we
6 won't need to look at it.

7 If I explain, Deputy Governor, this was, I suppose, a
8 note prepared at the Commissioner's request of the Attorney
9 General, I believe, with your input, if my recollection is
10 right, but it was in respect of the legislative programme on
11 governance, and so this folder contains, I think, at least as of
12 the 3rd of June, the sort of various iterations of acts and
13 codes.

14 A. Commissioner, can you please--I just need some clarity
15 in terms of you mentioned my involvement.

16 Q. It may just be my misunderstanding, but as I'm
17 understanding, a letter was sent both yourself and the Attorney
18 General asking to set out the current state of the proposed
19 legislative programme on governance, and my understanding, which
20 I may be entirely wrong, is that you had assisted the Attorney
21 General in putting it together.

22 A. Commissioner, you're correct.

23 Q. My mind is not playing tricks on me.

24 And so, the folder we have in front of us is not just
25 the note but what was the Attorney General provided was also, I

1 think, as of the 3rd of June but the iterations of the various
2 codes or bills that are going through, and I just want to ask
3 you about one, and that's at Tab 9. So we're now looking at
4 sort of the obverse to the Code of Conduct for Public Officers.
5 This is a Code of Conduct for Ministers.

6 And what you have is, at 14, page 14, you can use the
7 internal page numbering or the bundle numbering which is 181 at
8 the top.

9 What that says at 6.1 is that Ministers must uphold
10 the political impartiality of the Public Service, not ask public
11 officers to act in any way which would conflict with their
12 responsibilities and obligations.

13 Now, that's the principle. You explained that in the
14 public officers--the Public Service Management Code, one would
15 find a similar iteration of principle, but again it's asking for
16 your assistance of how that will actually work in reality.

17 Does it just come back to you, as the head of the
18 Civil Service, to monitor that? And if it does, how would a
19 Deputy Governor go about monitoring it?

20 A. Commissioner, if I look at 6.1, and it says must
21 uphold the political impartiality of Public Service and not ask
22 public officers to act in any way which would conflict with
23 their responsibility and obligations.

24 If a public officer, therefore, feels this is--a
25 Minister has asked him to act outside of this, they have overall

1 obligation to, as mentioned before, make known to their
2 supervisor; and their supervisor, be it department head, also to
3 the Permanent Secretary. And once that information is brought,
4 for example, to my central attention, I have responsibility, if
5 it's necessary, to investigate. If it's a matter which requires
6 other intervention based on observation, based on codes, place
7 it in that particular direction. So, I will serve as the--the
8 Deputy Governor will serve, Commissioner, as the medium or
9 litmus to monitor how this particular aspect is being executed
10 in relation to ministers and public officers.

11 Q. Is there any scope for a public officer raising a
12 concern anonymously?

13 A. Commissioner, you say "anonymously". do you mean make
14 reference to possibly make a note without a name to the Deputy
15 Governor?

16 Q. Yes.

17 A. Yes, there is.

18 Q. What I mean, it becomes harder if you're going up the
19 chain of command?

20 A. Yes.

21 Q. If you want to skip the chain of command and come
22 straight to the man or the woman at the top, that there is scope
23 within the system that you're progressing for Civil Servants to
24 raise concerns without being named?

25 A. Yes, indeed. You will find that within the Public

1 Service Management Code.

2 Q. Thank you.

3 I just want to take you back to--stick to this, and
4 it's just--I mean, perhaps these questions are a little cheeky
5 because they're drawing on your experience as a person
6 responsible for the Transformation Programme, but if we look at
7 the Code itself--and this is at 15--section 8 deals with
8 Ministers' private interests and sets out a general principle
9 that Ministers must ensure no conflict arises or could
10 reasonably be perceived to arise between their public duties and
11 their private interests, financial or otherwise.

12 It then goes on to say that it's the responsibility of
13 each Ministry to decide whether and what action is needed to
14 avoid a conflict or the perception of a conflict.

15 Now, just what does the--or what is or when are
16 Ministers supposed to avoid the interests? In what
17 circumstances should they be acting to ensure no conflict
18 arises?

19 A. Can you please repeat the question?

20 Q. I will put it in a different way because this is the
21 principle. We've seen the Cabinet Handbook which dates from
22 2009 which gives guidance, but in addition to this--and perhaps
23 the Cabinet Handbook, if that's not retired--what guidance is
24 given to Ministers in terms of assessing how to ensure that no
25 conflict arises?

1 A. The Register of Interests Act.

2 Q. Because...?

3 A. Makes reference here, conflict arises which can
4 perceive arising between public duties and private interests,
5 and that Act is guaranteed to speak directly to Ministers who
6 are also Members of the House of Assembly.

7 Q. And so--but it falls to the Minister to (a) accurately
8 disclose their interests in the Register of Interests; (b) to
9 keep it up to date; and then (c) to decide whether those who
10 declared interests and a policy or an agenda item on a Cabinet
11 meeting or whatever, that then there is a clash.

12 So, aside from that, it obviously always comes back to
13 the Minister making the decision?

14 A. Yes.

15 Commissioner, in the current state, yes. However, I'm
16 assuming within this particular bundle--which I have not seen,
17 so forgive me--there is a possible first draft of the Integrity
18 in Public Life Bill.

19 Q. There is.

20 A. And Commissioner, there is, you will see a different
21 iteration as it relates to how Ministers can be more responsible
22 in this regard, and where the possibility of the Commission
23 serving as a different body to monitor and not just public
24 officers but also all persons in public interests, including
25 political officials and ministers.

1 Q. And does the Integrity in Public Life Bill give--this
2 is the Integrity Commission established under that bill, but
3 does it give--does it give them the right to act
4 proactively--so, for example, to come in and monitor compliance
5 with the Register of Interests--or can they only act as an
6 Integrity Commission when something is brought to their
7 attention?

8 A. Yes.

9 Well, I will answer that carefully, Commissioner,
10 because, as you know, the Register of Interests rests within the
11 Constitution, so in knowing that there is only so much that the
12 Integrity Commission can do without the Registrar, for example,
13 prompting a look at the new draft of not just the Integrity in
14 Public Life but also the new draft associated with the Register
15 of Interests Act. You will see where there is an attempt
16 marriage between both institution so the Integrity Commission,
17 for example, can serve not just as a resource to what is their
18 interests but also serve as a body to assist in the
19 implementation--sorry, in the monitoring of how well all persons
20 are doing in public life, including public officials, Ministers,
21 and Members of the House of Assembly, for clarity.

22 Q. If we go to page 19 in this code, and if you go to
23 12.1, which is section 12 is Ministers and Compliance, and 12.1
24 is the General Principle, that Ministers have a personal
25 responsibility to conduct themselves in accordance with the

1 Code, the Premier has discretionary respect of the initial
2 handling of possible breaches of the Code.

3 How does that connect the work of the Integrity
4 Commission?

5 A. Thank you.

6 So, Commissioner, this current code as you see it here
7 in the Ministry Code speaks specifically to Ministers.

8 Obviously, the Integrity in Public Life Bill and Integrity in
9 Public Life Commission will speak to all Members of the House of
10 Assembly regardless of whether they're Ministers or part of the
11 back bench, so that this particular code, which is just a code,
12 will have to be contrasted with what will be the legislation to
13 govern the actions of all persons in public life, in particular
14 Ministers and Members of the House of Assembly. So, because
15 this Code, Commissioner is not necessarily legislation, there
16 would have to be deferment to the larger Integrity in Public
17 Life Code which will guide. And my assumption, Commissioner,
18 will be, before the Integrity in Public Life Bill is brought
19 into force or before this particular Code, ministerial code, is
20 brought into particular action, as a policy there will have to
21 be some contrast and review or both to make sure the right
22 synergy in the area that you're making mention.

23 Q. Before we leave Register of Interests, I don't know
24 whether, Deputy Governor, you followed any of the evidence over
25 the last few days that's been taken by the Commissioner, but

1 more than one or two Members of the House of Assembly have
2 raised concerns about the Register of Interests form.

3 I mean--firstly, one of the first questions or
4 question we have put to more than one witness--and this is both
5 current and former Members of the House of Assembly--was that
6 the form refers to a guidance pamphlet, and say if you can't
7 help us, but now our current understanding is that that Guidance
8 Pamphlet was never issued. Is that your understanding?

9 A. Commissioner, as I have my final record, that Guidance
10 Pamphlet has not been issued.

11 Q. And the reference to the Guidance Pamphlet comes from
12 the form which is part of the Act, and so since 2006, there has
13 been in this reference to a Guidance Pamphlet, but as far as you
14 have been able to establish, Deputy Governor--and I appreciate
15 that you had been doing something completely different in 2006,
16 but as far as you can establish, no Guidance Pamphlet was ever
17 issued?

18 A. Commissioner, as far as I have established within the
19 last 24 hours because that's the space in which I was asked to
20 ascertain.

21 Q. Right.

22 A. So, as of now, no. I will, however, continue into my
23 search. Of course, you know we have had a transition between
24 Registrars, so I will, of course, ask my office to speak with
25 the former Registrar to see if something were actually produced,

1 but within the last 24 hours.

2 COMMISSIONER HICKINBOTTOM: Thank you, Deputy. Nobody
3 else has found it, so--but your effort is much appreciated.

4 THE WITNESS: Thank you.

5 BY MR RAWAT:

6 Q. But, at present--and I can take you to it--this bundle
7 in front of you, small grey bundle, includes a Register of
8 Interests Act 2021, and that has annexed to it exactly the same
9 form.

10 A. Commissioner, do you mind--

11 Q. Yes. Of course. If you go to Tab 6, please, in that
12 bundle.

13 A. Thank you.

14 Q. You should find the Register of Interests Act 2021,
15 and I think what we need to say is that--what you put in your
16 Position Statement about that is that the draft of the amended
17 legislation to strengthen its enforcement through the Integrity
18 Commission has been completed and feedback provided to the AG's
19 Chambers.

20 This comes--my question comes directly from the
21 evidence that the Commissioner received in the a past few days
22 because if you look at this, this is now the new Register of
23 Interests Act which, of course, puts in this reference to a
24 relationship with the Integrity Commission, Clause 10 that
25 refers to that the Registrar may refer any matter related to

1 integrity to the Commission for advice.

2 But if you look at Schedule 2 of the Bill, it's
3 page 112 in the top right-hand corner, that form is exactly the
4 same as the form that is scheduled to the existing Act, and
5 including, as we see at page 115, a reference to a Guidance
6 Pamphlet.

7 So, hopefully an easy question for you to answer: In
8 light of the concerns that have been raised by different Members
9 of the House of Assembly, that at times they found the form
10 uncertain or ambiguous. Would you accept that this is something
11 that would need to be revisited before this Bill could
12 become--could come close to being an Act?

13 A. Yes.

14 Commissioner, can you just confirm for me the date, if
15 possible, or whereabouts when you received this particular draft?

16 COMMISSIONER HICKINBOTTOM: We can certainly say this,
17 I think--someone will correct me if I'm wrong--the evidence is
18 that this Bill has not yet been to Cabinet. It's been drafted,
19 not been to Cabinet and, therefore obviously not been to the
20 House either, so that's the evidence, if that may help.

21 THE WITNESS: Thank you, Commissioner.

22 The reason I asked, as you know, to get to a point of
23 a Bill going to Cabinet is a fluid process; and, based on what I
24 see here, it is my conclusion that this is a Bill, a draft Bill
25 that you've seen--a new draft Bill without the last set of

1 feedback which came from our Office of the AG's Chamber. So,
2 I'm happy that we have an opportunity not just to finalise our
3 original comments, but we've benefited from the dialogue through
4 this process, and we can make where necessary the improvement,
5 so the Bill has not made its way as yet to Cabinet, so we have a
6 window by which to correct all necessary parts of it.

7 BY MR RAWAT:

8 Q. We may come back to that small file in a moment, but
9 could I ask you one, going back to your Position Statement, is
10 at your page 6, your Item 4 on your table refers to Service
11 Commissions, and there is a Service Commission Act. There are
12 various commissions created under the Constitution and how they
13 operate, as I understand it, is under the Service Commission
14 Act 2010, but you refer there to a "Service Commission Tracker".
15 Can you just clarify for the Commissioner what that is?

16 A. Yes. Thank you, Commissioner.

17 We recognise in a modern and reformed Public Service,
18 transformed Public Service, the institutions which are in place
19 to make sure--ensure accountability, transparency, such as the
20 Commissions. They also have to be looked at for expediency,
21 effectiveness, and supposed to deliver a product on time based
22 on what might be some of the clients' requirements.

23 So, the Service Commission Tracker that you see here
24 is an electronic system that we have introduced in draft--the
25 demonstrations will be happening in the next week--to the

1 Members of the Commission to ascertain whether or not electronic
2 mechanisms will assist them in being more efficient in their
3 current work, Commissioner not that they're not efficient.
4 We're moving towards further efficiency, and this is part of how
5 we're transforming the Public Service.

6 Q. Thank you.

7 The next item on there is you have identified as it's
8 heads "Ombudsman/Complaints Commissioner", and you say status is
9 Office of the Complaints Commissioner is "address standards to
10 address and report complaints". But then you say next steps are
11 the need for more Enforcement Powers Act to be revised, mandated
12 Complaints Commission needs to be reviewed.

13 So, briefly explain to the Commissioner, what changes
14 do you anticipate to be made in relation to the Complaints
15 Commissioner?

16 A. Commissioner, I will have to draw on limited knowledge
17 at this particular point, except we know that the various good
18 governance mechanisms--I identify them in here in my model--we
19 have to always look at improving them. For example, we
20 mentioned the Register of Interests, we have taken a look at
21 that.

22 So, one of the items which came out from the
23 Complaints Commissioner with previous feedback from the
24 Commission is whether or not there is sufficient teeth to ensure
25 that their Reports, when they're not adhered to, if that

1 happens, can be further moved towards the different systems of
2 accountability.

3 So, overall it's taking a look at this legislation to
4 make sure that the Commissioner and the efforts of the
5 Commissioner is able to be effective.

6 So, right now they can write reports, they can make
7 references, but whether or not Departments adhere to them or
8 comply to them there is a possible need for further revision in
9 that area.

10 Q. One of the other--and this is, Deputy Governor, at
11 your number 11 on page 7 is, of course, the Integrity in Public
12 Life Bill, which is something I showed you about and you and
13 other witnesses have discussed.

14 Now, you've put there that it's to be approved in the
15 House of Assembly, and it's assented to by His Excellency the
16 Governor. Can you update the Commissioner as to which stage it
17 has reached?

18 A. Commissioner, I need to get confirmation exactly where
19 it is. I need to report on that. I know it did go back to the
20 House for a reading, but I need to seek clarity in order for me
21 to give you a thorough and accurate answer.

22 Q. I think just two things because the reason I ask is
23 the bundle that I've been taking you to was accompanied by note,
24 which gave the latest update as to the progress of the various
25 pieces of legislation. So, in relation to the Integrity in

1 Public Life Bill--and this note is dated 3rd of June 2021, so it
2 came from the AG, the Attorney General--it said the Bill
3 received its first reading on 22nd of April 2021, but as of that
4 date you have not had yet the second or third reading, and so we
5 have got to take it on board that it's going to be further
6 amended potentially as it passes through the House of Assembly.

7 The reason I wanted to raise it with you was that, if
8 you go back to the grey bundle--

9 A. Sorry, Commissioner, grey small or grey?

10 Q. Leave the grey large. You can ignore the grey large
11 and stick to the small grey.

12 A. Okay.

13 Q. Tab 1 has the Integrity in Public Life Bill, and you
14 will see at page 1, top right-hand corner, the first page of
15 that Bill.

16 A. Yeah.

17 Q. And headed "The Integrity in Public Life Act 2021".

18 On Monday afternoon, Sir Geoffrey Cox QC made the
19 point in submission to the Commissioner, and Sir Geoffrey
20 mentioned this in context of submissions on the Register of
21 Interests Act. And Sir Geoffrey, as you may be aware, acts on
22 behalf of the Attorney General but also on behalf of a number of
23 elected Ministers in this Commission of Inquiry, and he was--he
24 made the criticism--and you will see this if you turn to
25 page 22--that the Integrity in Public Life Bill, at least in its

1 present form--and that present form was as of Monday--had a
2 fundamental flaw in it, and the fundamental flaw Sir Geoffrey
3 identified to the Commissioner was if you look at paragraph 3 of
4 that schedule, it says the person in public life should act in
5 politically neutral manner and should not attempt to frustrate
6 the local policies, decisions, or citations of the public
7 authority, and the thrust of Sir Geoffrey's submission was that,
8 given that the phrase "persons in public life includes Members
9 of the House of Assembly who are elected". it's difficult to
10 envisage a situation in which a politician could act in a
11 politically neutral manner.

12 Would you accept that that is a valid criticism of the
13 Integrity in Public Life Bill?

14 A. Commissioner, you will please allow me, I will need to
15 seek further counsel on this. I don't have an opinion on it at
16 this time. It's important that I do converse a legal mind to be
17 able to give you what will be a comprehensive answer, so I'm not
18 able at this point to agree with what was first reported just
19 based on my current knowledge of the statement.

20 I don't know, for example, whether or not it's
21 possible or not, but I do need to consult legally. I hope you
22 will appreciate and allow me to do so.

23 Q. That's fair enough, and there is no issue with that.
24 The reason for putting it to you was it's a recent submission
25 made on behalf of the Attorney General and elected Ministers,

1 and you are part of the Transformation Programme, so you're a
2 person very well-placed to give the Commissioner an insight into
3 how this bill is intended to act and how it connects with other
4 aspects of the programme.

5 A. Thank you.

6 Q. But if we leave that as sort of a piece of homework
7 for you to do, Deputy Governor, if you don't mind, that will be
8 very helpful.

9 A. And Commissioner, if it's beneficial for our current
10 sitting to ascertain where the Bill is currently, then I think
11 we can do so. I mean, we have counsel who is here, but if
12 that's critical. And rest assured that whatever is mentioned
13 from that point--the Attorney General, I'm sure, has heard that.
14 She's the Government's Chief Legal Adviser.

15 Q. Yes.

16 A. And that would, of course, ring a different bell in
17 her ears being a legal professional than it would me not being a
18 lawyer.

19 COMMISSIONER HICKINBOTTOM: Yes, that's perfectly
20 fair, Deputy Governor. And also that the submission's made on
21 her behalf, by Sir Geoffrey, so I'm sure she will have that on
22 board.

23 And, in fact, in relation to all of these measures,
24 they will, of course, move forward over the next few months, and
25 so at some point we may return to the Attorney General and/or

1 you for an update as to where they stand, but not--but the point
2 you make that these are still ongoing measures is a perfectly
3 understandable one.

4 THE WITNESS: Thank you.

5 And Commissioner, I'm not a lawyer. My mom is a
6 lawyer, and she told me before that there is no such thing as a
7 perfect piece of legislation.

8 COMMISSIONER HICKINBOTTOM: I think she's on fairly
9 safe ground there.

10 BY MR RAWAT:

11 Q. If I could take you, Deputy Governor, just to item 15
12 on your table, which is at your page 7 in your Position
13 Statement, you refer there to the report form the Ad Hoc
14 Elections Legislations Committee, and the Commissioner has
15 received some information in relation to that.

16 Just to ask you, you say that the next step is to
17 develop a work plan to support the implementation of the
18 recommendations. Could you just give the Commissioner an update
19 of where you are with that?

20 A. Thank you for the question.

21 By Cabinet's directive, we've formed--a committee was
22 formed to look at the recommendations. I chair that Committee.
23 That Committee went through the recommendations, made their
24 professional assessment in terms of which recommendations where
25 feasible or logical. We then made a presentation, informal

1 presentation to Members of the House of Assembly as it relates
2 to the suggestions and the areas. And where we currently are
3 right now, Commissioner, we're waiting on the House of Assembly
4 to give us formal feedback on what we presented to them, and
5 that feedback will naturally, it could serve in the form of new
6 changes to the legislation, new policy changes, but we're
7 awaiting their feedback at this time.

8 Q. Just turn over--the last question just on the table,
9 your page 8 and item 18 refers to Disaster Management Act, and
10 you say "to be considered in line with constitutional review".

11 Do you have that?

12 A. Yes, I do.

13 Q. Just again develop that observation a little further
14 for the Commissioner. How is it going to work with the
15 constitutional review or with constitutional review?

16 A. It's really a question I pause on in terms of
17 answering. This statement is a factual statement and
18 communicated from the Governor's Office, from the Governor in
19 terms of the Premier in terms of the next steps, and my
20 preference will be for the Governor to elaborate on this point
21 going forward, given the responsibility in his note to the
22 Premier in the matter.

23 Q. I see. Thank you.

24 COMMISSIONER HICKINBOTTOM: In terms of the
25 constitutional review, where does that stand?

1 THE WITNESS: Commissioner, that's a question directly
2 for the Premier in terms of where it is currently because he's
3 responsible for advancing the BVI's contingency. I'm just not
4 in a position to give a formal update on that, but he would be
5 able to do so.

6 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

7 BY MR RAWAT:

8 Q. Thank you.

9 Let's go back to page 10, please.

10 You take your second paragraph, Deputy Governor, of
11 which you begin, that "trust is the foundation upon which the
12 legitimacy of public institutions is built and is crucial for
13 maintaining social cohesion".

14 I have little doubt anybody disagrees with that
15 statement, but would you accept that the trust, once lost or
16 diminished, can be very difficult to regain?

17 A. Commissioner, 100 percent. Good governance plus
18 society involvement, the overall goal is to have trust. That's
19 the business we are in as public officers. When you lose that
20 trust, just like any relationship, it takes time, patience, and
21 commitment to rebuild that trust.

22 Q. And there is a distinction, isn't there, between
23 perception and reality? If the public come to perceive either
24 public officers and/or elected officials as untrustworthy or
25 public institution as untrustworthy, then even if those

1 officers, those elected officials or those institutions are not,
2 in fact, untrustworthy, it's very difficult to defeat the
3 perception, isn't it?

4 A. Yes, it is, Commissioner.

5 Q. And it then takes a lot of work to shift that
6 perception; would you agree?

7 A. Yes, Commissioner.

8 Q. So, from your perspective--I'm going to label you are
9 as the architect of the Public Service Transformation
10 Programme--how do you measure the extent of public trust in
11 institutions?

12 A. I appreciate the question. Obviously, perception is
13 what's thought about, however not evidence, only reality can be
14 evidence. And I mention in my Position Statement why I'm
15 aggressively purporting to have a measure that not just the BVI
16 but the globe but citizens of the Territory can measure how well
17 we're doing in good governance, how well we're doing in
18 transformation, because interpretation and perception can lead
19 to false ideas. And I think the only way to do that is to have
20 an agreed standard that we're working towards and that standards
21 be communicated, and we are graded and monitoring measure based
22 on that standard.

23 Q. Is that the good governance scorecard that you
24 mentioned at page 21 of your Position Statement?

25 A. Yes, it is.

1 Q. So I think it's important to put this into the
2 Transcript, but are you saying that in order for the Public
3 Sector to implement the model and you set out the model of good
4 governance above there, it's important the Foreign Commonwealth
5 and Development Office assist the BVI in developing a good
6 governance scorecard by which the charity can use to monitor the
7 success of its Good Governance Programme on an annual basis.

8 Now, you have obviously given a great deal of thought
9 to this, Deputy Governor. What stage, if any, are you at in
10 terms of getting assistance to develop a good governance
11 scorecard?

12 A. Commissioner, this process allowed me to think deeply
13 and to present ideas, and this is part of the continuous
14 dialogue about good governance. You've heard that good
15 governance dialogue not just from myself as the Deputy Governor,
16 you also heard it from the Premier. And when you speak with the
17 Governor, possibly, you will also hear that. And because my
18 role is to look after overall good governance in the Public
19 Service, I recognise that, despite all of her great efforts,
20 despite all of the achievements that we have done in good
21 governance, despite what will come later, on unless we have a
22 scorecard to monitor and measure success, we could be having
23 this conversation ten years from now. And in speaking with the
24 Premier, he understands that, he appreciates that. And speaking
25 with the Governor, he also agrees to the same, and I feel it's

1 just a matter, as we advance the Public Service Transformation
2 Programme, this becomes part of what we bring forward and part
3 of what will be accepted through the Cabinet.

4 Q. And have you had any discussions at all with or
5 initiated any discussions about how you could go about
6 developing good governance scorecard, or is it very much a
7 proposal at the moment as a way forward?

8 A. The concept is there, Commissioner, the research is
9 there. And I hate to bring everything back within the context
10 of transformation, but part of what we have to do along with
11 bringing forward different initiatives and different policies of
12 good governance is to place that within a particular framework,
13 and this is the framework.

14 So, when we go back and present to Cabinet on our good
15 governance strategy or good governance plan, this will be part
16 of what has to be accompanied, and that scorecard
17 obviously--because I mentioned FCDO, that's the relationship now
18 between the FCDO and Premier, and hopefully I will assist to
19 create the scorecard so that, at the end of the day, we have (a)
20 the same definition of good governance; (b) we understand what
21 it takes to measure good governance, and equally we have a
22 system of accountability if we're not doing, and equally a
23 system of commendation and praise when we are doing well.

24 Q. Take you back, please, to page 11, at the very bottom
25 of the page, please, Deputy Governor--and this is taking you

1 back to that part of your Position Paper where you're speaking
2 of the importance of maintaining and enhancing public trust, and
3 you conclude at the bottom there: "This means we must engrain
4 the culture of timely public reporting of financial and
5 operational data which highlight the quality work being done
6 while identifying and addressing any potential conflicts that
7 may arise".

8 I just want you to sort of elaborate on that and
9 develop that a little. How is a culture of timely public
10 reporting of financial and operational data to be achieved?

11 A. We have a more, Commissioner, more complex community
12 now, a more sophisticated community, as you might be able to see
13 from the interests in these Inquiries. And in doing, I believe
14 that our constituents--I'm sorry, or society is asking more of
15 government, is asking more of the Public Service. So, in doing
16 so, we have to be equally aware of how much information we put
17 out. And I've mentioned something in my particular report, that
18 is what is needed to have an overall scorecard so that we can
19 communicate what financial prudence looks like. We can also
20 communicate what financial communication to society look like,
21 and society can develop an expectation from government and from
22 government institutions.

23 So, to encapsulate, what I'm reporting here is not an
24 off-and-on approach to reporting financial matters. A defined
25 system where persons can expect, whether it's every month, every

1 three months, every six months, through whatever mediums for the
2 reports to ensure that there is consistent information being
3 communicated.

4 And I say this, and I expand further in my Report is I
5 think more so than now, especially as we have been through a
6 world economic crisis, the hurricanes, COVID, persons are
7 looking more or demanding more of persons in public life,
8 especially when it comes to the area of financial prudence, and
9 I think it's upon us as persons in public life to create an
10 avenue--a consistent avenue by which we communicate that
11 information.

12 Q. Final and, I hope, short topic, please, Deputy
13 Governor, one of the points you've made is the autonomous
14 bodies--and by that I take that to mean something the Complaints
15 Commissioner, the Auditor General, Internal Auditor, need more
16 enforcement powers. What from the work you've done do you
17 perceive is the problem with the current powers that they do
18 have?

19 A. Is it possible for you to reference where you are?

20 And forgive me, we have a lot of things on this table.

21 Q. No, let me try and find it. And this will be the one
22 time I won't be able to find it.

23 A. I will try also.

24 COMMISSIONER HICKINBOTTOM: I think it's on page 21,
25 under the figure, the new paragraph.

1 MR RAWAT: Yes.

2 COMMISSIONER HICKINBOTTOM: "Autonomous bodies also
3 need to serve as watchdogs to identify which areas need to be
4 strengthened. This means steps need to be taken to amend
5 legislation to give autonomous bodies like the Auditor General,
6 the Registrar of Interests, and the Office of Complaints
7 Commission more enforcement powers".

8 THE WITNESS: Thank you.

9 Commissioner--as it happens, Commissioner, that's what
10 we're doing currently, and recognising, for example, the
11 weaknesses or any weaknesses in the Register of Interests Act,
12 for example, recognising, as you mentioned, engaging me
13 previously as to Office of Complaints Commissioner, and of
14 course further developing strengthening departments in other
15 areas. Those bodies are--they have to move with time,
16 Commissioner. They have move with further demands for modern
17 Public Service, further demands of governance, and that's why
18 there is a commitment, as we transform the Public Service, not
19 just to reengineer the systems and the programmes but also to
20 redevelop, redesign, and improve the core institutions that are
21 geared to monitor good governance.

22 COMMISSIONER HICKINBOTTOM: But in terms of the
23 Auditor General, here is says "more enforcement powers", but the
24 Auditor General, whose reports we've seen, might say very, very
25 good reports, very good Audit Reports, but there are Audit

1 Reports. They said they do the audio, they set out
2 recommendations. So what do you mean by "more enforcement
3 powers"? When an Auditor gives recommendations, those
4 recommendations are for the person to whomever the report is
5 made, in this case really the elected Ministers. What do you
6 mean by "enforcement powers"?

7 THE WITNESS: Thank you, Commissioner, and allow me to
8 only reiterate from my own opinion, and the Auditor General will
9 have to, of course, confirm what I'm going to say or whether or
10 not she has the same ideas.

11 COMMISSIONER HICKINBOTTOM: Yes.

12 THE WITNESS: From my observations, there are times
13 where the Auditor General might, for example, have difficulties
14 receiving information in a timely fashion and possibly sometimes
15 in a complete fashion.

16 COMMISSIONER HICKINBOTTOM: Well, that's certainly
17 what the reports say.

18 THE WITNESS: Therefore, if Auditor General had more
19 broader brush more enforcement or more--more auditing powers
20 than she's able or they're able to then almost demand and
21 command information in a timely fashion, so in that particular
22 case, Commissioner, that's what I reference.

23 COMMISSIONER HICKINBOTTOM: Thank you.

24 BY MR RAWAT:

25 Q. And in terms of the Registrar of Interests, what

1 additional powers would you be supporting a Registrar of
2 Interests to have?

3 A. Commissioner, it's my belief, and we can draw on a
4 dialogue that's taken place in the past week, that the Registrar
5 of Interests, the former one worked extremely hard to ensure
6 that her job was being done well, and she would have presented
7 different ideas and thoughts in terms of how she could be more
8 effective.

9 Now, what is necessary to ensure that what's in the
10 Constitution can be implemented and followed and monitored and
11 managed, those are the powers that we want to give to the
12 Registrar of Interests; and that, we hope, we will see in the
13 new revised Bill, and also ensuring also that there is a
14 relationship between Register of Interests and the Integrity
15 Commission.

16 BY MR RAWAT:

17 Q. Okay. Just one more point, if I could ask you, that,
18 please, if you go to 26 in your Position Statement, please,
19 Deputy Governor. The second paragraph down which begins "It's
20 therefore important". what you set out there is that there is a
21 need to clearly define the roles and responsibilities of the
22 various actors under the Constitution, and you put it more
23 widely. You include Governor, Premier, Deputy Governor,
24 Ministers of Government, and Policy Advisers in the form of
25 Permanent Secretaries, and to define their role as it relates to

1 good governance, and you argue for a clearer structure of
2 government being necessary.

3 And you give the example of having written an explicit
4 clarity section 56 of the Constitution which speaks to the role
5 of Ministers in relation to their Ministries. You say:
6 "Clarity on this section would afford Ministers the best
7 platform by which to set and monitor policies while ensure that
8 public service responds in pace and accuracy in the execution of
9 related functions".

10 Now, first question is how would you bring that about,
11 and second question is where would it sit underneath the
12 Constitution?

13 A. I'm sorry, Commissioner, where would what sit?

14 Q. You say that there is a need for written clarity on
15 the role of Ministers in relation to their role as Ministers.
16 That's the example you give about defining the roles of various
17 actors under the Constitution. That could be achieved in
18 different ways: It could be achieved in a code, it could be
19 achieved in legislation, it could be achieved by amending the
20 Constitution. And they're not all mutually exclusive.

21 So, from your Position Paper and your perspective, how
22 would you advocate that that written clarity be delivered? And
23 if it's outside the Constitution, where would it sit in relation
24 to the Constitution?

25 A. Commissioner, I think it starts with the Constitution,

1 and from the Constitution all of relevant laws, policies,
2 procedures will be guided. That's where it starts.

3 COMMISSIONER HICKINBOTTOM: But do you think--and this
4 may well be right--that the question Mr Rawat poses can only
5 really be answered by the response--an amendment to the
6 Constitution because nothing short of that will resolve these
7 issues, would give the clarity?

8 THE WITNESS: Commissioner, you're accurate. Yes.

9 COMMISSIONER HICKINBOTTOM: Thank you.

10 MR RAWAT: Commissioner, I have reached the end of my
11 questions, and can I conclude again for thanking the Deputy
12 Governor for coming and giving his evidence; thanking him for
13 his patience, but also importantly thanking him for the way in
14 which he has given his evidence and the assistance he's provided
15 this evening.

16 COMMISSIONER HICKINBOTTOM: Yes, can I echo that,
17 Deputy Governor. Thank you for your time. Quite a long time
18 today. Thank you very much for it, and thank you for your
19 evidence and the way--the clear and interesting way that you
20 have given it.

21 THE WITNESS: Thank you, Commissioner.

22 COMMISSIONER HICKINBOTTOM: Thank you very much.

23 (Witness steps down.)

24 COMMISSIONER HICKINBOTTOM: Mr Rawat.

25 MR RAWAT: That is actually the conclusion of our

1 hearing programme this week. We are not sitting tomorrow or
2 Friday, but we will resume on Monday with evidence.

3 COMMISSIONER HICKINBOTTOM: At 10:00, I think?

4 MR RAWAT: Yes.

5 COMMISSIONER HICKINBOTTOM: Good. Thank you all very
6 much.

7 (Whereupon, at 6:35 p.m. (EDT), the Hearing was
8 adjourned.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", positioned above a horizontal line.

DAVID A. KASDAN