

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 23
(WEDNESDAY 7 JULY 2021)

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

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Counsel to the Commission Mr Bilal Rawat appeared.

Ms Dorea T Corea gave evidence.
Ms Tashima Martin gave evidence.
Mr Wade Smith gave evidence.

Court Reporter:

MR. DAVID A. KASDAN
Registered Diplomate Reporter (RDR)
Certified Realtime Reporter (CRR)
Worldwide Reporting, LLP
529 14th Street, S.E.
Washington, D.C. 20003
United States of America
david.kasdan@wwreporting.com

Those present:

Session 1

Mr Bilal Rawat

Ms Dorea T Corea (attending remotely)

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

Mr Dame Peters, Audio-Visual Technician

Session 2

Mr Bilal Rawat

Ms Tashima Martin

Mr Wade Smith

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

P R O C E E D I N G S

Session 1

DOREA T COREA, COMMISSION WITNESS, RESUMED

COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

BY MR RAWAT:

Q. Good morning, Ms Corea. Can you hear me?

A. I can hear you, sir.

Q. Thank you. I want to go back to the report that we were looking at yesterday in relation to the Customs Department, but before I do, could I just ask you some questions about some of the reports that we've already looked at.

You will remember that we looked at an Audit Report from 2012 that was auditing the Belonger Immigration process together with a follow-up audit in 2014. The 2012 Report had a response from the Department of Immigration.

At the time that you were producing those reports, which Ministry did the Department of Immigration sit within?

A. The Premier's Office.

Q. Premier's Office.

And was that the same case in 2014?

A. Yes, sir.

(Overlapping speakers.)

Q. When you went--

Now, when you do a report, as you explained yesterday, there is an opportunity to produce a management response. When

1 you do a follow-up audit, do you offer the same opportunity?

2 A. Yes, sir.

3 Q. As Internal Auditor and as Director of the Internal
4 Audit Department, does the remit of the Department cover
5 Statutory Boards?

6 A. Yes, in cases where the Statutory Board receives a
7 pension from the Central Government.

8 Q. You also explained the importance yesterday of having
9 the Internal Audit Advisory Committee established, and one
10 reason for that was that that Committee's responsible for
11 deciding the Audit cycle. Is the Internal Audit Department
12 bound to follow that Audit cycle, or can you decide, yourselves,
13 to audit any other Public Authority other than those decided but
14 with the Committee?

15 A. Repeat your question, sir?

16 Q. You explained that the Committee--one of the functions
17 of the Committee is to decide on the Audit cycle.

18 A. The Audit Plan, correct.

19 Q. Yes, the Audit Plan.

20 And which public authorities will be audited in a
21 Financial Year.

22 Now, the Director of the Internal Audit Department
23 will sit on that Committee, but is there scope for the--for your
24 Department to audit in--audit bodies in addition to those that
25 form part of the plan? Can you decide for yourselves to go and

1 audit a public authority?

2 A. With the Committee in place, we would not venture to
3 do that because they're the one that drives the functionality.
4 When the Committee was not in place, we would decide to choose
5 audits to be completed, yes.

6 Q. Thank you.

7 If we go back to Part 3, please, of the bundles and
8 page 2346, this is--you will remember that this was the Audit of
9 the Partial Payment Programme and Courier Clearance Operations
10 that your Department did in 2019 and 2020, so yes, they were
11 looked--the Partial Payments Programme was audited in 2019, and
12 then December 2020 you did an audit report which looked at the
13 Courier Clearance process and brought everything together. And
14 we went yesterday through the first part, the Courier
15 Declaration process, and I just wanted to take you back to 2346
16 and just look again at CAPS, which is the Customs Automated
17 Processing System, and you explain at 2346 that this system was
18 rolled out on the 1st of November 2016.

19 Now, if you start--if you go to 2347, there were a
20 number of deficiencies that your audit revealed in relation to
21 use of CAPS, some of which we've touched on already, so I
22 hopefully can summarise it, but if we look at one, there was
23 through CAPS, inadequate monitoring of courier account, wasn't
24 there?

25 A. Correct, sir.

1 Q. And if you--what was recorded that was, although CAPS
2 was intended to facilitate reliable trade statistics on which
3 policy decisions can be based, it was not accomplishing that
4 goal.

5 Was that a consequence of the fact that, as you've
6 said, the integrity of the information put into CAPS was
7 questionable?

8 A. Yes, sir, that is correct.

9 Q. And was it also a function of a lack of training in
10 how to use CAPS generally?

11 A. That is true, sir.

12 Q. If you go, please, to 2348, could you see at (b) there
13 what's noted in the Audit is because proper multi-record
14 declarations are not being made, the calculated duties reflected
15 in CAPS is significantly different from the duties actually
16 collected in the JDEdwards receipting systems, so JDEdwards is a
17 separate accounting system, isn't it, and it's sometimes just
18 described as "JDE"; is that right?

19 A. Correct. That is our accounting system used by
20 Central Government.

21 Q. Now, if you--I wonder if you could just add a little
22 more detail to that first line. Could you just explain to the
23 Commissioner what the consequence was of having significantly
24 different duties being calculated in CAPS as opposed to the JDE
25 System?

1 A. Okay. Declarations are made in the JDEdwards
2 System--sorry, in the CAP System, so therefore, importers would
3 have to import the importations in the CAP System which would
4 calculate based on the rates assigned--the revenues that are to
5 be collected.

6 As I noted to you yesterday, there is a system where
7 deposit declarations are made which were--which would require
8 adjustment declarations being made, and then, based on the
9 comparison, the revenue would be calculated and paid
10 accordingly.

11 In some instances, those adjustments were not
12 calculated in the system, and they were done manually and the
13 information was not imported in CAPS. Therefore, when you print
14 out the payment summary from CAPS and you make the payment into
15 JDEdwards, you have a difference.

16 Q. Thank you.

17 Another point that--another deficiency that was noted
18 in relation to CAPS we find at 2349, and that's at point 3 on
19 that page, which is referring to the lack of integration between
20 CAPS and the JDE system, and the effect it seems was that
21 because what was found was approximately 90 percent of the trade
22 declarations in CAPS were not updated with information that was
23 derived from JDE.

24 So, in effect, the information that was being held,
25 again it's an example of the information that's held in CAPS

1 being unreliable, isn't it?

2 A. Yes, sir.

3 And if I can explain that a little further, too, there
4 are some instances where importation would start as a deposit
5 declaration and would end up as a regular import declaration,
6 and again because where the calculations are made, the two do
7 not marry each other, then you would have discrepancies in the
8 amounts being paid.

9 Q. And if we sort of put that in layman's terms, the
10 effect is that it's very difficult to understand exactly what
11 someone may owe, and it's also difficult, therefore, to
12 understand whether there is--there are losses to Government from
13 revenue.

14 A. That is true.

15 Q. And that--the fact that the system is not being used
16 properly and not worked--and the information being put into it
17 is not reliable means that it increases the risk, and
18 particularly the risk of Government losing out on revenue,
19 doesn't it?

20 A. At the end of the day, yes, sir.

21 Q. And it makes it much harder to actually quantify how
22 much revenue may be lost?

23 A. Yes, sir, depending on what calculation is made in the
24 system, yes.

25 Q. If you go, please, to 2349 at 4, I wanted just to ask

1 you again if you could just clarify 4 for the Commissioner.

2 4 begins: "Although CAPS was implemented to enable
3 the Government of the Virgin Islands to obtain accurate and
4 reliable information to inform policy decisions, the audit found
5 that the platform is severely limited in its reporting
6 capabilities."

7 And so, what it seems to be is that it wasn't or
8 couldn't be used to actually generate reports. What was the
9 consequence of that, please?

10 A. When we did the revision and we were asking for
11 reports, we were told that it is difficult to get reports from
12 the system, and we really could not understand why. But then
13 when we realized the process was being compromised in different
14 areas, it will be difficult to get good reporting from the
15 system because if the information is not placed in the system,
16 garbage in is garbage out. So, it will be difficult to get the
17 information and a report in full if the information is not put
18 in the system as intended.

19 Q. If you go to the last two lines of point 4--and,
20 again, it really speaks to not having the correct information in
21 CAPS--but you give an example, and I will read it: "It is
22 noteworthy to recognize that when a sample of the declarations
23 were queried for one courier, the officer investigating found
24 numerous other deposit declarations from prior years for which
25 adjustment declarations were not submitted. This fact confirms

1 the likelihood that there are a significant number of
2 declarations in CAPS that were never completed. We suspect that
3 this issue might be pervasive (as other entities outside of
4 couriers also participate in the deposit scheme) and a
5 multi-year issue."

6 So, it's--the point that's being made is that this
7 problem--that CAPS is not being updated with the information, so
8 you don't have, for example, details of adjustment
9 declarations--that applies to other entities other than
10 couriers, and it spans a number of years.

11 A. That is correct, sir, because we only look at the
12 courier processing.

13 Remember the importers who import every day from
14 different agencies and different companies, so we didn't
15 incorporate all of those. We only looked at the courier
16 processes.

17 And to add, like it's stated there, if the information
18 isn't accurate and incomplete, then you wouldn't get the
19 accuracy of it and the reliability from the system.

20 Q. If you go to 5 on 2340, another deficiency that the
21 Audit picked up on was that there was no reconciliation process
22 to ensure that all deposit declarations are cleared with the
23 corresponding adjustment declaration. I think that's something
24 you've explained already.

25 What you also note at 6, which is at 2351, is that the

1 system--and this is the CAPS--does not have the capability to
2 track and monitor the compliance of submissions of adjustment
3 trade declarations.

4 And so, there was a 15-day requirement to clear the
5 deposit declaration, so that's the time--you've got,
6 effectively, just over two weeks to put in your adjustment
7 declaration, but CAPS isn't set up to check whether people
8 comply with that time limit; is that right?

9 A. That's correct, sir.

10 Q. And did the Audit find that there was a low level of
11 compliance?

12 A. There was, sir.

13 Q. Is that a consequence of the system itself or is it a
14 consequence of the way it's being used by Customs?

15 A. For the most part, I think it's the way that the
16 system is being used by Customs Department. If there is--

17 (Overlapping speakers.)

18 Q. Please finish.

19 A. If there is no enforcement in utilizing the system as
20 it's intended to, then you would get gross--gross inadequacies
21 when you actually utilize the system.

22 Q. If we go to 2352, and just pick up a couple more of
23 the recommendations--deficiencies, forgive me--you've made
24 recommendations as well.

25 You found at 7 that some courier services were not--or

1 it appears that some courier services were not being processed
2 through CAPS at all; is that right?

3 A. That is correct, sir.

4 Q. And then at 8, you also found that declarations were
5 being wrongly entered into the system, so those--you would have
6 declarations entered as deposit declarations, but then changed
7 and cleared as import declarations.

8 A. That is correct, sir.

9 (Overlapping speakers.)

10 Q. And the point, as I understand the point, is that that
11 puts revenues at risk?

12 A. Yes, sir.

13 Q. Ms Corea, if we pull together the various deficiencies
14 that the Audit highlighted in relation to the use of CAPS--and
15 those are not just the ones that we have gone through this
16 morning, but some of the points you made yesterday in
17 evidence--when your team came to look at the system, it was in
18 December 2020, so four years after it had been rolled out.
19 Would a fair summary of the issues highlighted by the audit be
20 that, four years after it was rolled out, the CAP System was
21 simply not being used in the way it was intended?

22 A. That is correct, sir.

23 Q. And not only was it not being used in the way
24 intended, the way in which it had been used meant that it was
25 unreliable as a system?

1 A. That is correct, sir.

2 Q. And that fundamentally goes to your point about the
3 importance of preserving the integrity of information?

4 A. That is correct, sir.

5 Q. Which, from a Customs perspective, as a
6 revenue-generating agency, is a real problem, isn't it, because
7 they are not in a position to accurately assess how much revenue
8 may be owed and, therefore, how much revenue needs to be written
9 off or how much revenue may be lost?

10 A. From an audit perspective, yes, sir.

11 Q. Let's look at 2355 and your conclusion. What the
12 Audit team wrote was this: "It is our conclusion that Her
13 Majesty's Customs does not have an adequate system of internal
14 controls in place for the administration of its operations
15 related to courier clearance procedures. The current process is
16 void of clearly established guidelines for both customs officers
17 and courier operators. Although CAPS was implemented to achieve
18 specific objectives, the system is not being utilized in a
19 manner that will achieve those objectives and in a manner that
20 would ensure revenue maximization. The major concessions given
21 to some operators in the manner in which trader declarations can
22 be submitted and approved, lays waste to any meaningful
23 reporting on import activities which will have a direct impact
24 on policy decisions. The current use of standing deposits
25 leaves Government exposed to an unnecessary and unacceptably

1 high level of risk of loss revenues. We find that HM Customs
2 have allowed courier operators to dictate the manner in which HM
3 Customs processes are carried out and have to become de facto
4 customs officers servicing their business interests. We found
5 the entire process to be starved of adequate resources,
6 particularly at the Beef Island station where the bulk of
7 courier imports are processed, to effectively execute the
8 clearance and monitoring function for this area. Overall, the
9 facilitation of courier operations within HM Customs requires
10 significance reform in order to be a value-added service to the
11 Government. Finally, based on the significant number of issues
12 highlighted in this report and their possible pervasiveness
13 within the operations of Her Majesty's Customs, we find that
14 other areas of the Department must be evaluated on an ongoing
15 basis."

16 So, is the take-home point from this that, whilst
17 Customs can't abandon CAPS, it has, in effect, got to start all
18 over again with how it uses the system?

19 A. That is correct, sir.

20 Q. And where you, at the end, talk about possible
21 pervasiveness, is that because--is the point that the issues
22 that your audit raised in relation to courier operations are
23 issues that could affect other importers that come through
24 Customs?

25 A. I missed you there for a minute, sir. Could you

1 repeat? I think I'm having a little technical difficulty this
2 morning.

3 Q. I think the screen has frozen. We can still hear you.

4 A. It's asking me to restart my computer. Is it possible
5 I can get that done and continue?

6 Q. Yes, of course. We will pause and--if you need to log
7 out. And when you log back in again, Ms Corea, we will resume
8 your evidence.

9 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

10 THE WITNESS: Thank you, sir.

11 (Recess.)

12 COMMISSIONER HICKINBOTTOM: Thank you, Ms Corea. I
13 think you're back, and we may continue, Mr Rawat.

14 MR RAWAT: Thank you, Commissioner.

15 BY MR RAWAT:

16 Q. Ms Corea, I hope you can hear me. When we
17 were--before you had technical difficulties, we were looking at
18 the conclusion to the Audit Report which is at 2355.

19 A. Correct, sir.

20 Q. And the question I was asking you related to the last
21 sentence in that conclusion. As you'd explained, you were
22 looking at courier processing or the processing of courier
23 operations, but you refer, or the Audit Report refers to the
24 possible pervasiveness within operations of Her Majesty's
25 Customs, and the point I was trying to ask of you was the

1 deficiencies that you had identified were deficiencies that
2 impact other areas and other importers; would that be fair to
3 say?

4 A. Correct, because we looked exclusively at courier
5 services, sir.

6 Q. And is that particularly so because CAPS, as a system
7 is used across a range of services?

8 A. That is correct, sir.

9 Q. Now, the conclusion was "we find other areas of the
10 Department must be evaluated on an ongoing basis. Who was going
11 to carry out the evaluation?

12 A. Well, we were suggesting that the Department do that
13 because they do have an Internal Audit Unit within. So they
14 have the capacity to do that as well.

15 Q. Right. So, your suggestion was that their Internal
16 Audit Unit would need to start looking at those other areas to
17 see if there were deficiencies?

18 A. That is correct, sir.

19 Q. Do you know, Ms Corea, whether Customs did do that?

20 A. I'm not sure, sir.

21 Q. If you go to 2375, this is for the record, I'm not
22 going to take you through it, but you made, as an Audit Team, 14
23 recommendations in relation to the Courier Clearance Procedures,
24 eight further recommendations in relation to the CAP System, and
25 it would seem overall the Customs Department gave you a positive

1 response and put a plan in place to try and deal with the
2 recommendations; is that right?

3 A. That is correct, sir.

4 Q. Who would decide whether you, as the Audit Department,
5 can go back and check whether the recommendations have been
6 embedded?

7 A. We originally decide with the Internal Audit Advisory
8 Committee in place, they would also have a part to play in
9 deciding what happens after this stage.

10 Q. In your professional judgment, is this one of the
11 Audits that would benefit from a follow-up audit?

12 A. Indeed, sir.

13 Q. And in terms of a time frame, you completed this audit
14 in December 2020. When would be a suitable time to do a
15 follow-up audit?

16 A. 12 months, sir.

17 Q. Just one matter to just raise with you on the
18 recommendations, if you go to 2379, please. One of the--I will
19 wait until you get to the page.

20 It's part of a response to your recommendations, 2379,
21 and briefly summarizing it, one of the points that the Audit had
22 picked up on was that there was some stations where there was a
23 lack of Human Resources which meant that Customs Officers
24 weren't able to do perhaps as much as might be expected of them.
25 And under "AGREE/DISAGREE", what the response from the Customs

1 Department recorded was: "The Customs Department has been
2 operating with limited resources, (human, equipment and improper
3 facilities). We are asked every year to do more with less.
4 Nevertheless the Customs Department inspects cargo on a
5 risk-based approach which is guided by the World Customs
6 Organization (WCO) framework of standards. To inspect all
7 imported cargo on a daily basis is not practical. Hence, Risk
8 Management and Intelligence are utilized for checks and
9 balances."

10 I'm going to pause there, but it wasn't the
11 recommendation of the Audit team, was it, that every single
12 piece of cargo that comes through the ports should be inspected?

13 A. That is correct, sir.

14 Q. What was the purpose of the recommendation or raising
15 the issue?

16 A. Because it's the responsibility of the Customs
17 Department to also keep the BVI community safe, and the fact
18 that it was being imported without any checks and balances. It
19 is important to do random checks at the port for incoming cargo,
20 spontaneous, not that you have to check every piece of cargo.

21 Q. But in order to do a random check, you need enough
22 Human Resources to carry out random checks?

23 A. That is correct, sir.

24 Q. And the limited resources issue doesn't of itself
25 answer, does it, the difficulties that you uncovered with the

1 CAP System?

2 A. Repeat, sir?

3 Q. The fact that Customs has limited Human Resources is
4 not a complete answer to the deficiencies that you identified
5 with CAPS. That's more about how CAPS is used and the training
6 that is given in the use of CAPS, isn't it?

7 A. That is true, sir.

8 Q. Because if officers were properly trained in CAPS and
9 understood the importance of recording accurately information in
10 CAPS, it would become a much more useful and efficient tool?

11 A. That is correct, sir.

12 Q. Thank you.

13 Can I stop there now, and I just want to go to a
14 different report, which is in a different bundle. It's in your
15 Part 1 bundle at 852.

16 A. I have it, sir.

17 Q. It's a Petty Contract administration report covering
18 the Years 2007 to 2010, and the report itself was finalised in
19 April 2012.

20 Do you have that one?

21 A. Correct.

22 Q. If we go, please, to 856, just again so that we can
23 have the context, at paragraphs 2.2 and 2.3, the Audit Report
24 sets out the background to the Petty Contract system, and I will
25 read it out.

1 "The petty contract system is a widely used system
2 implemented by the Government of the Virgin Islands in an effort
3 to expedite and facilitate the execution of minor works and to
4 procure various professional services. A petty contract could
5 be for civil works, like building a small piece of road,
6 painting a building, etc. and for supplying goods like
7 stationery, furniture and services such as architectural, and
8 project management. According to the Public Finance Management
9 Regulations 2005, the petty contract limit was increased from
10 sixty thousand dollars (\$60,000.00) to seventy five thousand
11 dollars (\$75,000.00). This limit was again increased through
12 Statutory Instrument No. 28 of 2007 to one hundred thousand
13 dollars (\$100,000.00). The Public Finance Management
14 Regulations also gives Cabinet discretionary powers to waive the
15 required tender process for the procurement of goods and
16 services exceeding one hundred thousand dollars (\$100,000.00)."

17 "Over the years, the petty contract system has
18 evolved as the favored method of undertaking projects both minor
19 and major. This was pointed out in the Draft Report on
20 Financial Procurement and Government System in the Government of
21 the British Virgin Islands by the Foreign and Commonwealth
22 Office Internal Audit Unit Report of 2002 whereby it was
23 identified that the dual carriageway was executed using some
24 ninety (90) petty contracts. In addition, there is a noticeable
25 trend whereby, it appears, the contracting process is becoming

1 more and more decentralized, as Ministries are increasingly
2 using petty contracts for works: This review seeks to explore
3 the petty contract process within the various Ministries to
4 verify if consistency exists in the overall petty contracting
5 administration."

6 And if we look on the same page at 5.1 and 5.2, the
7 Audit Report then sets out the two audit objectives:

8 "To give assurance that there is consistency in the
9 execution of the petty contract process across Ministries"; and
10 secondly, "to determine whether Ministries maintain adequate
11 systems of internal control over the petty contract process."

12 I'm going to pause there, Ms Corea, and just ask you
13 to help us with this: This is an audit where it appears the
14 Audit team is looking at the use of Petty Contracts across a
15 number of Ministries. In circumstances like that where you're
16 looking at more than one public body, would you expect a
17 Management Response from each body?

18 A. Yes, sir.

19 Q. So, they will all have an opportunity to respond?

20 A. Yes, sir.

21 Q. If we go to 857, please, the next page, under
22 "LIMITATIONS", it's recorded: "The review was severely limited
23 due to the lack of project documentation prior, during, and
24 after the execution of the projects. This lack of documentation
25 required the review team to largely depend on interviews with

1 personnel from the respective Ministries in determining project
2 scope and objectives."

3 Now, did you--I appreciate again, I'm asking you to go
4 back a number of years, but can you recall at all why there was
5 a lack of project documentation?

6 A. Because there was a practice of poor documentation was
7 kept. I can't--I can't find any other reason as my memory takes
8 me, but that's--that's the only reason that we formed that there
9 was a level of poor documentation being kept in Ministries.

10 Q. So, within Ministries at the time of the Audit, when
11 they were doing projects which were mediated through the use of
12 Petty Contracts, what came across as a trend was that the
13 project documentation was not being maintained and retained
14 within the Ministry?

15 A. That is one factor, sir.

16 Q. Are there any other factors that go to the lack of
17 project documentation?

18 A. Lack of Human Resources within the Ministries to
19 actually administrate these programmes.

20 Q. To bring that together, from your recollection, you'd
21 suggest that a lack of Human Resources meant that there was a
22 lack of--a tendency not to retain project documentation?

23 A. Correct, sir.

24 Q. And from an Auditor's point of view, is that a
25 surprise?

1 A. No, sir.

2 Q. Why isn't it a surprise?

3 A. Because we have found that throughout a lot of
4 Ministries, a lack of Human Resources to actually maintain and
5 administrate functional areas within the Ministries.

6 Q. If we look at 9.1 on the same page, that's the "FACTS
7 AND FINDINGS" section, the start of it, you make a point that we
8 ought to put on the record: "The following findings represent
9 general notable observations that were evident during the course
10 of the review. All findings do not necessarily apply to all
11 Ministries; however, they are mentioned in the report because of
12 the prevalence of their occurrence within a significant number
13 of Ministries. It is our hope that each Ministry will evaluate
14 their petty contract administration process against the finding
15 of this report and make the necessary changes required to
16 improve any deficiencies."

17 Now, what--how the report then tackles your facts and
18 findings is that it's set out in terms of the cycles of a
19 project, and the first one is "Project Inception". And what's
20 noted at 9.2 is that "the review revealed three main ways in
21 which projects are conceived across Ministries. The first
22 method of project conception stems directly from Government's
23 agenda which is then appropriately budgeted and funded. The
24 second is through requests made by Members of the House of
25 Assembly, which token sums are provided for in the budget.

1 Finally, projects are sometimes conceived through an identified
2 need by the Ministry for which, if funding is not available,
3 these projects are funded through Supplementary Appropriations."

4 I will come back to that.

5 You continue: "Although these may be accepted
6 conception methods, the review team, in most instances, found no
7 documentation on project files indicating how projects were
8 conceived or what the objectives of the projects were. Based on
9 the lack of adequate documentation of objectives, it is
10 difficult to determine whether value for money is achieved and
11 whether the project yielded the desired outcome."

12 Now, firstly, Supplementary Appropriations, does that
13 mean that the Ministries having then to go back to the House of
14 Assembly to get additions to the budget?

15 A. That is correct, sir.

16 Q. And in terms of a lack of documentation, does this
17 hark back to points that you've made in relation to other
18 reports that we've looked at that the absence of documentation
19 doesn't allow for objective assessment of whether a project has
20 delivered on its goals, nor do you have any way of measuring
21 whether it has delivered on its goals?

22 A. That is correct, sir.

23 Q. So, from an Auditor--a question for an Auditor would
24 be, does the subject matter of your audit deliver value for
25 money and where you don't have the documentation, it's a

1 difficult question to answer, isn't it?

2 A. It is, sir.

3 Q. What at 9.3 is you explain is the first phase of the
4 project life cycle is in section, and it relates to
5 understanding the project scope and objectives and getting
6 enough information to confirm that the Project should proceed,
7 or to convince management that it should not.

8 And so, what's important is--does it come to this--the
9 question is: Is there documentation which allows an
10 understanding of the basis on which the project was either
11 rejected or approved?

12 A. That is correct, sir.

13 Q. What you say, though, at 9.4 is: "Although not
14 adequately documented in project files, the review team was able
15 to discern, through interviews, that the project inception
16 process is highly driven by the political establishment and not
17 by an overall strategically formulated plan for district and
18 territorial development. It was found that the majority of
19 minor projects are being conceived at the district level with
20 little consideration to a territorial development mandate. Such
21 a segmented approach to project inception, we believe, may have
22 significant adverse effects on the national development as
23 district development may not coincide with national interest as
24 projects may be conceived to promote political agendas of
25 District Representatives."

1 Now, you've mentioned "interviews". Were these
2 interviews with Members of staff within the Ministries
3 themselves?

4 A. That is correct, sir.

5 Q. And stepping back, what there wasn't in terms of use
6 of Petty Contracts, there wasn't--projects didn't fit into a
7 Territory-wide scheme. It was each Ministry would develop its
8 own project without reference to any others; is that right?

9 A. Yes, sir. And I indicated it would be at the District
10 Level and not from a Territorial scheme as indicated before.

11 Q. At 9.5, you say this: "In addition, this segmented
12 approach may be a direct consequence of the Territory's system
13 of District based representation whereby nine (9) of the
14 thirteen (13) representatives are elected at the district level.
15 As such, the impetus for these representatives is to primarily
16 satisfy the developmental needs and interests of their
17 respective Districts rather than the needs of the
18 Nation/Territory. This condition is further complicated when
19 the District Representatives are appointed to a ministerial
20 office. For example, during this exercise, we have found that
21 Ministries have taken on projects that are outside the scope of
22 their Ministerial mandate with the only seeming connection being
23 that the Minister responsible for that Ministry is also the
24 representative for the District in which the project is being
25 undertaken. This practice was found to be counterproductive as

1 the Ministry's resources are being distracted from achieving its
2 core objectives."

3 So, did the Audit reveal that effectively Ministerial
4 overstretch that more than one Ministry was engaged in
5 activities which fell outside the purpose of that Ministry?

6 A. That is correct, sir.

7 Q. And at least from a perception level, that creates the
8 perception that it's not being done for a good reason but rather
9 to promote a particular agenda; is that right?

10 A. That is correct, sir.

11 Q. If we go to 9.6 on 859, the next stage in the project
12 life cycle, as identified in the Audit, is "Contractor Selection
13 and Contract Award," and at 9.6 what the review records is that
14 there was "no set criterion across Ministries for contractor
15 selection and subsequent awarding of contracts. In the absence
16 of such criterion, the process of selecting contractors lacks
17 equity and transparency."

18 And so, what there wasn't was one set of criteria that
19 all Ministries were using when selecting contractors?

20 A. Correct, sir.

21 Q. The review says at 9.6.1: "Through interviews, it was
22 determined that, in most cases, contractor selection is greatly
23 influenced by the Members of the House of Assembly and in
24 particular the Representative for the District for which the
25 works are to be executed. The review again found no criteria

1 for the basis of Member's selection of the contractor other
2 than, in most cases, the contractor resides in the Member's
3 constituency/district. The lack of a criteria based selection
4 process was found to be of great concern as the risk is
5 significant that unsuitable contractors may be selected to
6 execute works that exceed their competency levels, resulting in
7 inefficient and unacceptable project outcomes."

8 You note at 9.6.2--or the review does that "The Public
9 Finance Management Regulations 181 mandates that the Financial
10 Secretary 'shall maintain a list to be approved by the Minister,
11 of pre-qualified contractors for the procurement of services,
12 including construction works.'"

13 What your review showed was that such a list hadn't
14 been produced, neither by the Ministry of Finance nor by the
15 other Ministries. So, although the Financial Secretary was
16 required to have such a list, as of the time of the Audit,
17 April 2012, no list existed; is that right?

18 A. That is correct, sir.

19 Q. And did any of the Ministries that you audited have
20 their own lists?

21 A. No, sir.

22 Q. And what the review notes is that: "As a result,
23 there is no record of any assessment done to determine the
24 suitability of a contractor to carry out the contracted works."

25 Now, does that mean that, certainly at least at the

1 time of the Audit, there was a complete lack of transparency as
2 to how Ministries were appointing contractors to take on Petty
3 Contracts?

4 A. That it was so, yes.

5 Q. What the review says at 9.7 is: "Before the issuance
6 of a contract, the contractor is required to submit valid
7 Certificates of Good Standing from the Inland Revenue Department
8 and the Social Security Board."

9 Do you know whether that's still a requirement,
10 Mrs Corea?

11 A. As far as I'm aware, it is.

12 Q. And what then records is that: "The review team found
13 numerous instances whereby certificates were granted by the
14 Inland Revenue Department with outstanding sums owing. The
15 review team also found these certificates to be inadequate in
16 providing information on which a decision in awarding contracts
17 can be based, as the details of amounts owing and duration is
18 not communicated to the Ministries. This requirement was put in
19 place as a control to ensure that Contractors were in fact
20 fulfilling their tax obligations and those who were not, would
21 not benefit from Government contracts during the period of
22 non-compliance. However, this control has been rendered
23 ineffective as contractors are issued Good Standing Certificates
24 and awarded contracts while taxes (which may be substantial) are
25 owed for extended periods of time."

1 In terms of a deficiency, when you refer to "numerous
2 instances", was that numerous instances found across a number of
3 Ministries?

4 A. Yes, sir.

5 Q. And in terms of this is as a problem, did the problem
6 lie with the Inland Revenue Department not carrying out due
7 diligence when deciding to issue a Certificate of Good Standing?

8 A. I don't understand the question, sir.

9 Q. As I understand the point that's made at 9.7, the
10 Inland Revenue Department would issue a Certificate of Good
11 Standing even though someone might owe taxes?

12 A. Within the Good Standing Certificate, it indicates
13 that they owed monies on their taxes. So even though they have
14 a certificate, it identified that the person being issued the
15 certificate has a sum of monies owed, but it would not indicate
16 how much and for what period of time.

17 Q. And so when that appears on a Certificate of Good
18 Standing, was the Audit team's expectation that that's something
19 that the Ministry ought to follow up?

20 A. Yes.

21 (Overlapping speakers.)

22 Q. With the Inland Revenue?

23 A. Yes, sir.

24 Q. And that's part of a due-diligence exercise before
25 awarding a contract?

1 A. That is correct, sir.

2 Q. Thank you. If we go to 860, the next page, please.
3 9.9, you consider and the Audit review considers the next part
4 in a project cycle, and that is Project Execution and
5 Management, and what's said at 9.9 is: "Over the years, a
6 discernible trend has emerged whereby the project execution and
7 management function has become somewhat decentralized with each
8 Ministry executing and managing its own projects. This
9 situation has arisen, due to the lack of capacity within the
10 Public Works Department to adequately perform such function for
11 the Ministries in a timely manner. As a consequence of this
12 apparent decentralization of this function, the Finance and
13 Planning Officers within the Ministries have been tasked with
14 performing these functions. However, in most instances they too
15 lack the necessary capacity and technical competencies to
16 adequately carry out these functions as their areas of training
17 and expertise do not encompass project management. As a result,
18 proper project management practices are sometimes inadvertently
19 neglected or overlooked in an effort to execute projects."

20 The review continues at 9.10: "Although project
21 management is an integral component of the Finance and Planning
22 Officer's job function, the review found that these individuals
23 admittedly do not possess the requisite background or training
24 in project management to adequately and sufficiently provide the
25 level of competency required to perform the function. Indeed,

1 it is observed that the Finance and Planning Officers focus
2 primarily on the financing aspects of the project undertaken
3 rather than the management of the works and efficient execution
4 of the project. This situation may be a direct consequence of
5 the upgrading of the Finance Officer post to that of Finance and
6 Planning Officer without any consideration given to skill set
7 and competencies of the position holders. Given the practice of
8 the Finance and Planning Officers being named as Supervising
9 Officers in contracts, it is of utmost importance that these
10 individuals possess the necessary skills in order to fulfill
11 their responsibilities."

12 And so, was this such a situation that had just
13 evolved in that, because the Public Works Department couldn't
14 deliver a service, Ministries took it upon themselves to do so,
15 and then the next step was just to upgrade the job description
16 of Finance Officer to Finance and Planning Officer but without
17 really putting training in place?

18 A. I would say not because the Public Works Department
19 could not provide. I think it was updated to improve the
20 Ministry of--the Ministries in terms of giving them the
21 opportunity to add value to the Ministry and execution of the
22 services of the Ministry. So, they would work in conjunction
23 with the Public Works Department but had that skill set at the
24 Ministerial level because, since each Ministry was responsible
25 for a number of departments, that--that skill would be passed on

1 to those departments that would be doing project management as
2 well.

3 Q. And if we sort of put that in layman's terms, the
4 effect is that it's very difficult to understand exactly what
5 someone may owe, and it's also difficult, therefore, to
6 understand whether there is--there are losses to Government from
7 revenue.

8 A. That is true.

9 Q. And that--the fact that the system is not being used
10 properly and not worked--and the information being put into it
11 is not reliable means that it increases the risk, and
12 particularly the risk of Government losing out on revenue,
13 doesn't it?

14 A. At the end of the day, yes, sir.

15 Q. And it makes it much harder to actually quantify how
16 much revenue may be lost?

17 A. Yes, sir, depending on what calculation is made in the
18 system, yes.

19 Q. If you go, please, to 2349 at 4, I wanted just to ask
20 you again if you could just clarify 4 for the Commissioner.

21 4 begins: "Although CAPS was implemented to enable
22 the Government of the Virgin Islands to obtain accurate and
23 reliable information to inform policy decisions, the audit found
24 that the platform is severely limited in its reporting
25 capabilities."

1 And so, what it seems to be is that it wasn't or
2 couldn't be used to actually generate reports. What was the
3 consequence of that, please?

4 A. When we did the revision and we were asking for
5 reports, we were told that it is difficult to get reports from
6 the system, and we really could not understand why. But then
7 when we realized the process was being compromised in different
8 areas, it will be difficult to get good reporting from the
9 system because if the information is not placed in the system,
10 garbage in is garbage out. So, it will be difficult to get the
11 information and a report in full if the information is not put
12 in the system as intended.

13 Q. If you go to the last two lines of point 4--and,
14 again, it really speaks to not having the correct information in
15 CAPS--but you give an example, and I will read it: "It is
16 noteworthy to recognize that when a sample of the declarations
17 were queried for one courier, the officer investigating found
18 numerous other deposit declarations from prior years for which
19 adjustment declarations were not submitted. This fact confirms
20 the likelihood that there are a significant number of
21 declarations in CAPS that were never completed. We suspect that
22 this issue might be pervasive (as other entities outside of
23 couriers also participate in the deposit scheme) and a
24 multi-year issue."

25 So, it's--the point that's being made is that this

1 problem--that CAPS is not being updated with the information, so
2 you don't have, for example, details of adjustment
3 declarations--that applies to other entities other than
4 couriers, and it spans a number of years.

5 A. That is correct, sir, because we only look at the
6 courier processing.

7 Remember the importers who import every day from
8 different agencies and different companies, so we didn't
9 incorporate all of those. We only looked at the courier
10 processes.

11 And to add, like it's stated there, if the information
12 isn't accurate and incomplete, then you wouldn't get the
13 accuracy of it and the reliability from the system.

14 Q. If you go to 5 on 2340, another deficiency that the
15 Audit picked up on was that there was no reconciliation process
16 to ensure that all deposit declarations are cleared with the
17 corresponding adjustment declaration. I think that's something
18 you've explained already.

19 What you also note at 6, which is at 2351, is that the
20 system--and this is the CAPS--does not have the capability to
21 track and monitor the compliance of submissions of adjustment
22 trade declarations.

23 And so, there was a 15-day requirement to clear the
24 deposit declaration, so that's the time--you've got,
25 effectively, just over two weeks to put in your adjustment

1 declaration, but CAPS isn't set up to check whether people
2 comply with that time limit; is that right?

3 A. That's correct, sir.

4 Q. And did the Audit find that there was a low level of
5 compliance?

6 A. There was, sir.

7 Q. Is that a consequence of the system itself or is it a
8 consequence of the way it's being used by Customs?

9 A. For the most part, I think it's the way that the
10 system is being used by Customs Department. If there is--

11 (Overlapping speakers.)

12 Q. Please finish.

13 A. If there is no enforcement in utilising the system as
14 it's intended to, then you would get gross--gross inadequacies
15 when you actually utilize the system.

16 Q. If we go to 2352 and just pick up a couple more of the
17 recommendations--deficiencies, forgive me--you've made
18 recommendations as well.

19 You found at 7 that some courier services were not--or
20 it appears that some courier services were not being processed
21 through CAPS at all; is that right?

22 A. That is correct, sir.

23 Q. And then at 8, you also found that declarations were
24 being wrongly entered into the system, so those--you would have
25 declarations entered as deposit declarations, but then changed

1 and cleared as import declarations.

2 A. That is correct, sir.

3 (Overlapping speakers.)

4 Q. And the point, as I understand the point, is that that
5 puts revenues at risk?

6 A. Yes, sir.

7 Q. Ms Corea, if we pull together the various deficiencies
8 that the Audit highlighted in relation to the use of CAPS--and
9 those are not just the ones that we have gone through this
10 morning, but some of the points you made yesterday in
11 evidence--when your team came to look at the system, it was in
12 December 2020, so four years after it had been rolled out.
13 Would a fair summary of the issues highlighted by the audit be
14 that, four years after it was rolled out, the CAP System was
15 simply not being used in the way it was intended?

16 A. That is correct, sir.

17 Q. And not only was it not being used in the way
18 intended, the way in which it had been used meant that it was
19 unreliable as a system?

20 A. That is correct, sir.

21 Q. And that fundamentally goes to your point about the
22 importance of preserving the integrity of information?

23 A. That is correct, sir.

24 Q. Which, from a Customs perspective, as a
25 revenue-generating agency, is a real problem, isn't it, because

1 they are not in a position to accurately assess how much revenue
2 may be owed and, therefore, how much revenue needs to be written
3 off or how much revenue may be lost?

4 A. From an audit perspective, yes, sir.

5 Q. Let's look at 2355 and your conclusion. What the
6 Audit team wrote was this: "It is our conclusion that Her
7 Majesty's Customs does not have an adequate system of internal
8 controls in place for the administration of its operations
9 related to courier clearance procedures. The current process is
10 void of clearly established guidelines for both customs officers
11 and courier operators. Although CAPS was implemented to achieve
12 specific objectives, the system is not being utilized in a
13 manner that will achieve those objectives and in a manner that
14 would ensure revenue maximization. The major concessions given
15 to some operators in the manner in which trader declarations can
16 be submitted and approved, lays waste to any meaningful
17 reporting on import activities which will have a direct impact
18 on policy decisions. The current use of standing deposits
19 leaves Government exposed to an unnecessary and unacceptably
20 high level of risk of loss revenues. We find that HM Customs
21 have allowed courier operators to dictate the manner in which HM
22 Customs processes are carried out and have to become de facto
23 customs officers servicing their business interests. We found
24 the entire process to be starved of adequate resource,
25 particularly at the Beef Island station where the bulk of

1 courier imports are processed, to effectively execute the
2 clearance and monitoring function for this area. Overall, the
3 facilitation of courier operations within HM Customs requires
4 significance reform in order to be a value-added service to the
5 Government. Finally, based on the significant number of issues
6 highlighted in this report and their possible pervasiveness
7 within the operations of Her Majesty's Customs, we find that
8 other areas of the Department must be evaluated on an ongoing
9 basis."

10 So, is the take-home point from this that, whilst
11 Customs can't abandon CAPS, it has, in effect, got to start all
12 over again with how it uses the system?

13 A. That is correct, sir.

14 Q. And where you, at the end, talk about possible
15 pervasiveness, is that because--is the point that the issues
16 that your audit raised in relation to courier operations are
17 issues that could affect other importers that come through
18 Customs?

19 A. I missed you there for a minute, sir. Could you
20 repeat? I think I'm having a little technical difficulty this
21 morning.

22 Q. I think the screen has frozen. We can still hear you.

23 A. It's asking me to restart my computer. Is it possible
24 I can get that done and continue?

25 Q. Yes, of course. We will pause, and--if you need to

1 log out. And when you log back in again, Ms Corea, we will
2 resume your evidence.

3 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

4 THE WITNESS: Thank you, sir.

5 (Recess.)

6 COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

7 MR RAWAT: Thank you for coming back, Ms Corea.

8 BY MR RAWAT:

9 Q. We're going to go to Part 3 of the bundle, please,
10 which--and page 3050.

11 A. I'm there, sir.

12 Q. Thank you.

13 This is the Internal Audit Department's Draft Audit
14 Report on the COVID-19 stimulus, and it's dated October 2020.

15 I just wanted to check the date with you, please
16 because, if you go, for example, to page 3062, you can see that
17 there's reference in the middle there to dates, March 9, 2021.

18 A. Correct.

19 Q. Does it follow that this report has sort of been
20 updated by the Internal Audit Department over time?

21 A. Correct. The report started in October 2020, so we
22 finished it in May 2021. So, that date was actually supposed to
23 be changed, sir. Sorry about that.

24 Q. That's very helpful.

25 So, the date on the front of the report should read

1 May 2021?

2 A. Correct, sir.

3 Q. And when it's recorded as "Draft Audit Report", is
4 it--does it mean the same as other Audit Reports in that you
5 sought a Management Response but you didn't get one?

6 A. That is correct, sir.

7 In this case, with this report, because we were just
8 finalising the report, we did not have an exit interview with
9 the client, which would have been the Premier's Office and the
10 Ministry of Finance. However, the report was issued to the
11 Financial Secretary, and I think, if I recall correctly, a
12 response in form of a memorandum was received, I think,
13 yesterday.

14 Q. I see. Thank you.

15 Can we look at the report itself, and first of all,
16 let's start with the introduction which explains the purpose of
17 the report, and that's at 3052. And helpfully again, there is
18 background and context to the purpose of the report. So, the
19 introduction says and I'll read it: "This report provides an
20 update to the Minister of Finance, and by extension the Cabinet
21 on the execution and process of the Government's economic
22 response to the stimulus in combating the social and economic
23 consequences to the ongoing COVID-19 pandemic. The report
24 evaluates select programmes against policy documents and
25 guidelines as approved, where available, to provide limited

1 assurance that the programmes are executed as designed and in a
2 manner that promotes accountability, transparency and equity in
3 the distribution of funds. The report does not intend to assert
4 or imply any opinion on the economic impact of the grant funds
5 expended/distributed."

6 And then by way of background, the report explains
7 that: "On May 28, 2020, the Premier of the Virgin Islands, The
8 Honourable Andrew Fahie delivered a message to the Territory
9 entitled 'Phase II of the Economic Response Plan: Social
10 Protection and Economic Stimulation in COVID-19'". And as the
11 report explains, the Premier gave details in that statement of a
12 \$62.9 million Economic Response Plan, which was funded by
13 Central Government and the BVI Social Security Board, and the
14 plan broke down as follows:

15 There was 40 million as a grant from BVI Social
16 Security Board, which then split as follows:

17 \$10 million for COVID-19 Unemployment Relief, which
18 was to be administered by the Social Security Board;

19 \$6.5 million as SME Grants--and "SME" is small to
20 medium enterprises, isn't it?

21 A. That is correct, sir.

22 Q. 1 million for Hotel Accommodation and Quarantine
23 Stimulus;

24 2 million as Support to Daycares, Private Schools and
25 Religion Organisations;

1 2 million Support to Agriculture and Fisheries;
2 1 million for Traffic Transformation and
3 Transportation, and it's put in brackets (Park and
4 Ride/Quarantine Bus Service);

5 7.5 million National Health Insurance;
6 9 million for Housing Repair Assistance; and
7 1 million for Social Assistance.

8 So, that was the 14 million grant from the Social
9 Security Board.

10 In addition, there was 17 million for the BVI Social
11 Security Affordable Home Construction Project;

12 2 million as a Grant to Assist with Infrastructure;
13 And 3.9 million just under the heading "Other
14 Assistance".

15 So, that was the total of 62.9 million.

16 And am I right to understand that, of that
17 62.9 million, 57 million came from the Social Security Board?

18 A. Correct, sir.

19 Q. If we go to page 3053, what the--your report says is
20 "the cadre of initiatives included six (6) programmes"--and
21 those have been designated with the letter (S)--"and six which
22 can be considered economic stimulus in nature"--and they're
23 designated with the letter (E). And are those designations
24 attributed by the Internal Audit Department?

25 A. Yes, sir, based on the information I received.

1 Q. And the report continues: "Although all programmes
2 are hoped to have some level of economic impact, this
3 distinction was made in order to better assess the desired
4 outcome of each programme based on its intended function."

5 It then continues: "To promote transparency and
6 accountability in the distribution of these funds, the Premier
7 charged the Internal Auditor (Director of Internal Audit) to
8 provide monthly reports to the Minister of Finance for
9 transmission to Cabinet. This directive from the Premier did
10 not provide any scope limitations or expectations to inform the
11 Internal Auditor's work and as such the Internal Auditor
12 exercises full discretion in the assessment of these programmes.
13 The assessment of the Government's COVID-19 response is limited
14 to the following five (5) programmes administered by Central
15 Government."

16 And so, does it follow that what--in order to carry
17 out the function that had been allocated to you as Internal
18 Auditor, you selected five of the programmes to assess and
19 review; is that right?

20 A. That is correct.

21 Q. And four of those programmes would come under Economic
22 Stimulus, one under Other Assistance, and they were these small
23 and medium enterprise grants: the Support to Daycares, Private
24 Schools and Religion Organisations, the Support to Agriculture
25 and Fishery, Traffic Transformation and Transportation and Other

1 Assistance.

2 COMMISSIONER HICKINBOTTOM: Just pausing there,
3 Mr Rawat, because those have been designated by the Internal
4 Audit Department, and the ones that had been designated
5 "Economic Stimulus" are the SME Grants, the Support to
6 Agriculture and Fisheries, and Traffic Transformation and
7 Transportation. Those are Economic Stimulus. And there are two
8 designated social protection programmes, that's, Support for
9 Daycares, Private Schools, and Religious Organisations, and
10 Other Assistance.

11 MR RAWAT: Thank you.

12 COMMISSIONER HICKINBOTTOM: Yes.

13 BY MR RAWAT:

14 Q. Taking you back, the Internal Audit Department was
15 charged with providing monthly reports to the Minister of
16 Finance for transmission to the Cabinet. Was that something
17 that the Internal Audit Department was able to do?

18 A. Repeat the question, sir?

19 Q. If you look at the middle paragraph on that page, it
20 says that the Premier charged the Internal Auditor to provide
21 monthly reports to the Minister of Finance for transmission to
22 Cabinet, and my question was: Was that something that the
23 Internal Audit Department was able to do?

24 A. No, sir.

25 Q. Why were you unable to do it?

1 A. We did not receive any additional information to do
2 the review, sir.

3 Q. We will come back as we go through the report to what
4 information you were provided with, but what on that page, the
5 report does say, is: "In fulfilling this mandate, the Internal
6 Auditor formulated the following criteria by which to assess
7 each programme: (1), policy paper was developed and approved
8 for each programme; (2), each programme has established
9 measurable outcome or targets for the monies invested especially
10 those geared towards economic stimulus as the primary purpose;
11 (3), each programme has established an eligibility criterion
12 that was publicly distributed; (4), each programme has
13 established clear evaluation criteria to review applications."

14 And then if you go over the page: "(5), each
15 programme has established mechanisms to communicate final
16 decisions to applicants, whether approved or denied and reasons
17 for denial, if necessary; (6), eligibility and evaluation
18 criteria were applied in a consistent manner, where deviations
19 occurred, and such reasons are appropriately documented."

20 So, if that then--the list, if you like, of benchmarks
21 by which you as Internal Auditor would assess these programmes?

22 A. That is correct, sir.

23 Q. So, these were the questions that the Audit team would
24 have in mind when looking at the information that was provided
25 to it?

1 A. That is correct, sir.

2 Q. Or, indeed, when deciding what information should be
3 requested?

4 A. Indeed, sir.

5 Q. If we--we're now on page 3054, and just to summarise
6 the paragraph that is headed or immediately under the heading
7 "STIMULUS OVERVIEW", and we can do that by looking at the last
8 sentence of that paragraph. You say, "the review incorporates a
9 cursory analysis of three provisions (timely, targeted and
10 temporary) of fiscal stimulus against the Government's
11 approach."

12 Now, these are--confirm this, please--they are
13 questions that would be asked when assessing Government fiscal
14 policy where there is an economic downturn?

15 A. That is correct, sir.

16 Q. And so, they weren't--they weren't standards that you
17 plucked out of the air. They were the ones that you knew you
18 could use as an Auditor?

19 A. That is correct, sir.

20 Q. And if we look at the first of those, which is asking
21 whether the provisions are timely and the definition of "timely"
22 is given as "take effect while the economy is still in a slump",
23 it comes down to and it goes over to the next page, perhaps we
24 can try and summarize it in this way: What you've concluded is
25 that there were delays in making payments, but, overall the

1 initiatives can be considered to be timely, given the continued
2 depressed state of the BVI economy? Would that be a fair
3 summary of your conclusion?

4 A. Yes, sir.

5 Q. Because you did note that there was a significant lag
6 in distribution of funds for which you could not establish
7 definitive reasons, but you did also observe that the process
8 was constrained because of inadequacies in resources to execute
9 the volume of works required to properly administer each
10 programme, and there was some delay in securing some funding
11 which would be a contributing factor.

12 Again, have I summarised that fairly?

13 A. That is correct, sir.

14 Q. The next analysis or benchmark that you used was
15 question of "Targeted", which is whether it's focused on
16 activities that have relatively high economic multipliers. And
17 you say this in the review report at 3055: "Although we have
18 not been able to review any documents that informed the
19 selection of the various initiatives under the Stimulus Package,
20 we assessed that the package was targeted towards specific
21 initiatives as outlined in the Premier's statement, as well as
22 outlined in the Grant Agreement. What was lacking, however, was
23 the absence of any specific strategy that quantified any
24 multipliers effects to justify why these specific initiatives
25 were chosen. This is further borne out by the fact that

1 outcomes were not clearly articulated in the programme"--

2 (Pause.)

3 COMMISSIONER HICKINBOTTOM: Mrs Corea?

4 MR RAWAT: We will pause.

5 (Pause for technical difficulties.)

6 COMMISSIONER HICKINBOTTOM: Good. Thanks, Dame.

7 We're ready.

8 THE WITNESS: Sorry about that.

9 COMMISSIONER HICKINBOTTOM: No, Ms Corea. These
10 things happen. We know your internet is not very stable today,
11 but we spotted that you were no longer with us, but you're back
12 with us, and we will keep an eye on it for the time being.

13 Mr Rawat.

14 MR RAWAT: Thank you, Commissioner.

15 BY MR RAWAT:

16 Q. Ms Corea, before you encountered technical
17 difficulties, I had gone through the question of whether the
18 stimulus was timely. The next measure against which you
19 conducted the analysis or the Audit team conducted the analysis
20 was whether it was targeted, and that's at page 3055, so if I
21 take you back to that, please?

22 A. Okay.

23 Q. Do you have it?

24 A. I do.

25 Q. And what the report records is this: "Although we

1 have not been able to review any documents that informed the
2 selection of the various initiatives under the Stimulus Package,
3 we assessed that the package was targeted towards specific
4 initiatives as outlined in the Premier's statement, as well as
5 outlined in the Grant Agreement. What was lacking, however, was
6 the absence of any specific strategy that quantified any
7 multiplier effects to justify why these specific initiatives
8 were chosen. This is further borne out by the fact that
9 outcomes were not clearly articulated in the programme documents
10 reviewed."

11 To pick up on some points arising from that, you say
12 "we have not been able to review any documents that informed the
13 selection." Did the Audit team ask for those kind of documents?

14 A. Yes, sir, we have requested the information.

15 Q. And what was the response to that request?

16 A. They said they would provide it, but we're still in
17 waiting, sir.

18 Q. And were you given any reason for why, although you're
19 still waiting for it, why it could not be provided immediately?

20 A. At the time they said they didn't have enough staff to
21 deal with the issues of administrating the programme, and the
22 information was being utilized at the same time of our request.

23 Q. Could you repeat that last bit again. We lost you a
24 little bit.

25 A. When we requested the information, they said that they

1 were utilizing the information, so we could not have gotten that
2 at that current time. And as soon as they finished with their
3 compilation, they would provide it for us.

4 Q. And you still--you're still awaiting that information?

5 A. Yes, sir, we are.

6 Q. If you look at the next or the--sticking with that
7 paragraph, you say that you referred to the fact that outcomes
8 were not clearly articulated in the programme documents
9 reviewed. What would you have expected to see documented in
10 terms of outcomes?

11 A. We will have--we would be looking for what the
12 objectives would have been, and any measures that they put in
13 place to make sure that they actually meet the goal of achieving
14 the objectives.

15 Q. Now, the third measure against which you analyzed the
16 stimulus was "Temporary", and that's whether the measure would
17 expire when the slowdown is over. And what is recorded in the
18 report is this: "Analysis of this provision proved somewhat
19 more difficult to assess given the evolving nature of the
20 pandemic. It is difficult to determine with any accuracy the
21 potential duration. However, given the overall administration
22 of the programmes, funding appears to be temporary in nature, as
23 the programmes are bound by the limited funds allocated.
24 Despite this, we found that the programmes have the potential to
25 be extended if additional funds are provided above the initial

1 allocation."

2 Again, what's the basis on which you found that the
3 programmes have the potential to be extended?

4 A. Based on the number of--based on what the intent would
5 have been, and based on the number of applicants that were
6 interested in achieving the grants.

7 Q. Under "Limitations" at the same page, what's written
8 is this: "The Audit approach was one that envisaged evaluating
9 the initiatives on a more consultative basis, with the hopes
10 that value added advice and recommendations could positively
11 impact the overall administration of the programme before all
12 the funds were expended. The multiple decisions of Cabinet to
13 have the initiatives audited on a monthly basis support this
14 approach." It goes over to the next page, and it continues:
15 "This approach would have allowed for corrective actions to be
16 taken by the executing agencies which would foster better
17 programme outcomes as well as provide some level of assurance
18 that the initiatives were executed in a transparent,
19 accountable, and equitable manner. However, this approach could
20 not be utilized due to severe limitations on the timely access
21 to information from the Executing Agencies. Despite multiple
22 requests for information of a formative nature, pertinent to the
23 administration of the programmes, such information was not
24 provided in a timely manner or not at all. Information such as
25 programme objectives, performance measures and eligibility and

1 evaluation criteria were in most cases either absent from the
2 documents presented or changed significantly from what was
3 envisaged. Consequently, our review and final conclusions are
4 based on the limited information accessible to the Audit team.
5 It is highly probable that if all information requested was made
6 available, it may have yielded different opinions and
7 conclusions."

8 So, to break that down a little bit, given--and you've
9 said that you were not able to do this--given that the Premier
10 had asked you as the Internal Auditor to review these programmes
11 on a monthly basis, was it your expectation that you would work
12 in consultation with the Ministry of Finance and the Premier's
13 Office so that you could deliver on that charge?

14 A. That was--that would have been the best practical
15 option, sir.

16 Q. And if your team, your Department, had been able to do
17 that, had received the information you wanted and been able to
18 then work collaboratively, you would have been able to input
19 into the programmes to make sure that they were providing value
20 for money and were targeted to those in need?

21 A. Yes, sir, because it would have been acting in a
22 consultative capacity as opposed an assurance capacity.

23 Q. And that's an advantage because it's being done as the
24 programme is ongoing, the programme can be adapted?

25 A. That is correct, sir.

1 Q. And from your perspective, Mrs Corea, was this
2 something that you were willing to take on as a role?

3 A. Surely, sir.

4 Q. But as I suppose with all audits and whether you're
5 consulting or providing assurance, it depends on you receiving
6 information?

7 A. That is correct, sir.

8 Q. And to keep it short, you made multiple requests, and
9 you didn't receive the information that you needed?

10 A. That is correct, sir.

11 Q. And to whom were the requests being made?

12 A. The requests were being made to the Premier's Office
13 through the Permanent Secretary, sir.

14 Q. And would you address your requests for information to
15 the Permanent Secretary in the Premier's Office?

16 A. That is correct, sir.

17 Q. And what about the Financial Secretary? Were you also
18 making requests of the Financial Secretary?

19 A. We did in certain instances, yes.

20 Q. But was the majority of information that you needed
21 held by the Premier's Office?

22 A. That is correct, sir.

23 Q. And just summarise for the Commissioner, what was the
24 response of the Permanent Secretary in the Premier's Office to
25 your request for information?

1 A. Well, when we first requested the information, they
2 indicated that they were still at the policy stage of executing
3 the programmes, so the information would not have been available
4 until the programmes were actually administered.

5 The second was when we, indeed, saw that payments were
6 being made, we requested the information again, and the
7 information that was submitted was their Cabinet Extracts that
8 didn't provide the substantial information that we needed. We
9 then again requested the information because we were monitoring
10 payments being made, and we were told that the information is
11 being utilized and collected and we will get it as soon as it is
12 readily available, sir.

13 Q. What about your requests--the requests that you made
14 to the Financial Secretary? What was the response there?

15 A. Well, when we were not receiving any information from
16 the Premier's Office, I reached out to the Financial Secretary
17 for his assistance in having the information written to our
18 offices, which he did, but we still are waiting--we still are
19 waiting for the information to be submitted.

20 Q. So, would the fair summary be that you've had some
21 limited information but not information responding to every
22 request that you put in?

23 A. That is correct, sir.

24 Q. And is the reality that you've had much less than you
25 would have expected and much less than you wanted?

1 A. That is correct, sir.

2 Q. And to take an example, once a programme is up and
3 running and payments are being made, it must follow that the
4 eligibility criteria will be in place, doesn't it?

5 A. That is correct, sir. That is the expectation.

6 Q. And so, if, in that situation, it should be no
7 difficulty to provide you, as Internal Auditor, with those
8 criteria that are being applied?

9 A. That is correct, sir.

10 Q. And it would be no difficulty to provide you with
11 details of who was receiving the payments and what amounts that
12 were being sent out?

13 A. That's true, sir, yes.

14 Q. You've been an Auditor for a substantial period of
15 time. You have been a Senior Auditor and the Internal Auditor
16 for some time. In your experience, is this level of resistance
17 to your requests commonplace?

18 A. It is very much so, in my experience, yes.

19 Q. If we look at--go back to 3056, please, because you
20 then took a look at the--or set out details about the five
21 programmes that you were assessing, the first of which is the
22 SME Grants.

23 Now--

24 A. Yes, sir.

25 Q. Have you got it?

1 A. Yes, sir.

2 Q. The SME Grants, which is at page 3056.

3 Now, which Ministry was responsible for administering
4 this programme?

5 A. The Premier's Office, sir.

6 Q. Under the heading "Background - Synopsis of
7 programme", the report records this: "On 17th of June 2020,
8 Cabinet approved the Small Business Sector Grant Programme via
9 Extract Memo No. 211/2020 in the amount of six million, five
10 hundred thousand dollars (\$6,500,000.00) funded through a grant
11 from the BVI Social Security Board. These funds were allocated
12 to assist businesses in meeting their operational expenditure
13 while stimulating economic activity by facilitating the
14 circulation of money within the Territory."

15 You go on to the next page to record that "a Committee
16 was established consisting of representatives from the Premier's
17 Office (Chair,) the Ministry of Finance, (Member,) and the
18 Department of Trade, Investment and Promotion and Consumer
19 Affairs"--as a third--"(Member). This Committee was charged
20 with ensuring the effective administration and management of the
21 application process for the approval and disbursement of the
22 grants. The programme was launched officially on July 21, 2020,
23 with an open application period of one month ending August 21,
24 2020." But you note that the application period was extended
25 for an additional week from September 10, 2020, to September 16,

1 2020, to allow businesses that may have missed the initial
2 deadline to participate in the programme.

3 Now, in terms of the Representative from the Premier's
4 Office and it was the Premier's Office that chaired this
5 Committee, who was the Chair?

6 A. I don't--I'm not sure who the Chairperson was.

7 Q. But was it a public officer rather than--

8 A. It would be a public officer.

9 Q. You explain that: "The SME Assistance Grants
10 Programme began with an extensive application, eligibility and
11 approval criteria designed to assess each business's operational
12 position and compliance with various statutory requirements.
13 However, due to time constraints and the unavailability of
14 requisite data, the majority of these criteria were eliminated
15 from the final execution of the programme to facilitate greater
16 inclusion/participation of businesses that would have been
17 negatively impacted by their non-compliance and inability to
18 provide documentation to meet the established criteria."

19 So, was that a decision of the Committee to change the
20 criteria and make them more simple?

21 A. I would think so. I'm not sure who made the decision.

22 Q. And was it a decision that was made before the
23 programme launched on July the 21st, 2020?

24 A. I believe if I recall correctly, it was made somewhere
25 during the process.

1 Q. What you do say is "As a result" of that change in
2 criteria, "the only eligibility criterion utilized was a valid
3 Trade License and the business employing fewer than 20
4 employees." And what happened was that rather than having a
5 scoring system, this was just "classified into five (5) groups
6 based on the level of financial impact (profit or loss) reported
7 during the assessment period."

8 So, the questions that were looked at in terms of
9 assessing what someone would get was, do you have a valid Trade
10 License, do you employ fewer than 20 people, and then what's the
11 financial impact on you as a business?

12 A. That is correct, sir.

13 Q. Now, there were some concerns that your Report raises
14 about that approach, and if we look at (a) on 3057, that you
15 make the point that all micro, small, and medium enterprises had
16 been redefined as "any business with fewer than twenty (20)
17 employees," and as a definition it created inequity in the
18 process, because the size of the business, capitalization needs,
19 cash flow requirements were not being considered when deciding
20 award amounts, as the definition made all businesses equal
21 within the programme; is that right?

22 A. That is correct.

23 Q. And you then point out at (b) that, whilst--when grant
24 were awarded on a lost profit basis, and that was between the
25 period of March to May 2020, it was done without reliable

1 information being collected, which created further inequity
2 because awards were not being made on an objective basis, and
3 you give the example of a micro business with one employee which
4 suffered a loss of \$1,000 being or that a business of that sort
5 could be awarded a grant of \$6,663; whereas a medium business
6 with six employees and a loss of 10,000 would also get the same
7 amount.

8 So, in effect, businesses of different sizes, because
9 they were being treated in the same way, were being--were
10 receiving the same amount in terms of an award?

11 A. That is correct, sir.

12 Q. If we look overleaf at page 3058, what's said in your
13 Report at (c) is: "It is evident that the programme was starved
14 of reliable economic data on which to successfully plan and
15 deliver a programme of this magnitude and significance in such a
16 truncated timeline, as most of the planned actions had to be
17 eliminated or significantly curtailed in order to accommodate
18 the applicants."

19 Where would the reliable economic data have come from?

20 A. The information would come from the criteria that they
21 raised initially, which would encompass more than just the size
22 of the business and the profit loss, so it had a wider range of
23 information in terms of the criteria of the application.

24 Q. And when you use a wider range of criteria, does it
25 mean that it allows awards to be better targeted?

1 A. And more transparent we saw, yes.

2 Q. And you point out that as a result of the approach
3 adopted, funding was awarded to businesses such as DJs,
4 entertainers, vehicle rental companies that would yield little
5 economic benefit while the current environment persists.

6 And so, it wasn't being used as an economic stimulus
7 but rather as social support for those kinds of businesses; is
8 that right?

9 A. Yes, sir.

10 Q. And you point out at (d), and this is, I think, an
11 assessment that was carried out by the Audit Team looking at the
12 different awards, what emerged from that was that the loss
13 sustained by a company was not--was used as a factor in deciding
14 the award, and so you give the example that 50 applicants that
15 reported the most significant loss received \$1,591 more than
16 those--only \$1,591 more than those applicants that possibly
17 broke even or suffered significant less loss. So, the
18 compensation wasn't being as targeted as it could have been; is
19 that right?

20 A. That is correct, sir.

21 Q. If we then go to 3059, at (e), the Audit Report says
22 this: "With criterion for both eligibility and process of
23 application stripped from the programme, we found that the
24 review"--"we found that the review process to be rudimentary,
25 flawed, and not evidence based. Assessment of applications was

1 based on two basic factors, an approved trade license and the
2 reported profit and loss factor as reported by the business
3 owner. No financial information was, in most cases, collected
4 or reviewed to confirm the veracity of the claims made by the
5 applicant. Upon inquiry, we were informed that a majority of
6 the applicants did not maintain financial information that could
7 be submitted."

8 So, in terms of the review process that you're
9 speaking here of the review of the application in order to
10 decide what amount should be awarded?

11 A. That is correct.

12 Q. And in terms of profit and loss, what there wasn't was
13 a financial information that supported the claimed profit or the
14 claimed loss made by an applicant?

15 A. That is correct, just that the applicant stated that I
16 had a profit or a loss and an amount.

17 Q. And now, you say that upon inquiry we were informed a
18 majority of applications did not maintain financial information.
19 Where did that information come from?

20 A. That they didn't have the financial information?
21 Well, they had to put--they had to fill out the applications
22 on-line, so we were able to go in and look at those
23 applications, and they didn't have any financial information
24 attached to it, only a statement saying selections stating that
25 I have X, Y, Z profit and loss, and then the amount.

1 Q. But what you say if we look at the last sentence of
2 (e), "upon inquiry we were informed that a majority of the
3 applicants did not maintain financial information that could be
4 submitted," and I was wondering firstly, who did you make that
5 inquiry to? Who, then, informed you of this detail?

6 A. We inquired with the Trade Department, who was the
7 agency that actually collected the applications in our database.

8 Q. I see.

9 So, the Trade Department would collect the
10 applications and keep them in a database. The Committee headed
11 by the Premier's Office was responsible for reviewing the
12 applications and deciding the awards that would go to
13 applicants?

14 A. That is correct.

15 Q. At (f), which is--what the Audit Report says is:
16 "Although grants were purportedly awarded on the basis of loss
17 to profit, forty eight (48) applicants were granted awards
18 without any information indicating the applicant's financial
19 status being reported on the application. It is unclear as to
20 the rationale for including provisions and granting awards for
21 businesses that failed to complete the application; however, the
22 awarding of these grants diminished the purported meritorious
23 nature of the award process of the programme as there is no
24 equitable and transparent basis to judge these applications."

25 So, if the person was just simply saying "I have an

1 approved Trade License," that could, at least in 48 instances,
2 mean that they still got an award?

3 A. That is correct.

4 Q. If you look at (g) on the same page, what's noted is
5 that applicants with multiple businesses could make a separate
6 application for each business, as evidenced by a separate Trade
7 License, but that was capped. So if you were an individual
8 applicant with multiple businesses, you had a cap of \$15,000 or
9 the equivalent to a grant benefit given to two business, so you
10 couldn't turn up and say "I've got eight Trade Licenses" and
11 just got eight awards, there was supposed to be a cap as to what
12 you could globally receive; is that right?

13 A. That is right.

14 Q. What you go on to say, however, in the Audit Report
15 is: "Based on the manner in which the applications were
16 reviewed and assessed, effective controls were not put in place
17 to ensure this cap was not breached. In one instance identified
18 thus far, the applicant for businesses (trade licenses for which
19 he"--the applicant--"is listed as sole owner or co-owner)
20 received in excess of twenty seven thousand dollars
21 (\$27,000.00)."

22 So, you found at least one example of someone getting
23 over the 15,000?

24 A. That is correct.

25 Q. And again, that was in the context of your Audit Team

1 being provided with limited information?

2 A. That is correct, sir.

3 Q. So, you're not in a position to tell the Commissioner
4 the complete picture in relation to how well the cap operated?

5 A. No, sir, I'm not.

6 Q. You if then look at (h) on page 3060, what's recorded
7 there is: "After reviewing the programme documentation,
8 sufficient consideration was not given to how the financial
9 impact of the programme will be measured." And that's the
10 review by your team, isn't it?

11 A. That is correct.

12 Q. The report continues: "Although the programme is
13 billed as a stimulus, the programme lacked a targeted approach
14 as to how the grant funding will be utilized by recipients."

15 "In speaking with key administrators of the programme,
16 it was indicated that it was hoped the funds would be used to
17 support the business in broad terms. Also, it was hoped that at
18 the conclusion of the programme a survey would be sent to grant
19 recipients to solicit information on use of the funds. However,
20 that sufficiently reliable baseline information was not
21 collected initially to draw reliable comparison to determine the
22 economic impact of the programme. Further, the declaration that
23 was aimed to ensure adherence to the terms and conditions
24 required for the use of the funds was not implemented, even
25 though it was an integral part of the monitoring component of

1 the programme."

2 Just to break that down a little, please, Ms Corea,
3 the report speaks of speaking with key administrators of the
4 programme. Who were those key administrators?

5 A. They would have to be persons within the Trade
6 Department and the Premier's Office.

7 Q. Were you able to interview public officers in the
8 Trade Department and in the Premier's Office?

9 A. We were able to speak with officers in the Trade
10 Department, but they had limited information to share with us.

11 Q. They didn't have enough information?

12 A. No, sir.

13 Q. How about being able to speak to officers in the
14 Premier's Office? How easy was that?

15 A. We tried, but that was not forthcoming.

16 Q. So, the information here is really coming from the
17 Trade Department?

18 A. Looking at the database that accessed the applications
19 we saw, yes.

20 Q. So, in terms of assisting your audit, the Trade
21 Department did allow you access to their database?

22 A. They did, sir.

23 Q. Ask did they provide information in response to your
24 requests?

25 A. As much as they possibly can, sir.

1 Q. And is the point that's being made at (h)--and this is
2 drawing on your experience as an Auditor--that if you want to
3 assess the economic impact or economic benefit of a programme
4 you need to do it as the programme is ongoing rather than at the
5 very end?

6 A. That's correct, sir.

7 Q. Now, the last bit, you say, is about a Declaration
8 aimed to ensure adherence to terms and conditions not being
9 implemented. Could you tell the Commissioner a little bit more
10 about that, please?

11 A. Initially, they had--they had--they had prepared a
12 Declaration for the use of the funds by each business in terms
13 of what they were going to utilize the forms for. Essentially,
14 it was supposed to be stimulus moneys, but that was never
15 implied at the end of the exercise.

16 Q. So, that didn't find its way into the final sort of
17 scheme?

18 A. No, it didn't.

19 Q. In the Audit Report, four opportunities for
20 improvement are identified, and what is explained is that "the
21 planned versus actual execution of this programme exposes
22 significant structural and operational deficiencies in the
23 economic data apparatus in the BVI Government which provides an
24 opportunity for requisite acts to be taken for future benefit."

25 And what you--the four points that are made is,

1 firstly, and I will summarise, an economic descriptor must be
2 determined and adopted to characterize the entities
3 participating in the economic space in the Territory.

4 Secondly, a comprehensive system must be put in place
5 to collect and analyze data.

6 Third, the business community needs to be trained in
7 proper financial planning and reporting.

8 And fourth, greater enforcement of statutory
9 requirements, payments of payroll taxes, NHI and social security
10 contribution needs to be implemented. I need to say a little
11 bit more about that because what's said here is that: "Based on
12 a review of applications, a significant number of applicants
13 were delinquent in meeting their statutory obligations, which
14 would have significantly impacted their award had that criteria
15 remained. This placed the Government in a precarious position
16 between deciding whether to assist those entities for the sake
17 of overall economy or limiting assistance due to non-compliance.
18 Without concrete actions to improve this area, the Government
19 may find itself again supporting businesses that are not in
20 compliance with Government regulations and do not contribute to
21 the funding from which they are now seeking to benefit."

22 So, in terms of these opportunities for improvement,
23 was this an effort to look forward and to make recommendations
24 should programmes like this be--have to be utilized again?

25 A. That is true.

1 Q. Because that's the sort of learning that could inform
2 such a programme if it needs to be used in a different sorts of
3 emergency?

4 A. Yes, sir.

5 And that's why acting in a consultative capacity when
6 the stimulus programmes came on board was one of the areas we
7 had anticipated working in as Internal Auditors.

8 Q. Because then, as we've discussed, the programme could
9 have been improved and adapted because, as auditors--it's not
10 Auditors being brought in at the very end to look at what went
11 wrong, but it's Auditors being brought in at the very beginning
12 to help makes things go right?

13 A. That is correct, sir.

14 Q. On this bit, this section of the report concludes with
15 what is headed "Auditor's Opinion" and reads as follows: "Based
16 on our understanding, although not specifically or clearly
17 indicated, the programme's intent was to assist MSMEs
18 (micro-small-medium enterprises) that were negatively impacted
19 by the ongoing COVID-19 pandemic in a transparent, equitable,
20 and meaningful way that would aid in their sustainability during
21 this period. When measured against this purpose, the
22 programme's execution failed to fulfill those expectations. The
23 programme was stripped of all basic controls and criteria for
24 determining eligibility, approval, and accountability. What was
25 left was an exercise that hinged upon a primal ethos that once

1 an application was submitted that some level of funding should
2 be granted. In the quest to be inclusive and timely in the
3 award and distribution of grants, the programme focused on
4 accommodating businesses rather than executing a process that
5 would optimize the allocation of the grants in a fair and
6 transparent manner to businesses that substantiated that they
7 were negatively impacted by COVID-19."

8 So, it comes down to that it was--in terms of its
9 execution and delivery, the programme did not meet the purpose
10 for which it was intended?

11 A. Not based on the information that we had put up there,
12 sir, no.

13 Q. And based on that information, what seems to flow from
14 the conclusions in this report was that this programme was not
15 sufficiently targeted at those that were--that it was designed
16 to most benefit?

17 A. That is correct, sir.

18 Q. The next programme that you assessed as an Audit Team
19 is at 3062, and it's the Traffic Transformation and
20 Transportation Programme.

21 Now, again, which Ministry oversaw that programme,
22 please?

23 A. It was a combination of the Ministry of Works and the
24 Premier's Office.

25 Q. And to give some background to the programme, it's set

1 out here in the report, and it's a synopsis of the programme
2 which reads as follows: "On 27 May 2020 Cabinet approved via
3 Extract Memo No. 175 of 2020 an amount not to exceed \$900,000.00
4 to support the City Transportation Programme Initiative in Road
5 Town. The Initiative includes a shuttle service from the
6 Festival Grounds and a quarantine bus service for returning
7 Nationals and Residents. City of Road Town Park & Ride" the
8 "'Park and Ride' free shuttle service is piloted by the Ministry
9 of Transportation, Works and Utilities (MTWU), and funded
10 through the Premier's Office. In light of the COVID-19
11 Pandemic, the initiative was expanded to include the Quarantine
12 Bus Service for returning Nationals...of the Virgin Islands. As
13 part of the Initiative, the City of Road Town Park & Ride free
14 shuttle service was also seen as an opportunity to provide
15 economic stimulus for the Public Transport Operator who may be
16 experiencing reduced income because of the closure of our
17 borders. Based on the programme guidelines, the initiative
18 commenced on June 30 and is to last for 1 month in the first
19 instance. A budget was created for the initiative for a
20 three-month period totaling \$384,200.00."

21 Now, obviously, events moved on, and as you've noted,
22 as of March 9, 2021, the grand total of money spent on this
23 programme came to \$845,478--sorry, I will read that again--just
24 over \$845,000; is that right?

25 A. That is correct.

1 Q. And the observations that was recorded in the Audit
2 Report in terms of concerns was, firstly, that no policy
3 document was created to guide the programme. Why is a policy
4 document important?

5 A. To make sure the programme is administered as
6 intended, providing that it lands and to provide processes in
7 which the programme would be executed.

8 (Overlapping speakers.)

9 A. And also to provide measures by which the programme
10 can be evaluated to ensure it that it met its goals and
11 objectives.

12 Q. Is that a sort of standard document that you would
13 expect as an Auditor to see when reviewing and assessing a
14 programme?

15 A. That is correct.

16 Q. What you want to see is documentation that tells--says
17 the purpose of the programme, how it's going to be delivered,
18 and how--and what assessment--or how delivery is going to be
19 assessed; how is the question "has it delivered its objectives"
20 going to be answered?

21 A. That is correct.

22 Q. What you also note at 2, page 3063, is that: "No
23 programme data is being collected on the usage of the Park and
24 Ride shuttle service. This information will be vital in
25 informing any adjustments that might be required for the

1 programme in terms of expanding or contracting the number of
2 buses in rotation. General observation of the activities has
3 shown that usage of the service is minimal at most, as most of
4 the shuttles are seen along the routes with few or new
5 passengers on board. Based on this observation, without further
6 incentive to utilize the service, the monies expended would not
7 have accomplished the programme's original intent."

8 And does it also not create this difficulty, and that
9 is that it might mean that you're using money for a purpose
10 that's not delivering which could be used better elsewhere?

11 A. That is correct.

12 Q. And that's an illustration, isn't it, of the benefit
13 of having the Internal Audit Department there on a consultative
14 basis?

15 A. Indeed so.

16 Q. At 3 and 4, what's noted is that there was no data or
17 documentation being retained to ensure that all required health
18 and safety protocols were being followed by those operating
19 motor vehicles under this initiative. And so, there, you say:
20 "This Department cannot attest to whether the required health
21 and safety protocols are being adhered to."

22 The reference to "this Department," is that a
23 reference to yourselves as Internal Audit Department?

24 A. That is correct.

25 Q. And then the last point that's made is that: "The

1 Park and Ride initiative was expanded to include taxi operators
2 in response to the impact the closed borders have had on taxi
3 operators. This expansion was done without any analysis on
4 demand for service, nor was the decision made with any
5 discernible outcome in mind other than a desire to offer some
6 relief to taxi operators during this time. As a result, with no
7 clear objectives, no performance measures have been established.
8 Again, in the absence of clearly defined outcomes and
9 appropriate measures, it is difficult, if not impossible, to
10 determine the economic impact this programme will have for the
11 monies expended."

12 So--and I accept, Ms Corea, that you can only make
13 recommendations or conclusions based on the information that's
14 given to you, and you've explained that you didn't have all the
15 information you wanted, but was this again a programme that it's
16 just impossible to identify whether it's being used for social
17 support rather than economic stimulus?

18 A. That is correct, sir.

19 Q. Again, in terms of the--I suppose the opportunities
20 for improvement, what the Audit Report says is: "Usership data
21 should be collected by all drivers", and "measurable targets
22 should be set for the programme." And you give the example,
23 what percentage does the initiative intend to reduce traffic in
24 the capital by.

25 Now, in terms of these opportunities for improvement,

1 have they been communicated before to the Premier's Office?

2 A. No, they have not.

3 Q. They are conclusions that you've now drawn from the
4 information that you've received?

5 A. That is correct.

6 Q. And, as I think you confirmed, these are an attempt to
7 look forward should there be a need to continue such a programme
8 in the future?

9 A. That is correct.

10 Q. If we look, then, at the Auditor's opinion on this
11 programme, it reads as follows: "Although the Park and Ride
12 initiative was established as part of the overall plan to make
13 the City limits a more pedestrian friendly space, the addition
14 of the utilization of taxi operators only serves as a means of
15 supplementing their income during this time of border closure.
16 It was not based on any overarching need that would augment the
17 overall purpose of the programme as originally envisaged. As
18 based on observations, the service is not being widely utilized.
19 In our overall opinion, the programme in its present state
20 serves as more of a relief programme for taxi drivers."

21 You then move on in the report to look at the House of
22 Assembly COVID-19 assistance grants initiative, and, again, if I
23 take you to this, the report helpfully provides a synopsis of
24 the programme.

25 And it explains that: "The Government of the Virgin

1 Islands initiated this programme as a form of social
2 intervention to assist residents of the territory experiencing
3 financial hardship as a direct result of COVID and/or requiring
4 assistance for hurricane recovery and preparation for the 2020
5 hurricane season. The programme was structured in a manner that
6 allowed Members of the House of Assembly" to "be directly
7 involved in the awarding of grants to their constituents.
8 Support to individuals, households, and businesses was capped at
9 \$5,000 and each applicant was required to provide evidence of
10 the type and amount of support being requested. Grant approvals
11 are to be governed by a system of means testing and information
12 is to be gathered on other types of assistance that have already
13 been granted to applicants."

14 So, there were--at least on that summary, there were
15 checks and balances put in place so that it wasn't a
16 straightforward "if you make the application you will get some
17 money". There was a process by which the application would be
18 assessed; is that right?

19 A. Yes, sir. They had provided the guidelines by which
20 they should follow in terms of the whole assistance grants
21 administration.

22 Q. If I take you to 3065--and this is "Observations" on
23 this programme--the Audit Report adds this: "Note: Due to the
24 manner in which applications were received and evaluated, only
25 applications that were recommended by the Member and approved by

1 the Clerk were reviewed. Information on ineligible or denied
2 application was not available for review. Our observations are
3 limited to those applications and supporting documentation."

4 So, you could only review those applications
5 that--which had been successful?

6 A. That is correct.

7 Q. And did the process work in this way: That the
8 Members would make a recommendation for an award and that would
9 then go before the Clerks of the House, who would approve it?

10 A. That is correct.

11 Q. Were the Members able to effectively decide whether
12 someone should get an award or not?

13 A. Well, based on actually reviewing the programme
14 itself, although the Clerk is responsible for approval and
15 payment of grants, in most cases, the recommendation that the
16 Members made was accepted and paid. So, whatever the Members
17 recommended to the Clerk was what was usually paid, unless the
18 Clerk had some reason for questioning.

19 Q. Does this take us back to the point that you made when
20 we were looking at previous Audit Reports relating to assistance
21 grants, and that is the difficulty position that the Clerk is in
22 because the Clerk has an obligation to act as the accounting
23 officer, doesn't she?

24 A. That is correct, sir.

25 Q. And is this something that could be a concern here,

1 that the Clerk is in a difficult position?

2 A. That is correct.

3 Q. Because information on ineligible or denied
4 applications was not available, does that mean that your team
5 was not able to say how many applications had been denied or
6 rejected as ineligible?

7 A. That is correct.

8 Q. Now, there was in this case--by contrast to the
9 traffic--Transformation in Transportation Programme, there was a
10 policy document in place, wasn't there?

11 A. There were guidelines, yes, for the administration of
12 the House of Assembly programme. Yes.

13 Q. What the Audit Report notes is this: "Although the
14 policy document requires each applicant 'to provide evidence of
15 the type and amount of support being requested', approximately
16 one third of applications approved and paid were not supported
17 by any evidence of the type and amount of the awarded
18 assistance. For example, of the 257 applications classified as
19 Unemployed/Underemployed, approximately twenty six percent (26%)
20 were only accompanied by a letter from the applicant stating
21 that they were unemployed or had had their work hours reduced as
22 a result of COVID-19. In addition, most applicants failed to
23 report income on applications or show that income was affected
24 and how this impacted their ability to meet their financial
25 obligations."

1 The Audit Report then continues: "Although it is
2 understood that the monies were given to the Members to expend
3 to their constituents, the policy paper that guides the
4 programme mandates that sufficient evidence be provided to
5 support the request. Again, applicants would just state they
6 were unemployed/underemployed and state the amount requested in
7 assistance without indicating or providing evidence as to how
8 the funds would be utilized. As a substantial number of the
9 applications reviewed are only supported by a letter claiming
10 financial hardship, we determined that such letter does not meet
11 the standard of sufficient evidence envisioned in the guidelines
12 for the programme."

13 Does this also raise a difficulty because if you've
14 got a percentage of applications being approved and paid out
15 without the required documentation, it means that there are two
16 stages where the process was falling down, doesn't it? Firstly,
17 at the Member stage because the Member was making the
18 recommendation but without the new required evidence; and,
19 secondly, you have the "Clerk to the House" stage because it was
20 being approved and paid out without somebody checking whether
21 there was the required evidence; is that right?

22 A. That is correct.

23 Q. What you say at the next point, 2, is that: "In
24 reviewing the applications and subsequent awards, the
25 methodology used by members to determine the amount of the grant

1 awarded could not be identified."

2 So, does that mean there wasn't one set of criteria
3 that was given to Members to apply or that the guidelines in the
4 policy document were so vague that people had to interpret them
5 in different ways? What was the concern?

6 A. Well, some of the criteria was vague, but in terms of
7 providing evidence, the applicant had to make sure that,
8 whatever their request was, that they provided an attachment to
9 the application because the grants--remember, the grants were
10 being issued or applied whether--for different reason, various
11 reason. It could have been medical; it could have been social;
12 health; even Hurricane relief was part of the criteria. So, the
13 different areas are vague. So, once they provided additional
14 information as evidence that they did need the funding, then it
15 would constitute sufficient evidence for the approval and
16 payment of the funds.

17 Q. What's noted in the Audit Report is this: "Grant
18 awards appear to be arbitrarily determined, even when sufficient
19 documentation was submitted to justify the amounts requested by
20 the applicant. In some instance, award amounts were
21 significantly lowered even though there was sufficient
22 documentation to justify a full award, while full amounts were
23 awarded to some applicants without any documentation to justify
24 the award. As a result, we found that there were no controls
25 implemented to ensure an equitable disbursement of funds."

1 So, the picture that emerges is that it was just that
2 funds were being allocated on an entirely arbitrary process?

3 A. That is correct, on the Members we have, yes.

4 Q. And what you also found--and this is at Point 3--is
5 that there were instances where applicants received awards from
6 multiple Members and from other assistance programmes which, you
7 say, "we find to be abusive."

8 What was the deficiency that led to the duplication of
9 awards?

10 A. I don't think the programme was--was looked at
11 holistically. When I say that, I don't think there was any
12 measure in place to actually do the checks and balances against
13 the Members in terms of the recommendations--maybe in some
14 instances, but not in all, because we realized that multiple
15 payments were made from different Members.

16 At the same time, the programmes were not connected,
17 so they didn't share a common evaluation process or a database
18 where they can be checked and verified. So, of course they
19 could have received the benefits from, let's say, small business
20 and still get monies from House of Assembly.

21 Q. And so--and that goes back, again, doesn't it, to the
22 report that you produced in 2014 on assistance grants as managed
23 by Ministries, but, again, there was no communication across
24 Ministries, no centralized approach, so that--to avoid the risk
25 of people--of the inequitable distribution of funds?

1 A. That is true.

2 Q. And you give, actually, on--overleaf, on page 3066,
3 what you described as "one of the glaring cases" involved an
4 applicant that applied for and was awarded educational
5 assistance from the following programmes: Firstly, from the
6 Premier's Office Assistance Grants Programme, the applicant got
7 \$20,000; from the COVID-19 assistance, a programme operated by
8 the District Representative, the applicant got \$500; the
9 applicant then got another \$5,000 from the District
10 Representative because the applicant's parent made an
11 application--

12 COMMISSIONER HICKINBOTTOM: It's \$4,000.

13 MR RAWAT: Sorry. Yes, you're right. \$4,000.

14 COMMISSIONER HICKINBOTTOM: Yes.

15 BY MR RAWAT:

16 Q. And then the final--final assistance came from the
17 Ministry of Education for \$20,000 as a scholarship.

18 So, in total, the applicant received \$49,000 from a
19 range of assistance programmes?

20 A. Correct.

21 Q. And, I mean, why do you say that's abusive?

22 A. It's abusive because the applicant was able to go to
23 all these different programmes and receive funds without any
24 checks and balances from--whether the Ministries or the
25 Department. So, once an applicant is aware of the ability to do

1 that, they will do it, and to me, that's abusive. In COVID-19
2 times, yes, it is.

3 Q. And, I mean, it's a point, isn't it, Ms Corea, that
4 the Internal Audit Department has made in non-COVID-19 times
5 because it's the same point that was made when we looked at the
6 Audit Reports in the House of Assembly Assistance Grant
7 Programme and the Audit Report in terms of Ministries'
8 Assistance Grant Programme? What the Internal Audit Department
9 was raising then was the risk associated with people being able
10 to make multiple applications.

11 A. That is correct.

12 I only mentioned COVID-19 because we did a COVID-19
13 report.

14 Q. If I go, then, just to the next point, what you also
15 note is that the policy paper indicated that expenditures should
16 be because of someone needing assistance because of COVID-19 or
17 Hurricane recovery or to prepare for Hurricane. But when you
18 reviewed applications, there were multiple instances where
19 applicants utilized the programme to settle obligations that
20 pre-dated the pandemic.

21 So--and you give examples of applicants requesting
22 assistance to make payments on loans that were severely
23 delinquent prior to the pandemic; to make payments for credit
24 cards that were delinquent prior to the pandemic; to reimburse
25 bills that had already been paid on expenditure that was not

1 related to COVID-19, such as educational, long-overdue Income
2 Taxes, outstanding daycare school fees; for persons who were, as
3 I said before, unemployed before COVID.

4 The last one you say is "District Office rent
5 prepayment and maintenance". Could you just clarify what that
6 refers to, please?

7 A. That payment was made for one of the Members' District
8 Office's payment of rent.

9 Q. I see. So, the Member used the COVID-19 grant to pay
10 his or her District Office rent?

11 A. That is correct.

12 Q. And was it just one Member that did that that you
13 found that out in relation to?

14 A. Based on our review, yes.

15 Q. And in terms of assessing the applications, the Member
16 is critical; isn't that right? Because it's the Member--the
17 Member has the responsibility under this programme to decide
18 whether there is sufficient evidence and also has the
19 responsibility to decide whether the application fits within the
20 policy of the programme.

21 A. Correct.

22 Q. And in your analysis, if someone is applying for an
23 educational grant under the COVID-19 programme, that's not
24 necessarily an application that goes to or is related to
25 COVID-19 or is required for Hurricane recovery or Hurricane

1 preparedness; is that right?

2 A. Well, based on the guidelines, these were the criteria
3 that they had put in place that the persons could apply under.

4 Q. What those applications--those applications should
5 have been made under other programmes that exist?

6 A. They could have, yes.

7 Q. If we look at 5, I will read it out: "While it is not
8 being mentioned to be frowned upon, there is a noticeable trend
9 where Members have instituted a food voucher system to assist
10 constituents. However, our concern lies in the absence of
11 sufficient controls to ensure accountability within this
12 programme. Members are approving large payments to supermarkets
13 in exchange for vouchers, which will then be distributed to
14 needy constituents; however, it is unclear what system is being
15 used to determine who is assisted through this method. As
16 COVID-19 assistance was intended to be an application-based
17 programme, the execution of this programme in this manner
18 diminishes both transparency and accountability."

19 So, was the way it was operating that a Member would
20 make a large or approve a large payment to a supermarket,
21 receive a set of food vouchers, and then the Member would decide
22 who would get food vouchers?

23 A. That is correct.

24 Q. And why was that a concern for you as an Auditor?

25 A. Accountability. Because if I'm going to administer a

1 programme that requires the applicants to apply, then the
2 applicants should have applied for a food voucher.

3 Like I said, I don't see that that's something to be
4 frowned upon, but then you have the Members deciding to do food
5 vouchers. So, I will do--what?--\$5,000 for 50 food vouchers and
6 then give them to your constituents. As the Clerk and as the
7 Accounting Officer, I'm not sure that these food vouchers were
8 actually delivered to constituent Members. So, the fact that
9 you have to be accountable for the funds that have been expended
10 drives our concern for the internal audit team.

11 Q. It puts the Clerk of the House in a very difficult
12 position, doesn't it?

13 A. It does.

14 Q. Because, on the system as you've outlined it, there is
15 no practical way in which the Clerk to the House can assess and
16 account properly for funds being used in this way?

17 A. That is correct.

18 Q. If we go to the next page, please, 3067, you point out
19 as well in the Audit Report that there was inconsistent use of
20 the way--or there was an inconsistency in the way monies owed to
21 third parties were awarded. The guidelines were that where an
22 applicant had wanted money to pay a third party, then the money
23 would be paid directly to the third party.

24 And what your audit found was that there were
25 instances, multiple instances, where such payments were made to

1 the applicant, even in instances where documentation was
2 provided. However, the majority of such instances occurred
3 where the applicant failed to provide documentation of the
4 outstanding debt, and that meant the control of making direct
5 payments to third parties was to ensure that the assistance
6 awarded was utilized for the intended purpose.

7 Now, that was not effective, was it?

8 A. That's correct.

9 Q. You also note at 7 that: "A majority of the
10 applications reviewed were incomplete, with comparative income
11 information usually omitted. Consequently, assessment could not
12 be conducted to determine the severity of the financial impact
13 of COVID-19 on applicants prior to and during COVID-19.
14 Additionally, numerous instances were observed where there was
15 no change in reported income; however, applications were
16 approved and grants awarded. Notably, among these applications
17 were public officers whose salaries have not been affected by
18 COVID-19. This gives the impression that grants were not based
19 on the assessed financial impact of COVID-19, but rather on a
20 discretionary basis by each Member."

21 If the Member were following the guidance, then if a
22 Public Officer made an application, the Member ought to have
23 rejected that. Does that follow from that point?

24 A. Correct, sir.

25 Q. And you referred to the application as being reviewed.

1 Did you go to the Clerk of the House of Assembly and look at
2 these applications as part of the Audit?

3 A. No, sir. We received the information from the
4 Treasury Department, which was--this was via vouchers that would
5 have that attached documentation to the voucher.

6 Q. So, the process--and tell me if you don't know this or
7 if I get it wrong, but the process would be: Application comes
8 in to the Member with any supporting documentation. The Member
9 would make a recommendation. It would go to the Clerk of the
10 House to approve, and then it would go to the Treasury
11 Department for payment, and the voucher on which the Treasury
12 Department paid had all of that documentation attached to it?

13 A. That is correct.

14 Q. Thank you.

15 What you also said is that: "Although assistance for
16 Hurricane Preparedness and Hurricane Recovery are permissible
17 within the programme, sufficient guidance was not provided to
18 guide members as to what constitutes as preparedness and
19 recovery. Consequently, requests of a tangential nature are
20 approved. When the standards"--and you've called them
21 "watertight standards"--"utilized by the Ministry of Health and
22 Social Development's Housing Recovery Unit is applied in
23 evaluating these awards, there is clearly a more liberal
24 definition of what constitutes recovery in the House of Assembly
25 [HOA] assistance programme. Within that programme," you say,

1 "grants are awarded to purchase furniture and appliances as
2 hurricane recovery, and payment of insurance premiums and
3 generators have received awards Hurricane preparedness."

4 So, there were in place and available standards from
5 the Housing Recovery Unit; is that right?

6 A. In their--in their programme, yes.

7 Q. And they have a programme of their own, do they?

8 A. They do, yes.

9 Q. But the same standards were not being applied by the
10 House of Assembly?

11 A. No, sir, because they were going off of the guidelines
12 for the House of Assembly.

13 Q. I see.

14 So, again, is that an example of two different
15 programmes that are intended to achieve similar purposes, but
16 operating in completely different ways?

17 A. Yes, sir, operating in isolation of each other, yes.

18 Q. You've made, under "Opportunities for Improvement",
19 this observation: "Social services mechanisms must be enhanced
20 to" report--"respond to social issues such as this. Systems
21 must evolve to a degree where the social service apparatus can
22 continually identify the most vulnerable in our society and
23 deploy services that can meet their needs in an evident-based
24 manner. These systems should be employed in a way that removes
25 subjectivity in the awarding of assistance, as is the case of

1 the system currently employed by the House of Assembly."

2 And you continue overleaf to say: "Again, social
3 service data need to be regularly collected and analyzed to
4 better inform social policies. A more targeted approach must be
5 employed to identify, assess, and assist the vulnerable segments
6 of our population without such a heavy dependency on elected
7 officials to determine who will be assisted and in what manner.
8 Objective rather than subjective tests must be employed to
9 present a more fair and equitable distribution of resources."

10 Now, that's again looking forward, isn't it, Ms Corea?

11 A. That is correct, sir.

12 Q. The "Auditor's Opinion" on the programme is this: "It
13 is our opinion that this programme was not structured in a
14 manner that promoted transparency in the decision-making, nor
15 equity in the distribution of funds. The programme was shrouded
16 in ambiguity, which made it difficult to administer, which
17 resulted in the broadest spectrum of assistance being offered.
18 Even where there were some limitations, applicable guidelines
19 were stretched to the fringes of applicability. Even the
20 controls applicable for approval were farcical in that secondary
21 and, when necessary, tertiary approvals were seemingly put in
22 place to simply facilitate payment without any apparent
23 authority in the decision-making process."

24 Could you just clarify and just add a little
25 explanation, what is meant by "secondary and, when necessary,

1 tertiary approvals seemingly put in place"? What's that
2 referring to?

3 A. So, secondary would be--you would have the primary
4 being the Minister who gets the application and recommends; the
5 secondary being the Clerk, who reviews and makes the payment;
6 and even a tertiary can be when it goes to the Treasury, and
7 they have to do the checks and balances with the vouchers and
8 make payment.

9 Q. But ultimately--and, again, I accept it's on the
10 information that you had, but you were able to look at the
11 applications. Did the decisions really fall on the shoulders of
12 elected Members of the House of Assembly?

13 A. Correct.

14 Q. It was for them to decide how to exercise a discretion
15 as to who would get an award and who wouldn't?

16 A. Correct.

17 Q. And that's where the concern that you raised about
18 subjectivity creeps in, doesn't it?

19 A. Correct, sir.

20 Q. And I suppose, speaking with your Auditor hat on,
21 there is always a benefit in having objective data, isn't there?

22 A. There is.

23 MR RAWAT: Commissioner, I've reached a point where I
24 think I ought to give Ms Corea another break, possibly even for
25 lunch because I think we have been going since about quarter

1 past 12:00.

2 COMMISSIONER HICKINBOTTOM: That's all right,
3 Mr Rawat.

4 Just to see where we are, we have still got to do two
5 more of the COVID schemes.

6 MR RAWAT: Yes.

7 COMMISSIONER HICKINBOTTOM: But those are--

8 MR RAWAT: Relatively short.

9 COMMISSIONER HICKINBOTTOM: Those are short.

10 MR RAWAT: Yes.

11 COMMISSIONER HICKINBOTTOM: And what else is there
12 for?

13 MR RAWAT: That will be it. I mean, there's a couple
14 of linked questions that arise out of that, but once I have done
15 those two, I will have done.

16 COMMISSIONER HICKINBOTTOM: Can we just check with
17 Ms Corea and, indeed, the Stenographer? How long do you think
18 it will take you, Mr Rawat?

19 MR RAWAT: I'm never very good at time.

20 COMMISSIONER HICKINBOTTOM: No, I will double it. But
21 I just wanted to know what your estimate was.

22 MR RAWAT: Perhaps--I think I would say about
23 25 minutes.

24 COMMISSIONER HICKINBOTTOM: Right. I think we had
25 better have a break.

1 I think we'll have a break, Ms Corea.

2 Shall we make it 25 minutes, try and come back about
3 20 past 2:00?

4 THE WITNESS: Yes, sir.

5 COMMISSIONER HICKINBOTTOM: Good.

6 Thank you very much, Ms Corea.

7 Thank you, Mr Rawat.

8 (Recess.)

9 COMMISSIONER HICKINBOTTOM: Yes, Ms Corea, we're back.
10 Mr Rawat.

11 MR RAWAT: Thank you, Commissioner.

12 BY MR RAWAT:

13 Q. Ms Corea, we were at 3068 in the bundle, and we were
14 going to the next programme which was the subject of your Audit
15 Report into the COVID-19 stimulus, and that's "SUPPORT TO
16 DAYCARES, PRIVATE SCHOOLS, AND RELIGIOUS ORGANIZATIONS".

17 The report records this in terms of a background
18 synopsis of the programme: "Realizing that daycare,
19 educational, and religious institutions were affected by the
20 COVID-19 pandemic and given the importance of these institutions
21 to the fabric of the BVI community, the Government through its
22 Economic Response initiative sought to provide some assistance
23 to these organisations to defray the cost of implementing a
24 number of social distancing and health requirements required for
25 reopening. According to the policy brief and administrative

1 guidelines, the budget for the programme was one million
2 dollars, however, two million dollars was approved for the
3 programme through the Social Security Grant."

4 Now, in terms of again which Government Department or
5 Government Ministry had responsibility for this programme?

6 A. In terms of the payments, the Premier's office.

7 Q. And in terms of producing the policy brief and
8 administrative guidelines, who was responsible for that?

9 A. I recall some synopsis was given from the Ministry of
10 Education.

11 Q. Did you see a policy brief yourself?

12 A. I did see some information, yes, that was supposed to
13 guide the programme.

14 Q. And that came from the Ministry of Education?

15 A. Well, the extract came from the Ministry of Finance.

16 Q. I see.

17 You gave, in terms of programme statistics as of March
18 the 9th, 2021, the following breakdown that church groups
19 received \$1,604,000, civic groups, \$55,000, and education
20 \$768,626.

21 But you note on the next page as follows: "No
22 analysis, beyond the financial allocations, could be conducted
23 on this programme due to the unavailability of the information
24 needed to conduct planned analysis. Although a policy brief and
25 administrative guideline were received and reviewed, substantive

1 documentation on the actual execution of the programme was not
2 provided although requested on multiple occasions."

3 So, in terms of financial allocation, is that a
4 reference to the figures that I've just read out to you?

5 A. Correct.

6 Q. So, beyond that, beyond knowing, for example that,
7 \$1.6 million was allocated and awarded to church groups, you
8 were not as part of your audit able to drill down further into
9 those figures?

10 A. No, sir.

11 Q. And you said that the policy brief and administrative
12 guidelines were received--was it from the Ministry of Finance?

13 A. Correct, sir.

14 Q. In terms of the requests for a further information,
15 for substantive documentation, who did the Internal Audit
16 Department make that request to?

17 A. The Ministry of Finance, sir.

18 Q. Did you make any requests to the Premier's Office?

19 A. Yes, we did, in terms of the payments.

20 Q. And what was the response from the Premier's Office?

21 A. We are still awaiting the information. They say they
22 were compiling the information to send it to us.

23 Q. So, their response was they were compiling the
24 information to submit to you?

25 A. Correct, sir.

1 Q. And you made multiple requests, both to the Ministry
2 of Finance and to the Premier's Office; is that right?

3 A. Multiple requests to the Premier's Office, and one
4 request to the Financial Secretary, the Ministry of Finance.

5 Q. Sorry, I spoke across you, and I apologize, but was it
6 one request to the Financial Secretary?

7 A. Correct, to assist us in getting the information from
8 the Premier's Office.

9 Q. I see.

10 And the current position of the Premier's Office is
11 that the information is being compiled and will be provided to
12 you at some point?

13 A. Correct, sir.

14 Q. Have you been told when it will be provided to you?

15 A. Upon completion of the compilation of it, but no
16 definite date was given.

17 Q. I see.

18 The next topic that you--or the next programme that
19 you assessed and that you had identified to assess we find at
20 3069, and that's Support to Agriculture and Fisheries, and again
21 by way of background, what you say there is: "Cabinet via memo
22 #179/2020 dated 27th" of "May 2020 approved the criteria
23 document to assess the eligibility of farmers and fishermen
24 qualification for assistance through the COVID-19 Economic
25 Stimulus Response. Additionally, the application form, priority

1 areas list, templates and production logs for reporting and
2 accountability in the various areas to be completed by the
3 Department of Agriculture and Fisheries. The programme was
4 funded through a two million dollar grant from the Social
5 Security Board."

6 Again, Ms Corea, can you just clarify for the
7 Commissioner which Ministries were responsible for overseeing
8 this programme?

9 A. Initially, it was being overseen by the Agriculture
10 Department, which is under the Ministry of Education. And the
11 payments were overseen by the Premier's Office.

12 Q. So, as you understand it, was the--it started off with
13 the Department of Agriculture and Fisheries but ultimately,
14 payments were coming out of the Premier's Office?

15 A. Correct, sir.

16 Q. Now, you've put there a table of statistics for
17 March 9, 2021, and you've noted under "farming" that 166
18 applications received awards of \$9,000.00; 2 applications
19 received awards of \$11,000.00; 174 applications received awards
20 of \$13,500.00; and 19 applications received awards of
21 \$22,500.00. So, the total under the "farming" heading was
22 \$4,292,500.00.

23 Under "fishing", you've noted that one application
24 resulted in an award of \$12,000.00; 19 in an award of
25 \$15,000.00; and 20 in an award of \$20,000.00, and then the total

1 of that is then \$697,000.00.

2 Have I summarised those two tables correctly,
3 Ms Corea?

4 A. That is correct, sir.

5 Q. And you've put a note again: "No analysis, beyond the
6 financial allocations, could be conducted on this programme due
7 to the unavailability of the information needed to conduct
8 planned analysis. Although the documents stated above were
9 intended to be used to manage and report on the programme, no
10 information was provided to validate documents--that documents
11 were actually utilized in the execution and management of the
12 programme. Again, substantive documentation on the actual
13 execution of the programme was not provided although requested
14 on multiple occasions."

15 So, other than the figures that you've put in your
16 Report and policy documents, you have no other data on which to
17 assess the efficacy of the programme?

18 A. No, sir, not to date.

19 Q. And that's the same position in relation to the
20 daycares, and religious organisations programme; isn't it?

21 A. That is correct.

22 Q. When did you start requesting information on those two
23 programmes?

24 A. In 2019, when the stimulus programme was commenced.

25 Q. So, 2020. When--

1 (Overlapping speakers.)

2 A. Sorry, 2021 when the stimulus programme was commenced.

3 Q. And was that because you were aware that you had been
4 charged to report on a monthly basis?

5 A. Yes, sir.

6 Q. We're now obviously over a year into the pandemic,
7 Ms Corea, at least in relation to these two programmes, have you
8 had no information at all?

9 A. None, sir.

10 Q. And over that time since they came in, which is March
11 to May 2020, have you made repeated requests?

12 A. Yes, sir.

13 Q. And have those requests been made to the Premier's
14 Office?

15 A. Yes, sir.

16 Q. And have they been made to the Permanent Secretary of
17 the Premier's Office?

18 A. That is correct, sir.

19 Q. And have you approached others for assistance to try
20 and get the information?

21 A. Well, we at some point figured that if we didn't get
22 the information, the Auditor General would have gotten the
23 information, so we collaborated with her office, but we were
24 told she didn't get the information, either.

25 Q. So, she wasn't able to assist you?

1 A. No, sir.

2 Q. Have you been able--I mean, is--I know you said
3 yesterday that, for you as Auditors, much of the information is
4 still on paper that you need to look at, but is
5 there--particularly in relation to these programmes such as
6 these, where they're being administered in 2020 and 2021, would
7 you expect the details to be held electronically?

8 A. Yes, sir, in some regards, yes.

9 Q. And in the modern age, it doesn't take too much work,
10 does it, to send you a spreadsheet or electronic document?
11 Would you accept that?

12 A. Yes, sir.

13 Q. You may not have been able to see the evidence of the
14 Auditor General to the Commissioner. In her reports--she's
15 produced two reports in relation to COVID-19, one in relation to
16 daycares, private schools, and religious organisations, and the
17 other one in relation to farmers and fisherfolk, and what she
18 noted in that Report--in both Reports was that the Auditor
19 General's Office was unable to obtain the relevant files and
20 information from the Premier's Office pertaining to the COVID-19
21 stimulus grants which were repeatedly requested by e-mail and
22 telephone. This includes access to databases, documents,
23 reports, and other information relevant to policy development
24 and implementation of the programmes.

25 That's similar, isn't it, if not the same, to the

1 situation that you were in as Internal Auditor; would you agree?

2 A. That is correct.

3 Q. I asked the Auditor General about that statement in
4 her Report--and for the Transcript, it can be found on the
5 Transcript of the 29th of June 2021, which is Hearing Day 19, at
6 page 10--and I asked her whether she was given any reason as to
7 why her requests for information were not agreed to. And the
8 answer given by the Auditor General was: "Initially, we were
9 not given a reason; and, subsequent to that, the Permanent
10 Secretary sent a message, an e-mail saying that Internal Audit
11 was working on it and working on the same areas, and that when
12 they were through with their audit, that we would have access to
13 the information."

14 The Auditor General continued as follows: "And as I
15 mentioned yesterday, when we were told that, I simply said to
16 her, well, first of all, I should say that we are used to
17 working in conjunction sometimes with Internal Audit, and if
18 they're working on an area we allow them to do their work. And
19 then after we have seen their Report, if we consider we need to
20 go in, we would also go in. In a case like this, where we're
21 working on the same subjects, but for different reasons, we
22 actually share information. They had--at the time, they had the
23 Treasury vouchers in their office, so we would actually go there
24 and get what was needed at that time that was relevant to what
25 we were doing, so we share information. When we were told that

1 Internal Audit is working on this and when they finish their
2 Report, we will let you know when you can have the information,
3 I simply said to her, okay, provide us with access to the
4 databases because that does not interfere with internal audit
5 pressure, and it does not interfere with your office processes,
6 access to the databases and accesses to other information they
7 have, because what we're getting from the staff within the
8 Ministry is what they were instructed not to forward the
9 information."

10 "So, in other words"--and this is continuing what the
11 evidence of the Auditor General was, she said: "So, in other
12 words, tell your staff that they can forward the information as
13 required as long as it didn't provide a conflict with Internal
14 Audit," and she clarified for the Commissioner that that was a
15 concession she was prepared to make to the Permanent Secretary,
16 but not one that she had to make.

17 Can I just ask you this? And it's not specifically
18 about COVID-19, but as Internal Auditor and as the Internal
19 Audit Department, are there occasions when you have worked in
20 conjunction with the Auditor General?

21 A. We have on several occasions, yes.

22 Q. And have you shared information on occasion with each
23 other?

24 A. Yes, we have, sir.

25 Q. Now, looking at what you say in your Report about the

1 two programmes that we have been looking at--let's call them the
2 religious organisation programmes and the support to Agriculture
3 and Fisheries--it does not seem that you were, in fact, working
4 on those programmes; would that be right?

5 A. You mean the Auditor General and my office?

6 Q. No, yourself as Internal Audit Department. You
7 weren't working--you weren't carrying out an audit of those
8 programmes, were you?

9 A. Repeat your question again. I think I lost part of
10 your question.

11 Q. You've confirmed that there are occasions when you
12 share information with the Auditor General.

13 A. Correct.

14 Q. And you've confirmed there are occasions when you work
15 in conjunction with her.

16 I've read out to you the portion of her evidence to
17 the Commissioner where she explained that the reason she was
18 given for not being able to be given information by the
19 Premier's Office was because Internal Audit was working on it.
20 From your Report, it does not appear that you have yet--or it
21 appears you have yet to receive the information that you want.

22 So, have you, in fact, been working on an audit of the
23 religious organisations programme or of the support of
24 Agriculture and Fisheries programme?

25 A. No, because we are waiting on information today.

1 Q. Obviously, once you receive that information, you will
2 then be able to carry out a fuller analysis, won't you?

3 A. That's correct.

4 Q. But at the moment, in terms of information on those
5 two programmes, all that you have are policy briefs and
6 administrative guidelines and the figures that we have read out;
7 is that right?

8 A. That is correct, sir.

9 Q. You're not in a position today, are you, Ms Corea, to
10 tell the Commissioner how, for example, the \$1.6 million
11 allocated to church groups was broken down?

12 A. No, sir, I'm not.

13 Q. And you're not in a position today to tell the
14 Commissioner, for example, the basis on which 166 applicants
15 under the farming programme received \$9,000?

16 A. No, I am not, sir.

17 Q. You haven't--it's right, isn't it?--carried out the
18 sort of audit that you would normally wish to carry out as
19 Director of the Internal Audit Department?

20 A. For these programmes, no, sir.

21 Q. And that's because, as you've explained, you have yet
22 to receive the information that you have asked for?

23 A. That is correct.

24 Q. Thank you.

25 MR RAWAT: Commissioner, I think I've reached the end

1 of my questions for Ms Corea, unless there's any other matters
2 that you want me to cover.

3 COMMISSIONER HICKINBOTTOM: No. Thank you very much.

4 MR RAWAT: So, can I conclude firstly by thanking
5 Ms Corea for her patience? I appreciate she's been having to
6 give evidence remotely, and that adds an extra level of
7 difficulty, but she's also had to go over into a second day.
8 So, I would like to thank her for her patience, thank her for
9 the evidence that she's given, and also for the way in which she
10 has given it.

11 COMMISSIONER HICKINBOTTOM: Yes. And can I add my
12 thanks to Ms Corea, as well? Thank you for your time, thank you
13 for your patience, and thank you for giving the evidence clearly
14 as you have. Thank you very much.

15 THE WITNESS: You're most welcome, sir.

16 (Witness steps down.)

17 MR RAWAT: If we could rise briefly, we will be able
18 to get on with the other witnesses shortly.

19 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

20 (Recess.)

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Session 2

TASHIMA MARTIN and WADE SMITH, COMMISSION WITNESSES, CALLED

COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

MR RAWAT: Thank you, Commissioner.

Our Witnesses this afternoon are Mr Wade Smith, who has given evidence on two occasions before to the Commission, but also Ms Tashima Martin, who is here for the first time.

Mr Smith has already taken the oath and so he remains bound by that and doesn't need to be sworn again but can I ask that Ms Martin be invited to either take the oath or to affirm.

COMMISSIONER HICKINBOTTOM: Yes. Thank you.

COMMISSION SECRETARY: Ms Martin, would you like to swear an oath or make an affirmation?

THE WITNESS: (Ms Martin) Commissioner, yes.

COMMISSION SECRETARY: Swear an oath or make an affirmation?

THE WITNESS: (Ms Martin) Swear an oath.

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

THE WITNESS: (Ms Martin) I swear by The Almighty God that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.

COMMISSION SECRETARY: Thank you very much.

MR RAWAT: Thank you.

BY MR RAWAT:

1 Q. Ms Martin and Mr Smith, what we're going to do,
2 because the questions that we have for you today overlap to some
3 extent. We're going to put the questions to you together, and
4 what I'll do is I will direct them to one or both of you, and we
5 will see whoever is best placed to assist with the question
6 should speak up. We will probably begin with Mr Smith and then
7 on occasions we'll put the question to Ms Martin. Because,
8 Ms Martin, it's your first time before the Commission, there are
9 some formalities that I need to deal with. So, can I ask, first
10 of all, that you give the Commissioner your full name, please.

11 A. (Ms Martin) Yes. Commissioner, my name is Inga
12 Tashima Martin.

13 Q. And your professional address?

14 A. (Ms Martin) Assistant Commissioner of Customs.

15 Q. Where are you based as Assistant Commissioner of
16 Customs?

17 A. (Ms Martin) I'm based at the Customs headquarters
18 attached to assurance.

19 Q. One thing to ask you is just to try and keep your
20 voice up and to speak slowly. The microphone that's in front of
21 you won't amplify your voice but it will record it, and so, if
22 you feel the need to shout a little, that's probably better than
23 to speak quietly.

24 Both Mr Smith and Ms Martin, you will both see that
25 there are a number of bundles that are next to you. We won't be

1 going through every single page of those but we'll just go to
2 various documents as we go through the evidence.

3 And again, Mr Smith will have heard me say this, but
4 Ms Martin, I would just like to explain that I do try and keep
5 the questions short and simple. If at any time I haven't
6 achieved that and you need me to repeat or rephrase the
7 question, please do ask me and I will do that.

8 If we start with you, though, however, could you
9 before you became Assistant Commissioner, just give the
10 Commissioner an outline of your professional background before
11 you assumed that position?

12 A. (Ms Martin) Okay. Commissioner, I have joined the
13 Department as a trainee in December 2001, and I was promoted to
14 an Officer I in August 2005.

15 I have attended the HLSC College part-time over the
16 years and successfully completed an Associate's degree in
17 accounts. That completion was done in 2006-2007.

18 In 2008, I then enrolled in the University of The
19 Virgin Islands and graduated with a Bachelor's degree in
20 accounts in 2010, and then returned to the Department after my
21 studies was completed.

22 At that time, I was promoted and his Officer II and
23 assigned to the Customs Internal Audit team which was
24 established in 2004, and responsible for testing the systems,
25 policies and the effectiveness of revenue collections as well as

1 increasing compliance, internal compliance and external
2 compliance, as well as recovering revenue.

3 Over the years, I have attended many trainings,
4 post-auditing, HR management, trusted trader programmes, trainer
5 training programmes, just a few--just a few to mention.

6 I'm now one of HM Customs certified trainers that is
7 able to develop training modules and execute trainings, which I
8 have done over the years.

9 With my commitments, experience, knowledge, and being
10 selected through interviews, I'm now the Assistant Commissioner
11 of Customs which I was appointed in July 2020.

12 Q. Thank you very much for that.

13 Can I take you to the first document that we need to
14 look at, and it will be a bundle that's labeled "Bundles for
15 Hearings Regarding the Work of the Internal Audit Department,"
16 and you will find it in the one that's labeled Part 2.

17 A. (Ms Martin) Commissioner, do we have to share?

18 Q. No, you've got your set there, Ms Martin.

19 A. (Ms Martin) Thank you.

20 Q. If you turn up page 2026, please. And if I've taken
21 you to the right page, you should have the first page of an
22 Internal Audit Department document, which is a report from
23 November 2015, and it's headed "Her Majesty's Customs Missing
24 Revenue." Sorry, I think the page I have taken you is actually
25 a letter which is addressed to the Financial Secretary regarding

1 "Suspicion of Fraud-Her Majesty's Customs," but if you turn to
2 2027, you will see that that's the front page of the Report.

3 Just to orientate you, the way--the reason or how this
4 report was generated was that on November 16, 2015, the Internal
5 Audit Department received information from the Ministry of
6 Finance in relation to allegations of missing revenue at HM
7 Customs. It had been reported by the Commissioner of Customs
8 that a preliminary investigation had been conducted which
9 revealed that a customer had presented receipts substantiating
10 payments for import duties at the Port Purcell location with no
11 corresponding revenue had been deposited.

12 So, in effect, there was an internal preliminary
13 investigation by Customs, and we will look at that in a moment,
14 that led to the Internal Audit Department becoming involved.
15 And if you turn through to page 2032, and if I could ask you, as
16 we go through this, please don't refer to the actual people
17 involved, if you just refer to an importer or a customer, you
18 can refer to the location where it happened. But in essence,
19 what the Internal Audit Department's investigation verified was
20 what had been found by Customs as preliminary investigation, and
21 that is that there was a--receipts had been issued to the
22 customer accepting payments, and if you look at 2032, you will
23 see the detail there. If you look at 3.3, so payments were said
24 to have been received but could not be found to have been
25 deposited. There were receipts from a manual receipt handbook

1 but those receipt books were traced to a Department or
2 departments that were not at the Port Purcell location. And the
3 money involved was substantial, it was \$264,000-odd. You will
4 see that recorded at 2031. And it was said to have been paid in
5 cash. What appeared to have happened was that the importer had
6 paper receipts to show that they had made payments in cash, but
7 Customs could not locate those receipts having been deposited.

8 And the outcome of the Internal Audit Department's
9 investigation was that there are other issues surrounding this
10 matter that begs the question of whether other criminal
11 activities are also being perpetrated. Best practices would
12 dictate the business is conducting transactions of such
13 magnitude would optimate payment by using a banking instrument
14 such as a money order or bankers' check. Therefore this, method
15 of payment raises some red flags.

16 And they continued: "Based on our preliminary
17 investigation, this office has concluded that there exists a
18 high probabilities that fraud had been perpetrated at Her
19 Majesty's Customs and this fraud has possibly resulted in the
20 Government of the Virgin Islands suffering financial loss of
21 approximately two hundred and sixty-four thousand eight hundred
22 and eighty-five dollars and thirty-three cents (\$264,885.33).
23 As stated in the Commission of Customs Report, on the advice of
24 the Attorney General, we recommend that the matter be submitted
25 to the competent and appropriate authority for further

1 investigation."

2 So, first question, perhaps if I direct this to you,
3 Mr Smith: Do you know if any further investigation did follow
4 on from the Internal Audit Department's Report?

5 A. (Mr Wade Smith) Yes, Commissioner.

6 Q. Without naming names, can you tell the Commissioner
7 what happened afterwards, the nature of that investigation?

8 A. (Mr Wade Smith) Well, Commissioner, first of all,
9 Commissioner, as mentioned, this was a matter that was
10 investigated by Customs and referred to the Financial Secretary,
11 and the Financial Secretary in turn, referred the matter to the
12 Internal Audit Department.

13 Commissioner, it's important to note that it shows the
14 effective controls that we have in place in the Customs
15 Department, and as outlined in our Position Statement, which you
16 have a copy of the challenges, included limited investigative
17 resources, as limited Human Resources, the Customs Department is
18 forced to rely on other agencies with specific skill sets who
19 may not view Customs matters as priorities because those
20 agencies has their own challenges, cases and may not know the
21 Customs systems or laws.

22 I stutter to say, Commissioner, that this matter was
23 referred to the authorities also outlined in my Position
24 Statement that the investigation would be conducted by Customs
25 Internal Audit team, forwarded to the Commission of Customs to

1 the Financial Secretary to the Internal Audit Unit, and in
2 accordance with their legislations, things should have been done
3 or could have been done, but we referred the matter after that.
4 We followed through with the matter, referred it to the Royal
5 Virgin Islands Police Force for further action, Commissioner.

6 Q. So, the short answer is that it was referred to the
7 Royal Virgin Islands Police Force. Do you know the outcome,
8 Mr Smith, of that--their investigation--

9 (Overlapping speakers.)

10 Q. Were you ever notified of the outcome of any
11 investigation done by the Police?

12 A. (Mr Wade Smith) Yes, Commissioner, the outcome of the
13 investigation by the Police indicated that the Office of the DPP
14 at the time said that there was not sufficient evidence to--for
15 a prosecution to be had. Those were in paraphrasing the
16 comments that were made.

17 Q. And that was no prosecution of any individual or any
18 entity?

19 A. (Mr Wade Smith) That's correct, Commissioner.

20 Q. If you go, Mr Smith, then, to just take a look at
21 2035, were you--and this is in 2015. Were you Commissioner of
22 Customs in 2015?

23 A. (Mr Wade Smith) Yes, Commissioner.

24 Q. And this is the memorandum from yourself, then, of
25 October 28, 2015, to the Financial Secretary?

1 A. (Mr Wade Smith) Yes, Commissioner.

2 Q. Now, I just want to ask you some questions about that
3 because you say in the second paragraph: "For past years, there
4 have been some assumptions and allegations that the Government
5 of the Virgin Islands is losing revenue through fuel imports."
6 What did you mean by "past years"? Over how many past years?

7 A. (Mr Wade Smith) Commissioner, we've reviewed, to the
8 best of my recollection, probably about two years or so we have
9 reviewed the import revenue and fuel imports, and we've noticed
10 that there may have been a decrease in the revenue of fuel
11 imports. At that time, we, Commissioner, we put a team
12 together, the Internal Audit team, to conduct further
13 investigations with regards to the collections of the fuel, in
14 particular at the Port Purcell Port of Entry.

15 Q. When you say you'd reviewed, the revenue received
16 through fuel imports, was that a review that you did in 2015, or
17 had you been reviewing them over a period of time?

18 A. (Mr Wade Smith) Commissioner, we reviewed the revenue
19 intake on a regular basis to see where if there are any
20 short-comings or any short-falls in revenue and to have an
21 explanation as to why there may be revenue short-falls in a
22 particular revenue head.

23 Q. And you did that over a two-year period?

24 A. (Mr Wade Smith) Commissioner, that's actually done
25 annually, quarterly. Commissioner, some cases monthly, where we

1 monitor and review the amount of revenues collected.

2 Q. When you refer in your memorandum to "assumptions and
3 allegations", what were you referring to specifically?

4 A. (Mr Wade Smith) Commissioner, can you repeat that
5 question, please?

6 Q. If you look at the second paragraph on your
7 memorandum, what you say is: "For the past years, there have
8 been some assumptions and allegations". What were you referring
9 to by using the phrase "assumptions and allegations"?

10 A. (Mr Wade Smith) That's assumptions based on the amount
11 of revenue collected; allegations in terms of management
12 discussing and the possibility of what could be taking place in
13 terms of the short-fall, Commissioner.

14 Q. And given that this had been going on for past years,
15 so for some time, was there any reason you could not have taken
16 action sooner?

17 A. (Mr Wade Smith) Commissioner, we reviewed--we
18 monitored the situation at the time, Commissioner, and we
19 reviewed the entries, we reviewed the deposits, we reviewed
20 everything that goes on with an entry submission for fuel, and
21 we compiled the information to present a case, and we directed
22 our Internal Audit team to gather information and pursue an
23 investigation.

24 Q. Given that it had been going on for years, was there
25 any reason why the review of records of fuel imports at Port

1 Purcell was limited to six months?

2 A. (Mr Wade Smith) Commissioner, it's assumed or alleged
3 that it may have taken place over a couple of years,
4 Commissioner. It's nothing proven at the time. However, an
5 initial sample, Commissioner, was retrieved of about six months
6 in the first instance, Commissioner, and then there would be
7 further or follow-up investigations or research into the matter.

8 Q. Now, one of the issues that both your internal
9 investigation and the Audit Department's investigation picked up
10 was the use of receipt books and receipt books that were not
11 allocated, if you like, to the Port Purcell location, and you
12 explain in your memorandum to the Financial Secretary that the
13 revenues collections at that port of entry was collected by the
14 JDE System or by a manual receipt book assigned to the station,
15 and in this case the receipts were linked to manual receipt
16 books assigned to other places. At that time, in 2015, what
17 system, if any, was there in terms of monitoring the use of and
18 distribution of receipt books within Customs?

19 A. (Mr Wade Smith) Commissioner, the distribution of
20 receipt books were done primarily at the headquarters, and they
21 were issued, and whatever unit or station they were issued to,
22 there was a Register where the individual receiving them would
23 have to sign off on receipt of the receipt books.

24 It is important to note, Commissioner, that the
25 Treasury Department was responsible for the collection at Port

1 Purcell utilizing the JDEdwards System, so it's minimal use of
2 manual receipts, of manual receipt books at the Port Purcell
3 station, only in the event that the system goes down,
4 Commissioner.

5 Q. And is the idea that if the system goes down--and
6 we're talking about 2015--if the system goes down and you have
7 to use a manual receipt book, when the system comes back up, you
8 ought to put that entry into the JDEdwards System?

9 A. (Mr Wade Smith) Commissioner, that's correct. When
10 the system goes down, which is not a lengthy period, and
11 immediately after that information should be loaded up into the
12 JDEdwards System.

13 And again, Commissioner, those--the Treasury cashiers
14 should have manual receipts at the Port Purcell station in the
15 event of a system outage.

16 Q. At that time in 2015, were receipt books allocated to
17 individual customs officers?

18 A. (Mr Wade Smith) Commissioner, receipt books were
19 assigned to seniors ahead who is in charge of various units.
20 For example, stations, the senior is in charge, they would be in
21 receipt of a receipt book in the event that you have a system
22 outage where you have to revert to manual operation.

23 Q. Was the person assigned the receipt book allowed to
24 share it? Could one officer, who had been assigned a receipt
25 book, pass it on to another to use?

1 A. (Mr Wade Smith) That's not a practice that is--that is
2 advised; but, in the event that the senior's not present, he
3 will have the officer in charge of the station at that time
4 utilize the receipt book. It's usually the second in command.

5 Q. And in terms of returning the receipt book, if, for
6 example, an officer retires from duty, what happens to the
7 receipt book or what happened in 2015 to a receipt book that had
8 been allocated to that officer?

9 A. (Mr Wade Smith) When an officer retires or leaves the
10 assigned area that they were working with a receipt book, that
11 receipt book is returned to the head office and accounted for.

12 Q. And what do you mean, Mr Smith, by "accounted for"?

13 A. (Mr Wade Smith) When a receipt book is returned, the
14 issuing officer goes to the Register and makes a notes of the
15 book being returned by the senior--by the senior or whoever has
16 that receipt book.

17 Q. And is there any check of the receipts that had been
18 issued at all? Is there any review of the book at all or is it
19 just simply signed back in?

20 A. (Mr Wade Smith) That's correct, Commissioner, there is
21 a review of the entries within that book.

22 Q. And what's the position in relation to the use of
23 receipt books now in 2021?

24 A. (Mr Wade Smith) Repeat that question, Commissioner,
25 please?

1 Q. What's the position in relation to the use of receipts
2 books in 2021 by Customs Officers?

3 A. (Mr Wade Smith) Commissioner, currently, there is not
4 much usage of the receipt books. The Treasury Department, like
5 I said, is responsible for the collection of revenue. At each
6 port of entry, there is a Treasury Officer present to collect
7 revenues assessed by the Customs Department, so 90 percent,
8 95 percent of the time, Commissioner, it's done by the JDEdwards
9 System.

10 Q. But receipt books are still being issued to officers
11 to use when the system goes down?

12 A. (Mr Wade Smith) Receipt books are there in case of
13 emergency situations.

14 Q. So, in that sense, it's exactly the same as in 2015?

15 A. (Mr Wade Smith) It's not exactly the same as 2015, but
16 it's similar, receipt books are issued to officers to use.

17 A. (Ms Martin) Commissioner, if I may?

18 Q. Of course, please, Ms Martin.

19 A. (Ms Martin) Just to add to the Commissioner of
20 Customs' statement as it relates to the issuing of manual
21 receipt books, this is now done directly from the Treasury.
22 Once receipts are--manual receipts are written up, it's been
23 entered into the JDEdwards.

24 For special units, if I can recall proper, the
25 responsible persons for these receipt books would have to turn

1 them in to Treasury for review, say it goes through that review
2 process on a when-it's-used basis.

3 Q. So, if an officer has to use the manual receipt book,
4 would they then be required to turn it over to the Treasury
5 Department so that the Treasury Department then conducts a check
6 as to how it's been used?

7 A. (Ms Martin) It is handed over to the cashier at the
8 ports.

9 Q. Yes.

10 A. (Ms Martin) It's entered into JDEdwards, and then it's
11 turned to the Treasury for further checks and balances.

12 Q. So, it's not up to the officer anymore to make sure
13 that JDEdwards is updated. That would be the cashier at the
14 port that does that?

15 A. (Ms Martin) Correct, Commissioner. However, at the
16 special units, CAPS assurance, they are authorized to collect
17 revenue.

18 Q. So, they may need to have their own receipt books?

19 A. (Ms Martin) Yes.

20 And they also have access to JDEdwards, they are
21 trained to process these invoices and are aware of the current
22 policies.

23 Q. Now, to return to you, Mr Smith, one of the points
24 that was flagged up in the IAD, the Internal Audit Department's
25 investigation, was the fact that payment was reported to have

1 been made in cash, and we're talking \$264,000, and they said
2 that that was a "red flag".

3 Is that something that you would agree with, that it
4 was a red flag, or would you expect payment in cash where the
5 figures involved are of that magnitude?

6 A. (Mr Wade Smith) Commissioner, to the best of my
7 recollection, I believe that if there is an amount paid over
8 three or \$5,000, a supervisor must be notified.

9 Yes, that would be a concern, would be a concern as in
10 regards to the large cash payment and a matter such as that
11 would be required--would be referred to the other competent
12 authorities for further investigation, other competent
13 authorities such as FCU, the Police Department, and even the
14 FIA.

15 Q. I think what we had in this situation was that a
16 customer was able to produce receipts in relation to location A,
17 but from a book that had never been near location A. And those
18 receipts, the customer was able to show that the customer had
19 paid in cash. No record on JDEdwards, no record of the money
20 ever arriving in Treasury, and so but what you have is,
21 therefore, that what follows is that a Customs Officer or
22 somebody with access to a receipt book had signed and issued
23 those receipts to the customer. That was in 2015.

24 What systems do you have in place now to stop that
25 sort of thing from happening?

1 A. (Ms Martin) Commissioner, controls that are in place
2 to address those issues from recurring would be the change in
3 policy as it relates to the management of the manual receipt
4 books, Commissioner. That is one.

5 And periodic revenue audits, post audits on entries
6 that have been processed and duties that has been paid.

7 Thank you.

8 Q. Now, one of the--

9 A. (Mr Wade Smith) Commissioner, if I may--

10 Q. Yes.

11 A. (Mr Wade Smith) If I may add, not just periodic but
12 frequent, at the various stations, "revenue audits" we call
13 them, Commissioner.

14 Q. Given, Mr Smith, as you pointed out when you referred
15 the Commissioner to your position statement, and it's point in
16 fact that you--that's made by Customs in response to another
17 report that we will look at, your Department has operated with
18 limited Human Resources for some years. The point that's made
19 is the point that I raised with the Internal Auditor today:
20 Customs had, in response to one of her Reports, written that
21 your Department has been asked to do more with less.

22 How are you able to conduct frequent audits when you
23 are constrained by limited Human Resources and you have other
24 demands on your officers' time?

25 A. (Mr Wade Smith) We do frequent audits. We regularly

1 go through the JDEdwards System to make sure that revenues are
2 being collected. We communicate regularly with the seniors at
3 each station.

4 And in addition to that, each senior officer at each
5 station has to produce reports explaining what has taken place
6 at each station in addition to in terms of revenue collection,
7 issuance of commercial licenses, crews and permits, other
8 revenue heads that the Department is responsible for.

9 A. (Ms Martin) Commissioner, if I may add, the Department
10 also utilizes the Customs automated processing system which we
11 actually keep record of all imports into the Territory, and that
12 information is then used to conduct post audits and generate
13 different reports to facilitate audits, revenue recovery, et
14 cetera.

15 Q. Can I come back to the CAP System a little later on,
16 if I may, Ms Martin. But one final point perhaps on this to
17 explore with you, Mr Smith, and it's taking you back to the
18 conclusion of the Audit Department's Report because what they
19 said is there are other issues surrounding this matter that begs
20 the question of whether other criminal activities are also being
21 perpetrated.

22 Now, when you saw that, what did you understand it to
23 mean? What did you take from it?

24 A. (Mr Wade Smith) Commissioner, when I--when I saw that
25 after reading the report, one thing that stood out in my mind is

1 the statement with regards to "cash payments". That stood out
2 in my mind in terms of having a matter referred to the FCU, as I
3 mentioned, and also the FIA, Commissioner, in terms of possible
4 laundering, money-laundering cases, those sort of things.

5 Q. And what the Internal Audit Department's Report seems
6 to hint at is that there may be other criminal activities going
7 on within Customs, so was this investigated in any way at the
8 time in 2015?

9 A. (Mr Wade Smith) In 2015, no, no other investigation
10 regarding that part within Customs, but we were able to--the
11 Internal Audit Team was able to identify receipts or another
12 receipt from the same book, the same sequence number, if I may,
13 that was linked to another activity that would have taken place
14 in 2011.

15 Q. But given what you've just said about the payment of
16 large sums in cash, raised for you the possibility of
17 money-laundering, you had been monitoring and had over two years
18 a drop in revenue in terms of imports that your Internal Audit
19 Unit had picked up on. You had this specific example, which
20 your investigation had been verified by the Internal Audit
21 Department, and you then referred it to the appropriate
22 authority.

23 But are you saying, Mr Smith, that that was it; after
24 that, the Customs Department didn't offer to back up all that
25 information and conduct any further investigations?

1 A. (Mr Wade Smith) Commissioner, we began further
2 investigation, we collected additional documentation. That
3 information was collected--received, collected, and that was
4 around the time the Hurricane came and destroyed everything but
5 we did not continue further investigation after that.

6 Q. So, between--this is October or November 2015 and
7 2017. You then conducted further investigations?

8 A. (Mr Wade Smith) We conducted--Commissioner, we
9 conducted further investigation because the information that we
10 received from the Police with regards to information received
11 from the DPP, we were not--we were not pleased. We were not
12 satisfied because of the amount of time spent on this
13 investigation, and we thought that we had produced enough
14 information to--for charges to be made.

15 Q. And--but all of the material that you gathered in
16 subsequent investigations was lost in the Hurricane?

17 A. (Mr Wade Smith) A number of the entries made in T-12s
18 were destroyed. We collected a number of the entries and they
19 were destroyed during the Hurricane. Probably about 90 percent
20 of our records were destroyed.

21 Q. All right. Can I ask you now--you can put that file
22 away, and then we'll just turn to--I think there is, I hope,
23 somewhere a single file which is related to and contained the
24 Auditor General's Reports.

25 A. (Ms Martin) Commissioner, this bundle labeled?

1 Q. It should be labeled just "Bundle for Hearings
2 Regarding the Work of the Auditor General." That may be the
3 lever-arch file that you want.

4 A. (Ms Martin) Thank you.

5 Q. Yes. If you go to page 749.

6 COMMISSIONER HICKINBOTTOM: Part 2 it will be.

7 MR RAWAT: Part 2.

8 COMMISSIONER HICKINBOTTOM: You should only have one
9 bundle that is Auditor General.

10 THE WITNESS: (Ms Martin) Yes.

11 BY MR RAWAT:

12 Q. They have all been combined into one bundle for the
13 Witnesses.

14 A. (Ms Martin) It's the Bundle Hearing Regarding the Work
15 of Auditor General.

16 BY MR RAWAT:

17 Q. It will be one of the two bundles in front of you.

18 A. (Mr Wade Smith) Bundle for Hearings Regarding the Work
19 of the Auditor General.

20 Q. That's the one. If you turn up page 748, please.

21 I will wait for Ms Martin. 748 is the front page of a
22 report of the Office of the Auditor General, and it's
23 examination of the Customs Department's Import Duty Partial
24 Payment Plan, and you will see that the report is dated the 18th
25 of April 2012. I want to try and hopefully just summarize it

1 for you, but if you go, please, to 750, that's the Executive
2 Summary of the Report, and it refers to the partial
3 payment--this is paragraph 2: "The partial payment system being
4 introduced on an unofficial and piecemeal basis to accommodate
5 importers who had difficulty paying the full amount of duty
6 assessed. This was initially done by referral of the Financial
7 Secretary and at times elected representatives, but now"--and
8 this is at 2015--"all applications are made directly to the
9 Commissioner of Customs who approves or denied the request."

10 And what it noted at five, that: "There has been a
11 study rise in delinquent payments over the years. At the time
12 of the Audit examination an amount of \$486,125 was over 90 days
13 past due." If you look at--if you look at 753, and at
14 paragraph 21, the Auditor General, in relation to delinquent
15 accounts made three points: Firstly, that the delinquent
16 accounts were caused by importers who had paid only the down
17 payment to release the goods and then never paid the outstanding
18 balance; secondly, you had importers who had started installment
19 payments but didn't follow through to completely pay off the
20 debt; and the third was where you had importers who had an
21 existing delinquent account but who were still granted
22 additional credit terms on other imports without being required
23 to cover the earlier debt.

24 What was also noted in the Report--and we see that at
25 20 in the same page was that the Customs Department had not to

1 date not pursued any court action to enforce payment of
2 delinquent payments.

3 And then if we look just at paragraph 16, which you
4 will find on page 752, the Auditor General noted that: Amongst
5 those who had delinquent payments, there were Government
6 employees, and they were usually expected to sign a salary
7 deduction consent forms, but amongst the delinquent importers
8 were a number of Public Servants, indicating that salary
9 deductions were not being applied across the board.

10 The next point, just to draw your attention to, is at
11 754, paragraph 24. Where the Auditor General said: "The
12 pervasiveness of client non-payment suggests that the programme
13 is being abused and possibly being used as a method to evade
14 paying full duty."

15 Now, I want to keep this question to 2015, just to
16 understand how that situation had arisen by 2015. Because if we
17 look at 26, paragraph 26 on that page, it says: "The programme
18 began as an initiative to accommodate individuals and small
19 businessmen by facilitating payment of substantial import costs
20 via installment payment. It now includes a number of
21 established businesses. In some of these cases outstanding
22 balances are so substantial that the Customs Department can be
23 said to be financing business activities rather than securing
24 government revenue."

25 A. (Mr Wade Smith) Where are you, Commissioner?

1 Q. Paragraph 26. If you look at paragraph 26, Mr Smith?

2 A. (Mr Wade Smith) Okay.

3 Q. You will see that at 24 the Auditor General had found
4 that the client non-payment was so pervasive that she concluded
5 that the programme was being abused. And then at 26, she refers
6 to--that's the paragraph I've just read out to you, and the
7 point that's made is that the Customs Department can be said to
8 be financing business activities rather than securing Government
9 revenue. And my question is this: And my question is focused
10 on the position in 2015. I want in due course to look at the
11 position today, but why were established businesses been
12 permitted to benefit from the Partial Payment Plan in 2015?

13 A. (Mr Wade Smith) Commissioner, because, Commissioner,
14 there has been quite a number of items that has been outlined
15 here, and if I--if I may, I would like to go through each--each
16 item. I think there is 16, number 16, number 21, 1, 2, 3.
17 There is also 24, 26, and 27, and Commissioner, I would like to
18 address each one individually.

19 But before I do, I would like to give a history of the
20 programme, and the programme has been in existence, from my
21 understanding, over almost four decades--40 years. In 2004,
22 there was no--a review of the history basically showed that
23 there was no formality, things evolved, and there are no perfect
24 system, but things evolve. In 2003, as Ms Martin mentioned,
25 when she joined the Internal Audit Unit, which was created

1 Internal Audit Unit within Customs, which was created, which was
2 a unit established out of the assessment of the Customs Reform
3 and Modernization Programme. We began to formalize the process.
4 We formalized the process, there were agreements in place that
5 officers--that officers required importers to sign.

6 And it's important to note that the Customs Department
7 was basically the technocrats in facilitating requests made by
8 the Ministry of Finance and the Financial Secretary.

9 It is not a system that is--or a "scheme", as it is
10 referred to, that is approved--or the Commissioner of Customs
11 approved these partial payments. And also we have letters from
12 the Ministry of Finance where the Financial Secretary would
13 approve these things. Applications would be made to the
14 Commissioner of Customs, yes, because most people may not be
15 aware of how the system works.

16 What we usually encourage them to do is send a letter
17 to the Ministry of Finance and copy the Customs Department on
18 it, and then we can follow through for them. Once these
19 requests are made and approved, we put the measures in place.
20 We have forms that were--not application forms, but forms for
21 them to sign agreeing to pay the amortized figure, and those
22 forms were developed in collaboration with the Attorney
23 General's Chamber, the forms were even further amended over the
24 years when we found the challenge, in some cases, to collect
25 outstanding.

1 So, number 16, if we may, Commissioner, number 16, you
2 said it's not applied across the board in terms of salary
3 deduction. And in some instances that may have applied. Some
4 government employees would state that their salaries are already
5 accounted for once payment--once they receive their salary, and
6 they would have asked for it to be paid by check because their
7 salaries either have to go for a car note or a bank mortgage or
8 whatever it may be.

9 Q. Could I stop you there for a moment?

10 A. (Mr Wade Smith) Yes.

11 Q. Break that down, Mr Smith. Are you saying as
12 Commissioner of Customs in 2015, you were not authorizing
13 partial payment plans?

14 A. (Mr Wade Smith) No, I did not say that, Commissioner.
15 Commissioner, what I said, the Financial Secretary would
16 authorize them. In some cases, the Commissioner of Customs or
17 officers within the Customs Department may contact the
18 Commissioner of Customs, and we may make authorizations
19 for--especially for officers or employees of the government
20 department to have payroll deductions, or for government
21 employees because they're already working with the
22 establishment.

23 Q. So, even in 2015, the Financial Secretary was
24 authorizing partial payments?

25 A. (Mr Wade Smith) 2015, up until October 2021, we've had

1 requests from the Financial Secretary authorizing partial
2 payment.

3 Q. The Auditor General when she set out the history of
4 the schemes also suggested at one time that elected Members
5 could intervene to get a partial payment plan in place. Was
6 that happening in 2015?

7 A. (Mr Wade Smith) Commissioner, I would say
8 emphatically: No elected official has come directly or
9 instructed or attempted to instruct the Customs Department to
10 issue a partial payment. Again, those requests, if there are
11 any requests from any elected official or any Member of the
12 public, they would have to go through the Ministry of Finance
13 and the Financial Secretary.

14 Q. And in terms of the form in 2015, was there a form in
15 place in 2015?

16 A. (Mr Wade Smith) Commissioner, there was a form in
17 place--there is a form in place from as far back as probably
18 2004-2005 that must be signed by the importer agreeing to the
19 terms of that amortization agreement.

20 Commissioner, even in December--December 24th, 2020:
21 "Dear Mr Smith, I write with respect to the above-captioned
22 matter," partial payment plan. "Please note by copy--please
23 note that I am by copy of this note instructing the policy unit
24 in my office to handle this matter in consultation with
25 Ms So-and-So of the Ministry of Finance. I am approving this

1 courtesy of partial payment to the"--

2 Q. And that letter is from who?

3 A. (Mr Wade Smith) Financial Secretary.

4 Q. Is that Mr Frett?

5 A. (Mr Wade Smith) No. The then-Financial Secretary in--
6 COMMISSIONER HICKINBOTTOM: Mr Forbes.

7 MR RAWAT: Forbes?

8 BY MR RAWAT:

9 Q. Was that Mr Forbes?

10 A. (Mr Wade Smith) That's correct.

11 Q. I'm sorry to interrupt you. The position we've
12 reached is that throughout your time as Customs Commissioner--

13 (Overlapping speakers.)

14 A. If I may interrupt--

15 Q. --the Ministry of Finance been able to authorize
16 partial payment plans?

17 A. (Mr Wade Smith) Repeat, Commissioner?

18 Q. Throughout your time as Customs Commissioner, the
19 Ministry of Finance, the Financial Secretary has been able to
20 authorize partial payment plans?

21 A. (Mr Wade Smith) The Ministry of Finance has been able
22 to authorize partial payment.

23 Q. Do you want to move on to paragraph 21 and what the
24 Auditor General says there about delinquent accounts?

25 A. (Mr Wade Smith) It says, Commissioner, importers who

1 paid only down payment and never honored payment plan for
2 outstanding balances, yes, we have seen some of that,
3 Commissioner.

4 Two importers--I will read these three and tell you
5 how we have addressed it.

6 Two importers who commenced installment payments but
7 did not follow through the complete payment of debt; yes, we've
8 seen that.

9 Importers with existing delinquent accounts who were
10 granted additional credit terms without being required to cover
11 their prior debt; we have seen some, Commissioner, but there is
12 also--what we have done as a Department is a number of things:
13 Number one, if importers--and there have been a few of them--who
14 are in receipt of government contracts, we've had through the
15 Financial Secretary utilizing the Financial
16 Management--Financial Management Act offset the balance. What
17 that means, Commissioner: If an individual owes \$5,000 to
18 Customs and the individual is going to receive a payment from
19 Government \$10,000, that \$5,000 is deducted. The Financial
20 Secretary has the authority to authorize that and make the
21 accounting general or instruct the accounting general to make
22 that deduction.

23 In addition to that, Commissioner, we've--we wrote to
24 importers to give them a chance to come and honor their
25 obligation, and in the event that that hasn't been done, we--in

1 accordance with the Customs Management and Duties Act, we began
2 a programme to repossess tangible assets that are delinquent.
3 In the past couple of months, we have repossessed heavy
4 equipment, taxis, personal vehicles that were in arrears. So,
5 those are things that we have done.

6 Commissioner, I must say, I'm looking at this--but
7 before I go there, Commissioner, number 24 suggests
8 the--suggests the programme is being abused and possibly being
9 abused as a method to evade paying full duty. I don't know the
10 intent of the individuals who the partial payment has been
11 granted to or who they were granted to, but in the event that
12 payment was not made, the Department has taken necessary steps
13 to recover the outstanding.

14 The programme began as an initiative to accommodate
15 individuals and small businessmen. I don't know how the
16 programme over what the initiative or the spirit of the
17 programme was at the time. As I mentioned, this programme began
18 over four decades ago, and I have an employee within the Customs
19 Department who has served in the Customs Department over
20 43 years, and he can attest to the longevity of the time that
21 this programme--I don't like to use the term "scheme," but this
22 programme has been in existence.

23 Commissioner, if I may, I'm seeing here a figure here
24 that reflects \$486,000, and that \$486,000 seems to be a number
25 that's in terms between 436, 450, 486. But Commissioner, when

1 we--in 2004, when we started recording everything with this
2 programme--not scheme--with this programme, there was
3 approximately--from 2004 to now, there was approximately
4 \$4.8 million in partial payment that was issued, that was
5 allowed to enter into an agreement with the Customs Department.

6 And, Commissioner, of that \$4,809,000, \$4,382,000 have
7 been recovered. That's a 91 percent collection rate, if I may.
8 We have an outstanding of \$427,000 at this point that we must
9 collect, but I must mention that, of that 427, \$149,000 of that
10 money was--which is, between three importers, roughly
11 50-50-50--that money, which is 35 percent of the \$427,000, that
12 money was pending exemption or set-off or set-off, offset by the
13 Ministry of Finance. Because these are contractors, the
14 Ministry of Finance at the time said that they will offset that
15 cost or that amount of outstanding against monies owed to those
16 contractors by Government.

17 The Ministry of Finance, the Financial Secretary at
18 the time, would have asked--would have written to ask for
19 Customs to suspend enforcement efforts at that time, which will
20 give them time to allow the process to set off or offset in
21 accordance with the Financial Management Act.

22 There is approximately \$94,000 of that 427 where, if
23 we're not successful in collecting that, we'll ask for it to be
24 a write-off by the Ministry of Finance because some those
25 individuals may have been--are deceased. However, if they're

1 deceased and we know where the asset is and if the asset is
2 something tangible--vehicle, heavy equipment--then we go and we
3 detain that asset because it's still un-Customs goods, not duty
4 paid.

5 Currently, there is one individual whose family Member
6 is deceased. That individual is now the owner or is utilizing
7 the vehicle. That individual is fulfilling the obligation of
8 the partial payments that was in existence. So, we--up to the
9 last month, a few weeks ago, that individual came and made
10 payment.

11 \$184,000, which is 43 percent of the--which is
12 43 percent of the \$427,000, we have been in communication with
13 the Attorney General's Office. We've written to the Attorney
14 General's Office as recent as 2019 to get officers trained and
15 assist us in taking these matters to the courts for recovery.

16 Commissioner, to put this into perspective, we're
17 looking at approximately \$427,000. And in terms of the
18 allocation of our resources, Commissioner, \$427,000 over a
19 17-year period, that equates to probably \$25,000 a year.
20 \$25,000 a year. And if you compare that \$25,000 a year for
21 17 years, it gives you approximately \$427,000. If you look at
22 \$25,000 a year and you--and, to put this into perspective, you
23 have a Customs Department that is collecting.

24 In addition to other things--cruiser permits,
25 commercial license, temporary imports, those things--put those

1 into perspective, and you have a Customs Department collecting
2 over \$40 million a year. That 27 or \$25 million a year, that
3 \$427,000 a year is less than 1 percent of that over \$40 million
4 revenue collection. And if you break it down even farther to
5 \$25,000 a year, that's .0001 of the annual revenue intake of the
6 Customs Department.

7 I say this, Commissioner, because if we were to focus
8 primarily on that .0001 percent of that revenue intake for the
9 Customs Department, we would be missing the big picture,
10 Commissioner.

11 COMMISSIONER HICKINBOTTOM: Could I just ask a couple
12 of questions by way of clarification? You said that the
13 Financial Secretary authorizes partial payments. Do you, as the
14 Commissioner, also authorize them?

15 THE WITNESS: (Mr Wade Smith) Commissioner, yes. The
16 Financial Secretary authorizes them. In special cases, number
17 one, if I'm unable to get in touch with the Financial Secretary
18 and if it's a pretty straightforward case with maybe a
19 government employee or payments are made or checks are deposited
20 for the duration of the process, then yes.

21 COMMISSIONER HICKINBOTTOM: And then you do it?

22 THE WITNESS: (Mr Wade Smith) Then I would do it.

23 COMMISSIONER HICKINBOTTOM: It's primarily the
24 Financial Secretary?

25 THE WITNESS: (Mr Wade Smith) It's primarily the

1 Financial Secretary.

2 COMMISSIONER HICKINBOTTOM: And what criteria does the
3 Financial Secretary apply?

4 THE WITNESS: (Mr Wade Smith) Commissioner, what I do
5 know is that a request is made to the Financial Secretary.

6 COMMISSIONER HICKINBOTTOM: We know the request is
7 made to him, and he either allows it or not, but what criteria
8 does he apply?

9 THE WITNESS: (Mr Wade Smith) Commissioner, I don't
10 know what criteria is applied.

11 COMMISSIONER HICKINBOTTOM: Because you mentioned that
12 it's a relatively small amount compared with the amount of your
13 income.

14 But, I mean, import duties are really pretty
15 straightforward because the importer wants to import goods; he's
16 not allowed to import them without paying the duty, so that's
17 very, very straightforward. In these particular circumstances,
18 for one reason or another, but mainly due to the Financial
19 Secretary's authorization, the payment is not made, as it were,
20 when it should be made prior to import.

21 THE WITNESS: (Mr Wade Smith) Commissioner, you're
22 correct. However, under the Customs Management and Duties Act,
23 Commissioner--I think it's Section 103 where it speaks to the
24 manner in which the Commissioner of Customs can release goods
25 with a secured--

1 (Overlapping speakers.)

2 COMMISSIONER HICKINBOTTOM: I'm not saying it's
3 unlawful or anything like that, but when you say that you have
4 to go and recover this money, you have to recover it because you
5 didn't collect it on importation.

6 THE WITNESS: (Mr Wade Smith) Yes.

7 COMMISSIONER HICKINBOTTOM: And at the moment--this is
8 not a criticism of you, but we don't know the criteria which the
9 Financial Secretary applies when making these authorizations?

10 THE WITNESS: (Mr Wade Smith) Commissioner, no. I'm
11 not aware of the criteria.

12 COMMISSIONER HICKINBOTTOM: That's fine. Thank you
13 very much.

14 MR RAWAT: Thank you.

15 BY MR RAWAT:

16 Q. Mr Smith, can I take you back to 2015 in the report
17 that we were actually looking at? If you look at 750.

18 A. (Mr Wade Smith) In this bundle, sir?

19 Q. Yes, 750. It's the Executive Summary of the report.

20 A. (Mr Wade Smith) Yes, Commissioner.

21 Q. Now, the report is dated 18 April 2015, and what the
22 Auditor General says is, at the time of the Audit examination,
23 an amount of \$486,000 was over 90 days past due.

24 Is that a figure that you dispute?

25 A. (Mr Wade Smith) Commissioner, we're talking

1 approximately nine years ago, and to be quite frank,
2 Commissioner, I am--I don't recall this document, and I didn't
3 have opportunity to review it. But the figure that you're
4 asking me, is it the 486, Commissioner? \$486,125 is past
5 90 days? Is that what you're asking me, Commissioner?

6 COMMISSIONER HICKINBOTTOM: You dispute that figure?

7 THE WITNESS: (Mr Wade Smith) The period for--

8 COMMISSIONER HICKINBOTTOM: Yes.

9 THE WITNESS: (Mr Wade Smith) No, I don't dispute that
10 figure, Commissioner.

11 COMMISSIONER HICKINBOTTOM: From what else you said,
12 it sounds probably as though it's right.

13 THE WITNESS: (Mr Wade Smith) Yes. I do not dispute
14 it.

15 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

16 BY MR RAWAT:

17 Q. If you look at 20 on page 753--

18 A. (Mr Wade Smith) Yes, Commissioner.

19 Q. --what the Auditor General has recorded is the
20 Department has not to date pursued any court action to enforce
21 payment of delinquent accounts. Is that right or is that wrong,
22 in 2015?

23 A. (Mr Wade Smith) In 2015, Commissioner, no, no court
24 actions or no proceedings have been made, anything on this
25 matter.

1 Q. 755, then.

2 In 2015, the Auditor General made recommendations, and
3 that was that the partial payment system for import duty needs
4 to be reviewed and needs to be standardized, and she set out how
5 the system needed to be regularized, and she also said it should
6 be regularized through the Ministry of Finance with the guidance
7 and assistance of the Attorney General's Chambers, that
8 Government employees with delinquent balances should have the
9 amounts deducted from their salaries in regular installments,
10 and that the facilities should not be extended--this is at 4--to
11 importers that already had delinquent accounts.

12 Now, in response to that, in 2015, did the Customs
13 Department in 2015 make any changes to the partial payment
14 system?

15 A. (Mr Wade Smith) Commissioner, I must say these
16 recommendations that are put forward, and we welcome any
17 recommendation that would help strengthen our processes, and
18 we've taken some of them into account, into consideration.

19 Ms Martin, is there something--do you want to speak to
20 any of them?

21 A. (Ms Martin) Commissioner, could you please repeat the
22 question?

23 Q. I'm trying to take you both back to 2015. The Auditor
24 General made eight recommendations in 2015 which you see listed
25 at page 755, and my question is whether, in response to those

1 recommendations, the Customs Department made any changes to the
2 partial payment plan as a programme?

3 A. (Ms Martin) Commissioner, off of memory, I can recall
4 from my appointment in 2011 to the Internal Audit Unit that we
5 have consistently made changes to improve and to collect
6 outstandings. We have not carried any of the cases to court.
7 However, it was planned for future recovery.

8 Q. Can we look at the future in a moment?

9 A. (Ms Martin) Yes.

10 Q. What I'm trying to understand from either yourself,
11 Ms Martin, or Mr Smith, is whether there was any positive
12 response to the recommendations made in April 2015 by the
13 Auditor General.

14 For example, on that page, she refers twice to seeking
15 the advice to the Attorney General's Chambers.

16 Mr Smith, did--in response to this, after April 2015,
17 in that year, did the Customs Department go to the Attorney
18 General's Chambers for advice in relation to the partial payment
19 plan?

20 A. (Mr Wade Smith) Commissioner--and I will answer it,
21 Commissioner, but you're making--you're referring to the (a)
22 through (g) of the recommendations?

23 Q. I'm referring to 1 to 8 of the recommendations.

24 A. (Mr Wade Smith) Oh, 1 to 8.

25 Q. If you look at 2, there's a reference to the Attorney

1 General's Chambers. If you look at 6, there is a reference to
2 the Attorney General's Chambers.

3 A. (Ms Martin) Commissioner, if I may, I don't recall
4 exactly if it was 2015 or 2016, but there--we had a meeting with
5 some representatives of the AG Chambers to seek assistance as it
6 relates to recovering outstandings. But I cannot--I cannot
7 recall if it was within the Year 2015 or 2016. I can't recall
8 at this moment.

9 Q. Can we put it this way? I will put it to you,
10 Mr Smith, first.

11 Now, your attention has been drawn to the
12 recommendations that were made by the Auditor General in
13 April 2015. Do you have today any recollection of the Customs
14 Department taking any action in response to those realizes? If
15 you can't remember, just say so.

16 A. (Mr Wade Smith) Commissioner, these are--are these
17 what we're looking at on page 755?

18 Q. Yes.

19 A. (Mr Wade Smith) Okay, Commissioner.

20 Can I look through them, Commissioner?

21 Would we want to start from number 1?

22 Q. Well, I hope it's a more general question. It's not
23 every day that the Auditor General comes knocking on your door,
24 and it's just simply this: She made a report; you would have
25 seen it as Commissioner for Customs. Do you have any

1 recollection today of responding to the recommendations that the
2 Auditor General made in relation to the partial payment plan?

3 A. (Mr Wade Smith) Commissioner, the only--because I
4 haven't reviewed the eighth of them, Commissioner, but the one
5 that sticks out in my mind is the consultation with the Attorney
6 General's Chambers. And that is something that we do on a
7 continuous basis, not only for the partial payment, but we have
8 consulted with them on the partial payment in terms of recovery.
9 We've consulted with them in terms of amending the new--amending
10 the form for amortization. So, we work closely, and we have
11 worked closely, with the Attorney General at that time,
12 Commissioner.

13 A. (Ms Martin) Commissioner, if I may assist the
14 Commissioner of Customs, going through these recommendations, my
15 answer to your question: If Customs have put any controls in
16 place to address these recommendations, the answer is "yes";
17 however, it was implemented over a period of time.

18 Q. All right. Thank you.

19 Can I just caution both of you? I don't want
20 you--please don't try to guess. If you can't remember if there
21 was a positive response, it's better just to say so, and that
22 would be more helpful.

23 Can I take you to a different report, then, and you
24 will find--

25 COMMISSIONER HICKINBOTTOM: Could I just ask one last

1 question about the last report?

2 Those recommendations are made on page 755, which
3 we've looked at, but the Auditor General, turning to her Report,
4 clearly wondered whether this was beneficial. She clearly
5 thought it might not be because the first recommendation is that
6 the programme needed to be reviewed, if it's considered
7 beneficial. Has there been any reconsideration of whether to
8 maintain this as a programme?

9 THE WITNESS: (Mr Wade Smith) Commissioner--

10 COMMISSIONER HICKINBOTTOM: Or--I'm sorry to
11 interrupt. Or would that a matter for the Financial Secretary?

12 THE WITNESS: (Mr Wade Smith) Commissioner, that would
13 be a matter for the Financial Secretary. However, currently the
14 programme is halted, suspended, as we try to recover--try to
15 lower the debt some more. We've lowered it 91 percent, but
16 we're still working--our aim is 100 percent. Whether we get
17 there, we will try--we will definitely try to get there.

18 COMMISSIONER HICKINBOTTOM: Okay. Thank you very
19 much.

20 THE WITNESS: So, Mr Rawat.

21 BY MR RAWAT:

22 Q. Yes. Now we can put that report to one side, and you
23 can close that file and put it to one side. But we need to go
24 back to the Internal Auditor's reports.

25 A. (Ms Martin) Commissioner, that's Part 2?

1 Q. This time we'll have to go to Part 3.

2 If you go in Part 3, turn up page 2330.

3 A. (Mr Wade Smith) 2330?

4 Q. Yes, please. Part 3's first page should be 2085, and
5 if you go through there to 2330.

6 This--now, it's is a letter from the Director of
7 Internal Audit, and it's dated December 13, 2020. And in 2019
8 and 2020, the Director of Internal Audit did an audit of the
9 Partial Payment Programme and of the courier clearance
10 operations, and those were split into two. And so, the report
11 that we see here is dated December 2020, but has an addendum the
12 report on partial payments and the Partial Payment Programme.
13 So, if we look at that and you go to 2360, this is the Acting
14 Commissioner of Her Majesty's Customs on October 27, 2019.

15 Mr Smith, previously you explained to the Commissioner
16 you stepped away from the role of Commissioner of Customs for
17 some time, so at this time you would not have been in the role
18 of Commissioner of Customs; is that right?

19 A. (Mr Wade Smith) That's correct, Commissioner.

20 Q. I think it was August 2020 you came back into the job?

21 A. (Mr Wade Smith) Correct, Commissioner.

22 Q. Now, if we look at 2360, what's explained there
23 is--it's the letter that explains the Department, if you like,
24 did a two-stage audit, and the first part being the Partial
25 Payment Programme.

1 If you go to the background section at the bottom,
2 what's written there is that: "Over the years, HM Customs has
3 approved requests from importers to make payments of the
4 assessed Customs duties through partial payments on large valued
5 items. Initially, this courtesy was only afforded to Government
6 employees, as repayment could be easily managed through salary
7 deductions. However, the programme has evolved and now includes
8 any importer who is approved by the Commissioner or an
9 authorized officer to make Customs duty payments through partial
10 installment payments. A down payment on the assessed duty is
11 required and the balance is to be paid in installment payments
12 over a defined period."

13 Now, elsewhere in the Report, what the Auditor General
14 clarifies is that--and the understanding that's given is it is
15 the Customs Commissioner and Assistant Commissioners who
16 authorize, give authority, for someone to be able to use the
17 Partial Payment Programme. The report doesn't mention the role
18 of the Financial Secretary.

19 But it's your evidence, as we understand it, Mr Smith,
20 that, in fact, it's the Financial Secretary that is making the
21 decision, not the Customs Commissioner; is that right?

22 A. (Mr Wade Smith) Commissioner, as I stated, the
23 Financial Secretary authorized the partial payment in
24 cases--there are cases where Customs has authorized partial
25 payment, but it is primarily--they're referred primarily to the

1 Financial Secretary.

2 And also, Commissioner, if I may, as you're reading
3 this document, it says here that the partial payment was
4 afforded the Government employees only, but in the report from
5 the Auditor General, it says that partial payment was for
6 businesses or for business--to provide opportunities for
7 businesses.

8 Q. To be fair to the Internal Auditor, she's giving there
9 the background, and she says "initially, this courtesy," and so
10 it expanded, but we can see that because if we go to page 2361
11 and look at the facts and figures findings--

12 A. (Ms Martin) Commissioner, if I may interrupt, to
13 address the question as it relates--or your comments as it
14 relates to the Commissioner of Customs and Assistant
15 Commissioner giving approval to partial payments, I would like
16 to correct that. The Commissioner authorizes or has authorized
17 for the partial payment. It would then be now for--in the
18 absence of the Commissioner, under his authorization, they will
19 then approve it, so it still comes as the approval through the
20 Commissioner of Customs.

21 COMMISSIONER HICKINBOTTOM: But Mr Smith said that
22 it's mainly the Financial Secretary who approved it. He does
23 approve some of them occasionally, but it's the Financial
24 Secretary who approves most of them.

25 THE WITNESS: Right, but in the event, Commissioner,

1 where--if it's signed by an assistant or a Deputy, it's--they're
2 signing or executing--

3 COMMISSIONER HICKINBOTTOM: On your behalf?

4 THE WITNESS: (Mr Wade Smith) --for the Commissioner.

5 COMMISSIONER HICKINBOTTOM: I understand that.

6 THE WITNESS: (Mr Wade Smith) Just like any other
7 document in any of the stations, it says "Commissioner of
8 Customs," but the officers--

9 COMMISSIONER HICKINBOTTOM: Sign on your behalf.

10 THE WITNESS: (Mr Wade Smith) --sign on behalf of the
11 Commissioner of Customs.

12 COMMISSIONER HICKINBOTTOM: I understand that. Thank
13 you.

14 BY MR RAWAT:

15 Q. Let's try to summarise this and look at some of the
16 points that the Auditor General found in October 2019. If you
17 look under "Facts and Figures" on page 2361, the Internal Audit
18 identified as of June 1st, 2019, a balance outstanding based on
19 information provided by HM Customs of \$490,145.60, which spanned
20 a period of 1996 to 2019.

21 If you look at the next page, 4--and what I would
22 point out to you both is that that figure of 490,000-odd is not
23 dissimilar to the figure that the Auditor General found in 2015.
24 If you look at 4, it says that partial payments have been
25 approved for multiple T-12s--that's the form used--for the same

1 importer. The decision to approve the subsequent partial
2 payment was made even though the importer was delinquent in his
3 payments on a previous agreement, and that is the point that the
4 Auditor General also identified in 2015.

5 If you look at 2364, at (d) and (e), another point
6 that the Internal Auditor picked up on was that there were
7 Government employees that were paying through salary deductions,
8 while others were allowed to make direct payments to the Customs
9 Department, and what the Internal Auditor said was that that
10 second option, not mandating salary deductions, meant that there
11 was less control over recovery.

12 If you jump back to 2363, at (c), what the Internal
13 Audit showed was between 2004 to present, the programme has an
14 average of 47 percent outstanding of duties to be collected.
15 From 2004 through 2010, the programme suffered an average of
16 64 percent delinquency. Given the duration of time that has
17 elapsed, the nature of the imported item and the deficiencies in
18 the agreements, it may be difficult for HM Customs to recover
19 these outstanding balances, and it refers to an opinion of the
20 Attorney General's Chambers, that that recovery may be limited
21 by the limitation ordinance, and if you conclude--look at the
22 bottom of that paragraph. It says: "Based on this opinion, the
23 Government may be statute-barred from referring approximately
24 \$265,411.02."

25 So, what the point is being made, as the Auditor

1 General made in 2015, was that there had been no real attempt by
2 the Customs Department to recover and that you would now have to
3 write off \$265,000.

4 Now, I accept, Mr Smith, your point about the amount
5 of revenue that goes through Customs and the amount of revenue
6 it collects, but on any view, \$265,000 is a significant sum of
7 money to an ordinary Member of the public.

8 Doesn't it appear, if you compare the findings that
9 the Auditor General had in 2015 and the findings in 2019, that
10 over that four-year period, that nothing really had changed, had
11 it? Would you accept that?

12 A. (Mr Wade Smith) No, Commissioner, I wouldn't accept
13 that at all.

14 Commissioner, in 2012-2015, 20-whatever partial
15 payments were issued, so the rates would increase--the rates
16 would fluctuate. It would increase, it would decrease, but we
17 had constant movement in terms of the balance that was carried.

18 Commissioner, I went through a lengthy projection
19 outlining the amount of revenue that was allowed to go on
20 partial payment, and I emphasized, Commissioner, the percentage
21 in terms of correction. I also emphasized, Commissioner, the
22 amount that was outstanding, and, Commissioner, I always went a
23 step further to break it down percentage-wise, to let you know
24 the percentage outstanding, the percentage that are still
25 pending or waiting for set-off, which is under the Financial

1 Management and duty--Financial Management Act, which the
2 Financial Secretary have the authority to set off. This equates
3 to \$149,000.

4 So, Commissioner, in my previous presentation, I
5 outlined everything in the efforts that were made in terms of
6 setting off of certain monies owed to the Government by some
7 Members who have received partial payment. That process, I
8 thought, was clearly articulated in terms of what is owed and
9 how it's being collected and meetings being held with the
10 Attorney General in terms of taking some--some of these
11 delinquent files to the Attorney General Chambers to
12 instigate--initiate court proceedings to attempt to recover
13 this.

14 I also mentioned there are some that might be in the
15 position to be--for write-off. Individuals who may have passed,
16 or deceased individuals, we have to identify where these assets
17 are. Once we do that, we will begin proceedings to collect
18 them. If we can't, then we will give advice to the Financial
19 Secretary to have those offset. I said there are some
20 people--there is someone who has taken over the payment plan for
21 a deceased family member, and they're now in possession of this
22 asset.

23 In addition to this, Commissioner, when partial
24 payments are issued--especially on tangible assets, such as
25 heavy equipment, vehicles--there is a Customs interest form that

1 is lodged with the Department of Motor Vehicles. That prevents
2 the sale or transfer of that vehicle asset legally because that
3 interest form is there until the full debt is settled with
4 Customs. So, there has been a rigorous campaign to collect
5 outstandings. We have been successful, and we have explained
6 the number of outstandings and what should be set off and what
7 we're waiting on.

8 COMMISSIONER HICKINBOTTOM: But there are a number of
9 problems, aren't there, Mr Smith? One is because most of the
10 decisions that authorize partial payment are made by the
11 Financial Secretary; we don't know the criteria that the
12 Financial Secretary applies.

13 But in terms of the programme, as you call it, as the
14 Internal Auditor says, perhaps because we don't know what the
15 programme is designed to do, there are no performance measures.
16 You cannot say--if there are no performance measures, you cannot
17 say this is a worthwhile programme, because we don't know what
18 to assess it against. I appreciate that you may have taken
19 measures to try to recover some this money, but if you have a
20 look at paragraph 10 of the Internal Auditor's report on
21 page 2365, what she says is that performance measures have not
22 been developed, nor have the performance of the programme
23 been--nor has the performance of the programme been evaluated.
24 The programme is simply administered on an ad hoc basis without
25 any review to determine whether it's achieving the desired

1 objects for its existence. We don't know what the desired
2 objects are, but if we did, there would be no assessment against
3 them. That's her point.

4 THE WITNESS: (Mr Wade Smith) Correct. I understand
5 that, Commissioner. And I don't know the intended objective of
6 the programme.

7 However, once the partial payment--as the technocrat
8 on the ground and the agency to implement or put the mechanism
9 in place, what we can say is in terms of collection--and that's
10 our aim, is revenue collection of the outstanding--in that time
11 period, we've recovered approximately 91 percent, but I do not
12 know what the intended objective of the programme was, and this
13 programme, like I said, had been in existence for at least
14 four decades.

15 COMMISSIONER HICKINBOTTOM: Thank you very much.

16 BY MR RAWAT:

17 Q. If you look at 2389--

18 A. (Ms Martin) Commissioner, if I may--

19 COMMISSIONER HICKINBOTTOM: Yes.

20 THE WITNESS: (Ms Martin) Just to address certain
21 concerns or points made in the Audit 2019 that was highlighted,
22 one, multiple T-12s, please note that the balances--that the
23 outstandings also have accounts that was established prior to
24 2015, so you--it would see a repetition there of the same
25 information.

1 What was the next one? Government workers are not
2 having salary deductions--again, repetition. Although we try to
3 restrict offering partial payments to Government workers, there
4 were some exemptions, authorizations through the Ministry of
5 Finance and so forth.

6 And what was the next point? Sorry.

7 BY MR RAWAT:

8 Q. Well, what I was trying to draw together was that,
9 under the findings that the Auditor General made in 2015 or
10 findings that the Internal Auditor is making in 2019, so the
11 same amount--a similar level is outstanding, there's--people who
12 are delinquent are still being approved for partial payments,
13 that Government employees are not all salary-deducted, and that
14 as of 2019, Customs had yet to make any real effort to recover
15 sums of money such that, in the Internal Auditor's opinion, you
16 were going to have to write off \$265,000.

17 A. (Ms Martin) Okay.

18 Commissioner, like I stated, the information of the
19 findings would reflect the same because of the previous
20 outstandings from 2015 going back, which--currently, 47 percent
21 of the outstanding speaks to those outstandings, which we have
22 tried through actions through the FS to offset or exempt, and to
23 review the 22 percent through detention once we can identify the
24 items, and through communications, which would then bring us to
25 \$203,000. However, 22 percent of that total we are still making

1 attempts to collect them.

2 Q. If you look at 2362, one of the points--at 5, one of
3 the points that--

4 A. (Mr Wade Smith) I'm sorry, Commissioner. Where are
5 we?

6 Q. 2362.

7 One of the points picked up in the Internal Audit was
8 that inadequate information is collected on importers approved
9 to make partial payments to aid in monitoring the installment
10 plans. The department usually only collects a telephone number
11 and only recently began collecting forms of identification.

12 And that, in terms of recovery, is another factor that
13 makes it difficult for you to recover because you don't have as
14 much details as you should, or you didn't in 2019, about the
15 importers. It seems to me that what Customs did was just have a
16 telephone number.

17 A. (Ms Martin) Commissioner, again, I would like to say
18 these findings were findings from accounts that was established
19 as far back as--what does it say?--2020--2002, where we had
20 start recording the information in 2004.

21 So, in the--

22 Q. Ms Martin--

23 A. (Ms Martin) So, in 2004, there was limited
24 information, yes, but as we progressed and tried to improve the
25 controls in place, we did start collecting more information,

1 such as numbers, address, identification, and identification
2 numbers of the items that are--the commodities that are being
3 placed on this partial payment system.

4 Q. But that's not what the Internal Auditor says. The
5 Internal Auditor says the Department usually only collects a
6 telephone number, and only recently began collecting forms of
7 identification. So, it's not about just having a telephone
8 number for someone who had a partial payment plan in 2004. It's
9 about only having a telephone number for someone who had a
10 partial payment plan in 2018.

11 A. (Ms Martin) Well, Commissioner, I'm not sure where the
12 facts is for that; however, I do have files that have numbers,
13 address, names of persons, and item numbers, identification
14 numbers.

15 MR RAWAT: Commissioner, I think we have been going
16 for quite a while. I wonder if we could have a short break for
17 the Stenographer.

18 COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.
19 Five minutes.

20 We will have a short break for the Stenographer.
21 Thank you very much.

22 (Recess.)

23 COMMISSIONER HICKINBOTTOM: Thank you.

24 Mr Rawat.

25 MR RAWAT: Thank you.

1 BY MR RAWAT:

2 Q. Could we just go to 2389.

3 A. (Mr Wade Smith) Commissioner, I don't have that page.

4 Q. You don't have it?

5 A. (Mr Wade Smith) No.

6 COMMISSIONER HICKINBOTTOM: And I haven't got it
7 either. I don't know whether Mr Smith's bundle is the same.
8 Mine goes from 2382 to 2391.

9 THE WITNESS: (Mr Wade Smith) Yes.

10 COMMISSIONER HICKINBOTTOM: We do have the same
11 bundle.

12 MR RAWAT: Right.

13 COMMISSIONER HICKINBOTTOM: I think you only want to
14 probably refer us to 2389 and 2390.

15 MR RAWAT: Yes.

16 COMMISSIONER HICKINBOTTOM: There is a page missing.

17 MR RAWAT: Does Ms Martin have it?

18 THE WITNESS: (Ms Martin) No. I'm missing pages 2382.

19 BY MR RAWAT:

20 Q. Okay. I will try and soldier on as the one person
21 with the document.

22 COMMISSIONER HICKINBOTTOM: Can you tell us what the
23 document is? It's probably on the first page.

24 MR RAWAT: What it is is it's a response, a management
25 response, from the Customs Department on the Partial Payment

1 Programme, so the Internal Auditor made a number of
2 recommendations in relation to partial payments, and the
3 Department, the Customs Department, then responded to that, and
4 that's what I wanted to go through a couple of those, just to--

5 COMMISSIONER HICKINBOTTOM: Do you recognize the
6 document, Ms Martin?

7 THE WITNESS: (Ms Martin) Commissioner, I do.

8 BY MR RAWAT:

9 Q. Let me just take you as shortly as I can.

10 The first recommendation that the Auditor--the
11 Internal Auditor, rather, made in relation to the
12 partial-payment system was that, given the high default rate and
13 the lack of a discernible business or economic value, it's
14 recommended that the Partial Payment Programme be discontinued.

15 Now, as I understand it from you, Mr Smith, it's not
16 been discontinued but it's been paused; is that right?

17 A. (Mr Wade Smith) That's correct--that is correct,
18 Commissioner. That would have to be a decision of the Financial
19 Secretary.

20 Q. What the Internal Auditor also said, it recommended
21 that the Commissioner of Customs seek advice from the Attorney
22 General's Chambers on the recoverability of delinquent balances
23 and employ any advice given to develop a course of action to
24 collect monies deemed recoverable and to take the necessary
25 action to write off balances that are determined to have a low

1 probability of ever being collected.

2 And you, Ms Martin, are recorded as responding to
3 that, agreeing to the recommendation, and saying that a letter
4 had been drafted and officers selected to train to assist in
5 corporate proceedings.

6 So, did you follow up--the deadline for that which you
7 gave yourself was to follow up with the AG's Chambers by the end
8 of the first quarter of 2021? Did you follow up with the AG's
9 Chambers?

10 A. (Ms Martin) The AG's Chambers, Commissioner, we have
11 not been able to, as our resources are directed to border
12 security at these times of fighting against the COVID-19.

13 Q. So, you--you haven't as yet been able to get advice
14 from the Attorney General as to recovering monies outstanding?

15 A. (Ms Martin) Correctly, it's actually pending.

16 A. (Mr Wade Smith) If I may--if I may, did you make
17 contact with the AG Chambers before prior with regards to that?

18 A. (Ms Martin) Commissioner, if I may, we have, as I
19 mentioned earlier--I think it was around 2015-'16--and then as
20 we were preparing to follow through with our actions, then memo
21 came, and then it was displaced, and that came to 2018-'19,
22 where we followed up. And then that's where we were faced
23 with--that's where the actual letter was drafted shown in our
24 response, and officers selected. It was just to follow through,
25 2000--bringing us to date, which was when?--when this was

1 response? Sorry.

2 COMMISSIONER HICKINBOTTOM: I think Mr Rawat knows
3 that.

4 MR RAWAT: It's not actually dated, but it would have
5 been after December 2020 because--oh, yes, hang on. It's
6 December 14, 2020, was when the attached response to the Audit
7 Report was sent to the Internal Auditor.

8 COMMISSIONER HICKINBOTTOM: Just before we go on,
9 could you help me--and Ms Martin, let us know if you want to see
10 a copy of the missing two pages, but on the first page, you said
11 that the first recommendation was to consider scrapping the
12 programme.

13 BY MR RAWAT:

14 Q. If you go over to page 2366.

15 COMMISSIONER HICKINBOTTOM: Oh, right.

16 BY MR RAWAT:

17 Q. That's the actual report and that's where the
18 recommendations are found.

19 COMMISSIONER HICKINBOTTOM: Excellent. Okay.

20 So, it's given the--the recommendation was that the
21 programme be discontinued.

22 MR RAWAT: Yes.

23 COMMISSIONER HICKINBOTTOM: On page 2389, I think it
24 will be, is there any comments on there, and who is the person
25 named as responsible for corrective action? I know that

1 Mr Smith said that this is going to be a decision of the
2 Financial Secretary, but--

3 MR RAWAT: In relation to the first recommendation.

4 COMMISSIONER HICKINBOTTOM: Yes.

5 MR RAWAT: The response is in the shape of a box, and
6 the response firstly is "Agreed: The corrective action plan is
7 recorded as follow-up with AG for assistance as discussed in
8 2019." "A letter has been drafted and officers has been
9 selected to be trained and assist with court proceedings." The
10 anticipated corrective action plan to completion date is given
11 as "Follow-up with AG Chambers will be completed by ending of
12 first quarter 2021," and the name of the contact person
13 responsible for corrective action is "Ms Tashima Martin,
14 Assistant Commissioner."

15 COMMISSIONER HICKINBOTTOM: But there are no comments
16 particularly with regard to the first sentence of the
17 recommendation.

18 MR RAWAT: No.

19 COMMISSIONER HICKINBOTTOM: Which is the
20 recommendation that the programme be discontinued because, if
21 the programme's discontinued, then quite a lot of the other
22 recommendations fall by the wayside, not just recoverability but
23 some of the other recommendations.

24 THE WITNESS: (Mr Wade Smith) Commissioner,
25 notwithstanding that we have put measures in place, we have

1 created the application form, for example, so in the event that
2 the Financial Secretary decides that they will not be
3 discontinued, we have these forms as requested or suggested by
4 the Internal Audit Department to use to go forward with.

5 COMMISSIONER HICKINBOTTOM: I understand that. And I
6 mean, I understand that your evidence is very clear, that you
7 have taken a lot of steps to recover the money and to do the
8 forms and so on, but at the moment we don't know what the
9 purpose of the programme is, and we don't know how to assess
10 whether all of this work is worthwhile.

11 THE WITNESS: (Mr Wade Smith) Thank you, Commissioner.

12 COMMISSIONER HICKINBOTTOM: Yes.

13 Thank you, Mr Rawat.

14 BY MR RAWAT:

15 Q. If we stick to page 2366, I will then read in what the
16 response was, but at 2(a) what was recommended was Customs
17 develop and document policies and procedures for the
18 administration of the programme, and the response again with
19 Ms Martin as the contact person and the date as the end of
20 January 2021 was: "HM Customs will develop and document
21 policies and procedure for administration of partial payments."

22 Has that actually been done, Ms Martin?

23 A. (Ms Martin) Commissioner, that's correct.

24 Q. Has it been done by the end of January 2021?

25 A. (Ms Martin) I can't recall the exact date it was

1 completed.

2 COMMISSIONER HICKINBOTTOM: So, it's been completed.
3 You can't recall the date?

4 THE WITNESS: (Ms Martin) Correct.

5 COMMISSIONER HICKINBOTTOM: Thank you.

6 BY MR RAWAT:

7 Q. And if you look at (b), what was recommended was
8 that--

9 COMMISSIONER HICKINBOTTOM: And we're all happy that's
10 on 2391.

11 MR RAWAT: Yes.

12 COMMISSIONER HICKINBOTTOM: We have this page because
13 this is on page 2391.

14 THE WITNESS: (Mr Wade Smith) 2391.

15 BY MR RAWAT:

16 Q. The recommendations was that guidelines are a formula
17 to be developed and applied on a consistent basis to determine
18 the repayment period, down payment amount, installation amount,
19 and assessing the importer's ability to make such payments, and
20 the response was that would be included in the policies and
21 procedures. Has that happened?

22 A. (Ms Martin) We have draft.

23 What happened, if I recall--I'm going off the timeline
24 here--we had a rotation in February where the team was assigned
25 with three new officers. And within a month or two, maybe

1 three, review was done on the whole procedure of the partial
2 payment taking into consideration the recommendations and the
3 Audit findings, and some recommendations were made in the event
4 the FS decides to continue this programme. So, all is in draft
5 form.

6 In the policies and procedures, the draft policies and
7 procedures, we have an application process that the applicants
8 would have to go through a timeline prior to the arrival of the
9 goods, and it continues, but I can't remember off my mind, but
10 there are some policies and procedures and forms created to
11 address the improved procedure.

12 BY MR RAWAT:

13 Q. And we see at (c) that the Internal Auditor provided a
14 draft agreement from the Attorney General's Chambers to use, and
15 that's the--you implemented the draft agreement straightaway,
16 didn't you?

17 A. (Ms Martin) Just to repeat, it's suspended.

18 Q. I appreciate that.

19 A. (Ms Martin) Pending--pending--pending the completion
20 of the actual--implementing of the new recommendation, so it's
21 there in our review policies and procedures.

22 Q. The reason I said that is because that's what you
23 wrote at 2392, "implement the new draft agreement immediately"?

24 A. (Ms Martin) Correct.

25 Q. And then in terms of ensuring that public officers pay

1 through salary deductions, the response which again came from
2 you, Ms Martin, is this was being done, and you would follow up
3 with salaries to ensure deductions can be viewed, and that was
4 put in place, was it?

5 A. (Ms Martin) Currently, we are having issues as it
6 relates to reports coming from salaried officers in HR, who is
7 responsible, as it relates to amounts that were deducted, so
8 we're still pending reports from the Department.

9 Q. And the last one just to pick up on is the Internal
10 Auditor recommended that Customs write to the Financial
11 Secretary concerning the outstanding amounts for deceased
12 importers so that a determination can be made to write off the
13 uncollectible debt, and the point was that some debts don't link
14 to the estate. And was that something that was done?

15 A. (Ms Martin) Currently, we have not reached so far in
16 the recovery process. We had a recovery plan where we started
17 with the most recent outstandings.

18 A. (Mr Wade Smith) In addition, Commissioner, if I may,
19 which I explained earlier, that there are--that we're still in
20 the process of recovery--recovering monies owed. There may be a
21 couple of deceased that we will be unable to collect.

22 However, there--as I mentioned before, there is--there
23 is actually a family member of a deceased who is currently
24 paying the debt. Those that are deceased, once we identify or
25 locate where these assets are, then that will be part of the

1 recovery process.

2 In the event that those cannot be identified, located,
3 then we will take the next step and write to the Financial
4 Secretary and let him know we have exhausted all of our
5 options--

6 COMMISSIONER HICKINBOTTOM: Future write-offs?

7 THE WITNESS: (Mr Wade Smith) For the write-offs.

8 COMMISSIONER HICKINBOTTOM: Could we just touch on
9 (f), if we might, and that's on 2395.

10 THE WITNESS: (Mr Wade Smith) Yes, Commissioner.

11 COMMISSIONER HICKINBOTTOM: It's recommended that the
12 Customs develop an objective for the programme and in turn
13 develop relevant performance indicators to monitor its
14 performance in line with its objectives, and that is again down
15 to Ms Martin by the end of the first quarter 2021.

16 Has anything been done on that? I'm not quite sure
17 how it can be because nobody knows what the objective of the
18 programme is.

19 THE WITNESS: (Ms Martin) That was not done; however,
20 we would have to communicate with the Minister--sorry, the
21 Financial Secretary to see if we will continue and then
22 establish those performance--

23 COMMISSIONER HICKINBOTTOM: The objectives--

24 THE WITNESS: (Ms Martin) The objectives On the
25 relevance performance, so that would be pending as well.

1 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

2 BY MR RAWAT:

3 Q. If I can move on to the second part of this report
4 from the Internal Auditor which was the courier clearance
5 operations--

6 A. (Mr Wade Smith) Where are we, Commissioner?

7 Q. We will take you back--I can take you to 2355, please.

8 A. (Mr Wade Smith) Commissioner.

9 Q. There was a substantial number of recommendations made
10 in relation to the courier clearance procedures, 14
11 recommendations, and then an additional 8 recommendations in
12 relation to the CAP System. And trying to take those as shortly
13 as possible, what can be said is that, in greater or whole part,
14 the Customs Department agreed with those recommendations. It
15 may be that we can just shorten it this way:

16 If we take the Customs Automated Processing System,
17 the criticism--and this comes from the Internal Auditor's
18 evidence, not just from the report but the explanation she gave
19 to the Commissioner today about the system--was that the system
20 wasn't delivering on its objectives, and in particular one of
21 the difficulties it had was that no reliable--there
22 wasn't--reliance couldn't be placed on the integrity of the
23 information held by the system because what the Audit revealed
24 was that you would have information that was held on JDEdwards
25 that should have been on CAPS hadn't made it to CAPS. You had

1 information that should have been on CAPS and hasn't been on
2 CAPS, that CAPS couldn't, for example, deliver on its reporting
3 function. It's supposed to deliver reports that could be used
4 to influence policy. And so, effectively, it didn't provide for
5 the Customs Department an effective system that it could be
6 used.

7 Another issue that the Audit highlights was that there
8 was a reluctance by some Customs Officers to use the system.

9 I can take you through all of the recommendations, if
10 you need to take--to have that done, but would you accept or you
11 appear to have accepted the concerns that were raised by the
12 Internal Auditor. The first question is: Do you accept that,
13 as of 2019-2020, when the Audit was done, CAPS wasn't being used
14 in the way that it should be? And secondly, then can you
15 explain to the Commissioner what changes have been made since
16 then to the system?

17 A. (Mr Wade Smith) Commissioner, if I may, before we get
18 to those questions--before we get to those two questions that
19 you mentioned, I think you--it's important that we address,
20 there were about two concerns that were raised prior to those
21 questions that are--that are asked at this time, and I think one
22 of them, Commissioner, if I can remember correctly, that the
23 system is not functioning as it was intended; is that correct,
24 Commissioner?

25 COMMISSIONER HICKINBOTTOM: Two points Mr Rawat

1 correctly said that the Internal Auditor made. Firstly, the
2 CAPS didn't work--was not functional, she said--for two reasons:
3 One was it didn't provide reliable statistics because the data
4 in the system were not reliable; and secondly, there was a lack
5 of training or lack of ability in using the system. Those are
6 the two matters she referred to.

7 THE WITNESS: (Mr Wade Smith) Okay. Commissioner, I
8 must say, is the system functioning or is it functioning as
9 intended, and if the system is functioning as intended, are
10 there challenges or concerns, yes? With any system, it's not
11 100 percent. However, the system was developed--was developed
12 by IBM, and a system was developed to meet the
13 needs--tailor-made to the needs of the BVI trading community.
14 There was a Steering Group that was established, and we met the
15 criterias that were required by the trade at that time.

16 COMMISSIONER HICKINBOTTOM: I'm sorry, the Internal
17 Auditor, I don't think, said that the CAP System was inherently
18 dysfunctional. She said it didn't work in Customs because the
19 data in the system were not reliable. And consequently, her
20 words, the current usage of the system does not accomplish the
21 intended goal of providing reliable trade statistics. And
22 secondly, she said that there was a lack of training or ability
23 to use the system by the officers.

24 THE WITNESS: (Mr Wade Smith) Commissioner, we'll
25 address those individually, but you said that the Auditor

1 General--the Internal Auditor did not say it didn't function,
2 but you mentioned some things--

3 COMMISSIONER HICKINBOTTOM: No, no.

4 THE WITNESS: (Mr Wade Smith) I respectfully--

5 COMMISSIONER HICKINBOTTOM: I'm obviously not clear.

6 THE WITNESS: (Mr Wade Smith) Okay.

7 COMMISSIONER HICKINBOTTOM: The CAP System, as a
8 computer system, is fine.

9 THE WITNESS: (Mr Wade Smith) Good.

10 COMMISSIONER HICKINBOTTOM: But it doesn't function in
11 Customs because of two things: One is the information, the data
12 that is in the system, that the system is fine, but the data in
13 the system are unreliable.

14 And secondly, the operators do not use it properly
15 because of lack of training/inability or unwillingness.

16 Is that fair, Mr Rawat?

17 MR RAWAT: Yes.

18 THE WITNESS: (Mr Wade Smith) Okay.

19 BY MR RAWAT:

20 Q. So, as a system, the Internal Audit looked at it from
21 the perspective of courier clearance processes, and you can see
22 this at 2349 as an example. What she says at 2349 summarises it
23 because the Internal Audit Report said that CAPS was implemented
24 to enable the Government of the Virgin Islands to obtain
25 accurate and reliable information to inform policy decision.

1 The Audit found that the platform is severely limited in its
2 reporting abilities. That was about functionality within the
3 system.

4 But what the Internal Auditor goes to explain is
5 that--and gives a scenario--there is a significant weakness in
6 the current configuration usage of CAPS. As our manual process
7 revealed, 775 depository declarations with merchandise value of
8 approximately \$15 million for 2019 with an estimated 2.4 million
9 in import duties at risk without corresponding adjustment
10 declarations due to poor record-keeping, record management
11 within the Department, and the claim that some of the entries
12 may have been completed outside of CAPS. The Audit could not
13 validate whether adjustment declarations were flat, completed,
14 and revenue collected in any of these deposit declarations.
15 Some of these deposit declarations were several months
16 delinquent. It's noteworthy to recognize that when a sample of
17 the declarations were queried for one courier, the officer
18 investigating found numerous other deposit declarations from
19 prior years for which adjustment declarations were not
20 submitted. Fact confirms the likelihood that are a significant
21 number of declarations in CAPS that were never completed. We
22 suspect this issue might be pervasive as other entities outside
23 of couriers also participate in the deposit scheme in a
24 multiyear issue.

25 And so, it's just trying to make it rather than

1 descending into specificities of CAPS and the courier clearance
2 process, the point that one takes from the Internal Audit is
3 firstly--I mean, the point about poor record-keeping is the
4 point that is made is that, in terms of retaining physical
5 records, Customs had problems. The point about record-keeping
6 within CAPS was that--one explains the deposit declaration and
7 the adjustment declaration--the Audit couldn't match them up,
8 and so what the Audit can't do--what the Internal Auditor
9 couldn't do was track revenue through CAPS, and her point was,
10 to the Commissioner, was that she questioned the integrity of
11 the information in the system, which means that, to her as an
12 Internal Auditor and as Auditor raised the question that revenue
13 was at risk.

14 So, that's the broad point.

15 Now, in circumstances when the Customs Department has
16 agreed to the recommendations that the internal auditor made not
17 only in relation to the courier clearance process but also in
18 relation to CAPS, it boils down to one simple question,
19 Mr Smith: Do you accept that the system isn't being used as it
20 was intended to be used?

21 A. (Mr Wade Smith) Okay, Commissioner, that's not
22 correct. Yes, we--yes, Commissioner, we agree with some of the
23 recommendations put forward, and I must say that a number of
24 those recommendations were actual recommendations made by
25 Customs Internal Audit Unit as well because we worked closely

1 with the Internal Audit Department and relayed information to
2 them to assist them in auditing function that they performed
3 with the Customs Department.

4 In terms of you said unreliable data, you mentioned
5 unreliable data put into the system, and operators, and I guess
6 I mean Customs Officers' reluctance to utilize the system. I
7 guess that's where we are going.

8 Yes, some officers may have been intimidated by the
9 utilizing the system, and we've continued to train and more of
10 those officers to utilize the system. That has been a challenge
11 especially with older officers in the past.

12 Unreliable data, some entries submitted may--may have
13 lacked accurate information, and that's where the review process
14 comes in. And in addition to the review process, the post-audit
15 process is conducted on some of these entries to ensure the
16 reliability of the data. And if it's not accurate, some of
17 those entries or those entries are returned to the importer for
18 correction with queries with regards to the information that
19 they are provided.

20 In terms of the courier system, Commissioner, I will
21 let--and the deposit entries, I will let Ms Martin speak to
22 those.

23 A. (Ms Martin) Commissioner, as it relates to the
24 couriers in the CAP System, in 2013, the CAP System was
25 implemented at the main harbour port, which is Port Purcell, to

1 have submissions--sorry, declarations be submitted
2 electronically. Over the years, the couriers' imports start to
3 grow. Their processing was work done at the outer stations
4 which were managed manually. And if I can recall, around
5 2015-'16, we started to see couriers importing through the main
6 port at Port Purcell because their imports has increased.

7 As we indicated that we made attempts or we have
8 started to have couriers submit their declarations through CAPS
9 so we can have proper--what you call it?--records of the imports
10 as it relates to goods being released on bond. At the time we
11 faced--over the years 2016, '17, '18, we faced issues such as
12 the size of the entries where the system was not accepting those
13 declarations, so some processing had to be done manually.

14 As it relates to inaccurate data as it relates to the
15 whole courier processing, through my recollection or even opine
16 it something, because of that challenge, management made a
17 decision to allow the couriers to manually record the reports on
18 an Excel sheet and put the figures on a one-liner--on one record
19 entry, so that's where we would have had the proper information
20 as it relates to classification and revenues. However, controls
21 were in place to ensure that revenue was collected, even though
22 the systems were--the system was giving us challenges to receive
23 those submissions via CAPS.

24 Later--I can't remember exactly when the system was
25 made capable to actually accept those large files, but that was

1 done; and, since then, we have extended the reviewing or
2 processing of cargo electronically to the outer stations.
3 Mainly, we started with Beef Island, where most of the couriers
4 were importing there, and there too we had some challenges,
5 Commissioner.

6 Lack of training and ability, one of the points you
7 made, in the implementation of the electronic submissions, the
8 Department developed a central unit to review entries, which
9 started, as I said, in 2013--well, that was after--when did we
10 do the central? Sorry, Mr Smith.

11 A. (Mr Wade Smith) No. Prior to 2015.

12 A. (Ms Martin) 2015. So the implementation of utilizing
13 CAPS for electronic submissions was done in 2013 in the major
14 port. In 2015, we developed a unit, CAPS Unit, that included
15 officers to review entries at a central point, and we tried to
16 start to encourage the population to submit via CAPS, and it was
17 reviewed through that unit.

18 However, over the years, we decided that we now have
19 to extend it and have all stations and units responsible for the
20 cargoes being imported because of the concerns as it relates to
21 communication and proper recording of the information.

22 COMMISSIONER HICKINBOTTOM: I mean, this report was at
23 the end of last year, and this report on page 2347,
24 recommendation 1, paragraph 2, that the finding is--

25 THE WITNESS: (Ms Martin) Sorry?

1 COMMISSIONER HICKINBOTTOM: 2347, page 2347,
2 paragraph 2 which is halfway down the page.

3 THE WITNESS: (Ms Martin) Paragraph 2?

4 COMMISSIONER HICKINBOTTOM: Yes.

5 The finding is that the current usage of the system
6 does not accomplish the intended goal, which is reliable trace
7 statistics, and then it goes on for some pages as to why the
8 statistics are not reliable. This is last year. The data in
9 the system, it was found, were not reliable at the end of last
10 year.

11 Firstly, this is Mr Rawat's question: Do you accept
12 that that was the case?

13 Secondly--and I think you do because there is no
14 response to say that that finding was wrong or challenged in any
15 way.

16 But if do you accept that, what has happened since the
17 end of last year?

18 THE WITNESS: (Ms Martin) We do accept, and--we do
19 accept, given the challenges that I just explained, and the
20 changes that we have made, first step was reconciling all the
21 bonds' accounts, so that process has started. Even before the
22 response in December, that recovery started.

23 Before this response, we also separated the CAPS
24 Units, and we made it into two units. The CAPS Unit that was
25 made up of the programme was administrators of the system and

1 the development team that added entries, and then we had a
2 Trader Declaration Unit that would then be responsible for the
3 reviewing of the actual entries and managing of those imports
4 coming in at the main port.

5 COMMISSIONER HICKINBOTTOM: Good. Thank you very
6 much.

7 Mr Rawat.

8 BY MR RAWAT:

9 Q. Can I take you to page 2337, please. So, this is part
10 of the Internal Auditor's actual report. So, the way the
11 Internal Auditor set out this report was to set out findings and
12 then below each finding make a recommendation, and it's finding
13 number two that I want to draw your attentions to: "The
14 Department has not established documented guidelines for the
15 processing of declarations. As a result, there is no consistent
16 approach to the processing of declarations within CAPS from
17 officer to officer and from station to station. Furthermore,
18 officers are allowed to selects on a discretionary basis, which
19 declaration they process. The audit is concerned that this
20 situation exposes the Department to two (2) significance risks:

21 "First, the situation promotes an environment for
22 inappropriate relationships to be fostered, where officers can
23 offer preferential treatment to importers in the processing of
24 their declaration which may include the offer of gifts and/or
25 payments."

1 The second is recorded as: "Given that it is alleged
2 that a number of customs officers provide brokerage services,
3 whether legitimately or illegitimately, as a private interest
4 for supplemental income, poses a significant conflict in that
5 officers may be reviewing and releasing declarations for which
6 they had a direct involvement in the preparation or at least may
7 have significant influence in the processing of such
8 declarations. Absent of appropriate controls to monitor, manage
9 and minimize this conflict, the current process is ripe for
10 fraud."

11 What I want--I just want to ask you about the first
12 2(a), that the situation promoted--promotes an environment for
13 inappropriate relationships. So, this was in 2020 that this
14 Audit was completed. What systems did you have in place at that
15 time to guard against preferential treatment being offered?

16 A. (Mr Wade Smith) You want to answer it?

17 A. (Ms Martin) Go ahead.

18 A. (Mr Wade Smith) Okay, Commissioner, the systems that
19 we have in place or what we began doing, is we began with a
20 rotation of officers and to have frequent--frequent rotation of
21 officers to, number one, prevent relationships from building
22 with officers and importers.

23 We've also implemented what is called the "Port
24 Account Management System," or "Port Account Managers." Account
25 Managers will be responsible for dealing with specific

1 importers. They will be assigned a number of importers, and
2 again this will be done on a rotational basis because we would
3 not allow any length of time to create an opportunity for any
4 type of long-term relationships with importers.

5 (Witnesses conferring.)

6 A. (Ms Martin) Commissioner, just to add, division of the
7 CAPS Unit as mentioned, where we turned it into units, as well
8 as a review of the actual--the entire cargo processing at all
9 ports. Recommendations were made and equipments were put in
10 place because lack of facility, such as tablets, officers were
11 trained at the various stations to actually utilize and review
12 entries via CAPS, as well as following through with the
13 releasing process.

14 So, in the new revised process which we have trained
15 and still have action points to implement, you have--it shows a
16 separation of duties where you have officers reviewing. Then it
17 goes through--the entry goes through a verification process at
18 the actual ports where they verify information such as
19 manifests, being on manifests, the persons collecting the items
20 if they are authorized, et cetera. And then after that
21 verification, payment is made, if required, and stamped by the
22 authorized persons, and then they would go to the cargo shed to
23 collect the goods which then there is inspections and goes
24 through another verification process and then released in CAPS.

25 So, training was done, and we still have more action

1 points to implement, but that has been done to date.

2 Q. Focusing on (a), though, taking each of you in turn,
3 are you aware of any Customs Officers having solicited or
4 accepted gifts or benefits from an individual or business that
5 is doing business with Customs, for example, an importer or a
6 broker?

7 A. (Mr Wade Smith) Commissioner, I'm not aware of any
8 officers receiving gifts or payment from an importer for doing
9 business with Customs.

10 Q. And when you say you're not aware, Mr Smith, that
11 hasn't happened in your time in Customs at all?

12 A. (Mr Wade Smith) Commissioner, I am aware that there
13 may have been brokerage services and I wrote to the Department
14 of Human Resources through the Ministry of Finance to make a
15 report on one of the officers, and that was roughly three years
16 ago. That is the only one, Commissioner, that I'm aware--that
17 I'm aware of. But to date, I haven't held back anything from
18 the Department of Human Resources in which we wrote seeking a
19 disciplinary action be taken.

20 Q. Can I come back to the question of brokerage services
21 because that's at 2(b), but it's looking at 2(a), which is what
22 the Internal Auditor highlighted, this risk of preferential
23 treatment which would include offer of gifts and/or payments but
24 your evidence to the Commissioner is that you have never become
25 aware of an officer receiving or soliciting a gift or a payment

1 from an importer?

2 A. (Mr Wade Smith) Commissioner, that's correct, and I
3 also emphasize to the officers not to accept any gifts or any
4 payment from anyone because it would be seen as a bribe, and our
5 laws in the Customs Management and Duties Act speaks against it.

6 Q. And Ms Martin, are you in the same position?

7 A. (Ms Martin) Commissioner, correct. I'm not aware of
8 any officers accepting gifts. However, I do recall some reports
9 made assumptions that officers are. As the lead of the
10 assurance team, there is--there were not any information or
11 facts that were given so that we can conduct a proper
12 investigation; however, we did emphasize to the officers
13 throughout the Department that that is not accepted.

14 Q. If we look at (b) now, the allegation that a number of
15 Customs Officers provide brokerage services, whether
16 legitimately or illegitimately, can we break that down. Are
17 Customs Officers allowed to have additional sources of income?

18 A. (Mr Wade Smith) Commissioner, Customs Officers who
19 have additional sources of income, must get permission from
20 Human Resources in the form of a private interest form. That
21 form is completed by the officer or any government employee, and
22 that is actually signed off by the Head of Department, and the
23 Head of Department is required to make comments, whether it's
24 going to be a conflict. If it's going to be a conflict, then
25 they must indicate that it will be a conflict or not on that

1 form.

2 Q. And are Customs Officers allowed to either offer
3 brokerage services or work for a brokerage service?

4 A. (Mr Wade Smith) Customs Officers, Commissioner,
5 have--I know of a couple of Customs Officers have received Trade
6 Licenses to do customs brokerage services. Once they made their
7 Declaration of Interests to Customs to notify Customs of their
8 License and their business name, I don't see any way that you
9 can prevent them as long as they're not engaging in any
10 conflict. And by that I mean processing, reviewing, processing,
11 releasing any of their client's--any of their clients' entries
12 or HMC-12 forms, but it is something that we constantly advise
13 against, but I am aware that officers in the past have attempted
14 to collect or receive Trade Licenses, and we have written to the
15 Attorney General's Chambers. And the Attorney General's
16 Chambers basically said there is nothing that prevents them from
17 obtaining these Trade Licenses. But they should not engage in
18 any practice that would be a conflict or can bring the
19 Department or the Government of the Virgin Islands into
20 disrepute. That is accordance with General Orders.

21 Q. When did you get the advice from the Attorney
22 General's Chambers?

23 A. (Mr Wade Smith) Commissioner, that could have been
24 over five or six years ago.

25 Q. And the advice was that you can't stop them doing it,

1 but you have to look out for a conflict of interest?

2 A. (Mr Wade Smith) Not look out for a conflict of
3 interest. That part I communicate through the Financial
4 Secretary, and I made them aware of such, and he said you have
5 to ensure that there is not a conflict of interest.

6 There was one officer in particular that attempted to
7 get a Trade License. I am aware that the Trade Department
8 contacted me and asked me my position on a matter. They wrote
9 to the Attorney General's Chambers, and there was nothing in the
10 law that prevents a Customs Officer from receiving a customs
11 brokerage license?

12 A. (Ms Martin) Commissioner, if I may add.

13 Q. Yes.

14 A. (Ms Martin) Under the Customs Management and Duties
15 Act in addition to those controls, the officers have to disclose
16 this information to the Commissioner if they're actually
17 practicing or involved in any ways. In the past, we did not
18 have a Register, but it's in the plan to do so, as we implement
19 our Code of Conduct and Ethics, and Disclose of Interests form.

20 Q. You are implementing a Register; is that right,
21 Ms Martin?

22 A. (Ms Martin) That's correct.

23 Q. Is it just the Register--is it a Register of
24 Interests?

25 A. (Ms Martin) Yes.

1 Q. So, it's not limited just to brokerage services, it
2 could be any another interest that an officer may have?

3 A. (Ms Martin) Correct. As it relates to duties to be
4 performed by an officer, so it can be interests in a vessel,
5 importer.

6 A. (Mr Wade Smith) That's engaged in the trade.

7 A. (Ms Martin) In trade.

8 Q. Do you currently have a list of the interests held by
9 officers?

10 A. (Mr Wade Smith) Commissioner, there is one officer
11 that made a Declaration of his company, his brokerage company.
12 There is one officer that I can recall that made a Declaration.

13 Q. But the point, Mr Smith, is how can you avoid a
14 conflict of interest if you don't know exactly who is--which of
15 your officers have a Trade License to allow them to offer
16 brokerage services?

17 A. (Mr Wade Smith) Commissioner, we know of a few
18 officers who has the Trade License and that information is
19 easily accessible by making a request to the Trade Department to
20 find out who has the Customs--who are all the customs brokers
21 listed in the BVI.

22 Q. Do you have a list in Customs headquarters, a current
23 list, of all the officers under your command who currently have
24 a Trade License that allows them to offer brokerage services?

25 A. (Mr Wade Smith) No, Commissioner. And that's why

1 we're going to implement the Declaration of Interests form in
2 the very short--in the very near future.

3 Q. But until you do that and collect the Register and
4 develop your Register of Interests, you, at the moment,
5 have--it's unclear whether an officer is engaging in activities
6 which amount to a conflict of interest?

7 A. (Mr Wade Smith) Commissioner, whether you have the
8 Register or not, it is--it can be unclear as to who may be
9 engaging in this type of activity. So, the answer to your
10 question is it doesn't--it doesn't necessarily mean you have to
11 have a Register to determine who is engaged in this. But once
12 it is detected. Like I said, once it's detected, that matter is
13 brought to the relevant authority which is referred to the
14 Financial Secretary, and the Department of Human Resources for
15 disciplinary action, if there is a clear conflict.

16 A. (Ms Martin) Commissioner--

17 Q. Why do you wait for it to arise? Your earlier
18 evidence, Mr Smith, was that you were told that you couldn't
19 stop officers from having Trade Licenses, but you had to be--you
20 had to avoid a conflict of interest. If you don't within your
21 own Department know which officers have a Trade License, you are
22 in no position to act to avoid conflicts of interests arising.
23 You can only act once the problem has occurred?

24 A. (Mr Wade Smith) Commissioner, within the CAP System,
25 there is an auditing function, and that auditing function we

1 periodically review any entries that may seem to be some type of
2 suspicious transaction. We follow it, and then we investigate
3 if there needs to be an investigation. If there is an
4 officer--because an officer does not need to have a Trade
5 License to engage in brokerage services, and the term that's
6 written here, I think it said "legitimately or illegitimately."
7 They do not need to have the Trade License, but this is a
8 practice that we have been discouraging for over a decade, and
9 we've tried.

10 And what we have done is we rotate officers and we are
11 continuously rotating officers to avoid that type of practice.

12 Q. The point that you're making about an officer doesn't
13 need to have a Trade License to engage in brokerage--in offering
14 brokerage services, is that because they could always use
15 somebody else's Trade License?

16 A. (Mr Wade Smith) Commissioner, that's a possibility.
17 No system, like I said, is 100 percent--100 percent efficient,
18 but there are ways that an officer may attempt to engage in this
19 type of business?

20 A. (Ms Martin) Commissioner, if I may. The objective of
21 the Register for the conflicts of interest would then assist
22 management and seniors to better assess the conflicts, the risk
23 of conflicts.

24 For example, if we have a Register--for example, if we
25 have officer A that disclosed that they have an interest in

1 company B, which is an importer, we would make sure that they do
2 not process any entries as it relates to reviewing of the
3 entries, validating, or releasing of the goods. That's the
4 objective of the Register in the near future.

5 Q. That beg two's questions, Ms Martin.

6 A. (Ms Martin) Um-hmm.

7 Q. The first is, why don't you now have a list of which
8 officers have Trade Licenses that allow them to offer brokerage
9 services?

10 A. (Ms Martin) Commissioner?

11 A. (Mr Wade Smith) Commissioner, currently we do not have
12 that list, and that information, as I stated, Commissioner, can
13 be retrieved from the Trade Department tomorrow, and we will
14 retrieve that information and we will secure that list.

15 Q. If you do do that, would you be willing to provide
16 that information to the Commission?

17 A. (Mr Wade Smith) Yes, Commissioner.

18 Q. And the second question, Ms Martin, is that the use of
19 a Register is dependent, isn't it, upon officers providing you
20 with information; that's right, isn't it?

21 A. (Ms Martin) That's right.

22 Q. And what it doesn't allow you to do, as Mr Smith
23 pointed out, is to identify those officers that may be offering
24 brokerage services illegitimately, perhaps using somebody else's
25 Trade License, you won't be able to swap that with the Register?

1 A. (Ms Martin) We won't. However, once we are--once we
2 have a detection, whether by a complaint, by stakeholders, we
3 would then do various checks to confirm the allegations. And if
4 it is proven that officers are, in fact, doing so, then they
5 will be penalized in accordance to the Customs Management and
6 Duties Act, including possible dismissal.

7 Q. Have you in, let's take the last five years, has there
8 been any disciplinary action taken against any officer for
9 illegitimately offering brokerage services?

10 A. (Ms Martin) Commissioner?

11 A. (Mr Wade Smith) Commissioner, within the last five
12 years, as I mentioned earlier, probably about three or four
13 years ago, there's been no disciplinary action taken; however,
14 recommendations was forwarded to the Department of Human
15 Resources with a particular officer that may have been engaged
16 in brokerage services.

17 Q. And I take it from your earlier answers that because
18 you're not aware of any officer accepting a gift or a payment of
19 any kind, that there's never been any disciplinary action
20 against a Customs Officer for that type of conduct?

21 A. (Mr Wade Smith) Commissioner, as stated earlier, I'm
22 not aware of any officer receiving a gift or a payment, so there
23 has been no disciplinary action taken against them.

24 They would have been referred to Department of Human
25 Resources again for violating General Orders for accepting

1 gifts, and also, they could be charged in the Customs Management
2 and Duties Act for accepting gifts or bribes.

3 Q. Would you accept--I take it you would--that where
4 Customs Officers are providing brokerage services, which creates
5 the risk of a conflict, if that's not properly monitored, that
6 would undermine public confidence in the Customs Department,
7 wouldn't it?

8 A. (Mr Wade Smith) Commissioner, can you repeat that
9 question, please?

10 Q. We have been discussing officers providing brokerage
11 services, and you've accepted, Mr Smith, that their being able
12 to do that can give rise to a conflict of interest. Now, that's
13 a situation, which, if you don't monitor it properly and if you
14 can't monitor it properly, it can undermine public confidence in
15 your Department, can't it?

16 A. (Mr Wade Smith) Commissioner, it can, and going
17 forward, one of the suggestions that we have been discussing is
18 to strengthen the legislation or make recommendations to have
19 the legislation strengthened where, if officers are engaged in
20 it, then severe disciplinary action should arise.

21 If they receive a Trade License, which is no problem,
22 but they cannot utilize the Trade License until they are retired
23 or removed from the Customs Department.

24 Q. Is there any reason why you don't feel able to push
25 for that legislation any earlier than now?

1 A. (Mr Wade Smith) Commissioner, the discussion has
2 been--had with the Ministry in the past, not in terms of the
3 legislation but in terms of trying to have officers engaged in
4 this type of practice to be removed from the Customs Department,
5 but it's not just now that we're thinking on this move to have
6 legislative amendment in the Customs Management and Duties that
7 this has been something that's been discussed over the years.

8 A. (Ms Martin) Commissioner, if I may, the risk that
9 we're speaking about of officers conducting illegitimate
10 brokerage or engage in conflict of interest, it is a risk, and
11 our intent is to mitigate that risk as much as possible.

12 Q. It's two risks, isn't it, Ms Martin? The first risk
13 is that an officer has a legitimate Trade License and is
14 offering brokerage services, and that person might be quite
15 attractive to an importer because they might be seen as having
16 an advantage, so that's risk number one, which is about the
17 public perception of your Department?

18 A. (Ms Martin) Correct.

19 Q. The second risk is someone offering the services
20 illegitimately, perhaps through somebody else's Trade License,
21 and that again, it undermines public confidence in your
22 Department but also they're much harder for you to spot?

23 A. (Ms Martin) Correct.

24 Q. Because they're not going to stop off and tell you,
25 "Hello, that's what I'm up to"?

1 A. (Ms Martin) Correct.

2 Q. So, those are the two risks. They're real risks,
3 aren't they?

4 A. (Ms Martin) They are.

5 Q. But isn't the first rather simple step to take is to
6 try and get a list, perhaps by tomorrow, of all the officers who
7 do actually have a Trade License that allows them to offer
8 brokerage services?

9 A. (Ms Martin) We do agree, and that is, like I said,
10 that's one of the steps that we are taking, and the Commissioner
11 did say that he can get that list tomorrow.

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

13 COMMISSIONER HICKINBOTTOM: Yes, certainly.

14 (Pause.)

15 MR RAWAT: Commissioner, I have reached the end of my
16 questions. Can I conclude, first of all, by thanking both
17 witnesses for the time they have given to the Commission this
18 afternoon and perhaps, in fact, into the early evening. And
19 secondly, also for the way that they have given their evidenced
20 today.

21 COMMISSIONER HICKINBOTTOM: Yes, can I thank you both,
22 Ms Martin and Mr Smith, both for your time and the way in which
23 you have given your evidence which has been very helpful. Thank
24 you very much.

25 THE WITNESS: (Ms Martin) Thank you.

1 (Witnesses step down.)

2 COMMISSIONER HICKINBOTTOM: Mr Rawat, is that it?

3 MR RAWAT: That's it. We start at 10:00 tomorrow with
4 a new witness.

5 COMMISSIONER HICKINBOTTOM: Good. Thank you very
6 much.

7 (Whereupon, at 5:48 p.m. (EDT), the Hearing was
8 adjourned.)

CERTIFICATE OF REPORTER

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

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

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

DAVID A. KASDAN