



OFFICE OF THE THIRD DISTRICT REPRESENTATIVE
JULIAN FRASER, RA

May 31st 2021

Re: Your letter of

17 May 2021

to

Richard G Rowe and Daniel Fligelstone Davies

Silk Legal (BVI) Inc

Requesting a “Position Statement from Members of the House of Assembly

Position Statement

I write in response to your letter of Ref.

1. **Your Question:** (1) What do you understand by the term “good governance”?
 - i. Good Governance is the effective dispatch of duties by Public Officers in accordance with the Laws of the Virgin Islands within the framework of established Cabinet Approved Policies.

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

- i. Poor Governance is the habitual deviation from my explanation of Good Governance. It is definitely not determined outside that framework by way of fishing expeditions and personal inferences.

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

- i. To the extent that it could be the difference between success and chaos. It is that important.

Ordinarily, the absence of success would be failure but not in this case. In this scenario however, the stakes are higher. This behavior of responsibility on the part of a government is the only reason one would have to work and behave within the dictates of the Rule of Law.

4. **Your Question:** (4) As a Member of the House of Assembly, what role, if any, do you have in ensuring there is good governance and how have you carried out that role?

- i. I draw your attention to Section 47 (3) of the Virgin Islands Constitution Order 2007

- ii. *(3) The Cabinet shall have responsibility for the formulation of policy, including directing the implementation of such policy, insofar as it relates to every aspect of government, except those matters for which the Governor has special responsibility under section 60, and the Cabinet shall be collectively responsible to the House of Assembly for such policies and their implementation.*

- iii. This is what I consider to be a “Got You” provision, because it says everything that needs to be said, unfortunately the most important part of it is devoid of reality.

- iv. Yes the Cabinet (Ministers) makes those Policies mentioned, yes the Cabinet (Ministers) directs the implementation of those Policies.

- v. But the fallacy is the part about Cabinet (Ministers) shall be collectively responsible to the House of Assembly for such policies and their implementation.

- vi. Ask yourself this question. Who makes up the House of Assembly? And the answer which is the Cabinet, namely: The 5 Ministers and the Attorney General, and a cast of supporters namely: The 2 Junior Ministers, the Dep. Speaker and another Back-Bencher plus the Speaker. That is a total of 11 out of 15 Members. So who are you kidding when you are trying to pin an unrealistic responsibility on the “House of Assembly” to hold the Cabinet to account? You know that this is nonsense, and you didn’t need me to tell you this, but you asked.

- vii. I am aware that the same System obtains in the UK, but let me point out that the dynamics are vastly different, different in the sense that they have diversity in numbers on their side. There is a Parliament of 650 Members, a strong and functional Opposition comprising of no fewer than 10 Parties including a main Opposition Party, along with other Independent MP's, and they are also blessed with a bi-Cameral System. So for them Accountability can and is achieved. Not to mention, they also have the Press.
- viii. If I was to elaborate on the many Committees of the House you would be equally impressed with their mandate, and sorely disappointed with their powers, which are nonexistent.
- ix. We have a Public Accounts Committee which is according to Standing Orders 73
- (5) The functions of the Committee shall be:
- (a) to consider the accounts of the Government in conjunction with the Auditor General's Report;*
- (b) to consider any Special Report submitted by the Auditor under Section 20 of the Audit Act, 2003;*
- (c) to report to the House of Assembly in the case of any excess or unauthorized expenditure of funds, the reasons for such expenditure;*
- (d) to report to the House of Assembly in the case of any shortfall of Revenue, the reasons for such shortfall;*
- (e) to report to the House of Assembly any case of apparent extravagance or waste of public funds;*

(f) to propose any measures it considers necessary to ensure that public funds are properly brought to account and are economically spent.

- a) The functions of this Committee doesn't pass the smell test on the surface, and neither is it meant to address modern day occurrences.
- b) Case in point, the Public Accounts Committee in the UK unlike ours, holds its hearings in Public which in and of itself is a means of deterrent.
- c) Also, our reporting method to the House of Assembly, which I have already concluded as a flawed system, is asking the very Body responsible for the shortcomings discovered, to do something about them. The Committee needs real power if it is supposed to be meaningful.

x. **What do I do to promote Good Governance?**

- xi. I ask questions in the House of Assembly, the answers to which, are at the discretion of the Minister. Standing Orders 18
- xii. *(6) A Minister may decline to answer a question, if the publication of the answer would in his opinion be contrary to the public interest.*
- xiii. Cross examination is restricted by the Speaker using Standing Orders 18

- xiv. (4) *After the answer to a question has been given, supplementary questions may, at the discretion of the Speaker, be put for the purpose of elucidating the answer given orally, but the Speaker may refuse any such question which in his opinion introduces matters not relative to the original question, or which infringes any of the provisions of Standing Order No. 17 (Contents of Questions), and may in that case direct that such question be not reported in the Minutes.*
- xv. *And (4)(a) Supplementary questions may be asked by the originator of the question or by another Member with the permission of the originator. No more than two (2) supplementary questions shall be asked.*
- xvi. There is more and much more I can say about this topic with regards to your question, but I notice there are many other questions within which I certainly hope I'll be afforded the opportunity to say more.

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

- i. This is beginning to sound like a 5th Grade examination. One which I am not inclined to indulge. We have a Constitution and we have numerous pieces of Legislation that speaks to your question. If those elements fails to produce "Good Governance" then I'm afraid Sir, only the fear of incarceration will.

- ii. This is not something I spend time thinking about, because I take it for granted that all Public Officers and those who gives directive have sworn to uphold the Laws of the Virgin Islands.

- iii. Officers have been disciplined to take orders, while at the same time knowledgeable that they cannot break the law. Simply put, they know better, that if someone directs them to do anything that is illegal and they do it, it is them who break the Law, and not the one who directed them. So for this reason I take Good Governance as a protected guarantee.

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

- i. The strengths are that guidelines are in place and if followed, there should be no issues whatsoever.

- ii. The weaknesses are, that the interpretations for Good Governance varies from person to person, and that brings two issues to bear.
 - 1) Persons like yourself from other societies trying to impose their standards on the Virgin Islands irrespective of Culture, Demographics, Geography, Socioeconomic circumstances, and most importantly, reality.
 - 2) The element of greed in our society, which causes neighbor to turn against neighbor when they don't get things their way.

- iii. And last but certainly not least, is blaming a Political System for failing to police itself, when in-fact it was designed to fail.

7. Your Question: (7) What steps do you as Members of the House of Assembly consider should be taken to promote the strengths and remedy the weaknesses you have identified so as (if you have answered (4) above in the positive) to sustain public confidence in all elements of government?

- i. I revert to my answer to your Question (4), and again refer to *Section 47 (3) of the Virgin Island Constitution Order 2007*, **and I'll ask the question, whether they are aware that our current System imposes legal dictatorship powers on our Premier?**
- ii. Let me explain. The Premier nominates 4 Members of the House of Assembly which the Governor appoints and together with the Premier makes up the 5 voting Members of the Cabinet, any or all of whom can be fired by the Premier for any reason. I've seen it many times, and as recently as in the last Administration. Simply put, **he dictates** what is or is not Government's Policies.

- iii. Again, referring to my answer to your Question (4), and my reference to *Section 47 (3) of the Virgin Island Constitution Order 2007*. That same Premier decides who gets to be Speaker of the House of Assembly, and he gets to decide who his 2 Junior Ministers are, all 3 of whom he can fire at any time. And all 5 Ministers including the Premier, the 2 Junior Ministers, the Speaker, and I forgot the Deputy Speaker who the Premier also sanctions, all forms the Government side in the House of Assembly. Note that this number represents 8 of the 13 voting members of the House of Assembly, and if need be, the Speaker is also eligible to vote also. **The point here is that the Cabinet being accountable to the House of Assembly, means being accountable to itself,** which essentially means the same as being accountable to the Premier.
- iv. You can do like most and ignore this reality, but the result will simply be another chase for the same thing you are after right now in a few years from now.
- v. The sad reality here, is that you are not going to report this massive flaw in our system, but instead you will continue to fish in a pond that has only dead fishes.
- vi. The irony in all this, is that as far back as 1995 a mechanism was devised to put an end to this “dictatorship”, but unfortunately it backfired because it wasn’t fully thought out and it only served to proliferate the matter. The good news is, is that it can still work, if people in your position cared enough to fix things.

- vii. Do something good for the people of the Virgin Islands. Deal with the cause.
Dealing with the symptoms alone will only mean that there will be more CoI's.

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

- i. Like I said in my answer to your question Number (1), when asked my understanding of the term “Good Governance”, and I related that the Laws of the Virgin Islands and approved Cabinet Policies if followed should be sufficient to ensure Good Governance, I do maintain that.
- ii. Therefore, those Standards are, **“upholding the Laws and Policies of the Virgin Islands”**.

9. ***Your Question:*** (9) In what way, if any, do you consider those standards to be insufficient?

- i. This is a Democratic society that is run by elected officials who are charged with the responsibility to make Laws and Policies for the smooth running of the country, and naturally the mere fact that new laws and policies are constantly being made, or old ones are being revised, speaks directly to insufficiency, which should not negate the fact that the dynamisms of the society has a lot to do with this need.

- ii. However, I must say that bad Laws and poor Policies does exist in the BVI, like everywhere else. But this also speaks to that lack of diversity in the Legislature, it speaks to that dictatorship I spoke about, but most importantly, it speaks to this system which I've implored you to speak to in my answer to your *Question (7)*.

10. **Your Question:** (10) What steps do you, as Members of the House of Assembly, consider should be taken to ensure that the standards of governance in place will sustain public confidence in all elements of government?

- i. If it is the case according to the Constitution that *“The Cabinet shall have responsibility for the formulation of policy, including directing the implementation of such policy, insofar as it relates to every aspect of government, except those matters for which the Governor has special responsibility under section 60, and the Cabinet shall be collectively responsible to the House of Assembly for such policies and their implementation”*.
- ii. And indeed, there are shortcomings, then those shortcomings would lie with the House of Assembly as I have pointed out in my answer to your question (4) specifically as it relates to the composition / formulation of the House. And also as far as the powers of the Committees are concerned.
- iii. The entire system needs to be revamped.

- iv. My answers to your previous questions addresses all the issue raised here.
- v. I have chosen to descent from a joint statement on this matter of concern, because my perspective of the issues facing the territory particularly with regards to the topic of this questionnaire cannot, and is not expected to be that of other Members, main reason being the disparity in experience. “The longer you live with an ailment, the more likely you are to accept that it can’t be cured”. There comes a time when something different “new” has to be tried.
- vi. At this stage of my career, and my long exposure to what obtains, I am not interested in listening to the same old stories, nor watching the same game over and over again. My belief is that the exercise you are engaged in is to be constructive, and as such, I’m all in. If however, I am to learn different, I’m out.
- vii. **Constructive is the operative here.** We as a Territory are due for engagement in a Constitutional Review, and emerging from this Commission of Inquiry, I expect forward thinking, and innovative proposals such as I have articulated throughout this questionnaire. Anything less will be a missed opportunity, and a disservice to the people of the Virgin Islands.

11. Thank you for this opportunity to share my views. I hope you will find wisdom in my thoughts even if they are different from yours.