

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 20

(WEDNESDAY 30 JUNE 2021)

International Arbitration Centre
3rd floor Ritter House
Wickhams Cay II
Road Town, Tortola

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Mr Deniston Fraser 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 Ryan Geluk gave evidence.

Hon Mark Vanterpool gave evidence.

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Those present:

Session 1

Mr Bilal Rawat

Mr Ryan Geluk

Mr Andrew Gilliland, Martin Kenney & Co solicitors

Mr Steven Chandler, 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 Deniston Fraser, Silk Legal

Mr Bilal Rawat

Hon Mark Vanterpool

Mr Steven Chandler, Secretary to the Commission

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

P R O C E E D I N G S

Session 1

RYAN GELUK, COMMISSION WITNESS, CALLED

COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

MR RAWAT: Good morning, Commissioner. First witness for today is Ryan Geluk, and I wonder if Mr Geluk could be sworn or invited to take the affirmation.

TECHNICIAN PETERS: Just one second.

(Pause.)

COMMISSIONER HICKINBOTTOM: Shall we pause and come back in a minute?

TECHNICIAN PETERS: Yes.

COMMISSIONER HICKINBOTTOM: Certainly.

(Technical pause.)

COMMISSIONER HICKINBOTTOM: Good morning, everyone. Again, sorry for the delay that was caused by a problem with the technology, the cause of which is a mystery, but it had a severe adverse effect on our ability to live stream and record, and I was unwilling to proceed without that being fixed. Thank you to all the technicians who have now hopefully fixed that, and we're ready to proceed, and I think we were just about to swear in Mr Geluk.

Thank you for your patience, Mr Geluk.

THE WITNESS: No problem. Thank you.

1 COMMISSION SECRETARY: Mr Geluk, good morning.
2 Would you like to swear an oath or make an affirmation?

3 THE WITNESS: Swear an oath, please.

4 COMMISSION SECRETARY: Take the Bible in your
5 right hand and read the words on the sheet in front of you.

6 THE WITNESS: I swear by Almighty God that the
7 evidence I shall give shall be the truth, the whole truth,
8 and nothing but the truth.

9 COMMISSION SECRETARY: Thank you.

10 COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

11 MR RAWAT: Thank you, Commissioner.

12 Before I start my questions can I just for the
13 record note that there are no legal representatives for any
14 participant present either in the hearing room or online
15 remotely. We do have, as we have had on the last two days,
16 Mr Andrew Gilligan of Martin Kenney & Co here as an
17 observer.

18 COMMISSIONER HICKINBOTTOM: Thank you.

19 BY MR RAWAT:

20 Q. Mr Geluk, thank you for--

21 COMMISSIONER HICKINBOTTOM: I think it's Mr JELUK
22 (phonetic).

23 THE WITNESS: JELUK (phonetic), yes.

24 MR RAWAT: Despite having checked, I was wrong.

25 JELUK (phonetic). I will remember that. It's best to sort

1 it out right from the beginning.

2 BY MR RAWAT:

3 Q. First of all, thank you for coming to give
4 evidence to the Commission, but can we start off by my
5 asking you to give the Commissioner your full name, please?

6 A. Certainly. Ryan Roques Eric Geluk.

7 Q. And what I try and do is keep the questions short
8 and simple, but if at any time I ask you a question that
9 you can't understand, please, do ask me to repeat it or
10 rephrase it.

11 Can I also ask, although I don't think it will be
12 a difficulty, but do keep your voice up and speak slowly so
13 that we can get an accurate record of your evidence today.

14 In terms of your current role, could you just
15 confirm that for the Commissioner, please.

16 A. Sorry, the current role as what I have been
17 summoned here for, or my current role with--

18 Q. Your current job.

19 A. Okay. Sorry.

20 I work for a Managing Director for BDO Limited
21 here in the British Virgin Islands.

22 Q. And what is BDO Limited?

23 A. We are an accounting and advisory firm--global
24 accounting and advisory network, I should say.

25 Q. And you alluded to why you were summoned here.

1 It's right, isn't it, that you were appointed as the BVI
2 Government representative on the BVI Airways Board of
3 Directors?

4 A. That's correct.

5 Q. If you look, you have one bundle, one large Lever
6 Arch bundle in front of you, if you turn to page 817 in
7 that bundle, please.

8 You should be at the first page of the Auditor
9 General's Report on the Government's financing of BVI
10 Airways direct flights to Miami.

11 A. Correct.

12 Q. Now, from that and from evidence that the
13 Commission has taken, we know that the BVI Government in
14 January 2015 commissioned BDO to provide a financial risk
15 analysis in connection with BVI Airways. Were you involved
16 in preparing that Report?

17 A. I was one of the persons involved in preparing
18 the Report, yes.

19 Q. If you go in that--well, if you go to 824, first,
20 please. Although I'm sure you're familiar with the
21 circumstances of BVI Airways but just to give some context
22 for the questions I want to put to you, at 824, it records
23 or the Auditor General's Report records that the
24 Government, having had initial meetings with a Mr Bruce
25 Bradley then entered into a Memorandum of Understanding in

1 June 2014 with his company which was known as Castleton
2 Holdings. Now, one of the requirements under that
3 Memorandum of Understanding was a joint report, a
4 Feasibility Report, would be commissioned, and this was
5 commissioned from an organization called Sixel Consulting
6 Group, Incorporated. You can see that at paragraph 19 on
7 page 825, and at the bottom another joint report that was
8 commissioned from Falco Regional Aircraft Limited was a
9 Pavement Condition Study, so that was a study of the
10 viability of the runway to take the aircraft that were
11 being proposed would be used by BVI Airways. Now, those
12 two reports were ready before BDO's financial risk analysis
13 report was prepared. Were those two reports made available
14 to BDO in order for you to carry out your work?

15 A. From what I can recall, the only one that I can
16 recall seeing was the Sixel report.

17 Q. The Sixel report was, putting it neutrally,
18 optimistic in its analysis of the proposal from BVI
19 Airways, and if you go to page 827, we see there that what
20 happened was that the Government then engaged BDO to assess
21 the merits of the proposal, and your advice was that the
22 proposal was inequitable to the Government?

23 A. Sorry, just for the record, BDO's advice, not
24 mine.

25 Q. BDO's advice.

1 A. I just want to make that clear although I do
2 share two roles, I have been summoned here to talk as a
3 whole as a director, but I recognize once in a while when
4 you say "your", I just want to refer that it's BDO's
5 advice.

6 Q. I will try and--I'm seeing you both as BDO and as
7 BVI Airways' Director.

8 A. I see.

9 Q. But we can't get to the second without going
10 through the first.

11 A. Understood.

12 Q. And so I will try and say "BDO" and then keep
13 that separation that way.

14 The BDO advice was not so positive, and if we go
15 to page 834--839, forgive me?

16 A. 839?

17 Q. Yes, please.

18 A. Um-hmm.

19 Q. At paragraph 109 the Auditor General's Report
20 highlights a number of points made in the BDO Report which
21 included, and I will summarize, first that a 20 percent
22 rate contemplated under the Memorandum of Understanding was
23 far too aggressive given the lack of risk being borne by
24 Castleton, and BDO recommended a much lower interest rate
25 of between 5 and 8 percent.

1 Secondly, that the advice that was the Government
2 shouldn't proceed unless Interline Agreements are
3 completed.

4 Then third point was that the Government would be
5 taking on a significant liability risk by signing a revenue
6 guarantee contract with parties that apparently lacked
7 relevant operational experience.

8 And then there was another point about the age of
9 the aircraft would likely lead to greater maintenance
10 costs, and the recommendation was perhaps to use more
11 modern aircrafts, even though they may be more expensive to
12 lease.

13 Now, would you say that those were key points
14 that came from BDO's financial risk analysis report?

15 A. Yes. I mean, that was--these were--when we
16 reviewed the--when we reviewed the Feasibility Study--not
17 the Feasibility Study--the MOU, the draft MOU, that we were
18 provided, those concerns were raised and we saw those as
19 being concerns that the Government should be aware of.

20 Q. And would you describe them as substantial
21 concerns?

22 A. I would--I would say that that's a fair--that's a
23 fair--a fair statement, yes.

24 Q. Because the concerns are not just about--well,
25 one aspect of it was the risks to which Government was

1 exposing itself, and the second one was an operational
2 concern over the age of the planes, that those would bring
3 additional costs that were perhaps not anticipated?

4 A. Correct. Yeah. We just wanted to point out--we
5 weren't given necessarily a scope as to particularly the
6 nature as to what we wanted to comment, so we commented on
7 the areas that we felt the Government should be aware of.

8 COMMISSIONER HICKINBOTTOM: But your Report was a
9 risk analysis?

10 THE WITNESS: For the most part, as far as I can
11 recall.

12 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

13 BY MR RAWAT:

14 Q. If I take you back to 828 in the bundle--let's
15 start at 827 just so you have the context--both from the
16 Auditor General's Report and from evidence that the
17 Commissioner took yesterday, after the MOU and after BDO's
18 analysis report or to about the time the analysis report
19 was produced, the Government decided to reject the
20 proposal, but there was subsequent discussions, and
21 ultimately in August 2015, a position was reached which led
22 to a decision paper being submitted to the Cabinet, and the
23 Cabinet then approved the project but set out certain
24 conditions.

25 Now, if you go to 828 and look at

1 paragraph 38--sorry, 39, the point that's made by the
2 Auditor General was that the BDO Financial Assessment
3 Report was not included among the papers presented to
4 Cabinet. Was that something that BDO would have been aware
5 of?

6 A. No--

7 (Overlapping speakers.)

8 Q. Subsequent to providing your own report in
9 January 2015, was BDO ever asked again to conduct any
10 further risk analysis?

11 A. Not to my knowledge, certainly not to myself
12 anyway directly, no.

13 Q. At 40, the Auditor General's Report refers to the
14 next event in the sequence, which was the signing of a
15 Framework Agreement on the 7th of December 2015, so the
16 parties on one side would have been the Government, and on
17 the other what the Auditor General describes as the
18 operator parties, so the various entities and individuals
19 sitting behind BVI Airways. If I carry on, I will use the
20 term "operator parties".

21 Now, one of the requirements under this Framework
22 Agreement, which--details of which are set out in the
23 Report, was that BVI Airways would appoint a government
24 representative on the Board of Directors, and that was you?

25 A. That's correct.

1 Q. How did you come to be appointed?

2 A. I believe first by a phone call by the former
3 Financial Secretary, by Mr Smith. If I remember correctly,
4 again this is going back several years, I believe he
5 did--he did call me and requested whether or not I would be
6 willing, based on--based on, I think, the analysis that BDO
7 had done for the Government on the Report. He appreciated
8 how--the points that were raised and felt that I would be
9 an adequate--that I would be an adequate representative for
10 the Government.

11 COMMISSIONER HICKINBOTTOM: And at that time,
12 Mr Geluk, what were you--what was your post at the time?

13 THE WITNESS: At the time I was a director of
14 BDO.

15 COMMISSIONER HICKINBOTTOM: Right. Thank you.

16 BY MR RAWAT:

17 Q. And had you had experience in terms of start-ups
18 of a commercial airline enterprise?

19 A. No, not prior to that, no.

20 Q. And in terms of the role you were expected to
21 play as the Government representative on that Board, what
22 did you understand your function to be?

23 A. To my understanding, the function really was
24 to--to--to, I guess look at the--to take into consideration
25 the Government's interests when decisions were being made

1 for us to ensure that the Government's position was
2 adequately protected for any decisions that were made by
3 the Board.

4 Q. And what did you understand the Government's
5 position to be?

6 A. Well, based on--I was given a draft copy again of
7 the agreement or of the MOU, and the position was what was
8 laid out in the agreement.

9 Q. Is that the Framework Agreement?

10 A. Framework Agreement, yes.

11 Q. Now, one of the--we have the MOU in 2014 and the
12 Framework Agreement in 2015. Were you given copies of
13 both?

14 A. Sorry, say that question again?

15 Q. The Memorandum of Understanding--

16 A. Right.

17 Q. --was at an earlier stage of the process. It was
18 produced in June 2014. There is then the pause where the
19 Government rejects the proposal and then discussions start
20 again, and results in the Framework Agreement of December--

21 A. Correct.

22 Q. --of 2015.

23 Were you given copies of both of those?

24 A. I was given copies of the--obviously of the 2014
25 one, I would have seen or been privy to it in working on

1 that, in working on the engagement with the BDO. When I
2 was informed in 2015, I believe I was given a copy of the
3 Framework Agreement.

4 Q. And that was your only guide to understanding
5 what the Government's position was in terms of how it
6 expected the project to proceed?

7 A. Correct.

8 Q. Aside from that, were you given any other
9 instructions by Neil Smith, the then Financial Secretary?

10 A. No, no. I wasn't given any other instructions at
11 the time, just that--just to--just that he would--he would
12 be--he would be--he would be grateful if I would serve on
13 the Board.

14 Q. If you please go to 838, and just look at
15 paragraph 101.

16 A. Um-hmm.

17 Q. Now, you're identified there as the nominee on
18 the Board of Directors, and it says you were appointed as
19 Director in March 2016; is that right?

20 A. I assume it is, based on the Auditor General's
21 comments. I was never provided with a formal indication as
22 to what date I officially became a director, so I can't
23 really comment on the official date, but the Auditor
24 General's--the Auditor General's statement, she typically
25 very thorough, so I'm assuming that that is correct.

1 Q. So, were you provided any paperwork to say you,
2 Ryan Geluk--

3 A. No.

4 Q. JELUK (phonetic) sorry, apologies. You are now
5 appointed a director?

6 A. No, I never received any formal documentation.

7 Q. You spoke to the Auditor General for the purpose
8 of her preparing this Report?

9 A. To staff of the Auditor General, correct.

10 Q. And it says, and I'll read this out. You
11 reported that you attended one meeting together with the
12 Financial Secretary Neil Smith and the Chairman of the
13 Tourist Board Russell Harrigan, which was held in Miami in
14 September 2016. "The airline at that time was still
15 seeking approval from the regulatory authorities and
16 appeared to be having difficulties with ASSI's delayed
17 processing of the manuals and documents submitted. Apart
18 from the Miami meeting, the director reported that he was
19 not provided with information regarding the airline's
20 operations and the only set of Financial Statements
21 received were unaudited and for the 15 months
22 pre-operational period from commencement of the venture to
23 31st of March 2017".

24 How did you come to attend that first meeting?

25 A. I was--I was contacted by Scott Weisman at that

1 time to attend the meeting as--again, as the--as a
2 director, so that was about the first time where I received
3 any sort of formal notification of a director.

4 Q. Did you expect there to be further meetings?

5 A. Absolutely I did, yes.

6 Q. From your experience, how often would you have
7 expected a Board of Directors to be meeting on a venture
8 like this?

9 A. I mean, it's very difficult to make any sort of
10 an analysis. I mean, it depends on what was going on, but
11 I mean, at least probably a quarterly meeting would have
12 been nice.

13 Q. Say that again, please?

14 A. Sorry, I said a quarterly meeting probably would
15 be nice, but it all depends as to what was going on and how
16 often management saw fit.

17 Q. From the start of the project in terms of the
18 signing of the Framework Agreement which is December 2015
19 to the date at which flights were expected to commence,
20 which under the Framework Agreement, as it was originally
21 intended, was going to be 31st of October 2016.

22 A. Correct.

23 Q. That's quite a tight time frame, isn't it? I
24 mean, in effect, in 10 months, the plan was to get up and
25 running an operational flight between BVI and Miami where

1 people would be coming back and forth, all the staff would
2 be in place, all the planes would be in place, all the
3 infrastructure would be in place. That is a tight
4 timetable, isn't it?

5 A. It appears so, yes.

6 Q. Insofar as it appears so, is the fact that you
7 only have--you're only able or informed of one meeting in
8 March 2016, and yet you attend that one meeting?

9 A. Sorry, the meeting was in September 2016,
10 correct.

11 Q. Sorry, you're right. My apologies.

12 So, even later, even closer to the operational
13 date, did that not cause you--did that cause you some
14 concern as the Director appointed?

15 A. Yeah. I mean, it did, and I had contacted or I
16 requested contact with Mr Weisman on a few occasions to get
17 at least an update as--as--as to what was going on.

18 Q. And what was the response to seeking a contact?

19 A. As far as I can recall, I believe we did have one
20 conversation somewhere in the area of about maybe June-July
21 of 2016. I believe we had one phone call--one phone call
22 at that time, to just sort of provide a high-level update
23 from what I can recall.

24 Again, it's a long time ago, so I can't really--I
25 can't really tell you as to what the nature of the

1 conversation was, but I remember it was essentially a
2 general update as to where everything was.

3 Q. What did you do with the information that you
4 were provided in that one phone call?

5 A. Nothing.

6 Q. It also appears from the Auditor General's Report
7 that you were provided with very limited, if any,
8 information as to the financial position of BVI Airways?

9 A. That's correct.

10 Q. Did the fact--that fact that there was so little
11 information being provided to you, cause you concern?

12 A. It did, and I did raise that to the Directors.

13 Q. Which Directors specifically?

14 A. I believe my e-mail again was to Mr Weisman
15 because he was my main point of contact. I can't recall
16 whether I cc'd the other Directors on the e-mail or the few
17 directors I might have had contact with, but I do recall
18 the e-mail was sent directly to Mr Weisman.

19 Q. What was the response to you raising concerns in
20 that way?

21 A. I don't recall if I--I don't believe I received
22 any response.

23 Q. And so, in the absence of any response, what
24 steps did you take after that?

25 A. I did have a word with Mr Smith, with the

1 Financial Secretary. I mean, him and I were in--in
2 frequent conversation just more or less asking if I had
3 heard anything. After that point in time, I think around
4 that time I did--I did have a conversation with him, and
5 he'd--he'd asked me to raise--he had asked me, I think, to
6 raise the issue, which I did to Mr Weisman, essentially
7 saying that, under the Business Companies Act, the Director
8 is able to get access to the information and is required to
9 get access to any and all information to undertake their
10 duties.

11 Q. So, did you have a feeling that you were being
12 shut out?

13 A. I did have that feeling at around that time, yes.
14 I mean, this was subsequent to the Directors' meeting. I
15 did have that feeling that I was not receiving the
16 information that I felt that I should be receiving.

17 Q. And that you were entitled to as a director on
18 that Board?

19 A. Correct.

20 Q. So, you passed on your concerns to Mr Smith, and
21 the fact that you were--he was asking whether you had any
22 information, and you were telling him "I'm not getting any
23 information". Can you tell the Commissioner, were there
24 any other steps that were taken?

25 A. Not from myself. I didn't take any additional

1 steps at that point in time.

2 Q. If you look at 849, please, this is
3 paragraph 172, under the Framework Agreement, BVI Airways
4 was supposed to submit quarterly Financial Statements to
5 the Government, and what the Auditor General notes is that
6 the quarterly statements were never provided.

7 Presumably, you never saw any quarterly
8 statements?

9 A. I did not.

10 Q. Were you aware that they were not providing
11 quarterly statements as they were required under the
12 Framework Agreement?

13 A. I was not necessarily aware, but I was not
14 surprised to hear that they weren't because I didn't
15 receive any information either.

16 Q. Was there any other reason for you not being
17 surprised?

18 A. Well, as I said, it's because I hadn't received
19 any information, any financial information. I wasn't
20 surprised that Government wasn't, either.

21 Q. But did you flag that up as a concern to
22 Mr Smith?

23 A. Not that I can recall. Again, it's a long time
24 ago, but I don't recall that that was necessarily something
25 that was flagged, but I did raise it to Mr Smith saying

1 that I didn't receive any information.

2 COMMISSIONER HICKINBOTTOM: Exactly--the point
3 you made earlier, Mr Geluk, was that you weren't receiving
4 any information.

5 THE WITNESS: Correct.

6 COMMISSIONER HICKINBOTTOM: Really.

7 THE WITNESS: Not really. Full stop.

8 COMMISSIONER HICKINBOTTOM: Full stop. So, you
9 weren't receiving any information, as you say, full stop.
10 And therefore, the fact that neither you nor, as it turns
11 out, the Government were receiving quarterly Financial
12 Statements. I mean, it couldn't have been a surprised.

13 THE WITNESS: Right.

14 COMMISSIONER HICKINBOTTOM: It seems to me it
15 would have been a surprise if they were receiving them,
16 given the background you've outlined?

17 THE WITNESS: Correct. Correct.

18 BY MR RAWAT:

19 Q. And you were never offered any other opportunity
20 to inspect BVI's financial records, were you?

21 A. I was not.

22 Q. The initial prompt to this project was an
23 introduction in 2013 between the then Premier, Dr Orlando
24 Smith and Bruce Bradley, and that seems to have been
25 facilitated by Mr Lester Hyman, who was, from the Auditor

1 General's Report, the Legal Counsel and lobbyist for the
2 BVI Government in the US.

3 From the time that you became a director, did you
4 have any dealings with Mr Hyman yourself?

5 A. I did not, no. The first time I met Mr Hyman as
6 a director was at the Directors' meeting.

7 Q. He was there?

8 A. Yes, he was there.

9 Q. And what role was he playing at the Directors'
10 meeting?

11 A. I cannot recall. I believe he was introduced as
12 a director.

13 Q. So, he was introduced to you as a director of BVI
14 Airways?

15 A. I believe so. Again, a while ago, but I believe
16 that's what he was introduced as.

17 Q. Were you aware that he was also someone who was
18 advising the BVI Government?

19 A. I was aware in the past that he was--he's
20 provided legal services to the BVI Government. I wasn't
21 aware in terms of his role in BVI Airways necessarily.
22 Only that I was aware that he was involved through an
23 e-mail from Mr Smith that--I'm trying remember the e-mail
24 per say, when he'd asked me to be Director, he did mention
25 Mr Hyman was involved.

1 Q. But did he clarify, from your recollection, did
2 the e-mail clarify what role Mr Hyman was going to play?

3 A. As far as I can recall, he didn't give one per
4 se. He said he wouldn't be surprised if Mr Hyman would be
5 a director.

6 Q. I see.

7 One of the pieces of information that the Cabinet
8 did have right at the beginning when it approved the
9 project was that Castleton, which is the company owned by
10 Bruce Bradley, would be investing \$6 million into the
11 enterprise. As it turned out, that was not incorporated
12 into the Framework Agreement. All the money appears to
13 have come from the BVI Government and none from other
14 investors.

15 As a director, were you ever told that there were
16 other people investing in BVI Airways?

17 A. I was not, no.

18 Q. Were you ever told that what may be the called
19 the "major players" such as Mr Bradley, Mr Weisman, and
20 Mr. Willoughby, that they had invested in the project?

21 A. I was never informed that they invested in the
22 project. No. The Framework Agreements made it--made it
23 appear that there would be investment in the project, but I
24 was never made aware that no investment was made.

25 Q. And you weren't--you say it--the Framework

1 Agreement gives the appearance that there would be
2 investment, but you were never told that there had been any
3 actual investment?

4 A. Correct.

5 The Framework Agreement, if I remember correctly,
6 used the term "reimbursement", which made it appear that
7 there would be funds.

8 Q. Were BDO ever asked to advise on the Framework
9 Agreement itself?

10 A. No, no, sir.

11 MR RAWAT: If you could give me a moment, please,
12 Commissioner. Thank you.

13 Those are my questions, Commissioner.

14 Can I conclude, first of all, by thanking
15 Mr Geluk for coming and also for the way that he's given
16 his evidenced today. Thank you.

17 COMMISSIONER HICKINBOTTOM: Yes. And can I echo
18 that. Thank you for your time, somewhat longer time than
19 we'd hoped, but thank you for your time and thank you for
20 the very clear way in which you have given your evidence,
21 very helpful. Much appreciated. Thank you.

22 (Witness steps down.)

23 MR RAWAT: Commissioner, can I ask you just to
24 rise briefly whilst we get the room ready for the next
25 witness.

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

3 (Recess.)

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Session 2

HON MARK H VANTERPOOL, COMMISSION WITNESS, RESUMED

COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.

MR RAWAT: Thank you, Commissioner.

Our next witness is The Honourable Mark Vanterpool. Mr Vanterpool has given evidence before, and there is no need for him to apply to take the oath again or affirm.

If I say that for the Transcript, Mr Vanterpool is represented this afternoon by Mr Deniston Fraser.

BY MR RAWAT:

Q. Mr Vanterpool, thank you very much for returning to give evidence to the Commission?

A. Thank you.

Q. You will have heard the Preamble that I give to all Witnesses so I won't repeat it for you, but can I just ask you, if you could just remember to keep your voice up as we go through. The microphone won't amplify, it will record, and so it's important that we do hear your answers.

A. Okay.

Q. The reason that the Commissioner has asked you to return to assist further is in relation to the cruise ship pier project in Wickhams Cay I. You were sent, and your lawyers were sent a bundle of documents which were essentially reports prepared by the Auditor General, and in

1 particular she prepared a report in relation to the Port
2 Development Project, and you will find that in--I think
3 it's probably the bundle--I think it's the other bundle
4 that's in front of you, that one, I think, yes, if you go
5 to page 619. We will jump between the two bundles but 619
6 is the First Report in relation to pier project.

7 Also provided to you--and this was on the 28th of
8 January and to your lawyers--was a copy of the Public
9 Accounts Committee's Final Report on the Cruise Ship Port
10 Development project which is a report that's dated the 13th
11 of June 2014, and I think you have a copy of that anyway.

12 A. I do.

13 Q. But there is also a copy in the bundle.

14 A. Yes.

15 Q. At the time that the Commission provided
16 the--that Report to your lawyers, it requested or asked
17 whether your lawyers could provide the appendices to that
18 PAC Report. No response was received, but we have now
19 obtained the appendices.

20 And if you look in the other lever-arch file,
21 what you will find is at the beginning is the report
22 itself, but after the tab that you'll see are the
23 appendices which, if I say for the record, or essentially,
24 I suppose, a note of the evidence that was taken by the
25 Public Accounts Committee.

1 A. Um-hmm.

2 MR RAWAT: Commissioner, if I could explain again
3 for the Transcript, just perhaps, the make-up of that
4 Public Accounts Committee.

5 COMMISSIONER HICKINBOTTOM: Yes.

6 BY MR RAWAT:

7 Q. So, as I said, it issues its Report on the 13th
8 of June 2014. It was a committee which was chaired by The
9 Honourable Ralph T O'Neal OBE, and the following Members of
10 the House of Assembly were Members of that Committee.

11 First of all, The Honourable J Alvin Christopher,
12 then The Honourable Andrew Fahie, The Honourable Alvera
13 Maduro-Caines, The Honourable Marlon Penn. Sonia Webster,
14 the Auditor General, was advisor to the Committee; and
15 Ms Phyllis Evans, I think, was the Clerk to the House of
16 Assembly was the Secretary to the Committee.

17 The Committee heard and received evidence from
18 the following:

19 The first was Vincent O'Neal, the former Managing
20 Director of the BVI Ports Authority.

21 The second was Claude Skelton-Cline, the Managing
22 Director of the BVI Ports Authority. And this is at page 1
23 of the actual report itself, and who's also described as a
24 former consultant.

25 The third was Gregory Adams, the former Acting

1 Chairman of the BVI Ports Authority.

2 Then Edwards de Castro, the Chairman of the BVI
3 Ports Authority.

4 Arlene Smith-Thompson, former Acting Permanent
5 Secretary.

6 Mrythlyn Hodge, Financial Controller of the BVI
7 Ports Authority.

8 Naomi Turnbull, a Board Member of the BVI Ports
9 Authority.

10 Clyde Chalwell, a Board Member of the BVI Ports
11 Authority.

12 Wendell Gaskin, Ministry of Finance and the BVI
13 Ports Authority representative, so that's the
14 representative on the BVI Ports Authority from the Ministry
15 of Finance.

16 Jeremiah Frett, also of the Ministry of Finance,
17 and the former representative of that Ministry on the BVI
18 Ports Authority.

19 Gene Creque, former Deputy Managing Director.

20 A. Creque.

21 Q. Creque, thank you, Mr Vanterpool.

22 Gene Creque, former Deputy Managing Director.

23 And Vareen Vanterpool, General Council of the BVI
24 Ports Authority.

25 Mr Vanterpool, you've told the Commissioner this,

1 but just to give these reports again some more context, can
2 we just go over some of your sort of Legislative History or
3 your time as a legislator. So I think you, on the last
4 occasion you explained that you had what you described as a
5 sabbatical between 2007 and 2011 when you were not a Member
6 of the Legislature?

7 A. Right.

8 Q. But you returned in 2011 to the House of Assembly
9 as a Representative of the Fourth District?

10 A. That's correct.

11 Q. And on returning to elected politics, you became
12 in that administration, the Minister of Communications and
13 Works?

14 A. That is correct.

15 Q. And did you remain in that role until the 2015
16 Election?

17 A. Correct.

18 Q. And when the next House of Assembly was
19 established after the 2015 Election, you continued, did you
20 not, both as the elected Member of the Fourth District and
21 as Minister for Communication and Works?

22 A. Yes, I was re-appointed as Minister after that
23 election in 2015.

24 Q. Right.

25 And obviously that took us to the 2019 Election?

1 A. Yes.

2 Q. And you now, as you explained, sit in Opposition?

3 A. That's correct.

4 Q. Now, forgive me, I just want to get it on the
5 record, but Wickhams Cay I, is it in Road Town?

6 A. It is.

7 Q. And which electoral district would it fall into?

8 A. Fourth District.

9 Q. Now, if I take you, please to--if you go to the
10 Auditor General's Report at 621, I appreciate that you will
11 be very familiar with the background of this project, but I
12 just want for the Transcript and to give context to my
13 question, just to set some background.

14 At 621, paragraph 4, the Auditor General sets out
15 as a summary of the sort of plans and the progress of plans
16 to develop the cruise ship pier at Wickhams Cay, and to
17 summarise the summary, she says that the cruise ship pier
18 was officially opened in November 1994. It was extended in
19 1999, but then it subsequently became clear that the pier
20 was too small to adequately service what were increasingly
21 larger cruise ships.

22 And so, if you go over to the next page, what
23 then happened--and this is sort of at the bottom actually
24 of page 621--what then happened is that the BVI Ports
25 Authority began to look at options. That led to a tender

1 process from a bidder, and the preferred bidder was Misener
2 Marine Construction, Incorporated, and a bid was put to
3 Cabinet in September 2008, which was rejected.

4 So, then, if we look over to the other page and
5 if I direct you to the heading "Disney proposal", there
6 were proposals from cruise lines including Disney, which
7 led to what's called a "Heads of Terms" being signed
8 between representatives from Disney, the then Premier, and
9 the Managing Director of the Authority, that's the BVI
10 Ports Authority. And what that agreement provided for--and
11 it was a non-binding agreement--was the provision of a
12 \$12 million loan, which would be used to construct a longer
13 pier and a welcome center, and then in return, the loan
14 would be repaid over 10 years at an interest rate of
15 6 percent. Disney were to have preferential berthing
16 privileges at one of the two berths for 15 years.

17 Now, that's the background. I think the
18 important point to you, Mr Vanterpool, is to say that
19 obviously that was going on at the time when you were not
20 in politics?

21 A. That is correct, yeah.

22 Q. If I take you--I'm afraid we're going to have to
23 have both reports open, but if I take you to the Public
24 Accounts Commission's Report, at page 2 of that Report.

25 A. Um-hmm.

1 Q. If you look at paragraph 7, they have--the Public
2 Accounts Committee essentially summarises the background in
3 similar terms to the Auditor General. The point they make
4 that I wanted to draw your attention to at paragraph 7 was
5 that the process was managed, negotiated and driven by the
6 Ports Authority Board, but what the Public Accounts
7 Committee Report goes on to point out is that, in November
8 2011, several things happened. The first one, of course,
9 was that there was an election and that brought a new
10 government, and that brought you in as Minister of
11 Communication and Works as you've confirmed.

12 The second was that the BVI Ports Authority came
13 under the control of your Ministry at that time; that's
14 right, isn't it?

15 A. That's correct.

16 Q. The third was that the non-binding agreement with
17 Disney was terminated, and the fourth was that there was
18 then a change in the scope of the development.

19 Now, I'm going to pause there because the
20 development or progress of this project is convoluted, and
21 I do appreciate that subsequent to the involvement of your
22 Ministry, the Ministry of Finance became involved, and then
23 subsequent to that, the project was taken forward in a
24 different way. What my questions are focused to at the
25 time when your Ministry was involved in the project.

1 A. Um-hmm.

2 Q. Specifically when you were involved as Minister
3 in the project. If we look at--back to the Auditor
4 General's Report, what she says--and this is again to give
5 us background, but--and this is at paragraph 20, at 623,
6 the Auditor General explains a consultant was engaged by
7 the Ministry of Communications and Works for the purpose of
8 liaising with the Port Authority and advising on port
9 related matters. Through a process that has not been
10 adequately explained, three proposals were received by the
11 Ministry. These came from CaribInvest, Trident Development
12 Enterprise LLC, and Tortola Port Partners. The proposals
13 from the latter two included the pier and upland
14 development whereas the former related only to the upland.

15 Now, the upland was an area of acreage around the
16 cruise pier which was at that time undeveloped.

17 Now, the Auditor General's Report, which I should
18 add for the record was the 31st of January 2013, so she's
19 reporting at a time before the Public Accounts Committee
20 has seen and received material. It makes the point at 21
21 that the submissions differed from the Disney proposals in
22 significant ways. The first was major development of the
23 upland. The second, a long-term commitment by the Port
24 Authority in the Government, 49 to 50 years. The third was
25 a long-term commitment of the associated cruise lines in

1 delivering passengers. The fourth was amendment to the
2 Port Authority's fees. And fifth, substantially excluded
3 possibility for local development--local involvement in
4 development.

5 Now, the decision was taken by the Ministry,
6 according to this Report, to accept the Tortola Port
7 Partners submission, and that was at that time a
8 \$57 million investment.

9 If we go over to 27, next page, I just draw your
10 attention to this: As the matter progressed, the proposed
11 investment increased from \$57 million to just over
12 \$70 million, and that's what the Auditor General's Report
13 recorded.

14 This process and the Public Accounts
15 Committee--this is at their paragraph 14, recorded it as
16 this that: The scope of the cruise ship port development
17 project changed from one that would extend the pier, add a
18 welcome center which was the Disney proposal, and
19 encouraged broad scale local involvement--

20 A. Sorry, which document under--

21 Q. Yeah, if I tell you, it's just to set the
22 background, but if you go to page 3.

23 A. Page 3, I'm with you. Of the public accounts?

24 Q. Yeah.

25 I'm afraid there is no way of doing it without

1 looking at both Reports?

2 A. That's okay. I just lost you for a minute. That
3 happens. Go ahead.

4 Q. I do want to keep you with me.

5 A. Yes.

6 Q. So, if you see that generally, after
7 January 2012, in that paragraph, what the PAC's report says
8 is the scope of the cruise ship port development project
9 changed from one that would extend the pier, add a welcome
10 center and encourage broad scale local involvement in the
11 development of the upland to one which included a full
12 development of the upland and allowed for leasing of this
13 valuable central property, 4.1 acres of undeveloped area
14 adjacent to the cruise pier, to foreign companies for up to
15 49 years.

16 A. Um-hmm.

17 Q. Now, having set out that background, and this is
18 now to narrow it to the areas that I would like to ask you
19 questions about--

20 A. Um-hmm.

21 Q. --the Public Accounts Committee makes four
22 criticisms of the Ministry of Communications and Works and
23 how the development was progressed:

24 The first was the manner in which the scope of
25 the project was changed, not giving you the background for

1 that.

2 The second was the use of a consultant. Now,
3 that consultant isn't named in the Auditor General's Report
4 but in the PAC Report. He's named is Claude Skelton-Cline.

5 A. Correct.

6 Q. The third was how proposals were obtained and
7 considered.

8 And the fourth was that there was in
9 effect--there was, in fact, no role for the Ports
10 Authority. To some extent, the issues overlap,
11 particularly when one looks at the matters as are raised in
12 the Public Accounts Committee Report, and that's the report
13 we may spend more time looking at because that's more
14 recent than the Auditor General.

15 Now, if you look at that Report and you look at
16 paragraph 15, which on the page that we were just looking
17 at, it says this: Former acting Permanent Secretary
18 Ms Arlene Smith-Thompson, advised the Committee on 29th of
19 January 2014 that if there was a conscious decision to
20 change the scope of the project, it was a verbal one by the
21 Minister of Communication and Works Honourable Mark
22 Vanterpool, and you are then described as the Minister.
23 Now, Arlene Smith-Thompson I'm taking was the then
24 Permanent Secretary in your Ministry; is that right?

25 A. Correct.

1 Q. And just to help you a little bit, if you go to
2 the appendices, which you will find just behind that tab,
3 can you see there's a tab in that bundle, just sticking
4 out?

5 A. Two.

6 Q. Behind that tab of the appendices, if you look at
7 page 91, the pagination should be in the middle, bottom
8 middle. So, if you find page 91, do you see that--the
9 bundle you're leaving through, you'll see some numbers
10 right at the bottom. Have you got page 91?

11 A. Yes, I'm with you.

12 Q. And you see then that there's--that this is the
13 note of the evidence given by Mrs Arlene Smith-Thompson to
14 the Committee, and at 66 it records--and I'll put the
15 question as well. The question's at 65: "The Auditor
16 General asked whether there was conscious decision taken to
17 terminate the previous project and extend the project".
18 And the response was: "The former acting PS responded that
19 the conscious decision would have been a verbal one by The
20 Honourable Minister, which he knew he would always remind
21 her that when he made a decision, he was not speaking
22 alone, that it would have been a collective decision taken
23 by his colleagues".

24 And the first question then is this: Was it you,
25 as Minister, who made the decision to change the scope of

1 this project?

2 A. No, sir. We, as a group and as a Cabinet, a
3 decision was made by the Cabinet to look at change in
4 scope. I wouldn't have made it on my own. I couldn't.
5 That was not the practice that we did.

6 Q. You say you couldn't have made the decision on
7 your own. Why was that?

8 A. Because the project was discussed by our group,
9 the Government Ministers, and the decision was made to
10 change the scope--you're speaking of the scope of the
11 project; right? Correct. That was based on certain
12 reasons, obviously, but I will get to that a little later.

13 Q. Now, when you came into Government in 2011, what
14 you had was a non-binding agreement with Disney for
15 \$12 million, a \$12 loan. You said that Cabinet made the
16 decision to change the scope. What did Cabinet have? What
17 was the evidential basis the Cabinet had to decide to go
18 from a \$12 million project to what ultimately became a
19 \$70 million project?

20 A. Yeah. Allow me to elaborate a bit because I need
21 to do that.

22 Q. Of course.

23 A. And not just keep answering your one on one
24 questions, if I may. Respectfully.

25 I became Minister for Communication and Works in

1 November 2011, as you stated earlier. The Government, as a
2 policy, decided that one of the very key things and one of
3 the things that was in the manifesto that we campaigned on
4 was to improve urgently cruise tourism in the Territory for
5 the economic viability of the Territory and its
6 development. I was requested to visit Miami, Florida, in
7 March of 2012 to meet with the, what you call FCCA, the
8 Florida Caribbean Cruise Association Operations Committee,
9 which was the vice presidents of operations of all the
10 major cruise lines that operated in the Caribbean.

11 At that meeting, I was a bit appalled by the
12 approach to me as Minister from the Committee that BVI
13 definitely didn't seem to be interested in cruise tourism,
14 and the reason for that is, for many years and many
15 Ministers visited them in the past, indicated their
16 interest in developing the cruise pier--the cruise pier and
17 the upland for many years and nothing had happened. In
18 fact, one of the major vice presidents who were there
19 literally made his very I will say insulting piece and left
20 and said there is no reason he should be in the room to
21 discuss any further with the BVI because they absolutely
22 had no interest in cruise tourism.

23 I made following--at the end of that meeting, I
24 made a full commitment as Minister responsible for ports to
25 that body that we are very interested in cruise tourism,

1 and we will return--I will return to the BVI and take the
2 report to a group, the Cabinet, in terms of what we may
3 need to do to attract more cruise tourism in the BVI.

4 From then on, we started to investigate what was
5 needed, what size ships would be coming, what kind of dock
6 would be needed. And based on that, and later on following
7 a report from an engineer, I think it's called Moffatt &
8 Nichol, I think it's mentioned in the Chief Auditor's
9 Report also--we were advised of the scope that we needed to
10 build for a cruise pier in the Virgin Islands to be able to
11 accommodate the new class of ships that were coming to the
12 Caribbean, and that is why the scope was changed.

13 We set about to look at how we will build the
14 pier, and that \$12 million that was suggested by Disney did
15 not include the upland development or the land side of it,
16 therefore, we went about and decided that we wanted to
17 develop the upland also.

18 So, the entire scope of the project changed, and
19 that is why the \$12 million proposal that we met before us
20 was no longer adequate and we decided to take a different
21 direction.

22 I hope that answers some of your questions that
23 you may have had.

24 Q. When you went to this meeting in Miami, did you
25 bring someone from the Ports Authority with you?

1 A. Yes.

2 Q. Who was that?

3 A. I can't recall now, but I think at that time we
4 had either one or two representatives with me, someone from
5 the Port Authority and someone from the Ministry. I can't
6 recall the exact.

7 Q. I read out at the beginning some names, so,
8 Vincent O'Neal, the former Managing Director of the BVI
9 IPA, the former Deputy Managing Director whose name you
10 corrected for me, Gregory Adams, the Acting Chairman,
11 Edwards de Castro, the Chairman--were any of those
12 involved--

13 A. I can't recall. If you can find the letter, the
14 Ministry--we can try to get that information for you.

15 Q. Were you aware, if we look at this, if we look
16 at--go to page 1 of the PAC Report. You have that?

17 A. Yes, I'm with you.

18 Q. If you look at what the Committee says about the
19 BVI Port Authority, they say it's a body corporate
20 established by the British Virgin Islands Port Authority
21 Act of 1990 with perpetual succession and common seal. As
22 an independent legal entity, the Authority may sue and be
23 sued and perform such other acts and functions as body
24 corporate perform. The BVI Port Authority is governed by a
25 Board whose Members are appointed in accordance with its

1 Constitution. The Authorities empowered to, among other
2 things, make rules with respect to staffing, terms of
3 employment, develop procedures for the administration of
4 authority and coordinate and execute any government project
5 in any specified port. The Authorities also empowered to
6 enter into contracts and borrow monies for the purpose of
7 advancing its objectives.

8 Now, a similar point is made in the Attorney
9 General's--Auditor General's Report.

10 Commissioner, I won't read it out, but for your
11 note it's at 624 in the bundle.

12 What I've just set out, do you accept that that
13 was the remit of the Ports Authority at that time that it
14 was an independent body corporate?

15 A. Where are you referring to the Port Authority,
16 the Act for the Port Authority Act of 1990, if I may,
17 Commissioner.

18 COMMISSIONER HICKINBOTTOM: Yes, we haven't got
19 it.

20 THE WITNESS: I think you just said that the
21 Minister you saw the authority of the port, so I wanted to
22 raise some points from it, very clear points. I can read
23 it if you like, but if you--

24 BY MR RAWAT:

25 Q. Well, pause there for two seconds. What I've

1 just read out to you was what the Committee said that the
2 Port Authority was as a legal entity.

3 The second question that is raised is that the
4 Commission hasn't received anything from your lawyers in
5 terms of additional documents that you wanted to put before
6 the Commission. Is there any reason that you didn't
7 consider it necessary to send those additional documents to
8 the Commission?

9 A. With all due respect, sir, I apologize, but I
10 really thought key facts are in this, in reference from the
11 Auditor General and the Public Accounts Committee would
12 refer to the Act that governed the port, and I wanted to
13 refer to some important points from that Act, very crucial
14 in terms of responding to this point about usurpation of
15 the role of the authority. I wanted to make sure, make it
16 clear what the Minister's responsibility was in respect to
17 that body.

18 COMMISSIONER HICKINBOTTOM: Certainly we need to
19 know this, but the problem is we haven't got the Act.

20 THE WITNESS: It's right here. I can give you a
21 copy right away, but it's very important in this question
22 to answer from this Act.

23 COMMISSIONER HICKINBOTTOM: Well, how is the best
24 way to deal with this, Mr Rawat?

25 MR RAWAT: If we can arrange quickly to get a

1 couple of copies of the Act.

2 COMMISSIONER HICKINBOTTOM: I think that will
3 just speed things up and make us quicker in understanding--

4 THE WITNESS: Yes, I would be happy to give you a
5 copy of this.

6 I'm sorry, I didn't realize you didn't have a
7 copy before.

8 BY MR RAWAT:

9 Q. If I make clear, the purpose of my questions,
10 Mr Vanterpool, are to allow you an opportunity to respond.

11 A. This is a copy--sorry, sorry.

12 COMMISSIONER HICKINBOTTOM: Let Ms Vanterpool do
13 that first.

14 THE WITNESS: Can you copy just up to page 25,
15 but other than that, you can copy the entire act, if you
16 wish to. Up to page 25.

17 COMMISSIONER HICKINBOTTOM: How many copies do we
18 need, Mr Rawat? At least one for you and one for me, but
19 that's probably it, isn't it?

20 MR RAWAT: It is, yes.

21 COMMISSIONER HICKINBOTTOM: Two copies, please.
22 Thank you very much.

23 BY MR RAWAT:

24 Q. Perhaps, shall we try and carry on and then see
25 if--I can come back to that point, if I may.

1 A. Sure. Depends on what your question is.

2 Q. Of course. And whether or not you have any other
3 documents that you need to refer to?

4 A. I don't think so, but--

5 Q. Can I just make clear, one of the questions I
6 will ask you is what response you made, and I'm not going
7 to ask it now, I'm going to ask it later once we've gone
8 through this, but what response you made at the time to the
9 criticisms that were made of you by the Public Accounts
10 Committee, because these are criticisms coming from the
11 Commission because the Commission is coming from a
12 Committee of the House of Assembly, but in the context of
13 the evidence that the Commissioner has heard, it's
14 important for you to have evidence from you as to the
15 context of those criticisms.

16 A. I appreciate that.

17 COMMISSIONER HICKINBOTTOM: And assume the
18 Committee will have had the Act in front of it because it
19 relates to the governance of the Board.

20 THE WITNESS: It must have. So I hope it did,
21 but I can't attest to that.

22 COMMISSIONER HICKINBOTTOM: No.

23 BY MR RAWAT:

24 Q. Was there any reason you didn't give evidence
25 before the Committee?

1 A. I never understood that, and even before the
2 Auditor General--you know, being accused of things
3 without--but that's the way it was done. I never gave
4 evidence.

5 Q. You didn't give evidence, but did you ask to give
6 evidence?

7 A. No, not at all.

8 Q. You didn't actually ask the Committee "can I come
9 before you and explain things"?

10 A. No, I did not.

11 Q. And in relation to the Auditor General, did you
12 ask the Auditor General for an opportunity to respond?

13 A. No, I did not, and I don't think it's normal for
14 that to happen, but I would have certainly been comfortable
15 in doing so.

16 Q. Well, the process that the Auditor General
17 explained she goes through is that she will do a draft
18 report, and she will then send it to the relevant Ministry,
19 and it's for them to then share it with anybody else who
20 may have an interest and the need to respond.

21 So, I take it that neither the--I mean, this was
22 in 2000--January 2013. You were still Minister for
23 Communication and Works then, weren't you?

24 A. That is correct.

25 Q. So, although the Auditor General didn't confirm

1 this, it would have been quite possible if her draft report
2 had gone to the Ministry of Finance for them to serve--to
3 share it with?

4 A. More than likely, but I don't recall that
5 occasion, but more than likely the Auditor General would
6 have shared it with the Ministry.

7 Q. Yes?

8 A. For their response.

9 Q. So either the Ministry of Finance or the Ministry
10 of Communication and Works, which you led at the time?

11 A. Yeah, more than likely. I don't know that as a
12 fact but I'm saying more than likely that would have been
13 the case.

14 Q. But it seems likely, doesn't it, that given that
15 you were still in Government and still in that Ministry,
16 there might have been an opportunity for you to respond to
17 the Auditor General's Report before it became final?

18 A. I'm sure, sir.

19 COMMISSIONER HICKINBOTTOM: Because the
20 restrictions on her examination are set out in paragraph 3,
21 and that is the files from the Ministry of Finance were not
22 complete, and the consultant was unavailable for interview.
23 Those are the restrictions. He doesn't refer to
24 restriction as to you as Minister.

25 THE WITNESS: Yes. I just consulted with, and I

1 would have loved to have been, but I never really offered
2 my (unclear) I never offered my input.

3 BY MR RAWAT:

4 Q. That first point about the change in the scope,
5 it's not necessarily a conclusion by the Public Accounts
6 Committee that's necessarily one of law. It seems to be
7 one of fact based on the evidence that they reached, and
8 their conclusion is at page 4 of their Report, if you look
9 at it, paragraph 21.

10 Do you have that, Mr Vanterpool?

11 A. I do have that.

12 Q. I'm going to read it out exactly as it's written.

13 A. Um-hmm.

14 Q. Under the heading "conclusion", is as follows:
15 "The Committee, in considering the information before it,
16 concluded that the project was commandeered by the Minister
17 for Communication and works and the scope changed between
18 November 2011 and January 2012 without consultation with
19 the BVI Ports Authority Board and without a prior Cabinet
20 Decision".

21 So, there are three points that are made in that
22 conclusion. The first is that it was done--and this is on
23 the evidence that they received, that it was done without
24 consultation with the BVI Port Authority's Board. Was that
25 a conclusion that you accepted at the time?

1 A. No, I--you know, the scope of the Project was
2 discussed at length with the Port's Managing Director with
3 the--there is a date when we first went to the--went to the
4 Port Authority Board and explained what we were about, and
5 I don't remember, but I did consider it this time, but the
6 Port Authority Board was informed with what we were doing,
7 is the point.

8 COMMISSIONER HICKINBOTTOM: I'm sorry, that
9 doesn't necessarily answer the question. The question
10 concerned consultation with the Port Authority Board. You
11 say that they were informed as to what you were doing.

12 THE WITNESS: The Port Authority Board was fully
13 aware that it was the policy and intention of the new
14 government of which I was Minister responsible for ports to
15 build a bigger pier to accommodate bigger ships. And that
16 was very clear. It wasn't only at the Port Authority
17 level. It was made public of what our intentions were from
18 the very beginning, to build a bigger pier to hold--to
19 handle bigger cruise ships in the harbour.

20 COMMISSIONER HICKINBOTTOM: I understand that,
21 but the point here is that it was done without consultation
22 with the Board.

23 THE WITNESS: I don't know that I can agree to
24 that. I don't recall--and I don't have all of the
25 information before me, but the Board was aware and

1 were--consult, I'm not sure what that word would mean here.

2 COMMISSIONER HICKINBOTTOM: There is a difference
3 between consulting with the Board and then coming to a
4 decision or--and at least as I understand your evidence--

5 THE WITNESS: Yes.

6 COMMISSIONER HICKINBOTTOM: --so far, or a
7 decision being made, that the Port Authority Board being
8 told of that decision.

9 THE WITNESS: No. The Board, from what I recall,
10 was consulted, but I would say that, as Minister, I gave
11 very clear direction of what we were looking to do.

12 BY MR RAWAT:

13 Q. Let's pause there because we've now got copies of
14 the Act, so you wanted to direct the Commissioner's
15 attention to particular parts of the Ports Act of 1990.
16 So, perhaps you'd like to do that at this stage, Mr
17 Vanterpool.

18 A. Yes, I appreciate that because they are--I think
19 he referred to--this came up when you referred to--

20 Q. Yes, I will take you back to it.

21 A. The point if you remind us.

22 Q. So, I won't repeat it all out.

23 A. Yes.

24 Q. But what you have in the report of the PAC is
25 what they say the Port Authority is, which it comes down to

1 it's an independent legal entity. If you want to see for
2 yourself what the Auditor General said, and this is at 64
3 in her report, she said the BVI Port Authority is a body
4 corporate charged with providing, operating, and
5 maintaining port and harbour facilities and services of the
6 BVI. The entity is specifically authorized to develop and
7 manage all lands that have been leased or vested in the
8 authority, and she cites the Port Authority Act Section 4.
9 It is in addition powered by Section 5(d) of the Act,
10 coordinate and execute any government project in any
11 specified port. She cites 5(d) of the Act.

12 A. Okay.

13 Q. So, this is not the Commission. This is an
14 Auditor General, and a committee of your House of Assembly
15 that you sat in and you still sit in reaching these
16 conclusions about the role of the Ports Authority?

17 A. Yes.

18 Q. So, that's what I've put to you. You have the
19 Act, if you'd like to take the Commissioner to the relevant
20 parts of it that you want to draw his attention do, please
21 do so now?

22 A. I appreciate that. And I was happy to see the
23 Auditor General did refer to Section 4. Section 4(a), if I
24 may, that's on page 11 of the Act. 4(a). And I may read
25 it, if I may, with your permission.

1 COMMISSIONER HICKINBOTTOM: Yes.

2 THE WITNESS: "The functions of Authority shall
3 be (a) to provide, operate, and maintain all port and
4 harbour services and facilities in the Territory as the
5 Minister considers necessary". "As the Minister considers
6 necessary".

7 Let me go to 4(f). In fact, let's begin from
8 (e): "The Port Authority is to develop and manage all
9 lands including", and you just referred to that, "all lands
10 and including lands on or under the seabed leased or vested
11 in the Authority".

12 (f): "To perform such acts as the Minister
13 determines". "As the Minister determines". "Report to the
14 Minister at such times as he requires respecting the
15 matters to which this Act relates".

16 I continue further, if I may.

17 BY MR RAWAT:

18 Q. Please.

19 A. Section 7, which is Part 3, page 15, while
20 emphasizing the role of the Minister in the Port
21 Authority--on the Port Authority's Act, 7(3): "The
22 Authority shall, at least two months before the
23 commencements of each financial year, submit to the
24 Minister in respect of such year and in such form as he
25 approves (a) estimates of capital expenditure for his

1 approval". No capital development in the Virgin Islands
2 can be done under the Port Authority without the approval
3 of the Minister.

4 COMMISSIONER HICKINBOTTOM: Yes, that's right,
5 but the estimates are provided by the Authority.

6 THE WITNESS: That is correct.

7 COMMISSIONER HICKINBOTTOM: Yes.

8 THE WITNESS: That is correct.

9 COMMISSIONER HICKINBOTTOM: Yes, thank you.

10 THE WITNESS: I continue with, Commissioner,
11 Section 7(5): "The accounts of the Authority shall be
12 audited at least once every financial year by an auditor
13 appointed by the Authority with the approval of the
14 Minister".

15 Continue, Commissioner, under Section 19(1),
16 page 22. 19(1). This is on the side the notes "powers of
17 the Minister in relation to the Authority".

18 If I may, 19(1): "The Minister may give the
19 Authority general directions in writing as to the
20 performance of its powers under this Act on matters which
21 appear to him to affect the public interest, and Authority
22 shall give effect to such directions".

23 I wish to read that one more time to make sure
24 I'm clear on it.

25 "The Minister may give the Authority general

1 directions in writing as to the performance of its powers
2 under this Act on matters which appears to him", the
3 Minister, "to affect the public interest, and Authority
4 shall give effect to such directions".

5 (2): "The Minister may from time to time direct
6 the Authority to furnish him in such form as he may require
7 return the accounts and other information in respect of the
8 property to its property and business, and Authority shall
9 carry out such direction".

10 (3): "The Minister may from time to time order
11 all or any of the activities of the Authority to be
12 investigated and reported upon by such person or persons as
13 he may specify and upon such order being made, the
14 Authority shall afford all such facilities and furnish all
15 such information as may be necessary to carry out the
16 order".

17 That is the Minister's powers under the Port
18 Authority's Act.

19 There is some other governmental provisions where
20 the Government at the time directs the Port Authority.

21 20(1), if I may refer: "The Authority shall,
22 with the approval in writing of the Government and
23 Council"--

24 COMMISSIONER HICKINBOTTOM: I'm sorry, this is
25 20?

1 THE WITNESS: 20, part 4 page 22. Same page we
2 were on a minute ago.

3 COMMISSIONER HICKINBOTTOM: Subsection 4?

4 THE WITNESS: 20(1).

5 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

6 THE WITNESS: "The Authority shall, with the
7 approval in writing of a Government Council, now called the
8 Cabinet, appoint a Managing Director and a Deputy Managing
9 Director".

10 So the Authority's a legal entity, yes, but under
11 the law with certain provisions that are under the
12 Authority of the Minister, in some cases and under
13 Authority of the Cabinet.

14 COMMISSIONER HICKINBOTTOM: To be absolutely
15 clear as to what your position is on this before Mr Rawat
16 asks you any further questions.

17 So, are you saying that because of the terms of
18 the Act, the Ports Authority is not an independent
19 authority? I think you are saying that because you're
20 saying that it's subject to the Minister telling them what
21 to do?

22 THE WITNESS: Commissioner, I'm not making such
23 assumptions. I'm just reading the laws and the Act to show
24 that while a statutory body is established under the Act of
25 1990, the Act does stipulate what are the powers of the

1 Minister and the Cabinet with respect to the BVI Ports
2 Authority. That's all I'm trying to point out.

3 COMMISSIONER HICKINBOTTOM: So, it's not an
4 independent authority?

5 THE WITNESS: That is not for me to--to--to
6 assume. I'm just going by the laws of the Act.

7 COMMISSIONER HICKINBOTTOM: Okay.

8 THE WITNESS: If I may respectfully,
9 Commissioner.

10 I can continue on, but I will leave it there
11 because there are some--also some provisions in the Act
12 where the Minister of Finance has certain responsibilities
13 to deal with--

14 COMMISSIONER HICKINBOTTOM: In simple terms, he
15 holds the money.

16 THE WITNESS: Yes. Which is precisely.

17 COMMISSIONER HICKINBOTTOM: So, he's quite
18 important in terms of finance.

19 THE WITNESS: Precisely my point.

20 COMMISSIONER HICKINBOTTOM: Yes.

21 THE WITNESS: In terms of the Port Authority has
22 to get direction, especially approval of the capital
23 budget.

24 COMMISSIONER HICKINBOTTOM: I mean, it has to get
25 its money from the Minister of Finance, as do all the

1 Ministries.

2 THE WITNESS: Yes. Is it independent? Is the
3 question you asked me, I don't know, but all I'm saying is
4 that is what the Act gives the power to the Minister for
5 and to the Minister of Finance and to the Cabinet.

6 COMMISSIONER HICKINBOTTOM: Thank you.

7 THE WITNESS: It is important in the context of
8 the project that we speak about. That's all I wanted to
9 point, Commissioner.

10 COMMISSIONER HICKINBOTTOM: Thank you very much.

11 THE WITNESS: I appreciate your thoroughness.

12 BY MR RAWAT:

13 Q. You've referred now, Commissioner, to the Act,
14 and I've taken you to what the Public Accounts Committee in
15 June 2014 understood the status of the Ports Authority to
16 be. I've taken you to what the Auditor General in
17 January 2013 understood the status of the Ports Authority
18 to be.

19 I think in answer to the Commissioner, you're
20 not--you don't feel able to say, one way or the other, what
21 you understand the status of the Ports Authority to be?

22 A. All I'm saying is I fully understood what my
23 powers were as Minister, and what I was responsible for to
24 the Cabinet, and what I was responsible for to the Minister
25 of Finance, so that's what I'm saying.

1 But, in effect, what my position has been and
2 what it continues to be is that we were elected to carry
3 out a policy for ports development. We decided what policy
4 we wanted to carry out, and as Minister I was entrusted by
5 the Premier to have carry out that policy, and that policy
6 was to urgently build a cruise pier and upland development.
7 And as Minister, I directed that. In conjunction with the
8 Port Authority, unlike what I have been reading there, but
9 that was my responsibility ultimately, to carry out the
10 directive for the policy of the Government under the Act
11 that I was responsible for under the BVI Ports Authority as
12 Minister. I read the powers of the Minister in there very
13 clearly.

14 Q. Let's take it in stages because you've helpfully
15 obviously read the Public Accounts Committee's Report.
16 You've confirmed that you didn't appear in front of it nor
17 did you seek to appear in front of it.

18 At the beginning, I read out the list of people
19 who gave evidence to that Committee, which included Members
20 of the Board and former and current Chairs and Managing
21 Directors of the Board. Let's take you back to
22 paragraph 21, page 4, because we were going through that
23 before. We had to look at the Act itself, but I just want
24 to give you an opportunity to respond.

25 A. Sure.

1 Q. I think we canvassed one of them, and there's two
2 more for us to go through.

3 The first one was without consultation with the
4 BVI Ports Authority Board. Now, the criticism, and we will
5 try and put it fairly and squarely, it's one that we may
6 need to develop as we go through this Report, but it is
7 this: Not that you were sort of doing anything in
8 accordance with your powers under the Act as the designated
9 Minister; it is that you link it to this work, the first
10 allegation is that you commandeered the project, and it
11 wasn't that the Ministry of Communication and Works
12 commandeered the project, the criticism--

13 A. Absolutely not. Absolutely untrue.

14 Q. May I finish?

15 A. I just want to make that clear. Yeah.

16 Q. And then I will give you an opportunity to
17 answer. It's very important.

18 A. Thank you. Um-hmm.

19 Q. The criticisms of the Public Accounts Committee
20 are three: You, Mark Vanterpool, commandeered the project.
21 So, not your Ministry, you yourself as Minister, because
22 that's what they referred to.

23 Secondly, you did it without any consultation
24 with the statutory authority responsible for that pier.

25 And third, that you did it without a prior

1 Cabinet Decision.

2 So, take the first two. You answered the second
3 one but link it to the first: Did you commandeer the
4 project?

5 A. No, I did not.

6 Q. Well, how--given that the Committee took evidence
7 from people on the Port Authority, how could it have come
8 to what you now say is such a wrong conclusion about your
9 conduct?

10 A. I recommended to the Government, as Minister,
11 that there is a project that it needed to pursue that
12 needed a change in scope that was there before, and that
13 that recommendation was taken and pursued. However they
14 may want to term it, commandeering, want to term it
15 whatever they wish, but I took that as my responsibility as
16 Minister to execute the policy of the Government at the
17 time under the permission given to me of the Act, the BVI
18 Ports Authority Act of 1990, and that is what I did.

19 What concerns me--they say what they think and I
20 can't contradict them, I won't contradict them in terms of
21 their views, but I'm telling you what was my view and what
22 was my position and what was my intention to execute that
23 project to ensure it was executed.

24 Q. If one steps back from these criticisms, what it
25 gives the impression of is perhaps of an overenergetic

1 Minister who pushes the Ports Authority to one side and
2 say, I'm going to deal with it, and I'm going to get this
3 project through.

4 Now, you've taken the Commissioner to various
5 provisions or the Port Authority Act--

6 A. You need to let me respond to some of what you
7 say because you called me an overenergetic minister.

8 (Overlapping speakers.)

9 A. --has to decide the authority. Let me respond to
10 that.

11 Q. Mr Vanterpool, I absolutely will give you an
12 opportunity to respond to everything, trust me.

13 A. But let me respond to that.

14 Q. No, let me put it into this context, please.

15 A. Okay.

16 Q. And the context is this: This is not--what I am
17 putting to you is the impression that the conclusion
18 gives--

19 A. Yes.

20 Q. --and so I've put it to you, as an impression,
21 and now I will let you answer that impression.

22 A. Yes.

23 So, I'm saying I'm happy to be called an
24 overenergetic Minister to achieve the goals and objectives
25 of the Government in the interest of the public but the

1 impression that was given that I pushed aside a Board is
2 totally incorrect.

3 COMMISSIONER HICKINBOTTOM: I've certainly got
4 that point from your evidence. My difficulty is that the
5 Public Accounts Committee heard evidence not I understand
6 from you, but they heard evidence from 10 people from the
7 BVI Ports Authority. 10, because they're listed on page 1,
8 and as a result of hearing evidence from the Ports
9 Authority, that they concluded that paragraph 2, the Board
10 was not participatory in vital decisions concerning the
11 project; and then at paragraph 21, that they were not
12 consulted, on the basis of their evidence that the project
13 was commandeered.

14 So we've used the term "impression", but the
15 conclusions of the Public Accounts Committee were based on
16 a lot of Port Authority witnesses. I just don't understand
17 how they could have come to that view other than on the
18 evidence that the Port Authority witnesses? And I haven't
19 because it only came in yesterday looked, certainly in any
20 detail, at the evidence before the PAC, which is in the
21 appendices. I just don't understand it.

22 THE WITNESS: Commissioner, I appreciate that,
23 but I would respond by saying that evidence was given. I
24 would not refute the evidence. I just said what my
25 position was because persons may have had the opinions and

1 they may have given that evidence. I'm not going to sit
2 here and suggest that it is wrong. But I'm telling you
3 what and how I went about to get this project moving, and
4 I'm satisfied in my mind that that's what we were doing.

5 The evidence is there, the Public Accounts
6 Committee Report is there, it has to be in the record,
7 fine, so is the Auditor General's, which is her proper job
8 to do, but I'm letting you know as Minister how--I've
9 giving you witness from me, what your conclusions are,
10 hopefully they will be understood, but that's my opinions.

11 COMMISSIONER HICKINBOTTOM: Thank you.

12 Thank you, Mr Rawat.

13 BY MR RAWAT:

14 Q. To you, please, Mr Vanterpool, the third aspect
15 of the conclusions of the Public Accounts Committee at
16 paragraph 21 and that is that you took this step, and the
17 step they're criticising is a decision to change the scope
18 of the project, to go from 12 million up to 70. But what
19 they say that it was done without a prior Cabinet Decision.
20 Is that a criticism that you accept?

21 A. No, I don't because nothing was done, and no
22 decision was made until the Cabinet approved the scope of
23 the project, so I don't know how that could have been a
24 conclusion. No decision was made nothing was executed
25 until the Cabinet approved it. There was no way out of--as

1 a Minister approve a project moving from 12 million to
2 70 million on my own. That would not have ever happened,
3 and therefore that part I would say I don't know where that
4 evidence came from, but that's not correct.

5 COMMISSIONER HICKINBOTTOM: For the Cabinet to
6 approve that change, they would have had to have had a
7 paper, the paper would have been prepared by your Permanent
8 Secretary, wouldn't it?

9 THE WITNESS: Mr Commissioner, may I say, one
10 would explore the project as how to how it should go
11 forward, once you have come to the conclusion as to where
12 and how to go forward, a Cabinet paper would be prepared
13 and submitted. That was done at the right time when the
14 Cabinet paper was necessary to go forward. Until that
15 time, the project was not authorized to go forward, so I'm
16 not agreeing that it could be a decision, it was not a
17 decision, until Cabinet approved the decision to go
18 forward.

19 But exploration had to be made before facts have
20 been prepared and presented to the Cabinet, and it was done
21 in due course for authorization.

22 COMMISSIONER HICKINBOTTOM: But to go at my
23 question, the paper to go to Cabinet would have been
24 prepared by your Permanent Secretary?

25 THE WITNESS: Yes.

1 COMMISSIONER HICKINBOTTOM: The Public Accounts
2 Committee heard evidence from, I think, her, anyway your
3 Acting Permanent Secretary, who said she never prepared a
4 Cabinet paper.

5 THE WITNESS: Yeah, but she may not have prepared
6 a Cabinet paper because the decision was not made as yet,
7 if that was the case.

8 No decision was made on this project without
9 Cabinet's decision, and we can check the evidence for that.
10 I don't have it, but that was the case.

11 BY MR RAWAT:

12 Q. To pick up on that, the Commissioner's question,
13 by the time that Ms Arlene Smith-Thompson is giving
14 evidence to the Public Accounts Committee, and she's
15 the--she was your Acting Permanent Secretary, she's giving
16 evidence in 2014. Now, by then, the matter had moved on.
17 Because by then, by 2012, it's actually the Ministry of
18 Finance that take over. So, we're looking at the conduct
19 of yourself as the Minister and your Ministry of
20 Communication and Works, so between 2011 and 2012. So,
21 your Acting Permanent Secretary comes in 2014, and in 2014
22 she says I didn't see a paper--I didn't put a Cabinet paper
23 together. That's the point of the Commissioner's question?

24 A. I respectfully put to you, Commissioner, that
25 between that time there would have been a Cabinet paper to

1 approve this project, and the evidence was checked, but I
2 put it to you there is no way that we could have reached
3 that point without Cabinet Decision. That was impossible.

4 Q. Could I just ask you to just to respond to one
5 particular aspect of Ms Arlene Smith-Thompson's evidence.
6 I'm taking you to the appendices, so it's the documents
7 that are behind the tab. Her evidence begins at page 81,
8 again using the numbering in the middle bottom of the page,
9 and that's the first page I hope. You should see written
10 in there's a section seen in attendance, and this is
11 Ms Arlene Smith-Thompson's name appears.

12 A. Um-hmm.

13 Q. Could you go to page 86, please.

14 Now, some of the questioning that was made by
15 Honourable Members of Ms Arlene Smith-Thompson focused on
16 what they described as the "consultant", Mr Skelton-Cline.
17 I am going to come back to that topic, if I may. I just
18 want to ask you about an answer that the Acting Permanent
19 Secretary gave, and it's if you look at 34, the Member for
20 the First District, I think that was and still is The
21 Honourable Andrew Fahie, isn't it? Is that right?

22 A. Yes.

23 Q. Member of the First District asked whether the
24 terms and conditions of the amount of the contract, whether
25 it was done by negotiation with the consultant. That

1 question doesn't matter at the moment, but what the former
2 Acting Secretary then said, did she say she was not privy
3 to that part in terms of how it came about, how it was
4 decided upon. She indicated she tried to ask questions
5 without process as well as with some other processes that
6 were somewhat similar in nature. And this is the bit I
7 want to draw your attention in particular to,
8 Mr Vanterpool.

9 It continues as follows: "She noted that she was
10 reminded by The Honourable Minister who drew her attention
11 to the Constitutional Order of 2007, Section 56, Clause 5,
12 it speaks of the Minister being assigned responsibility for
13 the administration of any government department, and the
14 Minister shall exercise direction and control over that
15 Department, including implementation of government policy
16 as it relates to that Department. Subject to such
17 direction and control, the Department shall, unless
18 otherwise agreed between the Governor and the Premier,
19 under the supervision of the Permanent Secretary who is a
20 public officer. She stated that sitting in the PS's seat,
21 that Clause in the Constitution presented an area of
22 conflict because it was the Minister asserting his control
23 based on powers he thought that was vested in the
24 Constitution, but the latter part of the Clause was still
25 speaking about the Permanent Secretary. She further

1 indicated there were other codes, acts and regulations that
2 pointed to the Accounting Officers carrying out their
3 duties and responsibilities by law. That was source of
4 conflict, but she did understand the urgency with which The
5 Honourable Minister wanted to move.

6 "She stated as acting PS, she did not want to
7 stand in his way because she also tried to support him as
8 best as she could".

9 Now, it's a Section 56 point that I wanted to ask
10 you about. You should have the--on the far end of the desk
11 you will see that there is--you have at hand already your
12 copy of the Constitution, so that's helpful. Let's turn up
13 Section 56 and look at what it says.

14 Commissioner, you find it at 13 in the bundle.

15 COMMISSIONER HICKINBOTTOM: Thank you.

16 BY MR RAWAT:

17 Q. And this is going back to the point of the
18 criticism that was made and the Commissioner has your
19 answer on it, but the criticism that I have taken to you
20 about effectively that you usurped the role of the BVI
21 Ports Authority, because what 56 effectively does in (1) is
22 that it, through the Governor, assigns to a Minister
23 responsibility for the conduct of any business of the
24 Government, including responsibility for the administration
25 of any Department of Government.

1 Do you have that?

2 A. Give me one second. 56. Okay, Commissioner, I'm
3 with you. Sorry.

4 Q. So, under Section 56, there is an assignment of
5 responsibility of the Ministers, effectively that's the
6 Clause in the Constitution that means a Minister is
7 responsible for a Department.

8 A. Yes.

9 Q. And in 5, which is what the acting PS was
10 referring to says: "Where a Minister has been assigned
11 responsibility under this Section for the administration of
12 any Department of Government, the Minister shall, subject
13 to this Constitution and any other law, exercise direction
14 and control over that Department including directing the
15 implementation of government policy as it relates to that
16 Department and subject to such direction and control, the
17 Department shall, unless otherwise agreed between the
18 Governor and the Premier, be under the supervision of a
19 Permanent Secretary who shall be a public officer, but two
20 or more departments of government may be placed under the
21 supervision of a Permanent Secretary".

22 So, the acting PS's evidence seems to be twofold:
23 That there is a tension in Section 56 between the role
24 allocated to a Minister and the role allocated to a
25 Permanent Secretary. You have been a Minister more than

1 once. You have run government departments. Do you see
2 Section 56 as presenting that tension between the role of
3 Minister and the role of Permanent Secretary?

4 A. No, I don't, I respectfully submit, because first
5 of all, let me say that I think all my Permanent
6 Secretaries I have worked with, including the Permanent
7 Secretary at discussion, I think, supported myself as
8 Minister in my role and we may have had differences, but I
9 was well supported.

10 And from what I can see here in the Constitution,
11 it is very clear that the Minister's responsible for
12 directing the Ministry. Very clear. But the support of
13 the Permanent Secretary, the Minister directs the Ministry,
14 as it says here, exercise direction and control as a
15 Minister over the Department including directing, the
16 implementation of government policy as it relates to the
17 Department and subject to such direction and control, the
18 Department shall, unless otherwise agreed between the
19 Government and the Premier, be under the supervision of a
20 Permanent Secretary who shall be a public officer, but two
21 or more departments of government may be placed under the
22 supervision of one Permanent Secretary.

23 So, my understanding of that is very clear and
24 very simple: The Minister directs the policy of the
25 Ministry, and the Permanent Secretary would work with the

1 Minister to execute this policy. But further in it is the
2 understanding under our--I believe our finance act is that
3 the Permanent Secretary is the Accounting Officer of the
4 Ministry.

5 But I understand it clearly here that the
6 Minister directs the Ministry.

7 Q. I suppose it directs and controls, but it's two
8 things, isn't it: The first going back to what Ms Arlene
9 Smith-Thompson said, was it seemed to be that her evidence
10 was, in effect, that you, as Minister, were relying on
11 effectively Clause 5 to say, "well, I'm the person in
12 charge, and what I say goes". And that, therefore, you
13 could, because you were the Minister, rely on Section 56 to
14 effectively take over the functions and roles of the BVI
15 Port Authority. Would be that a legitimate point to make?

16 A. I think I clearly pointed out earlier what I saw
17 my role as Minister with respect to the BVI Ports
18 Authority. And even--and within that context, yes, the BVI
19 Ports Authority had a certain responsibility and line of
20 direction to the Minister, and the Permanent Secretary was
21 expected to carry out the Minister's direction in that
22 respect.

23 Q. But the second point is a wider one, is, in your
24 view, does Section 56 mean that it is the Minister that
25 bears ultimate responsibility for the way that a particular

1 Ministry functions?

2 A. Precisely so.

3 Q. So, to put it in kind of, I suppose, more simpler
4 terms, the buck stops with the Minister?

5 A. Precisely so.

6 Q. But you've made clear that you disagree with the
7 central criticism of that part of the report which is that
8 you usurped the function of the BVI Ports Authority.

9 You've made that clear to the Commissioner. Is there any
10 particular provision in the Ports Authority Act which you
11 rely on to say that you were entitled to do that, that you
12 were entitled to take on the job of the Ports Authority?

13 A. I think you were saying that. I didn't say that.
14 I did not take on the job of the Ports Authority. I made
15 it clear that as Minister I was responsible for the
16 direction of the Port Authority, especially when it comes
17 to capital development as was pointed out in the Act but I
18 did not and did not wish to take on the role of the Port
19 Authority.

20 Q. And so--

21 A. If I may, and I go back to the Act, in Section 4,
22 as I pointed out early--earlier, made it very clear.

23 Section 4(a): "Authority shall be--the function of the
24 Authority shall be to provide, operate, and maintain all
25 ports and harbour services and that serves the Territory as

1 the Minister considers necessary".

2 Q. So, in this--

3 A. I just want to point that out. My role was not
4 to run the Authority. My role was to direct when I saw it
5 necessary, especially when it came to capital developments
6 as is clear in the Act, that I have to approve the budget
7 for capital activities. I must be able to, in the interest
8 of the public, direct the port to carry out certain
9 activities, and that was my role. But I would not suggest
10 at all that I was responsible to run the Port Authority,
11 and I would not like--as Minister, that was not my
12 function.

13 Q. The point is, that--and we're still on the "how
14 did 12 million turn into the 70 million" question, the
15 conclusion of the Public Accounts Committee was that that
16 didn't happen through consultation with the Board of the
17 Ports Authority. It happened through you taking decisions.

18 Now, are you saying that, do you accept that
19 conclusion?

20 A. No, I don't. I did not make any decisions,
21 Commissioner, sir, with all due respect, I, as Minister,
22 cannot make financial decisions of that nature.

23 COMMISSIONER HICKINBOTTOM: So who made that?

24 THE WITNESS: The Cabinet.

25 COMMISSIONER HICKINBOTTOM: No, no, we will come

1 back to the Cabinet because I want to come back to the
2 Cabinet anyway, but in respect of the Port Authority, my
3 understanding of your evidence is that, under Section 5 of
4 the Ports Authority Act, you were entitled to direct them,
5 to embark upon a project not for 12 million but for
6 70 million; that is not a relatively small project but a
7 big project involving the pier and the uplands.

8 THE WITNESS: Yes, Commissioner, but I must
9 qualify that very clearly. This scope of project did not
10 come about--the change in scope of project did not come
11 about by just myself as Minister directing that it should
12 be changed from 12 to 70. It came about after due
13 diligence and research and advice from engineers and the
14 consultation with the cruise ship lines, that this is the
15 size and scope of the Project that was necessary, one.
16 That was the pier.

17 The upside development of the project, the land
18 side development, was a policy decision made by the
19 Government to develop the land side. That is the
20 Government's policy. And I directed that to the port that
21 that is what we wanted to do, and that's how the project
22 became what it became. The upside development ended up
23 costing \$35 million, or \$36 million, and the port
24 development ended up costing about the same. And that's
25 how the project came to what it became. The scope was

1 changed. We felt that the project needed to come to that
2 level, and very clearly--I'm very comfortable it came to
3 that level because of what it has done for the economy of
4 the BVI and what it will do for the economy of the BVI in
5 terms of the scope and what we developed. And it is and
6 did start generating before the Hurricane very high
7 numbers, 700,000 passengers came to the BVI in 2016,
8 Mr Commissioner, because we developed that new port. The
9 new port was named the best port in the Caribbean--

10 COMMISSIONER HICKINBOTTOM: But not under this
11 proposal, under a later proposal, as I understand it?

12 THE WITNESS: Yes, but--not only this proposal,
13 Commissioner, but it's under the general policy. We can
14 come to how we get to that proposal.

15 COMMISSIONER HICKINBOTTOM: No, no.

16 THE WITNESS: But under the general policy,
17 Commissioner, that we were going to build a port to be able
18 to manage cruise--manage cruise tourism in the BVI to the
19 level that was suggested.

20 COMMISSIONER HICKINBOTTOM: No, I understand that
21 high level policy.

22 THE WITNESS: Okay.

23 COMMISSIONER HICKINBOTTOM: Just going back to
24 the Cabinet decision for a moment before I forget. You say
25 that the decision was not taken before the Cabinet

1 Decision.

2 THE WITNESS: It couldn't be.

3 COMMISSIONER HICKINBOTTOM: No, no. But--

4 THE WITNESS: Commissioner, there is no way a
5 Minister in the Virgin Islands Government can take a
6 decision to spend \$70 million without a Cabinet Decision.
7 Please go back to the Cabinet records. I wish I had access
8 to them now. Go back to the Cabinet decisions and find
9 where the decision was made and I will be happy--

10 COMMISSIONER HICKINBOTTOM: Exactly. Because the
11 window is very small.

12 THE WITNESS: Yes.

13 COMMISSIONER HICKINBOTTOM: The window at--the
14 time window is very, very small because the Cabinet
15 Decision must have been between November 2011 and
16 January 2012.

17 THE WITNESS: With due respect, Commissioner, why
18 would you say that?

19 COMMISSIONER HICKINBOTTOM: Because both of these
20 reports concluded that the decision had been made to go
21 from 12 to \$70 million in that period.

22 THE WITNESS: That is not correct. Unless you
23 show the evidence to me that make me believe that. That is
24 evidence that people--Mr Commissioner, the Public Accounts
25 Committee is the right Committee to investigate what is

1 happening, but until you show me where a decision was made
2 by January 2012--

3 COMMISSIONER HICKINBOTTOM: That was their
4 conclusion.

5 THE WITNESS: That is not correct. No decision
6 was made to change--petition was made to change the scope,
7 yes, or the recommendation. Let me use that word because
8 no decision was made as yet. A recommendation was made to
9 change the scope based on the fact that we wanted to
10 accommodate bigger ships in the BVI. A recommendation was
11 made.

12 COMMISSIONER HICKINBOTTOM: So, I just want to
13 make clear what we're talking about here.

14 So, you accept that no Cabinet Decision was made
15 on this before January 2012?

16 THE WITNESS: I don't think that was the case,
17 no.

18 COMMISSIONER HICKINBOTTOM: Right. Okay.
19 Because when they say "without a prior Cabinet decision",
20 that is what they mean?

21 THE WITNESS: No, that was not the case. It
22 wouldn't have been made by then, Mr Commissioner.

23 COMMISSIONER HICKINBOTTOM: So, I'm just trying
24 to get where really you depart from these two reports but
25 you seem to depart from these reports not on the basis of

1 there being a Cabinet Decision or not but on the basis that
2 there was a decision to change the scope of the project
3 because that's what both of these reports conclude, was
4 made before January 2012, and you say that that was not the
5 case?

6 THE WITNESS: It was a recommendation.

7 COMMISSIONER HICKINBOTTOM: A recommendation to
8 whom?

9 THE WITNESS: To the--to the Government, that
10 this is the way we should be going. And then when
11 the--when the right due diligence was done and a final
12 decision would have been made by the Cabinet, then we
13 proceed, but a recommendation--there had to be some work to
14 be done before you can put a project to the Cabinet, and
15 that is what happened. It wasn't done by January, no, that
16 is correct.

17 COMMISSIONER HICKINBOTTOM: Thank you very much.
18 That's very helpful. Thank you.

19 MR RAWAT: Commissioner, I noticed the time. I'm
20 going on to another topic. So, I wonder whether we could
21 have perhaps a short break.

22 COMMISSIONER HICKINBOTTOM: 10 past 2:00? About
23 20 minutes?

24 MR RAWAT: Yes.

25 COMMISSIONER HICKINBOTTOM: Come back at 10 past

1 2:00, Mr Vanterpool. Thank you very much.

2 (Recess.)

3 COMMISSIONER HICKINBOTTOM: Thank you, Mr Rawat.

4 MR RAWAT: Thank you, Commissioner.

5 BY MR RAWAT:

6 Q. Mr Vanterpool, can we go in the Public Accounts
7 Committee's Report to page 5, please. I told you that
8 there were four criticisms that one can derive from this
9 report, and we've dealt with the first one.

10 The next two, which is the use of
11 Mr Skelton-Cline and then how proposals were obtained are
12 covered together in this part of the report. And if I may,
13 can I just take you through them.

14 If you look at paragraph 22, what the Committee
15 said it found was that the public tender process had been
16 completely disregarded by the process engaged by the
17 Minister in late 2011-early 2012.

18 Its then goes on to say: "The Ministry engaged
19 Consultant in the person of Mr Claude Skelton-Cline on
20 contract from 1st December 2011 at a salary of \$96,000 per
21 annum to manage the Ministry's projects hereinafter
22 referred to as the former Consultant. The former
23 Consultant in his evidence of the 20th of February stated
24 that he had signed the contract with the Permanent
25 Secretary at the behest of the Governor. Examination of

1 the contract document indicated that the former Consultant
2 signed a contract with the Minister of Communication and
3 Works and no mention of the Governor is made in the
4 contract. (minutes of Public Accounts Committee meeting
5 dated 20th of February 2014)".

6 Now, what was your reasoning for recruiting--I'm
7 sorry, I will go on.

8 What the report then says: "The Minister would
9 subsequently introduce Mr Claude Skelton-Cline to the Board
10 of the Authority on 3rd of May 2012 as the Consultant who
11 will be working along with the various groups regarding
12 negotiations for the Cruise Ship Ports Development
13 Project".

14 "The former Consultant had previously been
15 engaged by the immediate past Government as a Consultant
16 for Youths and was an unsuccessful candidate for the ruling
17 party in the recently concluded general elections. The
18 Committee was not provided with evidence of Mr Claude
19 Skelton-Cline's experience as a port Consultant".

20 "The evidence presented before the Committee
21 showed that the Minister, with the assistance of the former
22 Consultant and to the exclusion of the Permanent Secretary
23 and the BVI Port Authority Board, embarked on a plan to
24 develop the cruise ship dock and upland without engaging
25 any central preliminary process such as a needs assessment,

1 cost benefits analysis, scope development, and cost
2 estimates".

3 Now, what was the reasoning for bringing as a
4 Consultant into the Ministry of Communication and Works
5 someone said to be a Consultant on Youth to negotiate
6 contracts with large cruise ship lines?

7 A. I, as Minister, felt that we needed a person in
8 my Ministry on the policy that was made by the Government
9 to carry out the development of a cruise pier and upland;
10 and, based on that, as Minister, I wanted to appoint
11 someone who would be the focus person. It was the
12 expectation, and that was how we executed it, that that
13 individual will consult with the right individuals who
14 would advise us as to how to develop this port, but I
15 wanted to focus person, and that's when we selected
16 Mr Claude Skelton-Cline to work closely with me in the
17 Ministry to ensure that that focus was there.

18 Q. If you look at the appendices at 90--this is the
19 appendices to the PAC Committee Report--and this is in
20 the--taking you back to the evidence of Ms Arlene
21 Smith-Thompson, and she was being questioned now by the
22 member of the First District, so that's The
23 Honourable Andrew Fahie; but, in the course of
24 questioning--d this is at 61--The Honourable Member says
25 this, that the reason he was asking about the whole

1 scenario with the Consultant was that he would not at this
2 time question the experience but as a former Minister who
3 has given the very same consultant as a youth expert, he
4 was flabbergasted to hear that right after the
5 November 2011 elections transformed him into a ports
6 expert, and that's what he was--that was the reason he was
7 inquiring as to what was on the résumé. But since the
8 Acting PS could not remember the contents of the résumé, he
9 would leave the matter there for now. So, this was the
10 point that was taken by the Members of the Committee back
11 in 2014.

12 Now, your answer is you needed a focus person.
13 My question was: Why did you pick someone who was going to
14 be paid \$96,000 per year and whose background, as the
15 Committee understood it, was in dealing with young people
16 to deal with a multi-million-dollar expansion of the cruise
17 ship pier?

18 A. The question is finished?

19 Q. Yes. And began responding--

20 (Overlapping speakers.)

21 Q. Why did you pick him?

22 A. Very, very clear, Commissioner. As I said, I
23 selected someone who would work closely with me to focus on
24 what we're trying to achieve. I did not select someone to
25 be an expert in ports development. That person, along

1 with our directions and along with the Port Authority
2 involvement would be responsible to me as Minister to
3 ensure that we got the expertise and the right direction in
4 carrying out the port development, and we went about that,
5 got the right engineers, got the right advice on various
6 entities to be able to execute the port.

7 I did not appoint a person or a consultant to be
8 an expert on port development. I appointed a person to
9 work closely with me as Minister to be entirely focused on
10 this development and advise me as Minister as to the person
11 that we were able to seek advice from--engineers, the
12 cruise ship companies, the various persons. As
13 Minister--and I felt responsible to make sure this was
14 happening--I would not have the time to do it. My
15 Permanent Secretary couldn't be entirely focused on this,
16 and neither could the Ports Managing Director entirely
17 focus on this. I wanted someone who was entirely focused
18 on the Ports Development Project to make sure it was
19 executed, and that is why I had appointed at the time
20 Mr Claude Skelton-Cline.

21 Q. Was the recruitment of Mr Skelton-Cline to this
22 important post undertaken through a competitive process?

23 A. No, it was not.

24 Q. So, you decided when you arrived, "I need a focus
25 person, and it will be Claude Skelton-Cline"?

1 A. Yes.

2 And Mr Commissioner, all over the world, the
3 governments appoint consultants to give you advice. It's
4 not always--I can put it to you that the United Kingdom
5 Government doesn't always appoint a consultant and put it
6 out to bid, especially to the--especially to Ministers. If
7 that is the case, I would be happy to look at the evidence,
8 but I cannot--I was very comfortable appointing someone, as
9 we got into office, to execute these projects, to advise me
10 on the matter, and that's what we did.

11 COMMISSIONER HICKINBOTTOM: But in terms of his
12 experience and qualification, you say that he had no
13 experience at all in ports, but what in his experience and
14 qualifications made you think that he was the right person
15 for this job? Because no doubt other people could have
16 been focused.

17 THE WITNESS: That other persons could have been
18 focused, yes, but it was my prerogative as Minister to
19 select someone who I was comfortable with and who I felt I
20 could trust to execute what I wanted to be done. And I'm
21 sure there were other persons who were--could have been
22 more qualified, but it was my position at the time as
23 Minister to select someone who I could trust and who I
24 could ensure would carry out the direction that I wanted to
25 carry out in terms of the port development.

1 So, you know, one can argue all day that there
2 might have been better person, yes, and it may have been,
3 but that was my prerogative, and that was my decision that
4 I made Mr Commissioner.

5 COMMISSIONER HICKINBOTTOM: Right. Thank you.

6 BY MR RAWAT:

7 Q. The point is the consequence of your decision was
8 that a salary of 96,000 per annum, would that have been
9 done under a petty contract arrangement?

10 A. Yes.

11 Q. So, you wouldn't have to take that to Cabinet and
12 get a tender waiver?

13 A. No.

14 Q. And your evidence seems to be that you--the basis
15 of why you thought Mr Skelton-Cline was the best person for
16 the job was that he was someone you could trust, and he was
17 someone who could fulfill your directions? That's what it
18 comes down to?

19 A. That's what I said.

20 Q. But he had no expertise in developing real
21 estate--

22 A. Commissioner--

23 (Overlapping speakers.)

24 A. When you make me repeat what I said, I think
25 you--I hope I can respectfully submit that you're not being

1 respectful. I answered it already.

2 Q. Well, with respect, Mr Vanterpool, I don't accept
3 that.

4 A. You understand my answer before?

5 Q. Yes.

6 COMMISSIONER HICKINBOTTOM: Mr Vanterpool, I
7 think we need to be very clear on this evidence.

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: I understand that
10 you've said that you appointed Mr Skelton-Cline because you
11 felt comfortable with him, you could trust him, and you
12 thought that he would do what you wanted him to do.

13 THE WITNESS: Yes.

14 COMMISSIONER HICKINBOTTOM: But other than that,
15 on your evidence, he had no other qualifications or
16 experience for the job, and I think we just want to make
17 clear that that is your evidence.

18 THE WITNESS: That is my evidence.

19 BY MR RAWAT:

20 Q. Because the reason for me trying to take this in
21 stages, Mr Vanterpool, is if you look at paragraph 25 of
22 that PAC Report, where they say that he had been engaged by
23 the immediate past Governor as a Consultant for use and was
24 unsuccessful candidate for the ruling party in the recently
25 concluded general elections. That could be said to be an

1 implication that there was some impropriety in your
2 decision to appoint Mr Skelton-Cline. Was there any
3 impropriety on your part?

4 A. Absolutely not.

5 Q. If you go on, please, to go through--29, please.
6 This is the continuation.

7 Now, bids were sought, as we saw at the 26th,
8 that they say you embarked on a plan with Mr Skelton-Cline.
9 At 27, Mr Skelton-Cline's evidence to the Committee was
10 that he believed that companies were very solicited for the
11 development through an electronic bid-by-invitation process
12 that he believed was issued regionally by the Ministry of
13 Communication and Works. Does that accord with your memory
14 of how bids were solicited for the development?

15 A. No, it does not.

16 Q. What was the way that bids were--

17 A. I recall, there were three stages of this. That
18 was the first stage that we--we embarked on. Three
19 companies who indicated interest in the pier port
20 development were invited to make presentations to the
21 caucus and then to the Cabinet, and those three companies
22 made their presentations. That is as I remember. I don't
23 recall any specific bids or invitations being sent out.
24 There may have been, but I don't recall that.

25 Q. What the--if you look at 28, the report of the

1 Public Accounts Committee says that this claim--and that's
2 Mr Skelton-Cline's recollection as to how bids were
3 solicited--was not supported by evidence provided by the
4 former Acting Permanent Secretary who told the Committee
5 that the Ministry of Communication and Works did not send
6 out any solicitations for bids. She advised that the
7 Minister and the former Consultant were the ones actively
8 involved in this process and her efforts to guide the
9 Minister and former Consultant on the proper processes were
10 largely disregarded.

11 And then it continues: "Between January and
12 March 2012, 3 proposals for the Cruise Ship Port
13 Development were received by the Minister and the former
14 Consultant through a process that lacked transparency and
15 did not involve any form of public tender or open
16 solicitation for this multi-million-dollar public project.
17 These were assessed by the former Consultant and forwarded
18 to the Minister for decision".

19 Now, all that the Attorney--the Auditor General
20 was able to say was just that three proposals were received
21 by the Ministry. She didn't add anything, so whatever
22 additional information we have comes from the Public
23 Accounts Committee's Report. But what it seems to--their
24 conclusion seems to be that there wasn't an open process
25 conducted by the Ministry of Communication and Works, leave

1 aside that they would say to you it should have been done
2 by the Ports Authority, but that it was just you and
3 Mr Skelton-Cline undertaking this process. Do you agree
4 with that conclusion?

5 A. No. The three persons who were involved in this
6 presented to the Cabinet, the caucus of the Government, and
7 that's the process that was taken.

8 Q. That, with respect, Mr Vanterpool, is something
9 that happened later on, isn't it? It's the first question:
10 What the Public Accounts Committee's conclusion goes to is
11 that these bids weren't coming in to the Ministry of
12 Communication and Works. The Ministry didn't go out into
13 the market and invite bids and then they came in, because
14 the Acting Permanent Secretary's evidence is she had
15 nothing to do with it. And, in fact, she tried to persuade
16 you and Mr Skelton-Cline not to disregard the proper
17 processes.

18 What the conclusion of the Public Accounts
19 Committee is, is that you and Mr Skelton-Cline went out and
20 got bids yourself. Is that what happened?

21 A. No.

22 As I said before, three interested parties
23 presented to the Government their ideas of what they could
24 do for the development of the port.

25 COMMISSIONER HICKINBOTTOM: But you've told us

1 that you don't recall any bids or invitations. I think
2 Mr Rawat's question goes to how did the three companies
3 come to your attention? They didn't come through to your
4 attention through your having an open procurement process.
5 His question is: Did you go and--how did they get onto the
6 list?

7 THE WITNESS: As far as I recall, interested
8 parties came to the Government, offered their ideas about
9 development of the port. I can't recall exactly how
10 that--how they--but it was--it was knowledge that the
11 Government was about to develop a port--expand the port,
12 and persons came and presented, three interested parties
13 that were involved with the cruise ship business, and those
14 parties came and presented. That's how I remember it.

15 But I totally agree you with, there was no public
16 bid--

17 BY MR RAWAT:

18 Q. And there was no proper procurement process;
19 would you agree?

20 A. I agree the procurement process could have been
21 different.

22 Q. In what way could it have been different?

23 A. It could have been a different public procurement
24 process.

25 Q. Well, the--your Acting Permanent Secretary's

1 evidence at the time is that there was a process and it was
2 disregarded. Do you accept what she told the Committee,
3 that the process was disregarded by yourself and
4 Mr Skelton-Cline?

5 A. The--the Government made a policy that went
6 forward to develop the cruise pier, and three persons made
7 a presentation made to the Government. Now, that may not
8 have been the exact procurement process that should have
9 been followed, but that is what happened.

10 Q. Were--and reaching back into your memory, were
11 the three CaribInvest, Trident Development Enterprise LLC,
12 and Tortola Port Partners?

13 A. Yes.

14 Q. Those were the three?

15 A. That's correct.

16 Q. So, you--the decision by Cabinet that the port
17 would be developed, you identified someone you wanted to be
18 your focus person, and there you both were, and suddenly
19 three entities appear and just said, "Here are our plans",
20 and they went through to Cabinet? That's what it comes
21 down to?

22 A. You could put it that way, but the three
23 entities--there was very clear knowledge within the cruise
24 industry that BVI was about to develop an upland side of
25 the port and expand the cruise pier of the port, and the

1 persons came and made presentations. That's the way I saw
2 it.

3 Q. And then--and this was--at that time it was a
4 \$57 million investment, and do you recall deciding to go
5 with Tortola Port Partners?

6 A. Commissioner, let me expand that a little bit
7 because I appreciate you asking the question.

8 There were three bidders. One didn't--wasn't
9 interested in the pierside of it, as I think it was G--

10 Q. CaribInvest?

11 A. No.

12 G--yeah, CaribInvest, the three--you just
13 mentioned them.

14 Q. Trident Development Enterprise LLC?

15 A. Yes.

16 Q. Tortola Port Partner--

17 (Overlapping speakers.)

18 A. CaribInvest only given--was interested in
19 developing the landside of the development. The other two
20 weren't interested in the other side of the development.

21 And we had a case where in the presentation the
22 Trident Group was connected with the Royal Caribbean
23 shipping company, is what I recall, and the Tortola Pier
24 Partners were proposing to develop the park in conjunction
25 with Disney and Norwegian Cruise Lines.

1 The main factor in selecting Tortola Pier Park
2 Group was an issue of finance. The Tortola Pier Park Group
3 were offering to charge \$15 in taxes per head, and the
4 other companies were not prepared to offer taxes at that
5 level. Then tax per head of a passenger coming into the
6 BVI was \$7 in season, and \$3 on the off season. And we
7 felt that the \$15 per head tax that was and three dollars
8 off the off season, and we felled the \$15 tax that was
9 being offered was attractive to us for the Territory and
10 along with economic advantage pier would develop to input
11 into the economy the estimate at the time was over a
12 hundred million dollars based on a hundred dollars per head
13 of passengers in terms of spend in the Territory. That was
14 an economic factor, we were attracted to that, and
15 therefore we began to pursue that direction.

16 Q. What I would like to do now, Mr Vanterpool, is
17 just to take you to some specific parts of the report so
18 that you can tell--give the Commissioner your response to
19 those parts, all right?

20 A. Yes.

21 Q. And it's important--it may mean I repeat my
22 questions, but it is important to get your answers--

23 A. Yes.

24 Q. --to the questions that I put.

25 If we go, please, to page 7 and look at

1 paragraph 31, this--it's now returning--it's under the
2 heading "BVI Port Authority Lack of Substantive
3 Involvement", but it's moved on in time because we're now
4 at the point where the bids, if you like, or the approaches
5 are being considered, and earlier it was just about the
6 decision to expand the scope.

7 So, at 31, the Committee says this: "The
8 Committee examined the process through which Tortola Port
9 Partners was selected from the three proposals received
10 between January and March 2012 for the development of the
11 cruise ship pier and found the decision was unilaterally
12 taken by the Minister".

13 "The former Acting Chairman in his evidence
14 before the Committee explained that he understood the role
15 of the Board to be one where they advise the Governments on
16 matters that pertain to the ports as well as help the
17 Government set guidelines and priorities for the management
18 of the port. He opined that the responsibilities had been
19 taken away from the Board by the way things that had been
20 done since November 2011".

21 November 2011 was when you came into post as
22 Minister for Communication and Works. I'm going to pause
23 there.

24 Do you accept or reject the criticism that the
25 decision effectively to go with Tortola Port Partners was

1 taken by you alone?

2 A. No. Absolutely not.

3 Q. Who took the decision?

4 A. The Cabinet, the Board--the Cabinet of the--of
5 the country.

6 At this junction, Commissioner, may I ask a
7 question? Did the Commission receive a PAC dissent report
8 on this paper?

9 COMMISSIONER HICKINBOTTOM: PAC on--

10 THE WITNESS: Public Accounts Committee Report.

11 BY MR RAWAT:

12 Q. No.

13 A. I think you need to receive that report.

14 Q. Well, with respect, Mr Vanterpool, we sent this
15 document to your lawyers. It was made clear--and it would
16 have been clear from the way that we sent it that you were
17 going to be asked questions about it. Your lawyers can
18 best help the Commissioner if, in advance of you giving
19 your evidence and certainly before you start, drawing the
20 Commissioner's attention to documents that may be
21 necessary, and that's for two reasons: One it doesn't
22 disrupt the Commission's proceedings; but two, it allows
23 you to be treated in a fairer way because I might have
24 asked you different questions if I had known that that
25 document existed.

1 A. Yes, I appreciate that, but Mr Commissioner, I
2 would like you to appreciate that I didn't recall this
3 document. I got this during the lunchtime, and it is
4 important that this document was laid in the House and the
5 same with this one was laid in the House, and it was
6 important--you may not use it in the questioning now, but
7 it is important, and I want to send it to you, that that
8 report be looked at because the PAC Report that you're
9 looking at is what the dissent report suggested, that it is
10 highly political that you're questioning me on.

11 COMMISSIONER HICKINBOTTOM: I'm sorry--

12 THE WITNESS: You need to see--you need to see
13 the dissent report and look at the two in conjunction, I
14 would respectfully submit.

15 COMMISSIONER HICKINBOTTOM: Can I just make sure
16 I understand what this Report that you referred is. This
17 is a dissent report the Public Accounts Committee?

18 THE WITNESS: It says subject--this was laid in
19 the House, and it was dated 14th of--excuse me. The
20 14th--sorry, the 16th of April 2014.

21 COMMISSIONER HICKINBOTTOM: It can't be a dissent
22 because this is dated the 13th of June 2014.

23 THE WITNESS: No, this was--this was Interim
24 Report before that dissented how the approach was being
25 done, and it was sent at the time by Honourable Marlon Penn

1 on the Report of the Port Development Project that was done
2 at the Public House Committee. It was laid in the House.

3 BY MR RAWAT:

4 Q. I mean, it's clear from the content of this
5 Report that the Public Accounts Committee produced an
6 interim report.

7 A. Yes.

8 Q. Were you--is your explanation to the Commissioner
9 that, in response to that interim report, The Honourable
10 Penn then submitted a dissent report?

11 A. Correct.

12 Q. And so that's why it's earlier in date than the
13 time period we're asking you questions about?

14 A. Correct.

15 Q. Well, I suppose we are where we are. It's
16 regrettable that your lawyers didn't think it necessary to
17 draw the Commissioner's attention to this earlier.

18 Are you in a position to provide that dissenting
19 report to the Commissioner?

20 A. I can send it to you electronically right now.

21 Q. Well, I think probably the better way to do it,
22 if you can, Mr Vanterpool, is to send it to your lawyers
23 but perhaps with an instruction that they should send it
24 immediately to the Commission.

25 A. I will do that, Mr Commissioner. Thank you.

1 COMMISSIONER HICKINBOTTOM: And I'm still sort of
2 at the moment struggling slightly, because we don't have
3 the report, to understand what it is.

4 There was an interim report. There was an
5 interim Public Accounts Committee Report. We know that
6 because it's referred to. This was a dissenting report to
7 the interim report?

8 THE WITNESS: Yes, yes, Mr Commissioner.

9 COMMISSIONER HICKINBOTTOM: And we will look at
10 it. When we get it, we will look at it, but this is the
11 Final Report.

12 THE WITNESS: (Witness nods.)

13 COMMISSIONER HICKINBOTTOM: So, where does the
14 leave the interim report? No dissent to the Final Report.

15 I'm sorry, that should have been a question. We
16 don't know.

17 MR RAWAT: Yes.

18 COMMISSIONER HICKINBOTTOM: Was there any dissent
19 to the Final Report?

20 THE WITNESS: I can't answer to that,
21 Mr Commissioner, but--

22 COMMISSIONER HICKINBOTTOM: None you know of?

23 THE WITNESS: None I know of.

24 COMMISSIONER HICKINBOTTOM: So, I'm just trying
25 to work out where we are. At the moment, we're asking you

1 questions on the Final Report, which overtook the interim
2 report, that you say there was an interim report with the
3 dissent which we will look at.

4 THE WITNESS: Yes.

5 COMMISSIONER HICKINBOTTOM: But it's not
6 necessarily the case that that undermines any of these
7 questions because we're questioning you on the Final
8 Report, but we will take a look at it.

9 Mr Rawat.

10 MR RAWAT: Thank you, Commissioner.

11 BY MR RAWAT:

12 Q. And properly, Mr Vanterpool, given that there is
13 the final report--

14 A. That was separate.

15 Q. --there doesn't appear to have been a dissent to
16 the final report. It is very important to get your
17 response to this Report, even though it is--we are now
18 seven years further down the line, so let's go back to
19 paragraph 31.

20 The first criticism that the Public Accounts
21 Committee make of you is that the decision was unilaterally
22 taken by yourself, and that is one that you do not accept;
23 is that right?

24 A. No.

25 Q. What is the reason why you don't accept it?

1 A. Because it wasn't. Simply that. I didn't make
2 any unilateral decisions as so stated.

3 Q. So, what was it that went to Cabinet?

4 A. All decisions in my Ministry supporting this port
5 development at this stage were taken to the caucus and then
6 to the Cabinet of the Government for approvals. I, as
7 Minister, made no unilateral decisions in this respect.

8 Q. And again, forgive me for wanting to be precise,
9 but are you saying that--we've established the three
10 bidders, if you like, were CaribInvest, Tortola Port
11 Partners, and then Trident Development Enterprise. Is your
12 evidence to the Commissioner that all three proposals, all
13 three bids, were taken to Cabinet and then Cabinet made a
14 decision?

15 A. Yes, correct.

16 Q. So, it wasn't the case that, at your level of
17 Minister, you looked at the three, assessed them, and said,
18 "Right, we will go for Tortola Port Partners. I'm taking
19 that to Cabinet"?

20 A. That is not the case. Absolutely.

21 Q. So, what was the role of Mr Skelton-Cline in
22 assess--in helping to you assess those bids?

23 A. His role was assess them, recommend, and take
24 them to Cabinet.

25 Q. Well, which--

1 A. And the Cabinet did also hear from the three
2 persons in presentation.

3 Q. Okay.

4 A. It wasn't a unilateral decision by
5 Mr Skelton-Cline or myself or all together. That is--that
6 is--that's not how it works. Respectfully, that is not how
7 it works, so I don't understand how one could assume I
8 could make a unilateral decision on a major project like
9 that. That is not how it works.

10 COMMISSIONER HICKINBOTTOM: I'm sorry, but this
11 is a Public Accounts Committee that made the
12 assumption--made that finding.

13 THE WITNESS: The Public Accounts Committee lead
14 by the leader of the Opposition.

15 COMMISSIONER HICKINBOTTOM: I assume--again, this
16 is a question, so--and my assumption may be wrong, but I
17 assume that the Public Accounts Committee, is that
18 comprised of only Opposition Members?

19 THE WITNESS: Three Members of Opposition, two
20 Members of the Government.

21 COMMISSIONER HICKINBOTTOM: Thank you very much.

22 THE WITNESS: And the two Members of the
23 Government is what I'm saying--I don't recall there being a
24 dissent on the final thing, but it was--the Public Accounts
25 Committee Report, in my view, and--certainly my view was

1 highly politically motivated, and the facts are not the
2 facts. You're asking me questions about the facts, I'm
3 giving you my view. You may opt to accept the Public
4 Accounts Committee Report, but my evidence is clear--I want
5 to make sure that it's clear on your record.

6 COMMISSIONER HICKINBOTTOM: No--absolutely,
7 that's important.

8 THE WITNESS: Thank you.

9 COMMISSIONER HICKINBOTTOM: So, my understanding
10 is that, in the Public Accounts Committee's final report of
11 which we know of no dissent, two Members of the majority
12 party that signed up to the finding that the decision to
13 choose TPP was unilaterally taken by you. I know you said
14 that that's wrong, but that's--that's where we are.

15 THE WITNESS: I--I don't know what you may
16 conclude, Mr Commissioner, but I'm telling you
17 categorically so.

18 COMMISSIONER HICKINBOTTOM: In--I'm sorry, I just
19 want to make sure that the premise on which you're going to
20 make your observations is correct. I'm not making any
21 finding or assumption.

22 THE WITNESS: Yes.

23 COMMISSIONER HICKINBOTTOM: The Public Accounts
24 Committee made this as a finding.

25 THE WITNESS: Yes.

1 COMMISSIONER HICKINBOTTOM: You say it's wrong.

2 THE WITNESS: Yes.

3 And you may--I don't have evidence with me now,
4 but you may go back to the--this Report as it was debated
5 in the House and get my views on this Report and others'
6 views on this Report as it was debated in the House. It
7 was debated in the House.

8 If you got the evidence totally, Mr Commissioner,
9 total evidence because I refuted this report in the House
10 of Assembly.

11 COMMISSIONER HICKINBOTTOM: But we could only act
12 on the evidence that's come forward, this has come forward,
13 and you have not brought forward any evidence including
14 interim dissenting report, but we will look at any evidence
15 that comes forward.

16 THE WITNESS: Yes.

17 I just want to categorically state that I made no
18 unilateral decisions on selecting any of these groups at
19 any time. That's my evidence.

20 COMMISSIONER HICKINBOTTOM: Yes.

21 BY MR RAWAT:

22 Q. Well, let's get your evidence on some of the
23 other factual matters that were set out in the report, and
24 if I take you to paragraph 33 in the report, and this is
25 the other element of the criticism. We've dealt with the

1 bids, but this is again going back to the lack of
2 involvement on the part of BVI Ports Authority. And if you
3 look at what the Public Accounts Committee says there:
4 "The Minutes of the Authority's Board meetings from
5 January 2012 to June 2012 bear evidence of the Authority's
6 exclusion from the selection process and from other
7 decisions regarding the development as follows". I'm going
8 to take you through each of them in turn can allow to
9 respond.

10 "On 26 January 2012 the Minister attended a Board
11 meeting of the Authority and informed the Board that he had
12 decided a new direction for the Cruise Ship Port
13 Development Project. The Minister also advised Members
14 that he had already received two proposals for the upland
15 development and was expecting a third".

16 "On 8th"--I will pause there. Do you have any
17 response to that, which is effectively that you came alone
18 to the Ports Authority and said "Look, this is what's
19 happening: I have these proposals in hand".

20 MR FRASER: That's the advice.

21 THE WITNESS: Yes.

22 No, I do recall going to the Board, yes, and
23 my--my recollection was clearly that this was the
24 Government's policy moving forward and that I was informing
25 the Board this was the direction the Government was

1 moving--moving towards, and I definitely--I do recall the
2 meeting, and that would have been what I'd said, so this is
3 probably correct.

4 BY MR RAWAT:

5 Q. Well, Mr Vanterpool, I want you to be careful
6 about what you say is "probably correct". The Commissioner
7 has your evidence that what you saw your job as Minister to
8 do was to implement government policy. What's being said--

9 A. Not "implement". Direct.

10 Q. Let's use a different word.

11 A. Direct.

12 Q. Yes, all right, "direct". I will take your word.

13 A. Okay.

14 Q. Go to (a) though and look at (a).

15 A. Um-hmm.

16 Q. "The Minister also advised members that he had
17 already received two proposals for upland development and
18 was expecting a third".

19 This is the point, that the criticism that is
20 made by the Public Accounts Committee is that you were not
21 consulting the statutory body responsible for that port
22 because what it said here is you told turned up and told
23 them--well, actually, whilst you were elsewhere, "I have
24 the proposals". Do you follow the point?

25 A. Yes.

1 Q. And do you accept that that is what you did?

2 A. That the prerogative that I had, and--I don't
3 know the exact details, and I'm sure you said the minutes
4 record, but that's what I intended to do.

5 Q. Let's go through the rest, though, perhaps, and
6 then I think I can put it as one point.

7 "On 8th of March 2012 the Minister attended a
8 Board meeting of the Authority and informed the Members
9 that the Heads of Terms that they (the Authority) had
10 signed with Disney had been canceled".

11 "At a Board meeting on 12th April 2012 the
12 Members were informed that the Government had signed a
13 Heads of Understanding on 27 March 2012 with Tortola Port
14 Partners to enter into negotiations for the management and
15 development of the Cruise Ship Development Project".

16 "At the meeting held on 12 April 2012, the Board
17 was promised greater involvement in the details of the
18 project under the guidance of the Minister for
19 Communication and Works".

20 It continues on the next page.

21 "May/June, the former Managing Director received
22 an e-mail from the former Consultant instructing the
23 Authority to pay \$3.1 million for piles for the pier
24 extension. Neither the Managing Director nor the Board
25 Members had been involved in, or had prior knowledge of the

1 Government's negotiations with TPP to purchase piles".

2 "Despite the Authority's non-involvement in the
3 decision-making process for this project, a resolution was
4 purportedly passed by the Board and executed on 5 July 2012
5 by the Acting Chairman authorizing the BVI Port Authority
6 to enter into an agreement with the Tortola Port Partners
7 Limited for expansion of the cruise pier and the
8 construction of the Tortola Pier Park. The Committee has
9 not found any record of a Board meeting to support passing
10 of said resolution".

11 And the last point made is: "On 8 October 2013
12 the Minister of Communication and Works attended a special
13 meeting of the Board and informed the Members that the TPP
14 arrangement had failed, the Government would be
15 transferring the Cruise Ship Port Development Project back
16 to the BVI Port Authority. He advised the Board that their
17 £12 million project--\$12 million project had grown to
18 \$49.9 million and that he needed them to pass a resolution
19 that he could take to the Cabinet and forward on to the
20 UK".

21 Now, that is knowledge that the Public Accounts
22 Committee has put in its Report--you have that report--and
23 it points to this: That the Ports Authority were not
24 involved in this process at all. That's the central
25 criticism that's made of you, isn't it, Mr Vanterpool?

1 That you turned up to them, you handled the proposals. You
2 decided that what the arrangement they had with Disney
3 should be canceled. You told them that a Heads of
4 Understanding had been entered into with Tortola Port
5 Partners. You said that they could have greater
6 involvement but under the guidance of yourself. And
7 then--but when it came to paying money, you told them they
8 had to pay the money, so the criticisms that there was no
9 meaningful consultation or involvement of the Ports
10 Authority in this project once you took it up. That's what
11 it comes down to. Do you have any response to that
12 criticism?

13 A. Yes.

14 COMMISSIONER HICKINBOTTOM: Could I ask you one
15 question before you give your response.

16 THE WITNESS: Yes.

17 COMMISSIONER HICKINBOTTOM: These paragraphs (a)
18 to (g), are they--you said that (a) was probably correct.
19 You accepted that that was your intention, "probably
20 correct". So, of these paragraphs (a) to (g), do you
21 accept that they are more or less correct? You may say, "I
22 was entitled to do this" or "I didn't have a duty to", but
23 are they essentially factually correct?

24 THE WITNESS: Mr Commissioner, whatever report is
25 here is not truthful, that as Minister and as Ministry of

1 Communication and Works that the Board of Port Authority
2 was not involved in the direction where we went. That is
3 not correct.

4 COMMISSIONER HICKINBOTTOM: Thank you.

5 THE WITNESS: The Board was involved.

6 BY MR RAWAT:

7 Q. At what stage did the Board become involved?

8 A. At different stages, and you could see the
9 meetings there. The meeting with the Board, if the Board
10 has a concern, each of those meetings the Board has a right
11 to raise their concerns. And the Board was told many
12 times--you're talking about eight months a year at most.
13 The Board was consulted, the Board was discussed, the Board
14 was aware of what we were doing. This is not a correct
15 statement written in this document. It's not. I will
16 repeat that every day.

17 Q. The Commissioner has that point, but just to
18 understand what you say the role of the Board is because
19 the role of the Board seems to be that they, at your
20 direction, they--this is a 3.1 million for piles for the
21 pier extension, that their job was to--or they had a role
22 in entering into--they had a role in simply paying out
23 money to TPP when required. That was their function, it
24 seemed, on this--on what you were telling them.

25 But why was it that, in 2013, you are reported as

1 saying that the development project was going to be
2 transferred back to the Ports Authority?

3 A. No, Mr Commissioner, let me--let me be clear: A
4 Board--a meeting with the Board, the Board has its right to
5 reject or accept and pass a resolution. As Minister, I may
6 present to them what I would like to happen and give them
7 that direction, but the Board has the authority to either
8 reject what I put to them or accept it. And at the end of
9 the day, if they passed the resolution, that is the
10 resolution of the Board, and that is what happened.

11 Q. Was there a resolution of the Board? I mean, did
12 you come to the Board and say, "This is what's going to
13 happen to this development", and did they pass a resolution
14 that said that the Ministry of Communication and Works
15 should take the lead in progressing the development?

16 A. That--I said earlier that that--that the
17 Minister, in Section 19, has the authority to direct the
18 Board. The Minister may give the Authority general
19 directions in writing as to performance of its powers under
20 this Act as matters which appear to him to affect the
21 public interest, and the Authority shall give it back to
22 his decision--

23 (Overlapping speakers.)

24 Q. I understand that, but the reason for my
25 question, Mr Vanterpool, was that just a few moments ago

1 you said that you can turn up to meeting of the Board, you
2 can give them a direction, and they can accept or reject it
3 because it's up to them to pass the resolution.

4 A. Um-hmm.

5 Q. So the question is: Did they pass a resolution
6 that said--

7 A. As far as I'm aware, yes.

8 Q. Well--

9 (Overlapping speakers.)

10 A. The port progress going into this project had to
11 be executed by resolutions by the Ports Authority. That
12 was the--

13 Q. From the beginning of the project? From the
14 beginning of 2011, when--November 2011, when you came on as
15 Minister of Communication and Works, was the Board passing
16 resolutions that, in effect, had the effect of shifting the
17 responsibility to enter into negotiations, obtained
18 proposals to the Minister of Communication and Works?

19 A. A board resolution is necessary when it's time to
20 execute the project and expend money. I gave directions to
21 the Board to--we want to move this way in the project, and
22 I expected, based on my authority, to have the Board move
23 in that direction.

24 Government's policy, in my view, by any board,
25 cannot be stymied by a board if they see it differently.

1 That's the way I see it.

2 Q. So they--

3 A. The Government's policy must be carried out, and
4 that's why the authority--the law gives the Ministry the
5 authority to give the directions to the Board in the
6 interest of the public.

7 Q. So, what is the legal basis you're saying is for
8 the Board to reject a direction from you?

9 A. I didn't say there was a legal basis, but that is
10 their prerog--their prerogative.

11 Q. The Board we assume can only act lawfully, so if
12 they have a prerogative to reject a direction from you,
13 there must be a legal basis for it?

14 A. Yes, there should be--there should be a legal
15 basis. I don't see one, but I'm saying, according to the
16 law, it says "the Authority shall give effect to such
17 direction by the Minister".

18 COMMISSIONER HICKINBOTTOM: I mean, again, I
19 don't want to get involved in a legal debate. That section
20 concerns general directions. That's what it says.
21 "General directions". You can give them general
22 directions.

23 THE WITNESS: Let's go to the end of the
24 discussion--that line, which appeared to him to affect the
25 public interest.

1 COMMISSIONER HICKINBOTTOM: I know.

2 THE WITNESS: This project, in my view as
3 Minister, was key to the public interest and the economy of
4 the Virgin Islands.

5 COMMISSIONER HICKINBOTTOM: So, does that mean
6 that you think you could have given specific directions?

7 THE WITNESS: Yes. Yes.

8 BY MR RAWAT:

9 Q. And they were bound?

10 A. According to Section 4.

11 Q. Was the Board bound to follow your directions
12 until they--

13 A. Yes, yes. As far as I know, yes.

14 Q. So, you are now changing your earlier evidence
15 that they could reject the direction if they thought it
16 appropriate?

17 A. You asked me if they followed my direction.

18 Q. No, were they bound to follow your direction?

19 A. According to this, yes.

20 Q. So, do you now withdraw your earlier evidence
21 that they could, in fact, reject your direction if they
22 wanted to?

23 A. They could identify it.

24 Q. I see.

25 A. As Minister with authority, I appoint the Board.

1 Q. So, if the Board had not followed your direction,
2 you would have fired them all?

3 A. I didn't say I would. I said I had the
4 authority--

5 COMMISSIONER HICKINBOTTOM: Yes, you could have
6 done?

7 THE WITNESS: Yes, yes.

8 BY MR RAWAT:

9 Q. Can I just take you--

10 A. The Government's policy, I want to make clear, is
11 my understanding when I became Minister, the Government
12 comes to office and the Government developed policies, and
13 the Government's policies within this law expected to be
14 carried out. That's the Government's policy. They give to
15 the management of the Board and running of the Board,
16 that's the Board's responsibility. Government's policy,
17 especially when it comes to development of the Board, has
18 to be carried out. That's the law. That's what gives the
19 Minister the authority to make sure that happens.

20 MR FRASER: Mr Commissioner, could we have a
21 moment?

22 COMMISSIONER HICKINBOTTOM: Certainly.

23 Could we just have a 10-minute break as well? It
24 may be a convenient time. We will come back in 10 minutes.
25 Thank you, Mr Fraser.

1 (Recess.)

2 (Discussion off audio.)

3 COMMISSIONER HICKINBOTTOM: Let's start the live
4 stream, and then all of this could simply go onto the
5 record, as it should.

6 Thank you. I think we are ready to recommence.

7 Mr. Fraser.

8 MR FRASER: Yes. Thank you, Mr Commissioner.

9 I was just referring to the documents--

10 COMMISSIONER HICKINBOTTOM: Yes.

11 MR FRASER: --in particular to the one document
12 you received for the Ports Authority Act, and another
13 document that was referred to in the Witness's evidence.

14 Normally, yes, these would have been submitted
15 prior. I just wanted to mention that we did have notice of
16 this during the cursory meeting this morning just before we
17 came in. It was just in a matter of discussion, that's
18 when we recognized that this is a--that this is a document
19 that would have been pertinent. It was not in the bundle,
20 and we just really apologize that it wasn't given in
21 advance.

22 COMMISSIONER HICKINBOTTOM: No.

23 MR FRASER: And the second document which we
24 referred to, as you said, again that was forwarded to me
25 during this--this whole proceeding.

1 But we--we would be from here on, of course,
2 submitting any documents and other documents to you as soon
3 as we can after this particular hearing.

4 COMMISSIONER HICKINBOTTOM: Well, that's right.
5 I certainly hope that we will have, by the end of the
6 Hearing, all of the documents that we need.

7 MR FRASER: Yes.

8 COMMISSIONER HICKINBOTTOM: But it would be
9 helpful if the interim report and the dissenting interim
10 report could be sent to us. That's the only--those are the
11 only documents that I think have been referred to so far,
12 other than the Act, which you have given us, thank you.

13 MR FRASER: These two, yes.

14 COMMISSIONER HICKINBOTTOM: Yes. Thank you very
15 much.

16 Mr Rawat.

17 MR RAWAT: Thank you.

18 BY MR RAWAT:

19 Q. Mr Vanterpool, I want again, in fairness to you,
20 to take you to two other paragraphs. I will take them
21 together and then allow you an opportunity to respond to
22 them.

23 A. Yes.

24 Q. If you look, please, at page 13, you see at
25 bottom there "Conclusions" at 52.

1 A. Yes, I do.

2 Q. What the Committee said was that it found that:
3 "There was a concerted effort on the part of the Minister
4 (whether by intention or through lack of knowledge of
5 government processes) and later the Ministry of Finance to
6 obscure information regarding the processes undertaken on
7 this project".

8 So, leave out the Ministry of Finance, not your
9 prerogative, but the charge against you by the Committee is
10 that you either intentionally or through no knowledge
11 obscured the information regarding the processes
12 undertaken. Is that something that you are willing to
13 accept at the time or now?

14 A. No, I don't.

15 Q. Go, please, to paragraph 81, which you will find.

16 Now, this is in a section of the report called
17 "Escalation of Costs". I'm only taking you to the parts
18 that relate to yourself as Minister for Communication and
19 Works at the time.

20 At 81, what the Committee recorded was that: In
21 November 2011, the Ministry of Communication and Works took
22 over the project and expanded the scope to include
23 development of the upland and more dramatic expansion of
24 the pier. The Minister failed to approach the Authority
25 for advice and guidance on what the Authority's plans were

1 and how his proposed expansion could be adopted to best
2 satisfy the needs of the industry and the local populace.
3 In so doing the Ministry missed the opportunity to gain
4 from the existing knowledge and experience of the Authority
5 and its experts and learn of possible existing options".

6 "This blind approach led to an informal
7 engagement of TPP for development cost/investment of over
8 \$70 million which provided no verifiable level of cost
9 detail and sought to tie up ownership of the central
10 waterfront property for up to 49 years. This was done
11 without any studies or assessments on the impact this
12 development would have on existing and prospective
13 businesses". And then they set down the sort of costs and
14 how it came to 70 million.

15 Its concludes: "The process ended abruptly with
16 an intervention that demanded greater transparency and
17 public accountability".

18 Just to put that into context, what happened was
19 that, in 2012, the project moved to the Ministry of Finance
20 and, therefore, you no longer had any involvement in it;
21 that's right, isn't it? Once it moved to the Ministry of
22 Finance.

23 A. I don't know that I would say "no involvement",
24 but the Ministry of Finance in terms of procurement for the
25 project, yes.

1 Q. What was your involvement after it moved to the
2 Ministry of Finance?

3 A. As Minister, I still had responsibility for the
4 port--

5 Q. I see.

6 A. --and therefore I had to be aware of it.

7 Q. And ultimately, it actually went back to the
8 Ports Authority to finish the development?

9 A. Correct.

10 Q. But we digressed slightly. What I wanted to give
11 you an opportunity to do was respond to paragraphs 81 and
12 82 which effectively accuse you of a blind approach, and
13 just to get on the record your response to that allegation.

14 A. I--I--I have no response to that. I had no blind
15 approach. I had no intentions of suggesting or doing what
16 they print, so I totally refute that.

17 Q. Now, bringing the elements of this Report that I
18 put to you, I think it can fairly be described as scathing
19 about the involvement of yourself as a Minister of
20 Communication and Works at the time. You have given and I
21 think clearly explained to the Commissioner your response
22 to this Report and to the parts that I have taken you to.
23 You have drawn the Commissioner's attention to the fact
24 that there is an interim dissenting report.

25 But following this, which was in June 2014--and

1 you were then still in government--did any consequences
2 follow for you as a Minister?

3 A. I'm not sure what you mean by "consequences".

4 Q. Well, did you remain--you obviously remained as
5 Minister. Were there any--after the publication of this
6 report and its laying before the House, you told us it was
7 debated; but other than that, were there any--was there any
8 sanctions imposed against you as a Minister? Was there any
9 official recording of any criticism against you as a
10 Minister? Did anything happen at all other than it being
11 debated?

12 A. It was debated, and the Public Accounts Committee
13 Report, in my view--and like I said--but in my view wasn't
14 the real facts; and, therefore, in the House of Assembly, I
15 refuted it in the debate. And as far as I know, the
16 project continued and, you know, we took a different
17 direction on how it was handled in terms of procurement or
18 the project continued.

19 As far as I was concerned, in spite of the Public
20 Accounts Committee Report, we were--I, as Minister, was
21 carrying on the policy of the Government under the
22 authority of my Ministry and the authority of the Port
23 Authority Act, so I'm not sure what consequences would have
24 come out of that.

25 Q. Well, thank you very much.

1 MR RAWAT: Commissioner, I have reached the end
2 of my questions. Can I conclude by once again thanking The
3 Honourable Vanterpool for coming to give evidence to the
4 Commission this afternoon but also thanking him for the way
5 in which he has done so.

6 COMMISSIONER HICKINBOTTOM: Yes.

7 Mr Vanterpool, can I thank you again for your
8 time and the clear way in which you've answered all of the
9 questions. I very much appreciate it.

10 THE WITNESS: Thank you, Commissioner.

11 (Witness steps down.)

12 MR RAWAT: That's our business for the day,
13 Commissioner, but we will have three witnesses scheduled
14 for tomorrow. I think we start at 10:00.

15 COMMISSIONER HICKINBOTTOM: Good. Thank you,
16 Mr Rawat.

17 (Whereupon, at 3:28 p.m. (EDT), the Hearing was
18 adjourned until 10:00 a.m. (EDT) the following day.)

CERTIFICATE OF REPORTER

I, David A. Kasdan, RDR-CRR, Court Reporter, do hereby certify that the foregoing proceedings were stenographically recorded by me and thereafter reduced to typewritten form by computer-assisted transcription under my direction and supervision; and that the foregoing transcript is a true and accurate record of the proceedings.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to this action in this proceeding, nor financially or otherwise interested in the outcome of this litigation.

A handwritten signature in cursive script, reading "David A. Kasdan", is written above a solid horizontal line.

DAVID A. KASDAN