

Virgin Islands

Tortola

**IN THE MATTER OF THE COMMISSION OF INQUIRY ACT, CAP. 237**

**AND**

**IN THE MATTER OF THE COMMISSION OF INQUIRY ESTABLISHED ON 19 JANUARY, 2021**

1. This statement is submitted in response to the Commissioner's letter of 17 May 2021 inviting me, as a participant in my own right, to submit a position statement in relation to governance and the operation of the agencies of law enforcement and justice in the Virgin Islands.
2. I have carefully considered the questions, the time given to respond and the limits on my response. I have also considered my fundamental responsibility as Attorney General to act in the public interest.
3. The responses of the Attorney General will (as they should) be taken most seriously and would be expected to have been thoroughly and completely considered, assessed and researched before they are provided and to have brought all relevant matters on behalf of the Virgin Islands to the attention of the Commissioner. I am not yet satisfied that my answers to the questions posed would meet my own standards for being informed before providing an opinion or position statement.
4. However, I am very mindful of the Commission's timetable and as I am able to speak broadly to the questions posed, I do so in the paragraphs below.

## The Context

5. The Virgin Islands aspires to excellence. Residents can readily find fault in what others may consider satisfactory and they speak freely – some in public, others privately to colleagues, family members, friends and authority figures. The beauty and curse of our small community is that you can be aware, you can be involved and you can demand accountability.
6. That quest for excellence together with hard work, determination and commitment to purpose, has served the Virgin Islands well overall and in developing its twin economic pillars of tourism beginning in the late 1950s and then international business from the early 1980s onwards. It is now a cosmopolitan community of roughly 110 nationalities.
7. In the international business sector, the Virgin Islands strives to be at the forefront of services and international standard setting and compliance in due diligence, anti-money laundering and financial crime and regulation.
8. There is a thriving financial services industry comprised of trust and corporate services providers, lawyers, accounting practices and other and related professionals.
9. Specialist bodies such as the Financial Services Commission deliver stringent oversight of the financial services industry through the regulation of corporate service providers, banks, insurance companies. The functions of the Financial Investigation Agency includes accessing the Beneficial Ownership Secure Search System (BOSSs) – arguably the most advanced beneficial ownership register in the Overseas Territories and Crown Dependencies.

10. The Virgin Islands is also bound by major international treaties on tackling organised crime, illicit drugs, corruption and terrorism and participates in international standard setting bodies such as FATF, CFATF, IOSCO, the OECD and the OECD Global Forum. It has signed 28 tax information exchange agreements and is also part of the *Multilateral Convention on Mutual Administrative Assistance in Tax Matters*, was an early adopter of the *Common Reporting Standard* for the automatic exchange of tax information and provides information under the United States *Foreign Accounts Tax Compliance Act* through the International Tax Authority which was established to work with tax authorities worldwide.
11. A premium is placed on training and education and the Government has invested heavily over the years in schools, the community college and scholarships for study abroad.
12. There is a good access health care for citizens and residents and the Government is carefully navigating the challenges of the COVID-10 pandemic with commendable success to date.
13. The rule of law remains sacrosanct and the judicial system is independent, respected and world renowned.

### **Good Governance**

14. No doubt dictionary definitions of good governance abound but it essentially entails doing things properly. In any organisation, rules are the foundation of good governance. Lawyers (and the other persons tasked with setting and assessing

compliance with rules, advising on how to foster compliance and taking action if rules are broken) should play a key role.

15. As the principal legal adviser to the Government, the Attorney General has to ensure, so far as possible, that the operations of the Government are conducted lawfully and constitutionally; and that the Government is not prevented from lawfully implementing its chosen policies. This has translated into the vision statement of the Attorney General's Chambers which is "...to uphold good governance and the proper and adequate administration of justice..." in the Virgin Islands. Essentially, the Attorney General's Chambers stands at the interface between policy and law.
16. The Virgin Islands has a bevy of legislation, rules and policies to promote high standards of behaviour as well as several entities created for this purpose such as Service Commissions, disciplinary bodies, a Complaints Commissioner and so on. However, mechanisms alone won't achieve good governance. The critical element is having the right people to translate the rules into practice by those who are governed or affected by them. Even as Attorney General, I have great difficulty carrying out my responsibilities primarily due to a severe and intractable shortage of counsel generally and specifically, with expertise in areas currently critical to the needs of Government.
17. The intractable challenge in the area of human resources procurement has resulted in a status quo where, at 1 October 2020 when I took office as Attorney General, the organisational chart boasted 46 staff positions of which more than half (24 - 52%) were vacant. With respect to counsel, there were 23 positions (excluding the Attorney General), of which 16 (69%) were vacant.

18. 8 months later, the picture is not much different. Only two legal practitioners have been recruited despite keen interest. This recruitment may be cancelled out by at least 3 counsel contracts coming to an end and one counsel retiring. One request for counsel recruitment was 'going through the process' from November, 2020 until just last week and, in other cases after waiting for more than 3 months post interview, 2 very good candidates declined the offers made to them because the overall compensation levels were too low. The Attorney General's request of 18 March 2021 to re-advertise all vacant posts has still not translated into advertisements being placed meaning that applications from other interested candidates cannot be actioned.
19. Inevitably, and though largely good natured and resilient, staff are overwhelmed and the status quo has real and costly consequences for the Government as client and poses professional risk to Counsel as constitutionally appointed officers and members of the legal profession and to other staff in their capacity as public officers.
20. My conviction is that every effort must be made for the legal departments of Government to get the mix of human resources, tools, systems and processes right. In the case of the Chambers, it must not only do what comes to it but it must reach deep into the Public Service to identify and address areas requiring attention, to eradicate 'self-lawyering', to raise reciprocal awareness of the needs of client and counsel, and to influence change in those behaviours that can lead to risks and disadvantages for Government. It has to be proactive. In its current state, it is largely reactive.
21. As a member of the public and having been a member of the Bar for 23 years and a client of the Chambers from 2017-2019 while acting as Permanent Secretary, I knew that a lot needed to be done to ensure that Chambers was not only fully but properly

staffed and that the best standards in legal practice were observed. Therefore, on taking office, my immediate priorities were to pay close attention to:

- a. staffing and expertise
- b. processes and procedures
- c. consolidation and revision of the laws of the Virgin Islands

Since taking office, I have been pursuing these objectives with some success but the main setback is not having enough counsel to progress the work referred to Chambers or otherwise requiring attention within my desired service standards.

22. I have already outlined the challenges with recruitment in the preceding paragraphs.

23. In terms of expertise, governance in the Public Service would also benefit from sustained access to expertise in a number of areas including:

- i. financial services/international business;
- ii. maritime and shipping law,
- iii. data, information, technology and cybersecurity law;
- iv. environment and climate change law;
- v. legislative drafting;
- vi. litigation
- vii. constitutional and administrative law
- viii. international matters generally and arising from relevant treaties, conventions and international agreements; and
- ix. transactions (e.g. contracts for works, technology, consultancies, property, development agreements, etc;
- x. legal operations; and

xi. paralegal, general administration, library/research, records management and data analysis

24. I also hope to develop a strong team culture supported by agreed team norms and to train and develop recently qualified counsel and legal cadets via mentorship and on-the-job training through rotations and secondments over 2 year periods with seats in central Government, statutory bodies and the private sector. This initiative is also dependent on recruitment of recently qualified counsel to undertake the training and other counsel to cover work assignments while trainees do the rotations.

25. Chambers has been greatly assisted by external counsel and short consultancies. I have also proposed the establishment of a panel of legal practitioners to provide drafting, civil and specialist legal services at published standard rates. This panel would complement the counsel team in Chambers in relevant areas but cannot replace the need for a strong cadre of in-house counsel.

26. A review of business processes, records management procedures, human resources, and information technology is also underway. This has resulted in staff training and 3 reports assessing the status quo, mapping mission-critical processes and analyzing associated workflows, making recommendations for improvements and efficiency, developing standard operating procedures for Chambers and making recommendations for implementing document and records management systems. We have also made recommendations in the Creations, Upgrades, Renames and Transfers (CURT) process for a Director of Legal Operations Support Division, a Senior Records and Information Management Officer and a Senior Legislative Officer.

27. The last comprehensive revision of the laws of the Virgin Islands was about 30 years ago (the 1990 revised version). Since then, there have been extensive amendments, new legislation, statutory instruments, Orders-in-Council and other legal instruments. Against this backdrop, the objective of the Accessibility of Law Project is to make the laws of the Virgin Islands accessible, intelligible, clear and predictable for everyone - public officers, counsel, the Court and the general public by:

- i. creating a process for the immediate revision and publication of amended legislation as soon as amendments are made; and
- ii. establishing a user-friendly searchable online platform where anyone can access the laws of the Virgin Islands.

On 21 April 2021 Cabinet approved the launch of the Project. In the meantime, Chambers' collaboration with the Financial Services Commission to produce an interim revision of financial services legislation to 1 January, 2020 has come to fruition with the Regional Law Revision Centre in Anguilla delivering electronic copies of the final approved PDF files on 28 May, 2021.

28. I hope that my efforts will bear fruit but the process for the engagement of legal practitioners in the Public Service and the offered terms and conditions militate against the Attorney General carrying out her role in good governance and every other area of responsibility. Low compensation levels and an inexplicably long and opaque recruitment process combine to ensure that suitably qualified and interested candidates do not make it to Chambers or cannot afford to stay. I understand that this is nothing new and is not peculiar to Chambers but it undermines governance when a Government's principal legal adviser and its other legal departments (the drafters, keepers and enforcers of the rules) are severely under-lawyered.



29. As a concept, good governance in the sense of doing things properly is at the heart of the Virgin Islands. Culturally, Virgin Islanders expect each other to behave honestly and fairly and laws and rules on the subject abound or are being considered. However, good governance insofar as it entails best practice in conducting the affairs of the Government will always be a challenge unless and until the legal departments are resourced to properly exercise their functions and to advise all elements of Government on the Constitution, the laws of the Virgin Islands, our rules, regulations and best practice and to take action against breaches of any kind. That is, in essence, my position statement on good governance.

#### **Agencies of Law Enforcement & Justice**

30. The agencies of law enforcement and justice in the Virgin Islands are the courts and those bodies responsible for the enforcement of criminal and regulatory laws as well as financial investigations including:

- i. Eastern Caribbean Supreme Court (Virgin Islands) (Civil, Criminal and Commercial);
- ii. The Magistracy;
- iii. The Governor's Office
- iv. Attorney General's Chambers;
- v. Office of the Director of Public Prosecutions;
- vi. Royal Virgin Islands Police Force;
- vii. Her Majesty's Customs;
- viii. Immigration Department;
- ix. Financial Services Commission;
- x. Financial Investigation Agency; and

xi. International Tax Authority

31. The organisation and respective roles as well as the inter-relationship and cooperation of these agencies is a study in itself. However, their annual reports should provide useful information and insight into their operations, successes, challenges, strengths and weaknesses. If required, I have located and can provide such reports for the Magistracy (2019), Governor's Office (2018), Office of the Director of Public Prosecutions (2018), Royal Virgin Islands Police Force (2019), Immigration Department (2019); Financial Services Commission (2019); Financial Investigation Agency (2018) and International Tax Authority (2019).
32. Within the overall system of law enforcement and justice, the Attorney General is, or is responsible for, among other things:
- a. advising Government on legal and policy matters;
  - b. drafting and revision of legislation;
  - c. the competent authority under the Criminal Justice (International Cooperation) Act, 1993. ;
  - d. a member of the National Security Council;
  - e. a member of boards of the Financial Investigation Agency and International Tax Authority;
  - f. the Deputy Chairman of the Virgin Islands General Legal Council;
  - g. providing a range of assistance including advice and the provision of documents, applications for freezing and charging orders, service of foreign process, and requests for evidence under statutes such as the Evidence (Proceedings in Foreign Jurisdiction) Act, 1988, Mutual Legal Assistance (United States of America) Act, 1990, Drug Trafficking Offences Act, 1992,

Criminal Justice (International Cooperation) Act, 1993 and Proceeds of Criminal Conduct Act, 1997; and

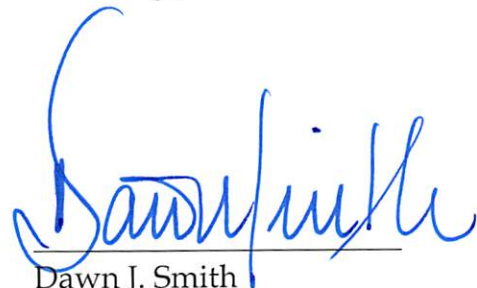
- h. working with the Governor's Office on international requests for assistance under a legal framework comprised of the Extradition (Overseas Territories) Order 2002, (United Nations Measures) (Overseas Territories) Order 2001, the Anti- terrorism (Financial and Other Measures) (Overseas Territories) Order 2002 and other legislation.

The role profile for the post of Attorney General is attached at Appendix 1.

33. As to be expected, the agencies of law enforcement and justice in the Virgin Islands aspire to high standards and have had their share of successes. For example, the continued functioning of the Eastern Caribbean Supreme Court in the Virgin Islands during the pandemic, no doubt informed by the lessons of the aftermath of the 2017 disasters, is commendable.

34. However, as in the case study of the Attorney General's Chambers, it is fair to say the overall system of law enforcement and justice in the Virgin Islands would benefit from strong investment in institutional capacity building at this point in time. Though driven by the pursuit of excellence and the need to remain competitive or compliant, too few people are doing too many things for sustained long periods of time.

35. I hope that my contribution is helpful.



Dawn J. Smith  
Attorney General



# Government of the Virgin Islands

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## Role Profile

<b>JOB TITLE:</b> Attorney General	<b>JOB CLASSIFICATION:</b> Legal
<b>MINISTRY:</b> Governor's Group	<b>COST CENTRE:</b> 2117
<b>DEPARTMENT:</b> Attorney General's Chambers	<b>GRADE:</b> 20
<b>SECTION/UNIT:</b> N/A	

<b>REPORTS TO: Directly:</b>	Governor
<b>Indirectly:</b>	Deputy Governor

<b>SUPERVISES: Directly:</b>	Solicitor General Chief Parliamentary Counsel Assistant Secretary Senior Administrative Officer/PA
<b>Indirectly:</b>	Administrative staff

**PURPOSE OF THE ROLE:**

Serves as the principal legal adviser to the Government as established by the Constitution, and has the overall responsibility for all aspects of civil litigation. Manages the day-to-date administration and activities of the Attorney General's Chambers.

**MINIMUM QUALIFICATIONS & EXPERIENCE:**

- Bachelor of Laws Degree or equivalent
- Bar Professional Training Course Certificate (BPTC)
- Admitted to the BVI Bar or imminent Call or other common law Bar qualifications
- Ten (10) years post qualification experience

**WORKING CONDITIONS:**

- Normal office environment
- Courtroom environment
- Extended working hours

**KNOWLEDGE & SKILLS:**

- Expert knowledge of Government structure, policies and procedures
- Expert knowledge of the Civil Procedure Rules of the BVI jurisdiction
- Expert knowledge of and experience in Court proceedings
- Expert knowledge of applicable statutes and statutory interpretation
- Ability to master and interpret legislation
- Expert legal research skills
- Expert analytical, negotiating, interpersonal and organisational skills
- Sound knowledge of the use of standard office equipment and computer applications
- Expert oral and written communication skills

- Ability to work well under pressure
- Excellent leadership and management skills

**KEY RESULT AREAS: GENERAL**

1. Ensures the smooth and efficient operation of the Department and the supervision of staff.
2. Serves as the principal legal adviser to the Government on constitutional matters and all other issues relating to the law or having legal implications.
3. Represents the Crown in all civil proceedings relating to or affecting the Crown.
4. Serves as a Member of the Cabinet, National Security Council and the Prerogative of Mercy Committee and advises Cabinet as may be necessary in its decision-making process.
5. Serves as an Ex-Officio of the House of Assembly, Pilots Bills and renders advice on legal issues arising with respect to the proceedings of the House of Assembly and other matters relating thereto.
6. Negotiates contracts for and on behalf of the Government.
7. Represents and defends the Government in international fora on matters affecting the Territory's interests, particularly in the financial services field.
8. Maintains within the Chambers oversight on the assignment and execution of work emanating from other Government Ministries and Departments.
9. Serves as the Territory's central authority in the processing of mutual legal assistance matters.
10. Liaises with the Governor and the Commissioner of Police on security matters to stem the spread of crime in the Territory.
11. Provides guidance on legislative matters, including the formulation and drafting of legislation.
12. Performs functions given to the Attorney General by statutes.
13. Serves as the Accounting Officer for the Attorney General's Chambers.
14. Prepares and manages the Department's Annual Budget.
15. Ensures the preparation and submission of Performance Planning and Appraisal Report for all staff.
16. Develops and implements strategic plans.
17. Performs any other related duties as required by the Governor or Deputy Governor in order to contribute to the effectiveness and efficiency of the Department.

**KEY RESULT AREA: DEPARTMENTAL**

As specified above.

**BEHAVIOURAL COMPETENCIES:**

1. Manage organisational challenges
2. Manage change in organisational activities
3. Manage relationships across the organization
4. Provide leadership for the organization
5. Encourage innovation in the organization
6. Obtain and analyse information for critical decision-making
7. Communicate and influence effectively
8. Ensure compliance with legal, regulatory, ethical and social requirements
9. Manage your own resources, development and networks
10. Manage financial and physical resources effectively and efficiently, ensuring value for money

*Note: This role profile incorporates the most typical duties performed. It is recognised that other related duties not specifically mentioned may also be performed. The inclusion of these duties would not alter the overall evaluation of this position.*

*Compliance statement: In the performance of their functions as detailed in the role profile, public officers have an obligation to avoid ethical, legal, financial and other conflicts of interest to ensure that their actions and outside activities do not conflict with their primary employment responsibilities. Public officers are also expected to understand and be in compliance with applicable laws, policies, and procedures for areas and departments which their essential functions cause them to interact.*