



BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY (“COI”)

GOVERNOR JOHN JAMES RANKIN CMG: POSITION STATEMENT



1. The following Position Statement is provided in response to the letter of 19 May from Andrew King, Senior Solicitor to the COI.
  
2. In addressing matters raised in the letter, I am keenly aware that I took up my position as Governor only four months ago. In responding to points concerning standards of governance, law enforcement and justice I have therefore drawn as appropriate on my experience not only to date in BVI but also in other jurisdictions, including the United Kingdom, the United States and most recently from my four years' service as Governor of Bermuda, a fellow Overseas Territory.

## **Governance**

### **(1) What do you understand by the term “good governance”?**

3. There are a wide range of elements that make up good governance. They include:
4. An effective separation of powers, in particular between the executive and the judiciary plus other independent institutions under the Constitution such as the Director of Public Prosecutions, the Auditor General and the Complaints Commissioner
5. Appointments to public offices and statutory bodies based strictly on merit following open competition
6. Procurement of services and awarding of contracts based on clear criteria, open tendering and objective assessments
7. Transparent government decision making, with decisions made and reasons for them properly documented
8. Ethical conduct, with the public good placed before individual political or other interest
9. Accountable Government, subject to scrutiny in the Legislature, the Courts, by the Auditor General, the Complaints Commissioner, a free and independent media and by civil society
10. A professional and independent public service, operating under a clear code of conduct, providing objective advice to Ministers and free to speak truth to power
11. A diverse public service which reflects the population it serves
12. Detailed planning, with formal reviews against delivery and clear accountability

13. Sound financial management, with budgeting, costings and scrutiny of spend to ensure proper use of public funds and value for money

14. Fully audited annual accounts scrutinised transparently by a Public Accounts Committee

15. Effective delivery of Government decisions and public services, leading to concrete results

16. Compliance with international standards

17. Clear regulatory environment

18. Respect for human rights and non-discrimination

19. Respect for the rule of law.

**(2) What do you understand by the term “poor governance”?**

20. Self-evidently, poor governance will occur when standards of good governance stated above do not apply. Elements include:

21. Erosion of separation of powers, with attempts to reduce or limit the powers of independent institutions and third parties who can hold the executive to account

22. Appointments made other than on merit e.g. on political grounds or in order to award friends or business associates

23. Conflicts of interest either public or private,

24. Corruption, with decisions made in return for financial gain or other benefit

25. Non-transparent procurement, with unjustified tender waivers or other inappropriate departures from prescribed procurement procedures

26. Non-transparent decision making, with reasons not given or not properly recorded

27. Lack of accountability, with ineffective scrutiny by the legislature and independent institutions, and/or refusal by the executive to cooperate with those institutions; lack of a free press or attempts to restrict a free press, and lack of civil society holding the executive to account through public dialogue and questioning

28. A public service which is politicised or whose members are fearful of providing professional independent advice or reporting wrongdoing when they see it

29. An insufficiently skilled public service who are not equipped to deliver their roles

30. Centralisation of power that slows down or prevents effective decision making, disempowers departments and agencies, and creates excessive bureaucracy

31. Poor financial management, with lack of effective budgetary controls leading to overspends and non-value for money, and failure to measure Government revenue and income

32. Out of date/poor accounting records without which it is not possible to have the knowledge to make sound decisions on expenditure and investment

33. Unethical conduct, with political or individual interest place above the public good

34. Failure to respect the rule of law.

**(3) To what extent do you consider good governance to be important in sustaining public confidence in all elements of governance?**

35. Good governance is essential to sustaining such public confidence. Without it, public confidence in the fairness and competence of government, and equitable and effective delivery of public services, is eroded. The public in this context includes all those residing in BVI, businesses located in BVI, those visiting or investing in BVI and outside bodies scrutinising BVI, including for example in the context of the forthcoming Caribbean Financial Action Task Force assessment.
36. Good Governance drives transparency, which gives the public confidence, being able to see and hold people accountable for decisions taken. It drives a positive dialogue between elected and electorate, helping to ensure that policies are set to deliver the best outcome for the territory in its widest sense.
37. Good governance models positive behaviours across society, builds civic pride and accountability, enabling all citizens to feel accountable for the territory
38. Good Governance means prioritising those areas that are basic needs; water, roads, education, building a sustainable foundation for people and the basis on which other work can develop and thrive
39. Conversely, a lack of transparency or failure to deliver public services erodes trust and seeds division, as the public question why taxes are not spent on improving essential services or important community infrastructure projects.

**(4) As Governor, what role, if any, do you have in ensuring there is good governance and how have you carried out that role?**

40. As Governor, I am empowered to exercise executive authority in the Territory on behalf of Her Majesty as per Section 46(2) of the Constitution. The functions of the Governor are however defined and therefore constrained by the Constitution.

41. Section 60 (1) of the Constitution nevertheless provides areas for which the Governor has special responsibilities:

- External affairs, subject to subsection (4)
- Defence, including the armed forces
- Internal security, including the Police Force, without prejudice to section 57
- The terms and conditions of service of persons holding or acting in public offices, without prejudice to section 92 and
- The administration of the courts.

42. Under Section 92 of the Constitution power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in such offices vests in the Governor, generally acting in accordance with the advice of the Public Service Commission.

43. In accordance with the Commission of Inquiry Act, I have the power to appoint Commissions of Inquiry into any matter which, in my opinion, would be for the public welfare.

44. In accordance with Section 49 of the Constitution, I chair Cabinet but do not have a vote in its decision making.

45. There is no provision in the Constitution equivalent to the Cayman Islands Constitution providing that in the exercise of his or her functions “the Governor shall endeavour to promote good governance and to act in the best interest of the Cayman Islands so far as such interests are consistent with the interest of the United Kingdom”. Nevertheless, one of my major concerns as Governor is the good governance of the Territory. In seeking to ensure such governance I have focused in particular on the following areas during my first four months in office:

- Support for the independent institutions under the Constitution, including the Royal Virgin Islands Police Force
- Tackling organised crime, including supporting future legislation on unexplained wealth orders
- Support for the public service, working closely with the Deputy Governor
- Close scrutiny of legislation in effort to ensure no diminution or restriction in the role of independent offices e.g. the Auditor General, the DPP and the Complaints Commissioner
- Close scrutiny in Cabinet of papers on procurement, in particular any proposed tender waivers
- Close scrutiny in Cabinet of proposed appointments to Boards or Statutory Bodies, in particularly to ensure that such appointments are merit based and avoid potential conflicts of interest.

46. In carrying out the above functions, I have sought to work cooperatively with the elected Government, while also setting out frankly areas where I may disagree with decisions and recording my positions as necessary in Cabinet minutes.

47. Furthermore, my office administers a territorial programme (£2.3 million for FY21/22), through which we fund a range of security, justice, environmental and governance activity to support the territory. Governance is not only central to all of these programmes in themselves, in terms of rigorous procurement practices, full transparency, and other controls. We also fund a number of programmes to directly support improvement in governance in BVI, such as training public servants in international norms and standards, technical advice including on maritime security and legislation to support adherence to international regulations, and support to transform the public service such as digitisation of paper based functions to enable a switch to e-governance and improve audit trails. Upcoming support includes training for public service in e.g. the Attorney General's office, audit department, and the election supervisor.

**(5) What mechanisms, statutory or otherwise, make up the current system in place in the BVI to ensure good governance?**



48. Current mechanisms include:

49. The Governor, exercising his or her powers under the Constitution and in accordance with such instructions as Her Majesty may from time to time see fit to give him or her

50. The power of the Royal Virgin Islands Police Force, the Director of Prosecutions and the Courts to investigate those responsible for wrongdoing and bring them to account

51. The power of the Auditor General to audit the accounts of the House of Assembly and all Government departments and offices

52. The power of the Complaints Commissioner to investigate actions taken by Government departments or a public authority in the exercise of their administrative functions

53. The maintenance of a Register of Interests and the duty of all members of the House of Assembly (including Ministers) and holders of other offices to declare their interests, income and liabilities, or of any other person connected with them, as prescribed by law in accordance with Section 112 of the Constitution

54. The respective roles of the Public Service Commission, the Teaching Service Commission, the Judicial and Legal Services Commission and the Police Service Commission in advising the Governor on appointments to offices

55. Procurement procedures as specified in the Public Finance Management Act and regulations

56. The role of the Governor together with the Deputy Governor, in upholding an independent public service

57. The existence of a free press in scrutinising Government, the public service and the work of statutory bodies.

**(6) What do you consider to be the strengths and weaknesses of that system?**

58. Some of the current mechanisms can in principle help to ensure good governance in BVI. But they may not be sufficient in themselves, and in any event their efficacy is dependent on full respect for their powers and functions.

59. Subject to the powers of the Governor under the Constitution, the Cabinet is the executive and policy making body for the majority of domestic issues in BVI. The Governor chairs Cabinet but does not have a vote in its decisions. My experience to date of Cabinet in terms of proper decision taking is mixed. Under the terms of the Cabinet Handbook, papers should be presented at least two days in advance in order to give members of Cabinet adequate time to consider proposals on which they are asked to make decisions. But in almost all Cabinet meetings I have chaired to date, a number of papers including on important issues e.g. Covid-19 response, have been submitted late and it is clear that some Ministers have not been able to fully read them in advance of Cabinet, meaning that decisions are taken other than on a fully informed basis.

60. There are also some papers that come to Cabinet with insufficient consultation. A notable example is the Disaster Management Act 2020 on which I understand the previous Governor was not consulted and to which to date I have not assented given its impingement on the responsibilities of the Governor and the proposed transfer of control over disaster preparedness and management from the Governor to Ministers.

61. There have been a number of occasions on which Cabinet has agreed to waive tenders in awarding contracts which in my view have not involved “exceptional circumstances” justifying departure from the general procedures under the Public Finance Management Act.

62. On other occasions it is not clear that contracts have been awarded under any proper procedure or with any cost benefit analysis e.g. the EZ shipping radar contract which to the best of my knowledge was not agreed by either the Joint Task Force or by the National Security Council prior to signature.
63. There have been a number of appointments agreed by Cabinet where in my view it is doubtful whether the selected candidate has the requisite qualifications for the job and/or where the political connections of the individual lead to a concern that the individual may have been selected for inappropriate reasons. There are also a number of individuals who sit on several different public boards, with a risk of potential conflict. All candidates for selection to boards and statutory bodies should be required to declare any potential conflict of interest as should those responsible for appointing them eg. if candidates are family members or business associates.
64. The Public Service contains many dedicated and well qualified officials. But their confidence appears to have been eroded by perceived attempts to exert undue political influence on their work or to create uncertainty over lines of authority. Under section 56 of the Constitution Ministers have direction and control of their department, including directing the implementation of government policy as it relates to that department. But unless otherwise agreed between the Governor and the Premier, the department is under the supervision of a Permanent Secretary who is a public officer. Moreover the power specified in section 56 is without prejudice to the Governor's responsibility under section 60 of the Constitution for the terms and conditions of the public service, the role of the Public Service Commission in the making of public appointments and the ultimate responsibility of the Governor for the disciplinary control of public officers and /or their removal from office. Such powers vest, and should continue to vest, in the Governor, not Ministers.
65. Confidence of the Public Service also risks being eroded by attempts to limit interaction by the Governor's Office with Ministries e.g. by insisting that all such contact be carried out through the Premier's Office. Such attempts run contrary to section 56 (7) of the Constitution whereby the Governor acting in his or her

discretion may at any time request from a Minister any official papers or seek any official information, subject to informing the Premier of any such request. They also cut across section 60 (8) of the Constitution which allows the Governor to direct others (not just Ministers) in the exercise of their functions where they involve or affect any matter for which the Governor has special responsibility under section 60 (1) of the Constitution.

66. The powers assigned to the Auditor General and the Complaints Commissioner provide strength to the BVI system of good governance and accountability. Further strengthening would be provided by the passing of Integrity in Public Life legislation and Whistleblower legislation. Legislation on these two points has been introduced in the House of Assembly and is in principle to be welcomed. I would note however my strong concern that as initially drafted, both these pieces of legislation would undermine or cut across the powers of the Auditor General, the Complaints Commissioner and indeed the Director of Public Prosecutions. If left unamended such legislation risks weakening rather than strengthening good governance. Moreover the effectiveness of such legislation will ultimately depend on the extent to which it is properly implemented and enforced.

67. The Register of Interests would be strengthened by making it public and with greater sanctions for non-compliance. The current Registrar of Interests Act 2006 simply places compliance by members of the House of Assembly in the hands of a Standing Select Committee of the House of Assembly. A clear limit should also be placed on the value of gifts that Ministers and members of the House of Assembly are allowed to keep. Under their current code, members of the Public Service are not allowed to receive and keep gifts of any value arising from their positions.

68. The independence of the DPP and of the Commissioner of Police in their decision making are strengths in the system of good governance. But the effective functioning of their offices is dependent on adequate financial resources being provided for their work, which decision lies with the Minister of Finance and Cabinet, subject to the extraordinary power of the Governor under section 103 of the Constitution to order payments out of the Consolidated Fund.

69. It is clear that there are challenges in delivery of public services. In citing perhaps the most pertinent example, I do not underestimate the huge destruction caused by hurricanes Irma and Maria in 2017, nor the resulting strains on public finances followed by the severe impact of the COVID-19 on tourism revenues. But the remaining destroyed cars and boats, together with other post-hurricane debris and unrepaired shelters, continued challenges in sewerage and water supply systems, and the lack of a sustainable waste management system speak to difficulties in meeting the basic needs of BVI as we again approach hurricane season.

**(7) What steps do you consider should be taken to promote the strengths and remedy the weaknesses you have identified so as (if you have answered (3) above in the positive) to sustain public confidence in all elements of government.**

70. Steps that should be taken include:

71. A public Register of Interests and a strict limit on the value of gifts or benefits in kind that can be received
72. Strengthened procurement procedures with tender waivers only in specific exceptional circumstances
73. All appointments made strictly on the basis of merit following open advertising and transparent processes
74. Cabinet papers prepared and submitted in good time
75. Publication of full Cabinet minutes
76. Adoption of a Ministerial Code of Conduct with clear provisions on the duty to respect the political impartiality of the Public Service

77. Passing of Integrity in Public Life and Whistleblower legislation, which does not limit or cut across existing independent institutions and accountability mechanisms
78. A Freedom of Information Act, to ensure the public have the right to access Government information
79. The Contractor General draft legislation, currently before the House of Assembly, designed to monitor the award and implementation of government contracts, is of questionable necessity. But at a minimum it should be redrafted (a) to similarly avoid cutting across existing independent institutions and accountability mechanisms and (b) stipulate an appointment and removal system for the Contractor General which provides clear independence
80. Adequate financing for independent institutions, including for the Director of Public Prosecutions and the Royal Virgin Islands Police Force
81. Fully audited accounts and quarterly public account reporting to ensure processing of payments is up to date and that the finances are in good order to meet any future commitments
82. More accountability and transparency in all public services

**(8) What are the standards by which good governance is currently measured in the BVI?**

83. There is no single such set of standards. But the Constitution, individual laws and certain non-legally binding codes e.g. for the Public Service provide legal requirements or standards by which actions can be judged. Individual institutions and bodies e.g. the Courts, the Director of Public Prosecutions, the Royal Virgin Islands Police Force, Auditor General, Complaints Commissioner, Labour Commissioner and the Financial Investigations Agency can all play a role

in ensuring respect for those standards, as can the Governor in respect of his areas of responsibility under the Constitution.

84. There are also external standards by which good governance in particular areas can be assessed e.g. the work of the Caribbean Financial Action Task Force (CFATF) in assessing measures to tackle money laundering; the work of the IMO and ICAO in assessing compliance respectively with maritime and aviation standards; and the work of international human rights monitoring bodies in assessing compliance with international human rights obligations.

**(9) In what way, if any, do you consider those standards to be insufficient**

85. Many of the relevant standards may be sufficient if actively applied to BVI. It is compliance with them that is needed for good governance.

86. There are nonetheless some gaps. One particular one is the need to update chapter 2 of the Constitution on Fundamental Rights and Freedom of Individuals and address the continued lack of a Human Rights Commission.

**(10) What steps do you, as Governor, consider should be taken to ensure that the standards of governance in place will sustain public confidence in all elements of governance?**

87. Please see my answers to each of the above questions. I would propose the following steps as priorities in sustaining public confidence in Government:

88. Effective and transparent financial management, budgetary control and spend of public funds

89. Transparent and strictly enforced procurement measures, based on clear criteria. Tender waivers only in exceptional circumstances and justified under strict tests

90. Fully audited and up to date accounts, publicly available
91. Appointments to boards, statutory and other public bodies made solely on the basis of merit
92. A public Register of Interests and all potential conflicts of interest declared and up to date
93. A willingness and determination across all parts of Government to tackle corruption wherever it may occur
94. Full respect for the Territories' independent institutions, including for example the Auditor General, and full compliance and cooperation with their requirements
95. Respect for an independent and professional public service
96. Transparency in decision making processes and funding of Government activity
97. And better delivery to meet people's basic needs.



## **Matters to be addressed – the operation of the agencies of law enforcement and justice**

### **(1) How are the agencies of law enforcement and justice organised in the BVI?**

98. Under section 60 of the Constitution, the Governor has responsibility inter alia for: defence, including the armed forces; internal security, including the Police Force, without prejudice to section 57; and the administration of the courts. Section 27 of the Constitution provides that a period of public emergency may be declared by the Governor when the well-being or security of the Virgin Islands is threatened by war, invasion, general insurrection, public disorder, natural disaster or other public emergency and the declaration is considered necessary by the Governor to maintain or restore peace and security.
99. Section 57 of the Constitution establishes the National Security Council, which advises the Governor on matters relating to internal security. Section 57 (4) provides inter alia that the Commissioner of Police has responsibility for the day-to-day operation of the Police Force, reporting regularly on such operations to the Governor.
100. Power to make appointments to offices in the Police Force and to exercise disciplinary control over persons holding or acting in such offices vests in the Governor under section 97 of the Constitution acting generally in accordance with the advice of the Police Service Commission.
101. The Virgin Islands are within the jurisdiction of the Eastern Caribbean Supreme Court. The Chief Justice of this Court is appointed by Her Majesty and the other judges are appointed by the Judicial and Legal Services Commission for the Court. Under section 95 of the Constitution, the Governor appoints Magistrates, generally on the advice of the Judicial and Legal Services Commission established under section 94 of the Constitution.

102. Funding for both the Police Force and the Courts, including filling of vacant positions, falls to the determination of the Minister for Finance subject to the extraordinary power of the Governor under section 103 of the Constitution to order payments out of the Consolidated Fund.

103. The positions of Attorney General and Director of Public Prosecutions are established respectively under sections 58 and 59 of the Constitution and appointments to these positions are made by the Governor acting generally in accordance with the advice of the Judicial and Legal Services Commission.

**(2) What particular responsibilities do you have, as Governor, within the overall system of law enforcement and justice in BVI?**

104. As per above, as Governor I have overall responsibility for internal security including the Police Force and for appointments to the Police Force. The Commissioner of Police has responsibility for operational policing decisions and reports to me on such operations. The Commissioner also informs the Premier of any significant security developments in the Virgin islands, including the occurrence of any significant criminal activity, as per section 57 (4) (c) of the Constitution. As Governor I summon a meeting of the National Security Council whenever I consider it desirable to do so and also whenever the Premier so requests as per section 57 (6) of the Constitution.

105. The members of the Judiciary and Magistracy operate independently and are not subject to my instruction in their judgments or rulings. Similarly the Director of Public Prosecutions acts independently in her decisions on undertaking of criminal proceedings and she is not subject to direction or control of any other person or authority, as per section 59 (6) of the Constitution.

**(3) What processes and systems are in place to monitor the effectiveness of the overall system of law enforcement and justice?**

106. I meet with the Commissioner of Police regularly in accordance with section 57 (4)(b) of the Constitution to discuss policing issues and I formally assess his performance on an annual basis.
107. The Commissioner also provides quarterly and annual reports to the National Security Council based on the RVIPF Strategic Plan, setting out major accomplishments, challenges and opportunities, reporting on the work of each Police Division and providing key information on crime statistics and trends.
108. As Governor I also chair the Criminal Justice Advisory Group (CJAG). This brings together a wide range of agencies involved in Justice matters, including the Director of Public Prosecutions, the Commissioner of Police, the Senior Magistrate, the Registrar of High Court, the Deputy Governor's Office and the senior official responsible for Health and Social Development. CJAG's purpose is "to enhance and promote the safety and wellbeing of the British Virgin Islands through the effective and efficient coordination of criminal justice services" and is designed to take a holistic approach. The most recent CJAG meeting focused on ways to address domestic violence and the current court case backlog.
109. I meet regularly with the Director of Public Prosecutions and carry out a formal performance assessment on an annual basis. As previously noted, in accordance with section 59(6) of the Constitution the Director is not subject to the direction or control of any other person or authority in the exercise of her powers.
110. I similarly meet regularly with the Attorney General as the principal legal adviser to the Government and am responsible for her performance assessments.

**(4) What do you, as Governor, consider to be the strengths and weaknesses of the overall system of law enforcement and justice in BVI?**

111. The independence of the Courts, DPP and RVIPF from political interference is a fundamental strength which must always be preserved to maintain the checks and balances central to a democratic society.
112. The application of English common law principles and central tenets of UK law, together with the possibility of final appeal to the UK Privy Council, are key underpinnings of the BVI justice system giving confidence that the rule of law will prevail.
113. RVIPF statistics for 2020 report an increase in detection rates and a decrease in recorded crimes, and record seizures of illicit drugs. I welcome the steps taken by both the outgoing and incoming Commissioner in tackling organised crime groups engaged in the transshipment of illicit drugs and associated violence and murders. The early arrest by the police and charges laid by the DPP, following a recent murder on island, have helped in restoring public confidence and I welcome the recent initiative by the Commissioner of Police to further strengthen community policing.
114. They are however a number of current challenges. BVI remains a major route for illegal drugs transshipment, which is highly reputationally damaging for the Territory. A number of the seizures successfully made in the past year by the Royal Virgin Islands Police Force regrettably point towards involvement by some police officers in the illicit drugs trade and corrupt practices. The volume of such drugs seized also suggests that similar challenges may exist within Immigration, Customs and the Airport and Port Authorities over which I as Governor have no day to day authority. It is vital that further action is taken to strengthen BVI's border security, both maritime and air, and that all those responsible for corrupt practices in this as in any other area are brought to account.

115. A further major challenge affecting both the RVIPF and the office of the DPP is that of resources, both for recruitment to fill vacant slots and for training. The outgoing Commissioner of Police in his 2020 report noted that the RVIPF regular allocated budget falls far below the reasonable cost required to maintain the competencies and highly skilled requirements and demands in investigating crime and bringing offenders to justice. The RVIPF currently has 67 roles unfilled, approximately one fifth of the total workforce. Funding for vital repairs and maintenance of police vessels is also needed. Current rates of pay for lawyers in the DPP's office and the Attorney General's office also appear to fall short of what is required to attract sufficiently qualified candidates to fill current vacancies.
116. The current backlog in court cases, though primarily caused by the 2017 hurricanes and Covid-19, needs to be addressed.
117. There also needs to be further examination of whether some criminal trials should be held without a jury given challenges ensuing from the small pool from which jurors are chosen and the risk of jury intimidation. The appropriateness of jury trials e.g. for complex fraud cases should also be considered.

**(5) What steps do you as Governor consider should be taken to ensure that the strengths and weaknesses you have identified can be maintained or remedied respectively?**

118. The constitutional underpinning for the independence of the courts, DPP and RVIPF must always be preserved to maintain the checks and balances central to a democratic society.
119. Further steps must be taken to tackle organised crime groups and their role in particular in the transshipment of illicit drugs.
120. Corrupt practices within all agencies responsible for border security need to be ended, with those responsible for such practices brought to account through the courts.

121. Recent events have demonstrated the need to review and improve the security arrangements at Her Majesty's Prison.
122. Police engagement with the community should continue to be strengthened, given in particular the information that members of the community may be able to provide in helping to bring those responsible for criminal activities to justice. Churches and other voluntary organisations, together with social services and HM Prison Service, also have a vital role in dissuading young people in particular away from criminal activities and rehabilitating those who may have fallen into crime.
123. Adequate financial support is needed to fill vacancies and meet training requirements in the RVIPF and the office of the DPP.
124. The Police Act currently under consideration should also be amended in a number of areas, including to better tackle performance and attendance issues and modernise other HR processes.
125. The construction of a new and secure Magistrate's court is required, with plans to that effect currently under consideration.
126. The work of the Registrar of the High Court and the Magistracy to deal with the current backlog of cases should also be supported, including through improved monitoring and management of cases, delivery of summonses by the police and a reduction in unnecessary delays caused eg. by unprepared defence counsel.