

BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY

HEARINGS: DAY 24
(THURSDAY 8 JULY 2021)

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

Before:

Commissioner Rt Hon Sir Gary Hickinbottom

Ms Sara-Jane Knock of Withers LLP (instructed by the Attorney General) appeared for various BVI Government Ministers and public officials.

Mr Daniel Fligelstone Davies of Silk Legal appeared for those members of the House of Assembly who are not members of the Government.

Counsel to the Commission Mr Bilal Rawat also appeared.

Dr Daniel Orlando Smith gave evidence.
Dr Drexel Glasgow gave evidence.

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Those present:

Session 1

Mr Bilal Rawat

Dr Daniel Orlando Smith

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Constable Javier Smith, Royal Virgin Islands Police Force

Mr Dame Peters, Audio-Visual Technician

Session 2

Ms Sara-Jane Knock, Withers LPP

Mr Daniel Fligelstone Davies, Silk Legal

Mr Bilal Rawat

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 3

Mr Bilal Rawat

Dr Drexel Glasgow

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Mr Dame Peters, Audio-Visual Technician

P R O C E E D I N G S

Session 1

COMMISSIONER HICKINBOTTOM: Yes, Mr Rawat.

MR RAWAT: Thank you, Commissioner.

This morning, Dr Daniel Orlando Smith has returned to give further evidence.

Just for the Transcript, can I just record that there are no legal representatives of any participants attending remotely.

BY MR RAWAT:

Q. Dr Smith, can I first of all begin by thanking you for coming back to give some additional assistance to the Commissioner today. What I need to do is just to ask you just to try to keep your voice up as much as you can, which is something I do with every witness, but hopefully I will try and keep the questions as short as possible because there are specific matters on which the Commissioner would welcome your further assistance, and these arise from evidence that has been provided by the Internal Auditor over the course of the last couple of days.

To assist you, I think--I hope the Commission wrote to you to confirm which reports from the Internal Auditor we might need to ask you questions about, and you were provided with copies of those reports, I understand?

A. Yes.

1 Q. Thank you.

2 The first of those, if I could ask you to, if you've
3 got it, it's the report on Belonger Status. Commissioner, it's
4 in Part 1 page 851(1).

5 COMMISSIONER HICKINBOTTOM: Dr Smith, the Stenographer
6 wonders whether you would like to remove your mask, because it
7 will make the transcription easier. But if you do not want to
8 remove your mask, can you make sure that your answers are clear
9 enough for the Stenographer to pick up.

10 THE WITNESS: I will try.

11 COMMISSIONER HICKINBOTTOM: Yes. And, Mr Kasdan, if
12 you can let us know if anything is unclear, we will make sure
13 that the answers are clear before we proceed. Is that all
14 right, Dr Smith?

15 THE WITNESS: Yes.

16 COMMISSIONER HICKINBOTTOM: We are happy for you to
17 retain your mask. We just need to make sure that your answers
18 are recorded. Thank you very much.

19 THE WITNESS: Thank you.

20 BY MR RAWAT:

21 Q. Dr Smith, can I confirm that you've got open in front
22 of you is an Internal Audit Department report on the Immigration
23 Board Belonger Application Process of June 2012?

24 A. That is correct.

25 Q. Thank you. Have you had an opportunity to read that

1 report?

2 A. I have, sir.

3 Q. Thank you.

4 If, just for the Transcript, just so that we can give
5 it some context, if you turn, Dr Smith, to paragraph 5.1, which
6 is on page 851(5).

7 A. "Audit Scope"?

8 Q. Yes.

9 What it explains is that the Audit focused on Belonger
10 Status issued between 2009 to 2011, and if you go through to the
11 next page, please, just draw your attention to just under
12 Objective 1, the report explained that the process can be
13 divided into three phases. The first phase is the application
14 phase when an application is submitted to the Department of
15 Immigration. The second phase is the consideration and
16 recommendation phase, and that's when the Immigration Board
17 would review the application and make a recommendation to
18 Cabinet. And the third phase was the approval or denial phase
19 where Cabinet either accepts or rejects the recommendation.

20 If you turn back, Dr Smith, to the Executive Summary,
21 which is on page 851(3), and you look at paragraph 1.1.5 of the
22 Executive Summary, it explains that "Cabinet approved two
23 hundred and twenty four (224) persons who were not considered by
24 the Board and for whom no recommendation was submitted." And
25 what's said is the "Cabinet's approval of status in this manner

1 renders the purpose, operations and functions of the Board null
2 and void as one of the reasons for which they were appointed and
3 engaged is undermined and in some instances ignored."

4 What the Audit found was that the names were not even
5 on a Cabinet paper but rather they were added at Cabinet level
6 based on personal representations from Members.

7 Now, that gives you the background, Dr Smith. What I
8 should also add was that the Internal Auditor, in her oral
9 evidence, confirmed that--and if you look at page 10--if you
10 look at page 851(10), I can explain it in this way. You will
11 see there is a table there, Table 2, that looks at the
12 Years 2009, 2010, and 2011, and the 224 applications happened in
13 2011. The Internal Auditor confirmed that this finding related
14 to the Cabinet that was in existence before the 2011 election,
15 so that wasn't your Cabinet, was it, Dr Smith?

16 A. No, it was not.

17 Q. You became Premier and Minister of Finance in
18 November 2011?

19 A. That is correct, yeah.

20 Q. You've confirmed that that's correct.

21 Now, the report that we are looking at is dated
22 June 2012, so that is after you assumed office, and so my first
23 question to you is whether this report was brought to your
24 attention when you became Premier?

25 A. I do not recall seeing this report. I know, based on

1 reading the document, that my Permanent Secretary made the
2 comments on the report.

3 Q. So, is that a surprise? Is it something that you
4 would have expected to have been brought to your attention as
5 Premier?

6 A. Usually, when the Auditor and General Auditor make a
7 report, they send a draft, and it's commented on by the
8 Permanent Secretaries in the particular Ministry, and it goes
9 back to the Auditor, and then it goes forward--comes forward, at
10 which point I would have seen it.

11 The reality is that, at that time, when I got elected
12 in 2011, end of 2011, it was quite a chaotic period in the
13 Ministry. I have no Permanent Secretary for quite for--for some
14 time, and then I had a Permanent Secretary who was there for a
15 short period of time until eventually Mr Penn came back, so it
16 was quite some time before we got settled down, and this did not
17 come to my attention.

18 Q. And when you were referring, Dr Smith, to not having a
19 Permanent Secretary, is that a Permanent Secretary in the
20 Premier's Office?

21 A. In the Premier's Office, yes.

22 Q. And at that time, 2011-2012, was Immigration under
23 the--did that fall under the remit of the Premier's Office?

24 A. That is correct, yes.

25 Q. I suppose the concern that's raised by the Internal

1 Auditor is that, in effect, at Cabinet level an additional 224
2 people are introduced for the purpose of considering whether
3 they should have Belonger Status or not. Except that your
4 evidence is that you didn't see the report. Were you made aware
5 of whether any steps were being taken to address issues around
6 Belonger Immigration?

7 A. When we got into office, we took the process quite
8 seriously about giving status, whether it's residence or
9 Belonger Status, and we compiled the persons who were--had made
10 submissions for them to the Board of Immigration, who made their
11 comments, and then sent them along to the House, or to the
12 Cabinet.

13 Q. So, were you told that there were 224 people that
14 hadn't gone through that process but had been at least approved
15 for Belonger Status?

16 A. I don't recall being told that.

17 Q. A second point that the Audit raises was a disconnect
18 between law and policy. If you look at page 19, so 851(19),
19 this is an appendix to the report, and it's where the Internal
20 Audit Department has set out the law and the policy. And if you
21 look under Section 16(3)--and this is the Immigration and
22 Passport Ordinance--what that prescribes is that a person could
23 have apply--would have to be an ordinary resident in the
24 Territory for not less than 10 years immediately prior to the
25 application for Belonger Status.

1 But if you go over to--two pages to 21, we see there
2 that a policy had been approved in 2006, the effect of which was
3 that you would have had to have lived continuously in the
4 Territory for over 20 years to qualify, and that the number of
5 applications would be limited to 25.

6 And if you--in the same paper, if you go over to the
7 next page, what the Executive Council had then recommended was
8 that steps be taken to increase the qualifying period for
9 Belonger Status to 25 years. And so, what the Audit showed was
10 that, although in law someone could make an application after 10
11 years, the Immigration Board was applying the policy on the
12 basis that you had to have 25 years, and that was the disconnect
13 that the Auditor identified.

14 Now, at the time, in June 2012, were you aware that
15 there was a difference between law and policy?

16 A. There's a difference, yes, but if you go back to page
17 851(19).

18 Q. 851(19).

19 A. It says: "A person may be granted a certificate
20 referred to"...if he "has been ordinarily resident in the
21 Territory for period of not less than ten years immediately
22 prior to" the "application". That gives the Cabinet the
23 latitude to make policy. It says "not less than", so it could
24 be 12, 13.

25 Q. I see. So, from your perspective, as Premier, that

1 allowed Cabinet to have more than 10 years as a requirement?

2 A. Correct.

3 Q. I see.

4 Because the Internal Auditor identified it as that's
5 the threshold. If you reach 10 years, you can apply, and if you
6 satisfy all other requirements you should get it, but your view
7 as Premier was that there was latitude for Cabinet to set a
8 higher threshold, if necessary?

9 A. Could you go back to 851(21).

10 Q. Yes, please.

11 That's the Executive Council's policy of July 20,
12 2006.

13 A. In the first, in (a) it says: "In the case of
14 persons"--sorry. There's another section.

15 Oh, yes. (c).

16 Q. Yes, it's (c) that--

17 A. "Once the backlog of those identified at (b) [8.1.2]
18 had been cleared, the Board should make recommendations as
19 applicants reached the 20th anniversary of their arrival in the
20 Territory after the normal screening process."

21 What it says there is that's when the Board should
22 make a decision on those applicants. They did not say that they
23 could not have applied before. It says that when the Board
24 should make a decision.

25 Q. I see.

1 So, your understanding of how the law and policy
2 connected together was, firstly, that there was nothing to stop
3 Cabinet setting a higher threshold than 10 years as a policy?

4 A. The policy did not say that they could not apply from
5 time 10 years. The policy says that the Board would make a
6 recommendation after considering the 20th anniversary of
7 resident in the Territory.

8 Q. So, an applicant could apply at the 10-year mark?

9 A. Yes.

10 Q. But under the policy it would only--it would only be
11 once they've reached 20 years that the Board could make a
12 recommendation?

13 A. That's correct, yeah.

14 Q. I think what the Auditor picked up that the Board was
15 doing was actually applying 25 years based on what was then the
16 Executive Council had asked the--they'd suggested the Attorney
17 General amend the Act to. But your understanding was what the
18 Board should have been doing under the policy is taking 20 years
19 as a threshold?

20 A. Yeah, because I think the five years, I think most
21 likely included five years before residency.

22 Q. I see.

23 Whether you have a 20-year residency qualification or
24 a 25-year residency, what's the rationale--what was the
25 rationale in having that threshold when your law said someone

1 could apply after 10 years?

2 A. The rationale of having a threshold of granting or the
3 Board making the determination for them to be granted. Giving a
4 Belonger Status is a significant thing in most countries, as
5 citizens in UK and in America, so it's a significant thing, and
6 we have to be--a country has to be careful about how they go
7 about doing this. We looked at several different countries. We
8 looked at America. For example, it takes at least 10 years or
9 more before this can happen, much more. My son took probably 15
10 years. We look at a country like Monaco, and only three people
11 were given Belonger Status or citizenship in a year, and that
12 was by the Crown Prince. So, there are various ways in which
13 countries decided when, when the time is right to give
14 citizenship.

15 Another point is that it is important when you're
16 giving residence or citizenship, Belongership, to look at
17 numbers because it is important that people who are accepted and
18 not been in the country tend to assimilate into the country. If
19 that did not happen, it causes conflict between the persons who
20 were there before and those who come after it. So, those are
21 factors that she took into consideration when making this
22 decision.

23 Q. If you look, please, Dr Smith, at page 851(31), you
24 should be at the Management Response.

25 Do you have that?

1 A. Yes, I have that.

2 Q. Thank you.

3 And this is obviously a response that's coming from
4 the Permanent Secretary and the Desk Office of Immigration, so
5 it's within the Premier's Office, but not coming directly from
6 yourself as Premier.

7 What is recorded, one recommendation was that steps
8 should be taken so that the policy that we've just been looking
9 at and the Act which set the threshold at 10 years or not less
10 than 10 years, should be reconciled so that they were in sync or
11 the Internal Auditor says there is no confusion in administering
12 the guidelines.

13 The response to that was to agree and that action
14 would be required to make policy law and that the Completion
15 Date was given as March 2015.

16 Now, as we'll see in a moment, nothing appears to have
17 been done, but can you remember whether steps were taken to try
18 and bring the policy and the law in sync?

19 A. This was a response by Members of the administration
20 or it's a responsibility as far as Immigration is concerned.
21 The Cabinet of the Virgin Islands at that time developed a
22 policy based on the facts that I explained a little while ago,
23 and there is no, in my mind--there is no need or no reason that
24 policy and law cannot exist. In fact, it always exists.

25 Q. So, from your perspective as Premier at the time, you

1 didn't see this disconnect that's been identified here between
2 law and policy?

3 A. No.

4 Q. For the Transcript, Dr Smith said "no" to that.

5 A. Yes.

6 Q. If I could ask--just for completeness, Dr Smith, to
7 the follow-up report that the Internal Auditor did, and you will
8 find that in the second bundle, but I think you have your own
9 copy, so we're in Part 2, Commissioner, at page 1737. Actually,
10 1735 is the front page.

11 This, Dr Smith, is the follow-up audit that the
12 Internal Auditor did in January 2014, so obviously that's still
13 during the period in which you are still Premier and Minister of
14 Finance.

15 A. That's correct.

16 Q. If you go just to the first page, 1736--

17 A. 1736?

18 Q. Just the next page over. You'll see it's the "TABLE
19 OF CONTENTS".

20 It just tells us that in terms of the recommendations
21 that the Internal Auditor made, the Internal Audit Department
22 made nine recommendations. One was not agreed; two were
23 partially implemented; and the remainder had not been
24 implemented. But if you look at 1737, which is a
25 recommendation, the recommendation we just looked at in terms of

1 making amendments to--the actual recommendation we looked at is
2 at 1738, but the point had been made by the Internal Auditor was
3 this recommendation to bring law and policy more closely
4 aligned. If we look at 1737, what the follow-up audit noted was
5 that the Premier's Office had indicated that work has commenced
6 on amending the Immigration and Passport Ordinance Cap in order
7 to bring both the ordinance and policy into alignment. To date,
8 there has been no revision or change to the ordinance or policy.
9 The conflicting policy document continues to be used as the
10 criteria for eligibility for Belonger Status. As a result, the
11 issue continues whether individuals desirous of acquiring status
12 are deprived of being considered because the policy stipulates
13 that a 25 year qualifying period whilst the ordinance states 10
14 years, the use of such criteria continues to be legal.

15 Now, we're now in January 2014, we've moved on some 18
16 months or so. When this follow-up audit was carried out, and
17 the Internal Audit Department raised the issue again, was that
18 brought to your attention at that point?

19 A. No, this was a decision or recommendation by Members
20 of the team. This did not come to the Cabinet for any
21 confirmation.

22 Q. The reason I asked whether it's raised with you is
23 twofold: Firstly, that this is happening in the Department of
24 Immigration, and that sat under the Premier's Office, and you
25 were obviously the Premier.

1 A. That's correct.

2 Q. But secondly, it goes back to the issue that, in 2011,
3 a Cabinet had given 224 people Belonger Status without their
4 having to go through the proper process, and so that's one
5 aspect of this Audit process has been picked up.

6 And the second aspect is the lack of clarity between
7 policy and law.

8 So, taking you back to the question, it's not
9 necessarily about something going to Cabinet, but what you have
10 is, in your Department, the Internal Auditor saying there is
11 still a mismatch here. It's illegal. Did no public officer or
12 Permanent Secretary come to you and say "this is an issue that
13 might need to be resolved"?

14 A. No.

15 I go back a step just for information?

16 Q. Of course.

17 A. When my Government got into office in--what year was
18 that now?

19 Q. November 2011.

20 A. 2011.

21 No. 20--

22 (Pause.)

23 A. We called a process for giving status, Belonger Status
24 or Resident Status. There was quite a backlog. This is going
25 back to 2003, actually. There was quite a backlog--I call it a

1 "backlog", but large numbers, over 200 people/applicants, who
2 had not been considered but going for Belonger Status and for
3 Resident Status because apparently not many people were being
4 considered before that time. When we got into office, we said,
5 I need to go back quite a few years. When we got into office in
6 2003, we said let us do something about this and let us get all
7 these people out, and so we set about on a regular basis--in
8 fact, I think we were supposed to be doing 50 of--batches of 50
9 until we cleared the people who were there before, waiting.

10 In June 10--when we were finished and we had a policy,
11 many people would have been--would have been 20 years and ready
12 for Belongership at that time. So, it was a systematic way of
13 dealing with the fact that this had not been dealt with before,
14 and having a regular approach or having either a Belongership or
15 a Resident Status through the Board of Immigration, and I think
16 I explained to you consideration about Belonger Status.

17 COMMISSIONER HICKINBOTTOM: According to this report,
18 the Internal Auditor and your own Permanent Secretary considered
19 that there was a disconnect between the law and policy and that
20 the policy was unlawful. That's what they both considered to be
21 the case, and that's why the Permanent Secretary was working
22 upon a change in the law, to bring it in line with the policy.
23 But you say you didn't know anything about that?

24 THE WITNESS: No.

25 And they may have been working on it together, but I

1 had not seen any review by the Attorney General when they were
2 considering that, who is the final arbiter when it comes to law
3 in the British Virgin Islands. So, there is no comment from the
4 Attorney General, and certainly it did not come to Cabinet.

5 COMMISSIONER HICKINBOTTOM: No, no, I understand that,
6 but you didn't know that your Permanent Secretary was working on
7 a revision of the law to bring what he or she considered the law
8 and the policy into alignment?

9 THE WITNESS: When the--when matters come before the
10 Ministry, the Permanent Secretary and those who work with him
11 would normally work on the matters and come to some conclusion
12 that I think is appropriate before bringing it to the Premier,
13 who then takes it to Cabinet for a decision.

14 COMMISSIONER HICKINBOTTOM: Yes, thank you.

15 BY MR RAWAT:

16 Q. If you go to 1747, please.

17 A. I'm trying to find it.

18 Q. It should be in the same document.

19 A. There is a difference in the numbering.

20 Q. I see.

21 If you want to use the document's internal numbering,
22 it's page 13. It should be headed "ADDITIONAL MATTERS".

23 A. Yes.

24 Q. Thank you.

25 What this follow-up audit did was it returned to the

1 fact that 224 people had Belonger Status approved illegally in
2 2011, and noted that, of those 224, six were part of a sample
3 that was considered as part of the follow-up audit. And what
4 the Internal Audit Department noted was that those six
5 applicants had been made to go through the established process
6 again.

7 So, having been given--initially awarded Belonger
8 Status and this point having been picked up, at least those six
9 were then made to go through the process of applying through the
10 Board, it then goes back to Cabinet, and Cabinet makes the
11 decision. What the Internal Audit Department noted was it's
12 uncertain if all the persons appearing on the list of persons
13 who received status contrary to the established process have had
14 to go through the Board to receive their status.

15 Now, accept, Dr Smith, that the decisions in relation
16 to those 224 people were made by a Cabinet that you did not lead
17 and you were not part of, but the reports raising the issue
18 emerged in 2012 and 2014 when you were Premier.

19 Did your Cabinet, in the time that you were Premier
20 and led Cabinet, did Cabinet--did you put in any steps to stop
21 Members being able to introduce applications for Belonger Status
22 at Cabinet level?

23 A. During the time when we were in office, once you
24 considered the recommendation by the Board, there's always a
25 discussion maybe this person should have been included or maybe

1 that person should have been included, but we did not all do
2 this. What we did was approved or disapproved the names of the
3 list that were sent--submitted by the Immigration Board, so
4 that's what I recall.

5 Q. So, your evidence is--I'm sorry I'm repeating it just
6 to make sure we make this clear on the Transcript, but it's that
7 as a Cabinet, and is that both as the 2011 Cabinet and the 2015
8 Cabinet?

9 A. After I got--after we got into office in
10 November 2011.

11 Q. Yes.

12 A. Yes.

13 Q. And from then on, what your Cabinet would do was
14 either accept or reject the recommendation?

15 A. Yes.

16 Q. What you or your Cabinet did not do was at Cabinet
17 level introduce applications for Belonger Status, irrespective
18 of the Board?

19 A. Not that I can recall.

20 Could you just put that again, the last part of what
21 you said?

22 Q. Yes.

23 A. I want to be clear.

24 Q. Yes.

25 I will put it this way. What was uncovered in the

1 June 2012 audit was firstly that recommendations from the Board
2 were going to Cabinet but in addition to that, Cabinet--Members
3 of Cabinets were introducing applications for Belonger Status
4 themselves at that level without recourse to the Board and
5 deciding on that, so 224 people got Belonger Status without
6 having to go through the established process.

7 And as I understand your evidence, it's firstly that
8 as a Cabinet, what you did was either approve or reject a
9 recommendation from the Board, which I think you said "yes"?

10 A. That is correct, yes.

11 Q. And also, as a Cabinet, what you did not do was,
12 yourselves, introduce applications for Belonger Status that had
13 not gone through the process?

14 A. No.

15 What we would do, however, is Members--during the
16 discussion, Members would suggest names of persons who they
17 thought were deserving, and these then could be forwarded to the
18 Board by the Immigration Officer who was responsible. As far as
19 I can recall, they were not subject to Cabinet Decision at that
20 time.

21 Q. So, whilst Members of Cabinet might suggest, "well,
22 there is someone who ought to get Belonger Status", that would
23 still have to go back to the Board?

24 A. That's correct.

25 Q. The Audit of June 2012 sets out and establishes the

1 process which the Board adopted, which was commended by the
2 Internal Auditor. So, it had a cultural questionnaire; it had
3 an interview; it had a point system; and it also had a queuing
4 system so it would look at how long applications had been
5 outstanding?

6 A. That's correct.

7 Q. If Cabinet or a Member of Cabinet were to raise an
8 individual as deserving of Belonger Status and the decision was
9 made to send that to the Board, does that not distort the
10 process because doesn't it look as if Cabinet were interfering
11 so that someone--someone who could make an application in a
12 normal way is, in effect, being given preferential treatment?

13 A. No, because the persons who may have--Cabinet Members
14 may have suggested have been left out, but those would only have
15 been within the particular years that the Board had sent these
16 recommendations. And, knowing the Board, the Board did what
17 they were supposed to do as far as the law is concerned. But we
18 did not--there was no influence, I think. I know that they
19 tried to influence their decision--

20 Q. And so, what Cabinet was doing was identifying people
21 who Cabinet felt ought to have Belonger Status?

22 A. Who may have slipped through--for example, if they're
23 considering a particular six-month period or one-year period and
24 there are people who had been left out, my colleagues may have
25 noticed that and would make an observation of that.

1 Q. Because the other limitation that was placed was that
2 only 25 people a year could get Belonger Status under the
3 policy?

4 A. That's correct, yeah.

5 Q. So, if the Board has identified 25 people who are
6 going to get Belonger Status, or who they recommend for Belonger
7 Status, and Cabinet felt that there was other people who would
8 qualify, doesn't it follow that some people would lose out--

9 A. No.

10 Q. --to keep within the quota for 25?

11 A. No, no, no. The Cabinet never said to the Board, "We
12 want this person or we want that person to be included".

13 Q. What did Cabinet say to the Board?

14 A. Not even to the Board. It said to the Immigration
15 Officer, "This person, this person would have been within the
16 period of time", and the Immigration Officer made a
17 recommendation to the Board; the Board made a decision.

18 Q. Thank you.

19 Could I move on to a different topic, a different
20 report, please.

21 MR RAWAT: And this is--I think, Commissioner, it's in
22 Part 3 bundle.

23 COMMISSIONER HICKINBOTTOM: Yes.

24 MR RAWAT: This is about grants managed by Ministries.

25 We need to go to page 2601.

1 Sorry. 2691, please. Apologies.

2 BY MR RAWAT:

3 Q. What we should have, Dr Smith, is a report from the
4 Internal Audit Department titled "GOVERNMENT
5 MINISTRIES-ASSISTANCE GRANTS PROGRAMMES, AUGUST 2014, DRAFT
6 REPORT".

7 The Internal Auditor explained that her Department
8 would label the report as "draft" in circumstances where there
9 wasn't a management response, so if they haven't received a
10 management response, they would finalise the report but still
11 call it a "draft report". This report was consistent with grant
12 programmes that were operated by Ministry, including the
13 Premier's Office, and it highlighted a number of concerns, which
14 I--if I can, I will just briefly summarise to you.

15 The first was that there wasn't a formal procedure by
16 which individual applicants could request assistance. If you
17 want me to show you where that is in the report, please tell me,
18 Dr Smith. But if not, I'll just try and summarise it.

19 The second was that applicants could make multiple
20 requests to the same programme and could also make requests for
21 the same type of support across different programmes run by
22 different Ministries.

23 The third was that there was a duplication in terms of
24 the purpose of the programme. So, for example, your office, as
25 the Premier's Office, would run a programme that had similar

1 purpose to that one established by the House of Assembly on
2 which the Commission has heard evidence.

3 And the last was that the amount of assistance that
4 would be awarded was left to the Minister's discretion, so it
5 was a decision solely for the Minister to make.

6 Let's go to page 2707, paragraph 11.1.

7 In the conclusion, the Internal Audit Department said
8 this: "The Assistance Grants Programmes administered by various
9 Ministries is largely administered at the sole will of the
10 respective Minister. In their current state these programmes
11 lack adequate controls to safeguard them from abusive practices.
12 Various questionable practices have materialized that has
13 resulted in one individual receiving multiple assistances across
14 various programmes and even within the same programme. This is
15 largely due to lack of verification activities and the lack of
16 adequate policies and guidelines to govern the administration of
17 the programmes. The methods by which amounts are approved and
18 the decisions made lacks transparency which can cast a dark
19 cloud over the programmes".

20 As I've said, there was no Management Response. But,
21 as we understand it from the Internal Auditor, this report would
22 have gone to various Ministries, including your office as
23 Premier. It's a report issued in August 2014 when, obviously,
24 you were in office.

25 Do you remember this report being discussed at

1 Cabinet?

2 A. No.

3 Q. Within your Departments--and you were Minister of
4 Finance and Premier--did Permanent Secretaries raise the issues
5 with you?

6 A. No. This report was not raised. It was not
7 discussed.

8 As I saw it, the draft report, what normally happens
9 is when the Auditor, as far as I can recall, makes a report, he
10 sends it, and the officer and office within the Ministry,
11 whether it's a Permanent Secretary, would make some comments,
12 and then send it back to the Auditor, and then it would finally
13 get back to Government.

14 This is a draft which I have not seen.

15 Q. That summary is right in terms of what the
16 internal--it matches what the Internal Auditor said. But what
17 she also added was that if the public authority that was being
18 audited did not take the opportunity to make a Management
19 Response, then her Department--that's the reason they would call
20 it a "draft report", not that it had more work for them to do
21 but because they hadn't had a Management Response. And the
22 effect of not putting in a Management Response meant that the
23 report would be labeled as "draft".

24 So, my question is: This report, even if we call it a
25 "draft report", did at least go to Permanent Secretaries; it

1 would have gone to Permanent Secretaries. And it raises a
2 concern that grants programmes within different Ministries
3 were--how they were used was solely at the will of the
4 individual Minister. But your evidence is that this wasn't
5 brought to your attention by anyone?

6 A. No. I didn't--I did not see this report, and that is
7 why I cannot comment very much upon it.

8 Q. Leaving aside the report, if the fact that there were
9 grants programmes within Ministries which--for Ministers to
10 administer, did the way those programmes were being administered
11 ever give you cause for concern while you were Premier?

12 A. When the--anybody made a request from a particular
13 Ministry, whether it's from the Premier's Office or the Ministry
14 of Finance, there would obviously be a consultation with either
15 the Permanent Secretary or the Financial Secretary before the
16 Premier or the Minister made a commitment.

17 Q. You've now obviously accept--your evidence is you
18 didn't see it at that time in 2014?

19 A. Yes.

20 Q. You have now had an opportunity to read it in 2021.

21 A. Um-hmm.

22 Q. Does its findings or its conclusions give you any
23 cause for concern today?

24 A. I believe an audit--all organizations should have a
25 regular audit because audits can improve the efficiency of the

1 organisation. So, therefore, I would look at this and see--look
2 at the conclusions, have a discussion within the Ministry about
3 it and, you know, make changes or change as indicated.

4 Q. During your time as Premier, so 2011 through to 2019,
5 did--were any changes ever made to the way grants programmes
6 within Ministries were administered?

7 A. In 2006, I think, we made a recommendation. In fact,
8 we decided that when you take the matter to the House of
9 Assembly to reduce the size of the grants, I think we reduced
10 them by 50 percent.

11 Q. But other than that decision, whilst you were Premier,
12 were any other changes made to the grants programmes that the
13 Ministries oversaw?

14 A. I don't recall, but--no, I do not recall. But any
15 suggestion by the officer in charge--that is, my Permanent
16 Secretary or my Financial Secretary--any of these grants would
17 have been discussed with them, and they would have made some
18 suggestion which could have been taken to effect.

19 Q. I think when one steps back from that report, that the
20 point we were left with is that it's how much an individual
21 applicant gets. Whether they get as much is ultimately a
22 decision to be made by the Minister. It's all at the discretion
23 of the Minister. And what there doesn't seem to be is any
24 criteria, either within Ministries or across Ministries, by
25 which that decision is made.

1 Does the fact that there is an absence of criteria
2 give you concern?

3 A. I hear what you're saying, but I would say that there
4 is always a discussion with the Accounting Officer, whether it's
5 the Financial Secretary or the Permanent Secretary, when these
6 matters came up.

7 I would agree that, based on this reading just now, it
8 would have been the right thing to do to relook at how the
9 grants are being administered, and then come up with some
10 process.

11 One of the things--even all grants from the House of
12 Assembly, I think there is need for review in how they're
13 managed, particularly the accounting systems, how they're
14 accounted for, so they can refer to--because accounting systems,
15 for example, in the House of Assembly grants, there is the
16 records, then Members would know that if somebody made an
17 application to me for this particular thing that already made
18 another submission to someone else.

19 Now, it does not mean that if somebody made the
20 submission to another Minister--let's say, for example, they
21 made a submission for \$5,000, and the Minister gave them \$100,
22 it would necessarily follow that they shouldn't make an
23 application to someone else who may look at the situation
24 differently.

25 COMMISSIONER HICKINBOTTOM: But if somebody--if

1 somebody has a need for \$5,000--

2 THE WITNESS: Yeah.

3 COMMISSIONER HICKINBOTTOM: --under this system, there
4 is nothing to stop that person from making an application for a
5 grant from a number of different potential sources, and those
6 sources give him more than \$5,000?

7 THE WITNESS: Does that--it is--

8 COMMISSIONER HICKINBOTTOM: The more merit the
9 application has, the more likely it is that more than one source
10 will give him the full grant?

11 THE WITNESS: Yeah, but there is an informal
12 discussion among Ministers. I don't remember--recall that, you
13 know, occurring. It's possible, but I don't recall that
14 occurring.

15 COMMISSIONER HICKINBOTTOM: But there is no process to
16 indemnify whether that occurred or not?

17 THE WITNESS: There is no process. You're quite right
18 there is no process.

19 And this, like I said earlier, I think audit is
20 important. And if I had seen this then, I would have done
21 something about it.

22 COMMISSIONER HICKINBOTTOM: Thank you.

23 BY MR RAWAT:

24 Q. The point you were making, Dr Smith, earlier, about
25 when an application was made, there would be a discussion within

1 the Ministry. Were you referring then to the practice within
2 your own Ministry? So, if an application came into the
3 Premier's Office or the Ministry of Finance, that was the
4 practice whilst you were leading those Ministries?

5 A. Yes.

6 Q. What there wasn't was a discussion at Cabinet level
7 about how these programmes should be administered, what criteria
8 should be applied, et cetera?

9 A. No, there was not discussion at Cabinet level. And
10 this is why, as I said before, audits are important.

11 Q. Yes.

12 A. And they will have time to review processes and put--

13 Q. And you've made the point that audit is important and
14 has benefit. In this case, this doesn't seem to be--or this
15 wasn't a report that was responded to, for example, by the
16 Premier's Office, nor was it a report that was brought to your
17 attention at the time. Why do you think that these reports
18 weren't being brought to your attention at the time?

19 A. What year was this? Let me see.

20 Q. It was August 2014.

21 A. '14.

22 I cannot say. Sometimes things take a while getting
23 from Point A to Point B. I cannot give an explanation.

24 Q. Can I ask you a separate question but related to the
25 Internal Auditor? The Internal Auditor explained that the--and

1 her Department--report to a committee, which is the Internal
2 Audit Advisory Committee, and that has five Members: The
3 Financial Secretary or Deputy Financial Secretary is one; the
4 Internal Auditor, the Director of the Internal Audit Department
5 is the second; and then, three other Members of the Committee
6 have to be appointed by the Minister of Finance.

7 Now, the evidence of the Internal Auditor was that the
8 last established Committee was set up on the 1st of January in
9 2014, and its term of office expired on the 31st of
10 December 2016. Since then, there hasn't actually been a
11 functioning Committee. We understand that three Members have
12 very recently been appointed. But you have a gap from 2016 to
13 2021, where there isn't a Committee. And the Committee has
14 statutory functions in relation to the Internal Audit
15 Department.

16 You would have been Premier for some of that period,
17 2016 to at least 2019.

18 Can you help the Commissioner with this: What was the
19 reason for not re-establishing the Committee after
20 December 2016?

21 A. There is no reason for not re-establishing it.

22 Once the matter is brought to my attention, then I
23 would do something about it.

24 Q. And whose responsibility was it to bring the matter to
25 your attention?

1 A. It would have been whoever the Chief Auditor was. And
2 maybe what they were referring to--it would have come to either
3 my Permanent Secretary or the Financial Secretary.

4 Q. The Director of Internal Audit's evidence was that she
5 wrote, on a number of occasions, to the Financial Secretary--

6 A. Um-hmm.

7 Q. --including during the period when you would have been
8 Minister for Finance. But as far as you can recall, Dr Smith,
9 the Financial Secretary did not bring it to your attention?

10 A. Certainly I do not remember. I have no recall of
11 seeing this document before.

12 Q. Would it have been the job of the financial--in terms
13 of finding suitable candidates for the Committee, would that
14 have been for the Financial Secretary to start that process?

15 A. Yes. He would have recommended, yes.

16 Q. Because, under the Statute, the Minister has to
17 recommend names to Cabinet, and then Cabinet then approves those
18 names?

19 A. Um-hmm.

20 Q. So, you would have needed someone to undertake that
21 task for you; is that right?

22 A. That's normally the process.

23 Q. We've also given you--I think we've asked you to look
24 at, today, some Cabinet Minutes which you should have as a
25 loose-leaf set of papers.

1 They would be paginated from 1 through, and the
2 pagination is in the center of them.

3 Do you have that?

4 A. Yes.

5 Q. And if I just again set the context, it relates to
6 Cabinet's decision to fund the construction of the wall at
7 Elmore Stoutt High School. And if you look, the first page is
8 the 4th of February 2015, and that's the actual decision that
9 Cabinet made.

10 If you look at (d), Dr Smith, Cabinet approved a sum
11 of \$828,004.10 to cover the costs, and it also approved--it gave
12 approval or granted approval to exceptionally waive the tender
13 process.

14 And then at (c), we see that approval be granted to
15 execute the project, utilizing Petty Contracts and different
16 suppliers and contractors, and that the Ministry of Finance
17 Project Support Unit assists the Ministry of Education and
18 Culture with the management of this project. Now, I'm going to
19 pause there.

20 Can you remember, in terms of the Ministry of Finance
21 Project Support Unit, when that had been set up?

22 A. Can you repeat that question?

23 Q. If you look at (1)(c), it refers to the Ministry of
24 Finance having a Project Support Unit, and we're looking at a
25 decision made in 2015. I just wondered whether you could

1 remember when that unit was set up in your Ministry?

2 A. I can't give you a date. I'm sorry.

3 Q. Can you assist at all with what its purpose was?

4 A. The purpose was--as it said, project support. The
5 Ministry of Finance are the body which sends out the notices
6 about contracts and also monitors to make sure that things are
7 happening, actually. The Project Support Unit assists in that
8 process.

9 Q. So, part of its remit was to make sure projects were
10 proceeding as expected?

11 A. Yeah, um-hmm.

12 Q. And was that from--were they set up from the view of
13 trying to maintain control over how money was being spent?

14 A. It was set up with a view of making sure that the
15 contracts were--the work were being done expeditiously and
16 properly.

17 Q. If you turn to page 3, please, Dr Smith, this is
18 again--just so that you can orientate yourself through the
19 paper, this is actually the Minutes of the Meeting of Cabinet.
20 And if you see, you were not present at that meeting. You are
21 recorded as absent, overseas on official business.

22 However, if we go through, you'll see, at page 11,
23 that the decision in relation to the wall was made on the basis
24 of a Cabinet paper, and specifically a memorandum from the
25 Minister of Finance.

1 Now, in circumstances where that's before Cabinet, but
2 you, as Minister of Finance, were absent, which Member of
3 Cabinet would be responsible for putting the paper before
4 Cabinet?

5 A. The Member of Cabinet which would be appointed as a
6 sort of Acting Minister--Acting Minister of Finance.

7 Q. I see. So, in this case, when you were absent
8 overseas on official business, as was the Honourable Kedrick
9 Pickering--

10 A. That's correct.

11 Q. --and so, the Honourable Ronnie Skelton was Acting
12 Premier. And so, he--it's there on the Minutes. He's Acting of
13 Minister of Finance, so it would fall to him to put that paper
14 before Cabinet?

15 A. Right.

16 COMMISSIONER HICKINBOTTOM: That's confirmed in the
17 Minutes, Dr Smith. You needn't look at it. It's paragraph 174,
18 and it simply says: "The Acting Minister of Finance presented
19 this paper".

20 THE WITNESS: Okay. Thank you.

21 BY MR RAWAT:

22 Q. Given--if you look, please, at page 13, however, in
23 this memorandum, the memorandum is signed by yourself. I just
24 wanted to ask you a question about paragraph 12.

25 What the paragraph says, paragraph 12 says, is: "The

1 total project cost exceeds the procurement threshold, and as
2 such should have been tendered. The Ministry of Finance
3 continues to advise Ministries to utilize the tender process and
4 not abuse the option to ask Cabinet to approve the waiving of
5 the tender process. The tender process is in place to ensure
6 that there is accountability and transparency. Proper and
7 timely planning and prioritization of all projects is necessary
8 to achieve this objective. The Ministry of Education and
9 Culture should consider their capital spending plan if Cabinet
10 approves the decision sought".

11 And it's that last bit that I just want to ask you
12 about. As we've seen, the tender process was waived. The
13 estimate the Cabinet approved was a little over \$828,000.

14 Going back to that paragraph 12, where was the
15 Ministry of Finance expecting the money to come from?

16 A. Each Ministry, on occasion, for capital works as well
17 as the contract expenditure, they would have come from the last
18 Premier. It would have meant that they may have had to forego
19 something else in the capital expenditure. That's why he said
20 "should consider the capital spending plan".

21 Q. So, what the position was, was that, whilst Cabinet
22 would approve spending \$828,000, it was up to the Ministry of
23 Education to find those funds themselves from what had been
24 allocated?

25 A. That's correct, yes.

1 Q. And that might mean that the Ministry might have to
2 make different decisions in relation to others' capital
3 spending?

4 A. That's correct.

5 Q. What this wasn't--just so that we're clear, it wasn't
6 Cabinet or Ministry of Finance finding additional funds for this
7 wall?

8 A. No. That last line is very clear.

9 Q. Thank you.

10 MR RAWAT: If I could just have a moment, please,
11 Commissioner.

12 (Pause.)

13 BY MR RAWAT:

14 Q. Perhaps if you could help with this last question--and
15 it's in relation to the decision to waive the tender in this
16 case. I accept that you were not present at that meeting. But
17 can you assist the Commissioner with why, in your view, was
18 tender waiver appropriate in relation to this particular
19 project?

20 A. Reading through this document and also from knowledge,
21 the Minister was very concerned about illegal activities around
22 the schools, including illegal entry, including use of cocaine
23 and various things like that. The Chief of Police was also very
24 concerned, and they thought it was important to do something to
25 protect the lives of the young people who were attending that

1 school.

2 Q. Thank you.

3 MR RAWAT: Commissioner, I have reached the end of my
4 questions.

5 So, can I just conclude, firstly, once again thanking
6 Dr Smith for returning and assisting further with the
7 Commission's work, but also, secondly, to thank him for the way
8 he has given his evidence today.

9 THE WITNESS: Thank you.

10 COMMISSIONER HICKINBOTTOM: Yes. And can I again
11 thank you, Dr Smith, for coming and for your time and for the
12 helpful way in which you have dealt with all of the questions.
13 Thank you very much.

14 THE WITNESS: Thank you, Commissioner.

15 (Witness steps down.)

16 MR RAWAT: Commissioner, could I ask you to rise now
17 because we have a pause. We have got a Directions Hearing
18 listed and then a witness coming at 2:00.

19 COMMISSIONER HICKINBOTTOM: Directions Hearing at 1:00
20 and witness at 2:00?

21 MR RAWAT: Witness at 2:00.

22 COMMISSIONER HICKINBOTTOM: Thank you, Dr Smith.

23 (Recess.)

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Session 2

MR RAWAT: Mr Davies, have you joined the Hearing?

MR FLIGELSTONE DAVIES: Yes, Mr Rawat, thank you, I have--nobody is in the room. My office door is locked, and I'm the only person in the office for the--for a few days.

COMMISSIONER HICKINBOTTOM: Good. Thank you, Mr Davis.

I apologise for the delay in starting this. This hearing should have started at 1 o'clock.

We received a letter about this hearing, quite a long letter about this hearing, at 12:20, and understandably Mr Rawat wished some time to prepare for this Directions Hearing following the hearings of this morning, which concerned further evidence.

One point made in the letter that we received from Withers was questioning whether this hearing should be in public or private. I have no doubt that it's properly in public. These matters, in my view, should not be aired simply in private. There's no good reason for them to be so aired.

Mr Rawat.

MR RAWAT: Commissioner, with your leave, what I would like to do is just--by reference to the points that are set out in numbered form in the Withers letter.

COMMISSIONER HICKINBOTTOM: Do you want to just confirm who's--for the purpose of the record, Mr Rawat.

1 MR RAWAT: Thank you.

2 For the purpose of the record, in terms of legal
3 participants attending remotely, Ms Sara-Jane Knock appears on
4 behalf of the Attorney General and the elected Ministers;
5 Mr Daniel Fligelstone Davies appears on behalf of other
6 remaining Members of the House of Assembly.

7 COMMISSIONER HICKINBOTTOM: Good. Thank you very
8 much.

9 MR RAWAT: And in terms of the matters that we need to
10 canvass this afternoon, what I'd suggest I do is I would just
11 adopt the sort of sequence of topics as set out in the Withers
12 letter.

13 COMMISSIONER HICKINBOTTOM: Yes.

14 MR RAWAT: Sort of numbered, really.

15 COMMISSIONER HICKINBOTTOM: Certainly.

16 MR RAWAT: The first point that--on which the IRU
17 takes issue is a point made in correspondence by the Commission,
18 that the disclosure being provided by the IRU is disorganised
19 and unhelpful, and this is a letter from Mr Olympitis. He was
20 in correspondence given one example in relation to 11 documents,
21 31 pages, and his response was that the documents were clearly
22 marked. It took him no longer than five minutes to ascertain
23 the order that the documents should be in, and he makes the
24 point that, so far as he was aware, the COI was content with the
25 recent arrangements that were made regarding disclosure.

1 With respect to Mr Olympitis, that doesn't really
2 answer what is a bigger issue, and that is that what has
3 continued to be provided to the COI is material that is being
4 received out of order.

5 And one other example that I can give is in relation
6 to Cabinet Minutes.

7 You'll recall, Commissioner, that at the start of this
8 process, material was being received by the Commission that
9 wasn't in an organised fashion, and that was a point that Sir
10 Geoffrey Cox conceded at an earlier hearing. The Cabinet
11 Minutes--and for good reasons that will be obvious those are
12 documents in which the COI will have a significant
13 interest--were disclosed anew by the IRU and they were
14 admittedly in better order than they had been. But they were
15 uploaded by year, and then minute, and then the memorandums,
16 i.e., the underlying Cabinet papers. And it's at that point,
17 that last stage, where once again, difficulties arose because,
18 almost inevitably, the papers were out of order. And it
19 doesn't--for Mr Olympitis to dismiss the problem in the way that
20 he appears to do in his letter doesn't really answer it.
21 It's--I mean, one could perhaps glibly respond that given it
22 took him five minutes to sort out, it should be no hardship for
23 Withers, given their substantial resources, to be able to do it
24 on a routine basis.

25 The point is that it only introduces delay in the work

1 of the COI if material is provided out of order, and the best
2 illustration I can give about that are the first hearings that
3 the Commission did in private, where, with a number of
4 witnesses, we took them through documents. And in an effort to
5 ask for their assistance to try and understand the process by
6 which, for example, a contract was entered into, and where time
7 and time again witnesses were having to say, "Well, I'll have to
8 go and check that and I'll come back to you".

9 As to the point that Mr Olympitis makes in this--under
10 this head is that the COI was content with recent arrangements.
11 That again, doesn't really appreciate the point. It's not a
12 matter of, "Well, you haven't complained". The position that
13 the COI is being placed in is that it has to just put up with
14 this situation in order for us to continue the work of the
15 Inquiry. And frankly, we should not have to be--it should not
16 be expected that we need to raise issues of this sort with a
17 global firm that's providing a commercial service.

18 And so, I hope that I set out there why this is such
19 an important issue for the COI.

20 Perhaps I can link it to the second point which is
21 about the use of references.

22 At the beginning of the Commission of Inquiry, the IRU
23 were asked not to use their own references, but they continued
24 to do so in correspondence and when providing disclosure. The
25 way that documents have been referenced when it's being

1 disclosed on to the Relativity platform that the COI now uses,
2 has caused problems, and we've had to find workarounds.

3 The point that we need to get across today is that
4 it's, firstly, that the IRU--and the IRU has put itself at the
5 center of this process. It wants any disclosure from any
6 government body to go through it. It wants to be able to
7 conduct, as we understand it from previous correspondence, an
8 audit exercise. If it wants to do that, what it needs to do is
9 to ensure that, when it's providing disclosure to the COI and to
10 Relativity, not only that they use their own reference but also
11 that they use the reference that the Inquiry uses because
12 otherwise the process slows down.

13 And contrary to the assertion that's made in--by
14 Mr Olympitis in his letter that the COI has often referred to
15 the IRU's reference alone for ease of identification, that is
16 not so. This Commission has had to use those references when
17 it's had to draw attention to an error on the part of the IRU or
18 to seek clarity. And one example has been given to
19 Mr Olympitis, and that is where the IRU uploaded material under
20 one reference set out in a covering letter, but that material
21 was then disclosed under a second reference.

22 And these may appear to be small points, but given the
23 pace at which the Inquiry has to work, they can rapidly build
24 up, and they can destabilise the Hearing timetable, and that's
25 what we are most keen to preserve.

1 COMMISSIONER HICKINBOTTOM: In respect of the
2 references, Mr Rawat, there are now two references, the IRU's
3 reference system and the Commission's reference system. Are you
4 saying that the IRU can or even should use both references on
5 any particular document, as long as they use them correctly?

6 MR RAWAT: What has to happen when it--as I understand
7 it, when material is provided now to Relativity, both references
8 have to be used, and that's to ensure that it can be properly
9 indexed on Relativity, and that's--it's a workaround that's been
10 reached to ensure that the material can be uploaded and retained
11 on Relativity and appropriately indexed.

12 COMMISSIONER HICKINBOTTOM: So, the message to Withers
13 that you give is please put both references on everything
14 correctly.

15 MR RAWAT: Yes. I mean, we can set that out in
16 writing, but both references have to be used, as I understand
17 it, but also it's very important, obviously, to get references
18 right.

19 COMMISSIONER HICKINBOTTOM: Yes. Okay. Thank you
20 very much.

21 Now, Ms Knock, we'll come back to that.

22 In relation to the first matter, where Mr Olympitis
23 didn't agree that the disclosure was disorganised or unhelpful,
24 as I understand it, even in the example that was given, which
25 was a tiny example, 31 pages, the documents which were in

1 appendices A to H were not put in the order as one might
2 expect--A, B, C, D, E, F, G, and H--but were simply put in a
3 random order, and that, on any view, is not helpful. If it took
4 Mr Olympitis five minutes to sort out what order they should be
5 in for 31 documents, that some of these exhibits are hundreds of
6 pages long. I just don't understand why they're put in an order
7 which is not clearly the order they were in and, indeed, no
8 sensible order.

9 MS KNOCK: Commissioner, thank you very much for
10 giving me the opportunity to address you on these issues.

11 I'd first like to point out that the numbered
12 paragraphs in the Withers's letter are responding to the
13 numbered paragraphs in the IRU--sorry, in the Commission letter
14 that we received last night at about quarter to 8:00 p.m. in the
15 BVI.

16 I'd also like to start off by discussing how
17 disclosure has been provided to the Commission from the very
18 beginning. Now, at the--

19 COMMISSIONER HICKINBOTTOM: Well--no, ma'am.

20 MS KNOCK: No, Mr--Commissioner, please afford me the
21 respect and allow me to finish, because a lot has been--

22 COMMISSIONER HICKINBOTTOM: Ms Knock--

23 MS KNOCK: --a lot has been said about the IRU's
24 failings to provide disclosure, and I would like to have the
25 courtesy of addressing the Commission without being interrupted

1 by you, sir.

2 So, I will start--

3 COMMISSIONER HICKINBOTTOM: First--Ms Knock--

4 MS KNOCK: Sir, mis--

5 COMMISSIONER HICKINBOTTOM: Ms Knock, first, could you
6 please answer my question. If you want to make--

7 MS KNOCK: No, I will not answer your question first
8 because we have to put it in context, and then I will get to
9 your question, Commissioner.

10 At the very beginning of this Inquiry, the BVI
11 Government employed a document management provider called
12 "DISCO". at the very beginning, in February. The Commission has
13 been offered access to that platform numerous times, and you
14 have refused access to that platform. Had you accepted that
15 offer, you would have received the documents in exactly the same
16 way that the IRU has received the documents.

17 Instead, we have been asked to provide documents by
18 e-mail, which we did. We have then been asked to provide
19 documents by share file, which we did. We have then been asked
20 to provide documents by Relativity, which we did, which means
21 that sometimes we have provided the same document at least three
22 different times.

23 Every time we have provided a document, we have not
24 only referred to your reference but we have referred to the
25 IRU's reference, so Mr Rawat is incorrect when he states that we

1 only use our references. That is not true.

2 We also provide an inventory with--for all of our
3 documents which clearly state which requests they relate to.
4 So, again, Mr Rawat is incorrect when he states that.

5 When we provide documents uploaded to Relativity, we
6 also send an e-mail saying where they are filed, and we provide
7 an index, and we provide the Commission reference.

8 Now, with respect to the Cabinet Minutes, some of
9 these have been provided three times, and as we have previously
10 stated, they are provided in the same way that the Cabinet
11 provides them to us. After we were told that you wished them in
12 a different way, we uploaded them in a different way. We spent
13 days and days reorganising them for you.

14 Now, Commissioner, there are only 11 documents in this
15 recent example that Rawat has--Mr Rawat has indicated. They are
16 provided to you in the same way. There is an index. It is
17 clearly document--they're clearly stated. They can only be
18 appendices to the same document. They are not all included in
19 one document. They are all separate. We provide them to you in
20 the same way that they are provided to us. It is for you to
21 organise them, not for us to organise them.

22 That is the answer to all of these criticisms. We
23 have been providing the documents as we have been given them.
24 We have been provided--providing you with both our references
25 and your references, and we have been providing them in many

1 different formats over and over and over again.

2 All of this could have been avoided had the Commission
3 taken up our offer numerous times to have access to the DISCO
4 platform, which is a very similar platform to Relativity.
5 Instead, the Commission only started using Relativity very
6 recently.

7 COMMISSIONER HICKINBOTTOM: Ms Knock, I don't want or
8 need to go through the entire history of the way in which these
9 documents have been disclosed. There were very good reasons why
10 we didn't want to share the BVI Government's platform, one, of
11 course, of which is the need to have a platform which is under
12 our control, at which I regard as being very important.

13 But from what you've said, and in response to the
14 question I put at the beginning, you accept that documents which
15 are not put in the order A, B, C, D, E, F, G, and H, but in a
16 random order is disorganised, but you say that that's the order
17 that you received them in.

18 MS KNOCK: Commissioner, have you had a look at the
19 index for those documents? Have you seen it?

20 COMMISSIONER HICKINBOTTOM: But these are the doc--

21 MS KNOCK: No, Commissioner. Have you seen that
22 index? Can you honestly tell me when you have a look at that
23 index that it is difficult to understand the order of those
24 documents? Have you seen the index?

25 COMMISSIONER HICKINBOTTOM: I haven't seen the index.

1 My team--

2 MS KNOCK: Well, then--

3 COMMISSIONER HICKINBOTTOM: My team have seen the
4 index, but that's not the point, is it?

5 MS KNOCK: That is the point, Commissioner. We are
6 trying to provide you with hundreds and thousands of documents.
7 We are trying to do it as quickly as we possibly can, and we are
8 doing it in the way that we have been provided with those
9 documents. They are clearly labeled. They are indexed.

10 Now, 11 documents on an Excel spreadsheet which
11 clearly state Appendix A, Appendix B, Appendix H, all you need
12 to do is click "sort" on an Excel spreadsheet, and they can be
13 sorted. It is quite frankly, ludicrous to suggest that they are
14 provided in a disorganised, unhelpful way, Commissioner.

15 COMMISSIONER HICKINBOTTOM: Looking forward, which I'm
16 very anxious to do, do you, therefore, propose to disclose
17 documents in the same manner?

18 MS KNOCK: Yes.

19 COMMISSIONER HICKINBOTTOM: Mr Rawat.

20 MR RAWAT: I think we've taken a long time to get to a
21 short point, and we've done it by generating a lot of heat and
22 not very much light.

23 The point is, the example that I gave and the reason
24 for giving it was that that was given as a recent example in
25 relation to correspondence. The issue that the COI is taking is

1 not that on one occasion 11 documents were sent in a particular
2 fashion. If this is happening, this is a wider issue.

3 But I think the answer that the Commissioner--that,
4 Commissioner, you are being given is basically this is the way
5 the IRU gets it, this is the way the Commission will get it. I
6 think that's the endpoint.

7 COMMISSIONER HICKINBOTTOM: Will that slow down the
8 preparation, your preparation, the COI Team's preparation, for
9 hearings?

10 MR RAWAT: Inevitably, and the example of that is we
11 would--we end up going back to the point that we were with our
12 initial hearings, that we are having to sort out.

13 And with respect to having the fact that the COI has
14 been given documents more than once, all that means is that it's
15 been given documents in a disorganised fashion--

16 MS KNOCK: That is not true, Mr Rawat.

17 COMMISSIONER HICKINBOTTOM: Ms Knock, you can't
18 interrupt, I'm afraid. That's not the way we do things.

19 MR RAWAT: But I think that's the logical conclusion.
20 Ms Knock's point is that material is given in the way that it is
21 received. So, if it is received in a disorganised fashion and
22 then given by e-mail, it is still in a disorganised fashion. If
23 it's given by SharePoint, it's still in a disorganised fashion.
24 If it is uploaded to Relativity, it is still in a disorganised
25 fashion.

1 I think that Ms Knock's submission simply comes to
2 this: One, it is going to be--it is handed over to the COI in
3 the manner that it is received; and, two, the IRU does not
4 consider its role to--in assisting the Commission to in any way
5 organise the material and in a fashion that would allow it to be
6 followed.

7 MS KNOCK: That is not my submission, Mr Rawat. If
8 that was the submission, we would not index the documents for
9 you in an Excel spreadsheet that can be clearly sorted. I take
10 issue with that submission.

11 MR RAWAT: I'm not sure, Commissioner, that we're
12 going to get much further with the point.

13 COMMISSIONER HICKINBOTTOM: No, I don't.

14 It's unfortunate.

15 MS KNOCK: Yes.

16 COMMISSIONER HICKINBOTTOM: Sir Geoffrey Cox accepted
17 that the documents in the hands of the BVI Government were in a
18 very, very poor state. I had hoped that the intervention of the
19 IRU, which is, as I understand it, to assist the Commission of
20 Inquiry, would have assisted in organising those documents in
21 the way in which I would find it most helpful to deal with the
22 hearings, which we are proceeding with at great pace. But
23 anyway, you have made the position of the Attorney General
24 clear.

25 Point 3, Mr Rawat.

1 MR RAWAT: I think Point 3 and successive points
2 overlap to some extent, so can I break it down in this way and
3 take Point 3, narrow it down just to the compliance with the
4 Commission--with your Protocol, Commissioner, on the provision
5 of written evidence in relation to providing it in electronic
6 form?

7 The protocol, which is dated the 1st of June 2021,
8 asks that the Affidavit be accompanied by an index, which sets
9 out--or indexes exhibits; and secondly, it also asks that an
10 electronic version of the Affidavit be provided in Word form.

11 In a significant number of cases, there is no index
12 provided. A Word form--a Word version of the Affidavit is never
13 provided.

14 Again, it's not clear why the IRU can't do this. It's
15 somewhat baffling that it isn't because these are not requests
16 that are complicated or outside the normal course of requests
17 that an Inquiry would make of participants.

18 So that's the first point I wanted to raise. Perhaps
19 if I--if you invite Ms Knock to respond to that before I go on
20 to the next point.

21 COMMISSIONER HICKINBOTTOM: Ms Knock, what's the
22 response to that?

23 MS KNOCK: The response to that is we'd like to know
24 why you need it in Word format.

25 MR RAWAT: Because the Protocol says so.

1 MS KNOCK: That's not an answer, Mr Rawat. Why does
2 the Commissioner need the Affidavits in Word format?

3 COMMISSIONER HICKINBOTTOM: Ms Knock, there are two
4 answers. Firstly, because the Protocol requires it, and
5 participants are required to comply with the Protocols.

6 Secondly, because, as we work with the evidence in the
7 Affidavits, it is much easier to be able to take parts out of a
8 Word document and put them into other documents such as
9 submissions, if something needs to be referred to or responded
10 to or, indeed, the report.

11 But the real answer is the one Mr Rawat gave, and that
12 is that it's in the Protocol.

13 Are you saying that the Attorney General doesn't have
14 to comply with the Protocol?

15 MS KNOCK: I'm not saying that, Commissioner. If you
16 insist on having them in Word versions, then we will provide
17 them in Word versions, but it will take some time to obtain
18 those because often the IRU doesn't have the final Word version
19 before they're provided by the various Ministries and public
20 officers. So, we will do what we can to provide those for you.

21 COMMISSIONER HICKINBOTTOM: Good. Thank you very
22 much.

23 MR RAWAT: Can I clarify just two points with this:

24 Firstly, it's whether Ms Knock is making--I've assumed
25 that Ms Knock is making submissions on the instruction of the

1 Attorney General. So, we need to be clear whether the Attorney
2 General wishes or will or intends to comply with the Protocol in
3 terms--on written evidence or not.

4 COMMISSIONER HICKINBOTTOM: My understanding of your
5 answer, Ms Knock, is that the Attorney General does intend to
6 comply.

7 MS KNOCK: Well, we'll get to that bit, Commissioner,
8 because there are parts of the written Protocol that we take
9 vast issue with, and we have made that position very clear in
10 correspondence, so I'm sure we will get to those bits.

11 For now, the Attorney General will comply with the
12 provision of Word versions of all the Affidavits, but as I said,
13 that will take some time, not least because a majority of the
14 Ministries are shut because of the pandemic.

15 COMMISSIONER HICKINBOTTOM: Ms Knock, let's take this
16 a step at a time.

17 MS KNOCK: Yes.

18 COMMISSIONER HICKINBOTTOM: We've dealt with that.

19 MR RAWAT: Can we deal with the step of whether
20 Affidavits will be accompanied by an index?

21 MS KNOCK: And index of the documents that are in the
22 exhibits that are referred to in the Affidavit? You would like
23 the IRU to go through all of the Affidavits and produce an index
24 of all of the documents in the exhibits, Mr Rawat?

25 COMMISSIONER HICKINBOTTOM: No, no. It's not

1 Mr Rawat. It's what's required in the Protocol by me as the
2 Commissioner.

3 MS KNOCK: Commissioner, are you asking the IRU to go
4 through all of the Affidavits and provide an index of all of the
5 documents that are already referred to in the Affidavits?

6 COMMISSIONER HICKINBOTTOM: Because that's what the
7 Protocol requires, and that's what will save time during the
8 course of the hearings. That's what should have been done
9 already. It's not an additional task.

10 MS KNOCK: Well, it is an additional task because you
11 have asked for so many Affidavits, we've just been trying to get
12 to them--get them to you as quickly as we can. If you would
13 like those indices, we will provide those indices, Commissioner.

14 COMMISSIONER HICKINBOTTOM: It's not an additional
15 task. It's a task which simply hasn't been done, but thank you
16 for confirming that we'll get the indexes.

17 Mr Rawat.

18 MR RAWAT: Can we move on, then, to the next topic,
19 which is the question of redaction?

20 COMMISSIONER HICKINBOTTOM: Yes.

21 MR RAWAT: Now, the Protocol on redaction set out a
22 two-stage process in terms of disclosure and in terms of
23 redaction. So, what the Protocol also does is that it reserves
24 the COI's position that it can invite redactions at an early
25 stage.

1 And in Letters of Requests seeking disclosure and
2 seeking Affidavits since--in more recent weeks, the COI has made
3 clear that it needs recipients to indicate what redactions they
4 seek when providing that disclosure or providing an Affidavit.

5 And we've had to do this because of the time that
6 has--recipients of Affidavits have needed for--to actually
7 comply with requests. There has been just one occasion when,
8 Commissioner, you have refused an extension of time. There have
9 been two occasions when you have only agreed a partial
10 extension. Otherwise, and in every other instance, requests for
11 extensions have been granted time and time again.

12 But that obviously has an impact on the timetable, and
13 it also has an impact on the work of the COI because it reduces
14 the time we have to consider material that is coming in, to
15 determine whether we need to ask someone to come along to attend
16 an oral hearing, to decide whether to--to prepare a summons to
17 issue them to organise the Hearing, and that's the sort of price
18 we have to pay in order to ensure that people can provide
19 Affidavits. But so far, the Attorney General has not sought
20 redactions in relation to any Affidavit that has been provided,
21 but there is a lack of clarity as to whether she will seek
22 redactions in the future.

23 And I can illustrate that by taking you to the
24 Affidavit--to a standard sentence that appears so far in all
25 Affidavits that the COI have received, which is that "at the

1 outset, I should further say that in this Affidavit where I
2 mention the document, I do not waive any privilege asserted in
3 respect of it unless I do so expressedly".

4 Now, the difficulty with that is that the witness is
5 effectively--or the Affidavit maker is effectively reserving his
6 or her position, and it's not entirely clear when matters will
7 move forward. It's not clear from that sentence what kind of
8 privilege may be asserted. It's not clear when it might be
9 asserted, and as you will appreciate, Commissioner, that,
10 obviously, can have impact on a hearing. The COI doesn't know
11 how--the extent to which the Attorney General is happy for it to
12 use the Affidavit and exhibits, and it doesn't know whether if
13 it does use it, whether there will be a belated request for a
14 matter to be redacted on the basis of privilege.

15 And so, what I would like to understand or, in my
16 submission it would be helpful for you to understand from
17 Ms Knock--and it's not what the IRU's position is because the
18 IRU acts under the instructions of the Attorney General. So,
19 it's the Attorney General's position that needs to be made
20 clear, and it's that--is it the intent of the Attorney General
21 to comply with the request that is set out in letters of
22 request, and that is to set out--to identify when, for example,
23 submitting an Affidavit what redactions may be sought.

24 COMMISSIONER HICKINBOTTOM: Yes.

25 Ms Knock?

1 MS KNOCK: We have already answered this question in
2 correspondence, Commissioner. I'm not sure what else we can say
3 to this question. We've already answered it.

4 COMMISSIONER HICKINBOTTOM: What is the answer,
5 Ms Knock?

6 MS KNOCK: The answer is that privilege is maintained.

7 COMMISSIONER HICKINBOTTOM: Privilege? What
8 privilege?

9 MS KNOCK: The privilege in the documents.

10 Now, we have not expressly said for any of the
11 Affidavits that we wish any of the documents to be redacted.
12 However, there may come a point in a Hearing where a document
13 arises in an exhibit and is mentioned, and so we wish to
14 maintain our right to say that we maintain privilege. We set
15 this out in correspondence before. I'm not going to speak more
16 to it.

17 COMMISSIONER HICKINBOTTOM: Does that mean that the
18 Attorney General reserves her right in the middle of a hearing,
19 when we're going through the evidence, to bob up and suggest
20 that something is privileged--

21 MS KNOCK: Yes.

22 COMMISSIONER HICKINBOTTOM: --then to set out what the
23 privilege is and the basis for it, and then we can have a debate
24 and a decision on the privilege in that document?

25 MS KNOCK: Yes.

1 COMMISSIONER HICKINBOTTOM: Well, there are--I mean,
2 Mr Rawat may have something to say about that, but there are
3 obvious problems with that because if we knew what documents or
4 information the Attorney General considers is or might be
5 privileged, the chances are for most of it that we can work
6 around that, but we can't work around it if we don't know what,
7 if anything, she is claiming privilege over, and on what basis.

8 MS KNOCK: Commissioner, we will do what we can, but
9 as you will appreciate, we have been asked to provide Affidavits
10 and documents in incredibly short periods of time, even with
11 extensions. So whilst--when we are able to assert privilege and
12 say that we request redactions prior to a hearing we will;
13 however, we still reserve the right to raise an issue of
14 privilege during a hearing if it so arises, and that's all I can
15 say. Those are my instructions, Commissioner.

16 COMMISSIONER HICKINBOTTOM: Anything else, Mr Rawat?

17 MR RAWAT: Well, it's not the most helpful position
18 for the Attorney General to take. It's difficult to understand
19 why in the process of compiling an Affidavit, identifying which
20 materials should go--should be exhibited to it.

21 And perhaps I have wrongly assumed that these
22 Affidavits are being prepared with the assistance of legal
23 representation, but it is difficult to understand why issues
24 around redaction cannot be identified at an early stage.

25 And it's wider than the question of privilege, which

1 is what Ms Knock has focused on. It's whether the--what's also
2 asked, for example, is whether the Attorney General wishes for
3 any personal data to be redacted.

4 COMMISSIONER HICKINBOTTOM: Of course.

5 MR RAWAT: And the point is that it's--I mean, the
6 practical consequences are obvious and significant: Firstly,
7 that if any participant suddenly, at the last minute, in
8 relation to a document where they could have given an indication
9 at an earlier stage, steps up, then we will have to stop the
10 public live-streaming. Secondly, there would then have to be
11 discussions about the extent to which a document can be deployed
12 and a ruling may be necessary; and, depending on that ruling,
13 there would have to be further discussions as to how the
14 document was deployed.

15 And although, Commissioner, you have been prepared to
16 sit late to get witnesses done, the obvious inconvenience and
17 disruption is there. But we have Ms Knock's submissions as to
18 the position of the Attorney General.

19 COMMISSIONER HICKINBOTTOM: Remind me of this,
20 Mr Rawat. There had been--there was some earlier correspondence
21 about redactions. Didn't the Attorney suggest that we gave a
22 certain number of days' notice? I believe it's Stage 2.

23 MR RAWAT: The Attorney General's positions, and I'll
24 be corrected by those who sit behind me--was that she--if the
25 Inquiry were to indicate any redactions that it wanted to make,

1 she could deal with that within two days. I'm going to turn to
2 check whether those who sit behind--

3 COMMISSIONER HICKINBOTTOM: Yes, that rings a bell.

4 But the problem for you is that the Affidavits are
5 coming in so late.

6 MR RAWAT: Yes. But it's--what we--or the way we are
7 going to proceed is that if there is no positive response to
8 what's clearly set out in the Letters of Request, then--seeking
9 redactions, then we will have to assume that no redactions are
10 being sought, and we will proceed on that basis.

11 And we--in terms of what the Letters of Requests seek,
12 that they explain to recipients of a Letter of Request, for
13 example, seeking an Affidavit that if there are redactions
14 sought, then they will need to produce a marked copy of the
15 Affidavit, marked to show the redactions and then fully
16 redacted.

17 But I think, as I understand the Attorney General's
18 position through Ms Knock, it is that no redactions are being
19 sought, but she reserves the right to raise an issue of
20 privilege at a hearing, but I'm assuming--and no doubt Ms Knock
21 will correct us if we're wrong--that that reservation is limited
22 just to questions of privilege, nothing else.

23 COMMISSIONER HICKINBOTTOM: Is that right, Ms Knock?

24 MS KNOCK: Yes, but also redaction insofar that it
25 relates to privilege.

1 COMMISSIONER HICKINBOTTOM: I'm sorry, I simply don't
2 understand that.

3 Ms Knock--

4 MS KNOCK: So, if I'm going to be raising an issue of
5 privilege and, therefore, the document needs to be redacted,
6 then, therefore, it's redaction and privilege in respect to that
7 document.

8 COMMISSIONER HICKINBOTTOM: Well, the only way we can
9 proceed with hearings, if that's the Attorney General's view--if
10 that's the Attorney General's stance, is to proceed on the basis
11 that the evidence that's been submitted to me, that no claim is
12 made--we're going to assume that no claim is made for privilege.
13 If a claim is made at some other time, even during the course of
14 a hearing, we will have to deal with it then because there is no
15 other way of doing it, but we're going to assume that there is
16 no claim for privilege, no claim for any redactions in any of
17 the documents that have been lodged.

18 Good. Mr Rawat.

19 MR RAWAT: I think if we can move on to the next
20 matter, and that is a request which was set out in an e-mail 7th
21 of July 2021, which is addressed to the Secretary to the
22 Commission, and that's in relation to an extension at the time
23 in relation to a number of Affidavits. This was sent by
24 Ms Knock and the extension that is sought is to Wednesday the
25 14th of July 2021.

1 Commissioner, we would--or in my submission that there
2 will be no difficulty in granting that extension in principle.
3 What Ms Knock asked for is some indication as to the priority
4 order, and we can write to the IRU after this hearing to set out
5 which matters may or need to be prioritised in order to best
6 preserve the Hearing timetable.

7 The point that Ms Knock makes is that the IRU and--I
8 mean, the requests don't go to the IRU for Affidavits; they go
9 to the person who's being asked to make the Affidavit. As I
10 understand the Guidance Note that was issued by the Attorney
11 General to that person whether they wish to use it may argue or
12 not. The Commission does routinely copy in the IRU to e-mails.

13 But what I think--two points I think bear keeping in
14 mind: First, that it is not unusual for an Inquiry to
15 seek--here it's Affidavits, in other Inquiries it will be
16 witness statements--from witnesses, explaining circumstances and
17 that's inevitable. That we have to do it in short time is a
18 consequence of the timetable that the Inquiry operates under.

19 That--it might be said that there are many requests.
20 Well, that's a consequence of two things: Firstly, the Terms of
21 Reference; and secondly, that there are a number of matters that
22 you, Commissioner, consider it important that you investigate in
23 order to fulfill the Terms of Reference.

24 COMMISSIONER HICKINBOTTOM: But also, Mr Rawat,
25 because this was dealt with when I directed these Affidavits to

1 be requested and made.

2 Quite a lot of these Affidavits are required because
3 the documents that have been produced are in no sensible order,
4 and the only way of understanding what might have gone on is to
5 get somebody who should know what's going on to set it out in an
6 Affidavit with the documents insofar as they're available.

7 MR RAWAT: And the point I would add to that
8 observation, Commissioner, is that the Affidavits are being
9 sought in relation to documents that have been provided already.
10 So, if I use the example of one that we have sought, which is in
11 relation to Crown Land, you will remember that we had hearings
12 in relation to Crown Land, and so the disclosure was provided.
13 Following that hearing, you directed that further material be
14 identified and provided. And so, the next stage is to ask
15 someone to take the material that has already been identified as
16 relevant and explain it, in effect.

17 So, that's the context in terms of the extension of
18 time. But I would just raise one other matter that arises out
19 of the question of Affidavits.

20 On the 2nd of June, you set out the topics that you
21 were going to investigate. And with some changes, our hearing
22 timetable has adhered to that; and so, at the moment, the topic
23 we've been looking at is the work of the Auditor General and the
24 Complaints Commissioner and the Internal Auditor.

25 As we move through, we will move on to the question of

1 the function of Statutory Boards, we will look at Crown Land,
2 and we will look at contracts, and these are what the requests
3 for Affidavits are going to.

4 But the point I'd like to make is not about a
5 provision of new Affidavits but about the content of those that
6 have been received following granted extensions but which don't
7 appear to have fully answered the request. And if I give an
8 example, and it is an important example, but the COI sent a
9 Letter of Request to The Honourable Premier--as Premier and
10 Minister of Finance, asking that he set out in an Affidavit the
11 details concerning the Statutory Boards that fall under the
12 remit of him as a Minister. Similar Letters of Request were
13 sent to others.

14 In relation to the Affidavit that's been recently
15 received from--responding to that Letter of Request, what is
16 quite clear is that the Affidavit has not addressed a number
17 of--and, in fact, it's eight Statutory Boards that actually come
18 under the Premier's portfolio, and that's not from the COI.
19 It's actually set out in a Cabinet memorandum as that these
20 are--these Statutory Boards come under the Cabinet's portfolio.

21 So, what you were therefore directed was firstly that
22 the--and this was in a letter to the Attorney General, that by
23 4:00 p.m. today, you be provided with a list of all Statutory
24 Boards for which Ministers hold responsibility and a detailed
25 explanation as to how there now appears to be a serious failure

1 to comply with the request to address all Statutory Boards.

2 Particularly, the letter says in circumstances where
3 the IRU has been assisting, we assume perhaps wrongly, with the
4 preparation of Affidavits.

5 Secondly, that insofar as that list is provided, it
6 should contain Statutory Boards and identify Statutory Boards
7 that are not addressed in the Affidavit and the relevant
8 Permanent Secretary or Minister that will provide a further
9 Affidavit addressing the matters concerning those Statutory
10 Boards.

11 And what was asked also was a specific Affidavit be
12 provided by Dr Carolyn O'Neal Morton.

13 Now, I'm summarising that. I think what's important,
14 I've dealt with the Request for Extension, but what perhaps is
15 important to hear from Ms Knock on is whether that request for
16 clarification by 4:00 p.m. today will be met.

17 COMMISSIONER HICKINBOTTOM: Mr Rawat, you've gone
18 through the programme of topics that I set out in--at the
19 beginning of June. As you say, at the moment, we're really
20 dealing with matters arising from the reports of the Auditor
21 General and the Internal Auditor, and that's going to take this
22 week and probably next week. Next on the list of topics would
23 be Statutory Boards.

24 MR RAWAT: It would be.

25 COMMISSIONER HICKINBOTTOM: So this would be the next

1 topic.

2 MR RAWAT: Yes, sir.

3 COMMISSIONER HICKINBOTTOM: So, this is likely to
4 start a week on Monday.

5 MR RAWAT: Yes.

6 COMMISSIONER HICKINBOTTOM: And--right, okay.

7 Yes, Ms Knock.

8 MS KNOCK: Thank you, Commissioner.

9 First of all, I'd just like to reiterate that it is
10 not through lack of will of any of the Public Servants that
11 things have been submitted late. They are--everybody who the
12 IRU is dealing with, everybody who the Attorney General is
13 dealing with is going to great pains to provide the Commission
14 with what they need, and, unfortunately, it takes time, which
15 has been the reason for all of the extensions.

16 Now, also unfortunately, as you will be aware, the BVI
17 is currently in the midst of a huge COVID-19 surge. In fact, it
18 is the worst surge that the BVI has experienced since the COVID
19 pandemic. Currently, there are reported 821 people who have
20 been--who have received a positive COVID-19 test.

21 Now, the knock-on effect of this is that the current
22 guidance is that everybody is required--is suggested and asked
23 to not travel, to work from home as much as they can. And what
24 it also has meant is that many of the public offices and
25 Ministries have shut. In fact, I've been provided a list of

1 every office and Ministry that has been closed as of today,
2 which I can certainly forward on to you.

3 With respect to the Premier's Office, they had two
4 positive cases yesterday, and they've had to shut for at least
5 14 days.

6 So, whilst we will continue to do everything that we
7 can--and when I wrote my e-mail yesterday, we thought we were
8 going to be in a position--everybody thought they were going to
9 be in a position to provide you with the Affidavits by next
10 Wednesday--I can't say that that will be the case because not
11 only are people working remotely, they don't have access to the
12 same IT facilities. They don't have access to their staff.
13 They don't have access to hard copies. And today, when I spoke
14 to the Permanent Secretary of the Premier's Office, she stressed
15 to me she would do what she could with her staff to provide you
16 with the documents, but they would only be electronic documents,
17 so there may be gaps.

18 So, it is unfortunate that this surge has happened now
19 and it has caused disruption, but there will continue to be
20 disruption. I'm receiving phone calls from people in hospital
21 asking me to, please, request an extension, from phone calls
22 talking about their sick children and their sick relatives. And
23 so, there is not a lack of will to provide you with these
24 documents and these Affidavits they just simply need more time.

25 With respect to the Statutory Boards information, we

1 will provide that to you as soon as we can. We have been asking
2 the Permanent Secretaries to confirm the information. We got
3 the letter, I think, two days ago. We've been working with
4 them. But as you will appreciate, not only are the Permanent
5 Secretaries working to provide the Commission of Inquiry with
6 what the Commission requests, but they are also working to run a
7 country.

8 So, we are doing what we can, and particularly with
9 short deadlines. We will be providing the Affidavits, although
10 I'm instructed that the recipients' of Requests for Affidavits
11 are working hard to provide them as quickly as they can, they
12 may not be as detailed as they would ordinarily be because they
13 simply don't have the resources at the moment to provide them.
14 And that's all I can say.

15 We're asking for some compassion from the Commission.
16 We're asking for some understanding that if deadlines are
17 missed, it is not because people are not trying. They are doing
18 everything that they can to get you what you need, Commissioner.

19 COMMISSIONER HICKINBOTTOM: Ms Knock, firstly--and
20 I've said this before, several times, but I'm very, very pleased
21 to reiterate it. I very much appreciate the efforts of the
22 Public Servants in doing the work that they have to do because
23 all, or almost all, of this work has been delegated down from
24 the Ministers to their Public Servants, their work in providing
25 the Commission with the information that they have provided,

1 both in terms of documents and now in terms of Affidavits.

2 Secondly, I am, of course, very sensitive--we're all
3 very sensitive--to the health position here as it's developed,
4 in particular, over the last week, and we understand the
5 challenges that that brings in all sorts of ways, but including
6 in responding to the requests the Commission are making. We're
7 very, very sensitive to that.

8 Of course, most of these requests were made some time
9 ago, long before the unfortunate COVID surge. But what I'm far
10 more interested in is to ensure that the work of the Commission
11 can proceed as best it can, sensibly and safely, in the
12 circumstances that we find ourselves in.

13 My understanding, but Mr Rawat will correct me if I'm
14 wrong, is that the work of the Commission over the next couple
15 of weeks, which, as I say, concerns topics relating to the
16 reports of the Auditor General and the Internal Auditor, there
17 is--there are no outstanding Affidavits for this week or next
18 week, as I understand it.

19 No. I'm just checking, but that's the case.

20 So, in terms of the evidence, we have the evidence
21 that's set up for this week and next week. I've given
22 directions in terms of how we're going to proceed, which is, of
23 course, remotely. But the next topic will be Statutory Boards.
24 And so--and the topic after that will be--is due to be Crown
25 Land.

1 So, in terms of priorities, Ms Knock, what is crucial
2 for our work--and, as you say, there are other things going
3 on--but in terms of our programme, what are crucial are the
4 Affidavits relating to Statutory Boards and the Affidavits
5 relating to Crown Land.

6 In terms of the Statutory Boards, we asked for the
7 gaps to be filled by today, by the end of today.

8 MR RAWAT: It's really to just understand where the
9 gaps are as a first stage, or why there were gaps in the first
10 place. I mean, some of these Affidavits were requested at the
11 beginning of June, so--and it's--it is concerning that if
12 they're going to come in incomplete, then we need to take a
13 view. I mean, it doesn't just affect the timetable. We need to
14 consider then the best way of filling in the gaps so that we can
15 have focused hearings, rather than having to bring people back.
16 And that's particularly difficult if, as you say, and as
17 Ms Knock pointed out, and as everybody knows, the COVID
18 situation has now changed.

19 COMMISSIONER HICKINBOTTOM: So, the response to that
20 letter, Ms Knock, is vital for the term--in terms of at
21 timetable because Mr Rawat and the COI Team supporting me do
22 need time to prepare for the hearings.

23 And secondly, Crown Land. And my understanding--but
24 correct me if I'm wrong--is that you're suggesting, subject to
25 everything else being equal and things not becoming even more

1 adverse, but you were at least hoping that those would be sent
2 in by next Wednesday.

3 MS KNOCK: Yes. I think at moment there are 13 or 14
4 Affidavits that you have requested that are outstanding. And
5 so, we will--we are working as hard as we can with--and I know
6 that the recipients of Requests for Affidavits are working as
7 hard as they can, as you have been told before by Sir Geoffrey.
8 So it's--we're working with an understaffed Public Service here,
9 and they're trying to do what they can.

10 And I appreciate that you have said that Statutory
11 Boards will be the next topic. We will work to get you that
12 information as soon as we can. We appreciate that you do need
13 the time to prepare. It's not going to be possible to get your
14 list today by 4:00 p.m., particularly what's happened over the
15 past two days.

16 So, we will get you that information as soon as we
17 can. We will be providing you with the Affidavits as and when
18 they are finalised. It may be that the Affidavits actually are
19 witness statements, rather than Affidavits, because the
20 recipients may not be able to find notaries or Commissioners of
21 Oath at the moment.

22 But rest assured, we are doing what we can. We do not
23 want the Commission to continue any longer than you want the
24 Commission to continue, Commissioner. So, we will--we are
25 doing--it is not for lack of will that the extensions have been

1 granted. We're working with a very understaffed Public Service
2 here who are trying their best, and a lot of the Affidavits are
3 addressed to the same Ministries, in particular the Ministry of
4 Finance and the Premier's Office, and they are doing what they
5 can to give you the information.

6 Now, if there have been gaps in the information that
7 they have provided, then once those gaps are identified, we will
8 work--they will work to provide you with that information.

9 COMMISSIONER HICKINBOTTOM: No, Ms Knock. As I say, I
10 understand the pressure that the Public Service is working
11 under. But it--with respect, it is not up to the Commission of
12 Inquiry to identify gaps in Statutory Boards where the Ministers
13 must know which boards fall under their umbrella. And as
14 Mr Rawat says, that the Premier/Minister of Finance's response
15 appears to be a Statutory Board short.

16 So, it's very important that we get some handle on
17 when we are going to get the substantive information concerning
18 Statutory Boards. And the letter that's outstanding really goes
19 to that issue, why it has been missed out and when can these
20 gaps be filled. But it's obviously for the Ministries to
21 identify the Statutory Boards that fall under their umbrella.
22 If they simply can't identify their own Statutory Boards, well,
23 that will tell a particular story, but I suspect that's not the
24 case.

25 Could you come back to us by the end of tomorrow,

1 which is a Friday, at least telling us what the position is with
2 regard to the evidence on Statutory Boards?

3 MS KNOCK: Yes, Commissioner. We will do so.

4 COMMISSIONER HICKINBOTTOM: Thank you very much.

5 And similarly on Crown Land, if you could make
6 inquiries about Crown Land because you've said that you hope to
7 get these Affidavits in by next Wednesday. And I certainly
8 understand the point you make about difficulties in swearing
9 Affidavits currently. I understand that; and statements which
10 can be sworn later if necessary would, of course, be fine.

11 But again, in terms of Crown Land, it would be helpful
12 for us to know by the end of tomorrow, so far as you're able to
13 ascertain it, where we stand in relation to getting the
14 Affidavits in relation to Crown Land together, and to us because
15 we are working towards dealing with those topics in the next
16 couple of weeks.

17 MS KNOCK: I understand, Commissioner. We will do
18 what we can.

19 COMMISSIONER HICKINBOTTOM: Good. Thank you very
20 much.

21 Anything else, Mr Rawat?

22 MR FLIGELSTONE DAVIES: If I may be of assistance?

23 COMMISSIONER HICKINBOTTOM: Yes. Yes, Mr Davies.

24 MR FLIGELSTONE DAVIES: Well, what the Labour Tribunal
25 does in such situations, having been in a few matters myself, is

1 that Affidavits are sworn remotely by their Commissioner of
2 Oath, who happens to be the Secretary to the Tribunal. So a
3 signed copy of the Affidavit is sent to the--or a copy of the
4 Affidavit is signed; she takes the oath on video; and then it's
5 scanned in and sent to her. If that may be--if that procedure
6 may assist--the same--a similar procedure can assist--

7 COMMISSIONER HICKINBOTTOM: Thank you, Mr Fligelstone.
8 Ms Knock will note that.

9 As I say at the moment, I'm interested in the
10 substance of the evidence because the formalities can be dealt
11 with in another way or later, if necessary.

12 Ms Knock, you've heard what Mr Davies says about that.
13 That may help.

14 MS KNOCK: Yes, thank you, Mr Davies.

15 COMMISSIONER HICKINBOTTOM: Mr Rawat.

16 MR RAWAT: Just, I think in terms of trying to find a
17 pragmatic way through, if--I think the key--two key points to
18 emphasise is if Ms Knock can come back to us and give a
19 realistic assessment of, firstly, the reason why there were gaps
20 in the Statutory Boards Affidavit; secondly, how those gaps will
21 be filled; and then, thirdly, the position on producing an
22 Affidavit in relation to Crown Land because that then will allow
23 us to plan realistically for the weeks to come.

24 COMMISSIONER HICKINBOTTOM: Exactly.

25 MR RAWAT: One final observation I would make, though,

1 is perhaps it's important to point out that the Letters of
2 Request go to the Minister. So, the request for an Affidavit
3 is, be it to the Premier or the Minister of Fi--as Premier or
4 Minister of Finance or to another Minister, it goes not to the
5 Ministry but to the Minister, and it is then a matter for the
6 Minister to decide whether he will provide the Affidavit or
7 whether he will ask someone in his Ministry to provide it.

8 The Commission has always recognised the efforts that
9 have been made by Public Officers to provide it with
10 information, and that has not--it's not been--just been
11 reiterated by yourself, Commissioner, from time to time, but
12 also directly to those officers when they have given evidence.

13 But perhaps we may--it may be that the Commission has
14 been proceeding under a misapprehension that those who are
15 providing these Affidavits have the benefit of legal support in
16 so doing. I don't know whether, Commissioner, Ms Knock might be
17 able to assist you with an explanation of what support is being
18 provided to these Public Officers if they are being asked to
19 make Affidavits by their Ministers.

20 COMMISSIONER HICKINBOTTOM: We've--I've assumed,
21 Ms Knock, that the IRU/the AG's Chambers are supporting the
22 Ministers and other Public Servants in producing the Affidavits
23 that they are producing.

24 MS KNOCK: We are providing whatever support that the
25 Ministers and Public Servants request.

1 COMMISSIONER HICKINBOTTOM: There we are.

2 MR RAWAT: Right.

3 I think the penultimate matter we need to deal with is
4 the question of the Commission's request for hard-copy bundles,
5 and this is set out in the Protocol, and that is that in
6 addition to the material being provided in hard copy, then it
7 should also be provided--in electronic copy. Forgive me--it
8 should also be provided by--in hard copy, and the Protocol asks
9 for five hard copies.

10 Perhaps it might help, Commissioner, if I just give
11 some context as to why the Protocol does say that and why it
12 doesn't simply say "can we have it in electronic", and it takes
13 us back to the fact that we are having to do hearings under
14 pressure of time. Disclosure has been a much more prolonged
15 process than anticipated, for reasons that have been ventilated
16 and we don't need to go over again.

17 Affidavits have taken longer to be provided than,
18 again, anticipated, and that was happening even before the COVID
19 surge and, as Ms Knock makes the point, is that that will now be
20 a factor that may introduce further delay.

21 What that means in reality is that the time that the
22 Commission of Inquiry has and the team that I am part of has in
23 terms of getting ready for a hearing is much reduced, and not
24 just in terms of preparation time but for the other matters that
25 one needs to go through in order to be ready to have a hearing,

1 and that is why we asked for hard-copy bundles, and it means
2 that I will have a hard copy; you, Commissioner, will have a
3 hard-copy bundle; there will be hard-copy bundles available for
4 witnesses. You will have seen that there have been occasions
5 when we have called two witnesses together, and it's effectively
6 the quid pro quo.

7 If more time is needed to provide a--to provide, for
8 example, an Affidavit, then the way that--that comes with the
9 request that it be given in hard copy, and that's why it was set
10 out in the Protocol as it was. We need to be able to move in a
11 flexible manner, which is why also we have asked that redacted
12 copies be provided if redaction is being sought because--and it
13 goes back to the point that Ms Knock has made on behalf of the
14 Attorney General. If she is going to reserve her position in
15 relation to privilege, that again emphasises why the Commission,
16 in order to get its work done, has to try and behave or act and
17 proceed in as flexible a manner as possible. And so, that sets
18 out the rationale for the Protocol, I hope.

19 This takes us back to a letter that Mr Olympitis wrote
20 to the Commission, and it's dated the 7th of July, and it
21 basically says this: That neither the Attorney General's
22 Chambers nor Withers BVI have the capacity, in terms of time,
23 personnel or equipment, to deal with producing copies or
24 bundles, and that what's said is that is because of the number
25 of Affidavits that have been sought; that a commercial

1 photocopying outlet would charge USD 14,000, and the alternative
2 is that, for £7,000, Withers will have their London office make
3 the copies and deliver it to the BVI's London office.

4 The letter concludes: "Let me know how the
5 Commissioner wishes to proceed. To the extent necessary, please
6 treat this letter as an application to the Commission in respect
7 to any costs as may required be incurred".

8 And I take that what Mr--or at least the Attorney
9 General's point is that, if she is going--and those she
10 instructs are going to be required to provide hard--I think more
11 than one hard copy bundle, then they will charge the Commission
12 for it.

13 COMMISSIONER HICKINBOTTOM: Yes.

14 Ms Knock, the--as Mr Rawat has said, the reason for
15 requiring hard copies in the Protocol is essentially the
16 practical one, and that is that Mr Rawat and the COI Team do
17 need time to prepare, and that time, because of the lateness of
18 lodging both the documents and now Affidavits is, I mean,
19 extremely short, and the only way that we can proceed
20 expeditiously is to require hard copies. I understand that hard
21 copies have been requested in at least one other Commission of
22 Inquiry, but I don't know the reason it was requested in that
23 Inquiry. But, certainly in this, that's the reason.

24 And if the combined resources of Withers and the
25 Attorney General's Chambers say that they simply can't do the

1 copying, given the time and resources they have, it's very
2 difficult to see how the Commission of Inquiry could do that in
3 the very limited time we have, given the lateness of lodging of
4 evidence.

5 MS KNOCK: Well, there are--I think there are two
6 issues here, Commissioner: The first is ability to prepare, and
7 the second is cost.

8 Now, the first, being the ability to prepare, now I
9 can say, as a BVI legal practitioner and somebody who is
10 qualified as a Solicitor in England and Wales, holding current
11 practicing certificates in both jurisdictions, that it is not
12 necessary to have hard copies of documents to be able to prepare
13 for a hearing. Indeed, the BVI Commercial Court and the BVI
14 High Court have been using electronic bundles not only
15 throughout the pandemic but also post-Irma. We, as a
16 jurisdiction, are used to using electronic bundles.

17 Now, that's number one. I don't agree with your
18 assertion that you need five copies of documents in order to be
19 able to properly prepare.

20 The second one is costs. Now, this is not a new
21 issue. We have made it clear on numerous occasions--indeed,
22 before Mr Olympitis' letter yesterday--that the BVI Government
23 is not prepared to fund the Commission's requirements for
24 photocopying and also does not have the resources to do so. It
25 has provided two different ways that the Commission may wish to

1 receive these documents. One is by use of a local firm;
2 however--sorry, a local printing firm; however, given the
3 sensitive nature of these documents, they do not think that that
4 would be advisable; or also, potentially using Withers's London
5 office.

6 Now, as you may be aware, Commissioner, everybody on
7 the IRU team has sworn an Oath of Confidentiality, and indeed,
8 as have the--everybody who works for the Attorney's Chambers.
9 If personnel in Withers' London office are to provide these
10 photocopies, they will also swear an Oath of Confidentiality.
11 So it is up to the Commission. If they wish to have hard
12 copies, they will have to pay for them. The Attorney
13 General's--the Attorney General, nor Withers, will pay for
14 these, nor will the BVI Government, I'm afraid, Commissioner.

15 COMMISSIONER HICKINBOTTOM: And what power have I got
16 to pay such costs?

17 MS KNOCK: Well, on the Commission's website, it says
18 that the core costs of the Commission will be borne by the UK
19 Government.

20 COMMISSIONER HICKINBOTTOM: No, no, no. What power
21 have I got to order these--direct these costs to be paid? What
22 power--

23 MS KNOCK: You have all the powers of a Judge.

24 COMMISSIONER HICKINBOTTOM: I have all the powers of a
25 Judge in respect to summonses, but, unfortunately, not all

1 powers of a Judge. Sometimes I'd rather like to have all the
2 powers of a Judge, but I simply don't have all those powers.

3 MS KNOCK: Well, we are going to have to come to some
4 sort of arrangement if you wish to have hard copies because the
5 BVI Government is not providing you with five hard copies of all
6 of the Affidavits, Commissioner.

7 COMMISSIONER HICKINBOTTOM: So, that is a point where
8 the Attorney General is not going to comply with the Protocol.

9 MS KNOCK: Correct. As I mentioned before, she will
10 not be providing with--she will not be complying with all of the
11 Protocols. We have made this position very clear in previous
12 correspondence, that it is disproportionate and costly to think
13 that the BVI Government should be providing five hard copies.

14 Also, Commissioner, it is not clear--and we have asked
15 this question before--where these five copies are going to go,
16 and also what is going to happen to these five copies of
17 documents after the Commission is finished.

18 Now, part of the reason why the IRU has been
19 instructed by the Attorney General's Chambers is to ensure that
20 all Government documents are logged before they are provided to
21 the Commission because the BVI Government wants to know where
22 its documents are at all times. We have asked you prev--on
23 numerous occasions, dating back to when we had to provide
24 documents by e-mail, what the security systems were in order to
25 keep the BVI Government's documents safe, and we have never had

1 a proper answer other than to say that the Commission will keep
2 them safe.

3 So, to provide five hard copies of documents again
4 raises a security issue. Quite apart from the costs and the
5 labour, it simply not possible for the BVI Government to provide
6 copy--five copies of all those documents unless it is outsourced
7 to another firm, and the BVI Government will not be paying those
8 costs.

9 COMMISSIONER HICKINBOTTOM: Mr Rawat, in terms of the
10 practicalities, for this week and next week, we are fair set in
11 terms of the evidence, as I understand it?

12 MR RAWAT: Yes.

13 COMMISSIONER HICKINBOTTOM: In respect to Statutory
14 Boards, we don't have all that evidence yet?

15 MR RAWAT: Yes. And we may, on Ms Knock's
16 submissions, may not get it.

17 COMMISSIONER HICKINBOTTOM: Well, we may not.

18 MS KNOCK: No, that's not what I said, Mr Rawat. I
19 didn't say you may not get it. I said you may--you will not get
20 your letter by today. I did not say that you may not get all of
21 the information that you are seeking in relation to Statutory
22 Boards.

23 COMMISSIONER HICKINBOTTOM: Just one moment, Ms Knock.
24 But we don't know when we'll get it. We don't--

25 MS KNOCK: We are hoping that you will get it next

1 week, but we are try--we are doing what we can to provide you
2 with that. We are mindful that your hearings in relation to
3 Statutory Boards start a week on Monday, so we will--we are
4 aiming to get you that information as soon as we can,
5 Commissioner. I've not said that you will not be getting it.

6 COMMISSIONER HICKINBOTTOM: And in terms of the--in
7 terms of the Affidavits to date, in terms of Statutory Boards,
8 how lengthy are they?

9 MS KNOCK: They're fairly lengthy, Commissioner.

10 COMMISSIONER HICKINBOTTOM: Well, "fairly lengthy" is
11 not very precise.

12 MS KNOCK: Okay. Well, for one of them, I believe the
13 exhibit runs to over a thousand pages.

14 COMMISSIONER HICKINBOTTOM: So, what's the practical
15 way forward for this?

16 MR RAWAT: Well, I think the position we've reached is
17 that we are in a posi--we are able to continue with our hearings
18 into next week.

19 COMMISSIONER HICKINBOTTOM: Certainly.

20 MR RAWAT: In relation to Statutory Boards and with
21 respect to Ms Knock--and I think it's better if we both do our
22 advocacy through the Commissioner rather than engaging, perhaps,
23 in ping-pong match. But the point that we have is that we have
24 Affidavits that have been received, but there are gaps in them.
25 If those gaps need to be filled, then all that Ms Knock can say

1 at the moment is that a letter--the response to your request,
2 Commissioner, that some explanation be given, which was asked
3 for by 4:00 p.m. today, will not come by 4:00 p.m. today. It
4 will come, possibly, tomorrow.

5 In terms of further Affidavits to complete the gaps,
6 all that Ms Knock can say is that they may come sometime next
7 week. So, the position we are in at the moment is that there is
8 a question mark over the extent to which we can begin hearing
9 evidence on Statutory Boards on the 19th of July.

10 COMMISSIONER HICKINBOTTOM: That's certainly right,
11 Mr Rawat.

12 But what about the hard-copy bundles?

13 MR RAWAT: Well, I've set out the reasons why we need
14 them. And with respect to the Attorney General, I think
15 Ms Knock's submissions make my point for me because we may be
16 dealing with evidence that is coming in at a very late point,
17 indeed. And it may be that the BVI--BVI lawyers are far more
18 evolved than those in England and Wales. My experience has been
19 that--and it's--perhaps I've done more inquiries than others in
20 this hearing--that people do routinely provide hard copies, and
21 they do do so when requested by an Inquiry Chair or a
22 Commissioner.

23 Can I pick up one point, though, which is that
24 Ms Knock's concern, which she says has not been answered by the
25 Commission, about the safety of material, there has--the

1 Commission takes great steps, has throughout taken great steps,
2 to ensure not only that the material is kept safe but it is held
3 in such a way to make sure that the public can understand and
4 appreciate the independence of the Inquiry is important, and
5 that's why, as you indicated, we could not use the DISCO system,
6 and that's why we've asked for material to be provided in
7 certain ways.

8 The position that we have reached in terms of fact is
9 that there has been one leak of information that has been
10 provided to the Commission; that has been confirmed as not
11 having emanated from the Commission. The other place it could
12 have emanated from is the Government that has been confirmed as
13 not emanating from the Government. The Attorney General has
14 been written to and is still in the process of investigating
15 the--who had access to the document that was leaked to the press
16 and how it came to be leaked, and a reply is awaited for her.

17 But given that Ms Knock has made clear the efforts
18 that the IRU go to track where material goes, it might be
19 helpful if she can respond, perhaps not now but in writing, to
20 the direction that you made in relation to that leak, which was
21 to set out--and this--a request made to the Attorney General, to
22 identify now which lawyers, which paralegals did have access to
23 the document that was leaked because that's information, in my
24 submission, that will provide comfort to you, Commissioner, in
25 dealing with a matter which, as you made clear, you took with

1 great seriousness. And that will, no doubt, I'm sure, if
2 Ms Knock cannot provide it immediately, will form part of the
3 Reply that the Attorney General will give in full shortly.

4 COMMISSIONER HICKINBOTTOM: I mean, I think in respect
5 to that point, Ms Knock, you should liaise with the Attorney
6 General. It will come as great comfort to the Attorney General
7 that there is such a good tracking system as to where documents
8 go, and it will assist her in responding to my request that I
9 have a full list of anyone who saw the leaked document or a
10 draft of the leaked document. So, that will help.

11 In relation to the Affidavits, we have the Protocol.
12 Nobody has sought to challenge the Protocol. And the Protocol
13 requires the hard-copy documents, in terms of evidence, to be
14 lodged. You say that the BVI courts are electronic. But
15 certainly, here, within the--in the Commission of Inquiry,
16 certainly most of the witnesses have asked for hard-copy
17 documents; very rarely have they not. We sometimes have more
18 than one witness giving evidence at the same time. Because of
19 COVID, they have to have their own bundle of documents. Now, of
20 course, they'll be remote. And, certainly, Mr Rawat and I work
21 from paper documents. What I would--so, there's nothing further
22 for me to say. We have the Protocol, and the Attorney General
23 and those she represents as participants are bound by the
24 Protocol.

25 But I would say this, Ms Knock: What I am most

1 urgently concerned with is the work which the Commission of
2 Inquiry that I wish to do over the next two or three weeks, I've
3 identified what that work is. After next week, it will be
4 Statutory Boards, and after that, it will be Crown Land. And
5 it's those Affidavits that we will need in hard copy to enable
6 those hearings to proceed.

7 MS KNOCK: Commissioner, I think we've made the
8 Attorney General's posi--I think I've made the Attorney
9 General's position clear. There will--the Commission will not
10 be provided with five hard copies of the Affidavits and the
11 exhibits.

12 COMMISSIONER HICKINBOTTOM: Well, I've made my
13 position clear, Ms Knock. The Protocols are there.
14 Participants are required to comply with the Protocols. We've
15 identified--I've identified exactly why we need the hard copies.
16 I've identified, in particular, that the Affidavits that we need
17 to have hard copies of to proceed with our work in an efficient
18 way.

19 MS KNOCK: And we have provided you with alternatives.
20 If the Commission will fund the cost of providing those
21 documents, five hard copies, then they will be provided.
22 Otherwise, they will not be provided. And at the moment, they
23 cannot be provided because the offices are shut, Commissioner.
24 There is nobody to physically copy them, even if we were going
25 to.

1 COMMISSIONER HICKINBOTTOM: Well, the Protocol is
2 there. We have a couple of weeks to work out a practical
3 solution. I wish these hearings to proceed in an efficient way.

4 As you'll appreciate, the documents you're providing
5 are not all of the documents that we're having to produce the
6 hearings. They're only the evidence upon which the Attorney
7 General, the IRU is producing. That's all it is. It's a
8 fraction of the documents that we have to produce. And so, the
9 Protocols are there, and I've indicated that in respect of those
10 two topics, I wish those, the Protocols, to be complied with.

11 MS KNOCK: May I suggest that the Commission considers
12 using electronic bundles because, as I've mentioned before,
13 people in the BVI are very used to using electronic bundles in
14 hearings.

15 COMMISSIONER HICKINBOTTOM: Well, as I say, our
16 witnesses are--prefer hard copies, and I understand that, and at
17 moment we are using hard copies.

18 Anything else, Mr Rawat, from the list?

19 MR RAWAT: No.

20 Can I just--there's one final matter which is related
21 to some recent disclosures made, and that's in relation to
22 assertion of a claim for privilege.

23 Now, Commissioner, you indicated earlier that this
24 matter will need to be heard in a private hearing.

25 COMMISSIONER HICKINBOTTOM: Yes.

1 MR RAWAT: The letter of today moves it a little bit
2 forward. I'd suggest that if all parties take this approach,
3 and that is not to refer either to the detail in that letter or
4 the detail in the document itself, then we--

5 COMMISSIONER HICKINBOTTOM: We needn't go into private
6 session.

7 MR RAWAT: --we needn't go into private session, and
8 we have also the three-minute delay, in any event, if anybody
9 wants to object.

10 The position that we've reached, as I understand the
11 letter, is that the--on the particular document in which--on
12 which privilege was asserted, what's said is that the Attorney
13 General would be willing to waive the claim for privilege, but
14 what then follows is a condition that is attached to it,
15 beginning with the words "So long" in the letter.

16 With respect, again, to Mr Olympitis, it's not a good
17 point to say that privilege will be waived on the basis of a
18 particular condition being imposed as to the use of the
19 document. Either a privilege is waived or it is not. I don't
20 think that there is a proper basis on which conditions can be
21 imposed, and it has practical consequences because if the
22 document is then put to a witness, they might not feel bound by
23 the same condition.

24 And so, I think that the decision on what--for the
25 Attorney General, no doubt acting on instruction because it's

1 not her privilege to waive, the decision or clarification that
2 needs to be sought from Ms Knock is whether the
3 document--privilege is waived or whether it's not.

4 MS KNOCK: Well, I think that Mr Olympitis in his
5 letter made it very clear. The Attorney General is willing to
6 waive privilege on that particular document so long as it is put
7 into context. And so--

8 COMMISSIONER HICKINBOTTOM: But the context is
9 evidential. How can the Attorney General give that evidence?

10 MS KNOCK: I think--I'm not sure I can add anything
11 more to--without talking about the document itself. I'm not
12 sure I can add anything more to what Mr Olympitis had to say.
13 If you would like to discuss this via correspondence, then we
14 certainly can.

15 COMMISSIONER HICKINBOTTOM: No, no.

16 MS KNOCK: But, right now either--

17 (Overlapping speakers.)

18 MS KNOCK: --either privilege is maintained or
19 privilege is not maintained with that condition.

20 That's--there's nothing more I can say, Commissioner.

21 If you would like to continue this discussion off-line
22 and via correspondence, then we can. But that is the position.
23 Those are my instructions. I can't add anything more.

24 COMMISSIONER HICKINBOTTOM: Well, let's see. Are you
25 saying you want to go into private session to discuss this?

1 MS KNOCK: No, I'm not saying I want to go into
2 private session to discuss this, Commissioner. I am saying that
3 our position was put in that letter. There is nothing more to
4 say.

5 COMMISSIONER HICKINBOTTOM: Do you accept that the
6 condition is evidential?

7 MS KNOCK: In what respect, Commissioner?

8 COMMISSIONER HICKINBOTTOM: Well, it's giving
9 evidence. The context that's given--that's set out there is a
10 matter of evidence.

11 MS KNOCK: Commissioner, I am not prepared to discuss
12 this privilege any further, either in a public hearing or not in
13 a public hearing. We have made our position clear. I am not
14 discussing it any further.

15 COMMISSIONER HICKINBOTTOM: But it's not clear.
16 That's the trouble.

17 MS KNOCK: But it is clear. And I'm not discussing it
18 any further at this stage.

19 COMMISSIONER HICKINBOTTOM: Well, it's not clear to
20 me, I'm afraid, Ms Knock, and one of the purposes of this
21 hearing is to determine whether privilege is waived or not.

22 MS KNOCK: Well, I can go away and I can seek further
23 instructions, Commissioner, but at this point in time I cannot
24 discuss this any further. We have made our point, and that is
25 how it's going to be. I can go away; I can seek instructions;

1 but, right now, I have nothing further to say on this point.

2 COMMISSIONER HICKINBOTTOM: I mean--

3 MR RAWAT: I think the position we've reached is that
4 Ms Knock's instructions are limited to what is set out in the
5 letter of today's date from Mr Olympitis.

6 COMMISSIONER HICKINBOTTOM: And she can't go further.

7 MR RAWAT: And she's not--she has no further
8 instructions on the points. All that we can ask her to do is to
9 take further instructions as to the basis on which the Attorney
10 General would be willing to waive the claim for privilege. In
11 taking the instructions, you might be assisted by some
12 clarification as to who is actually asserting the privilege, the
13 basis on which it's being asserted as well. But other than
14 that, I don't think, in light of what Ms Knock has just said,
15 the matter can be taken any further.

16 COMMISSIONER HICKINBOTTOM: In respect to the hearings
17 next week, I'd like to deal with this at a hearing. It should
18 be dealt with in a hearing, and it can be dealt with in a
19 private hearing if that's what the Attorney General wants. What
20 I'd like is somebody with full instructions, on behalf of the
21 Attorney, to be able to make submissions to me. When next week
22 can that best be done?

23 MR RAWAT: We have--the timetable has--we'll be
24 dealing with legal submissions next week on the 13th of July.
25 We've--we haven't yet published that, but we have written both

1 to the participants--

2 COMMISSIONER HICKINBOTTOM: (Unclear.)

3 (Overlapping speakers.)

4 MR RAWAT: --in writing legal submissions on specific
5 matters.

6 COMMISSIONER HICKINBOTTOM: And that's at half past
7 9:00 on Tuesday?

8 MR RAWAT: Yes. So--

9 COMMISSIONER HICKINBOTTOM: Okay.

10 MR RAWAT: --if--

11 COMMISSIONER HICKINBOTTOM: We'll deal with it then.

12 MR RAWAT: --it's not been taken instructions by that
13 time, we can revisit the matter on--

14 COMMISSIONER HICKINBOTTOM: Yes.

15 (Overlapping speakers.)

16 COMMISSIONER HICKINBOTTOM: Yes.

17 So, Ms Knock, this part of the Directions Hearing are
18 simply adjourned over until 9:30 next Tuesday. It will be
19 remote, in any event, but then we do need somebody with
20 instructions from the Attorney General to explain the privilege
21 that's claimed, if indeed it's still claimed, and to explain the
22 condition if the condition is maintained.

23 MS KNOCK: Okay.

24 COMMISSIONER HICKINBOTTOM: Good.

25 MS KNOCK: Understood.

1 COMMISSIONER HICKINBOTTOM: Thank you very much.

2 Is that--anything else, Mr Rawat?

3 MR RAWAT: I think that concludes all the matters that
4 we need to deal with. I don't have any further to raise.

5 COMMISSIONER HICKINBOTTOM: Good.

6 Mr Fligelstone Davies, is there anything to add?

7 MR FLIGELSTONE DAVIES: No, Mr Commissioner. I
8 think--I don't think there is anything I can add.

9 COMMISSIONER HICKINBOTTOM: Good. Thank you very
10 much, Mr Davies.

11 I'll rise because we have further evidence this
12 afternoon. I'll rise now while we just reconstitute ourselves.

13 Good.

14 MR FLIGELSTONE DAVIES: Thank you.

15 COMMISSIONER HICKINBOTTOM: Thank you very much.

16 (Recess.)

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Session 3

COMMISSIONER HICKINBOTTOM: Dr Glasgow, can you hear and see us?

THE WITNESS: Yes, Commissioner.

COMMISSIONER HICKINBOTTOM: Good. And we can hear and see you. Thank you very much.

Mr Rawat.

BY MR RAWAT:

Q. Dr Glasgow, I hope you can hear me as well?

A. I can hear you.

Q. Thank you very much for making yourself available to give evidence today. I understand that you would like to affirm; is that right?

A. Yes, that's correct.

Q. And you have the words of the affirmation with you?

A. Yes, I do.

Q. Would you read out the affirmation now, please.

A. I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth, and nothing but the truth.

Q. Thank you.

Can I just check what you have with you. Do you have a copy of the Affidavit that you've provided to the Commission?

A. Yes, I do.

Q. Together with the exhibits as well?

1 A. Yes.

2 Q. What I'll try and do, in putting questions to you, is
3 stick to the exhibits, but it may be that we might need to go to
4 what we've marked as the Constitution and Legislation Bundle.
5 Do you have a copy of that?

6 A. Yes, I have a copy.

7 Q. Thank you very much.

8 I'll try--and this is something I say to all
9 witnesses--to keep my questions short and simple, but if at any
10 time I ask a question that you find difficult to understand,
11 please do stop me, and I'll try and repeat it or rephrase it,
12 all right?

13 A. Sure.

14 Q. Thank you.

15 Can I also ask that you keep your voice up so that the
16 Stenographer can hear you clearly so can we have an accurate
17 record of your evidence.

18 A. Sure.

19 Q. The only thing that we both will need to try and do is
20 not to speak over each other. I'm probably more guilty of that
21 than you will be, but if we both keep that in mind, it should be
22 easier going forward.

23 Dr Glasgow, you have in your Affidavit identified your
24 current role as being Director of Projects of the Ministry of
25 Finance. Before we turn to what that involves, could you just

1 give the Commissioner an outline of your professional background
2 before you were appointed to that role?

3 A. Sure.

4 I'm trained as a civil engineer, having completed a
5 Bachelor in Civil Engineering at the Florida A&M University
6 followed by a Master of Science and Doctor of Philosophy at the
7 University of Minnesota.

8 I do have a Professional Engineering licence that I
9 operate under.

10 I joined the Public Service in 2003 for a short stint,
11 for about four months at the Vehicle Licencing Department as a
12 Chief Licencing Officer. During that transitional period--or
13 after that transitional period, after that four months, I was
14 the Deputy Director for Public Works Department, and I served in
15 that capacity until 2007 to which I acted as Director for Public
16 Works until 2012.

17 In 2012, I joined the Ministry of at the time
18 Communications and Works, that's now Ministry of Transportation,
19 Works and Utilities, as a Chief of Infrastructure, Planning,
20 Research, and Development. I stayed there for two years.

21 And I'm now in my current position being the Director
22 of Projects which I started in February of 2014.

23 Q. I think you have given the date--your start date as
24 the 17th of February 2014?

25 A. That's correct.

1 Q. And could you just explain to the Commissioner what
2 the role of Director of Projects involves?

3 A. Yes, sure.

4 And so, as Director of Projects, I am the lead
5 personnel on capital projects and technical matters to advise
6 the Government. In that role, I guide the development of
7 project management, project development, risk management,
8 quality standards, et cetera, for the execution of
9 infrastructure projects funded by the Government, and also
10 sponsored by Government.

11 I facilitate the preparation of the capital
12 expenditure programme for the Government on behalf of the
13 Ministry of Finance. We do have a monitoring role in the unit,
14 that's the Projects Unit that I served with, to monitor the
15 delivery of capital expenditure programmes from different
16 Ministries, so somewhat of a vetting role. And then there is
17 also the role of project budgeting to ensure from a policy
18 perspective, a financial perspective, that projects are
19 delivered with key value for money, transparency in a
20 transparent manner, fair, and also for the benefit of the
21 Government--of the people of the Virgin Islands.

22 Those are the primary roles. Of course, there are
23 ancillary roles, assisting in decision-making, advising the
24 Financial Secretary in those matters, deliver Cabinet--the
25 matters of Cabinet. And again an advisory role.

1 Over the years, I have taken keen interest in
2 procurement, being trained and having taken quite a few courses
3 and undertakings related to procurement, the procurement of
4 projects through loans and other funding agencies.

5 So, in brief--well, not so brief, that's what I do for
6 Government of the Virgin Islands.

7 Q. You mentioned the Projects Unit. The Commissioner has
8 heard evidence of--that there was a Project Management Unit in
9 the Ministry of Finance, and certainly that was in existence
10 around 2014-2015. Is that the same unit that you're a part of?

11 A. Yes.

12 So the correct name is not "Project Management Unit".
13 The correct name is "Projects Unit". Projects Unit is comprised
14 of two different components: Project Services Support Unit, so
15 that's where you have your project management, that deals with
16 projects once they have been procured; and also the Procurement
17 Unit, which is involved in assisting the Central Tenders Board
18 in the procurement of projects that we call "major projects",
19 projects that are valued over USD 100,000.

20 Q. I've also--you've explained that its proper name is
21 the Projects Unit. And has it always been Projects Unit?

22 A. No. Prior to that it was simply Project Support
23 Services Unit; and, prior to that, it was called the--I think
24 the name was "Project Cycle Management Unit". That's way before
25 my time.

1 Q. Can you--you said it's way before your time. Can you
2 give the Commissioner an idea of when that unit was first
3 established?

4 A. I--I do not know that.

5 Q. When you joined it in 2015, was it already an
6 established unit within the Ministry of Finance?

7 A. Yes, when I joined in 2014, that is.

8 Q. Sorry.

9 A. It was called a "Project Support Services Unit", so
10 the name had already changed. And so, once I joined, not too
11 along after, it was called "Projects Unit."

12 Q. Thank you very much for that.

13 Can I just turn to your Affidavit itself and just take
14 you to paragraph 3 of that Affidavit, please. That says: "At
15 the outset, I should further say that in this Affidavit where I
16 mentioned a document, I do not waive any privilege asserted in
17 respect of it unless I do so expressly".

18 Now, you have--and this is you will see this at
19 paragraph 5, you have an exhibit to your Affidavit which
20 contains a number of documents. Which of those documents, if
21 any, are you asserting privilege over, Dr Glasgow?

22 A. (a)--and let me ensure that I have your correct--the
23 correct understanding. Asserting privilege mean I do take
24 ownership of that.

25 Q. Well, it's just in your Affidavit. If you look at

1 paragraph 3 of your Affidavit--

2 A. Yes.

3 Q. --it says that you do not waive any privilege asserted
4 in respect of a document unless you do so expressedly.

5 COMMISSIONER HICKINBOTTOM: In respect of that,
6 Dr Glasgow, what did you mean by that? That's probably the
7 starting point.

8 THE WITNESS: Yes, so the information that's provided
9 in those documents, they are provided--noting that I'm not the
10 author of those documents, but I do recognise the contents of
11 the documents as being authored by the particular persons or the
12 entity that are noted.

13 And so, my evidence provided has that in mind.

14 BY MR RAWAT:

15 Q. Was it your decision to put that paragraph into the
16 Affidavit, or did you do it on advice?

17 A. This is on advice.

18 Q. And did you understand what was meant by "privilege"
19 when you put that into your Affidavit?

20 A. I understood it to mean, unless I have said that the
21 contents of those documents that I've placed in there, unless
22 I've said that they are not applicable to this particular
23 Affidavit or I cannot attest to it with the ownership of the
24 documents or the author of the documents, that I do not waive--I
25 do not waive any rights or any assertion that I make from the

1 document or privileges that's put into the document. That's
2 what I understood from it. I'm not sure if that's the correct
3 understanding, but that's what I understand of it.

4 COMMISSIONER HICKINBOTTOM: So, you understood it
5 really as protecting other people's "intellectual property"
6 rights?

7 THE WITNESS: Well, protecting--that's one part of it,
8 and the other part is protecting me, that it was not authored by
9 me.

10 COMMISSIONER HICKINBOTTOM: Yes. So, you acknowledge
11 that other people have authored these documents and not you?

12 THE WITNESS: That's correct.

13 COMMISSIONER HICKINBOTTOM: Thank you very much.

14 BY MR RAWAT:

15 Q. What I hope that we will be able to get your
16 assistance on today, however, is just essentially that the law
17 and practice in relation to the procurement of government
18 contracts in the Virgin Islands, which is something that you
19 have set out some details in that Affidavit, and I think as you
20 indicated earlier, procurement is something which you have an
21 understanding and an interest; is that right?

22 A. That's correct.

23 Q. If we could just take it, first of all, I'd suggest we
24 take it in a particular order, and we deal first of all with
25 Purchase Orders and what is meant by Purchase Orders. You have

1 dealt with that in your Affidavit at paragraph 8, and you refer
2 there to Section 172 of the Public Finance Management
3 Regulations of 2005. If you look in your own exhibits at
4 page 62, and it's the numbering is in the top right-hand corner.

5 A. Just give me a moment.

6 Q. Of course.

7 A. I'm working from electronic copies, so...

8 (Pause.)

9 A. Did you say 62?

10 Q. Yes.

11 A. Okay, I'm there.

12 Q. In paragraph 8, you referred to a Purchase Order as
13 being the most widely used instrument, and you refer to it as
14 being used in relation to works or services. If we look at 172,
15 that refers to using a Purchase Order for the supply of goods.

16 Is it your understanding that in the BVI or the BVI
17 Government uses a Purchase Order to buy both goods and services?

18 A. We use--we use Purchase Orders for goods, services,
19 and works.

20 Q. And if I've understood 172 right, if we look at 172,
21 you can use a Purchase Order for up to \$75,000; is that right?

22 A. Well, you can use the Purchase Order--when you say use
23 the Purchase Order, you mean to actually contract with a
24 contractor or supplier or vendor?

25 Q. You've--you've said that a Purchase Order can be used

1 to buy goods, services, and works.

2 A. Okay.

3 Q. If we cross-relate that to 172, that sets out the
4 limits that the Purchase Order can be used, and the different
5 limits you need different types of authority.

6 A. Correct.

7 Q. But the top limit seems to be \$75,000. If we look at
8 172(1)(c).

9 A. Correct.

10 Q. So, does it follow that whether you're buying goods,
11 services, or works, you could use a Purchase Order for up to
12 \$75,000?

13 A. That is--that is not the correct interpretation.
14 Before I continue--so 172, I think it was in the
15 amendment I believe it was 2007, there's an amendment that's
16 part of that that revised those numbers, so where you had 50,000
17 it went to 75; where you had 75 it went to 100,000. I wanted to
18 make that distinction--

19 Q. Sorry to interrupt you, Dr Glasgow, but I think you
20 mentioned the amendment of 2007. That's at page 98 in your
21 bundle.

22 A. Okay. Yes.

23 So, if you look at subsection (a), so 172(1)(a), it
24 speaks to Purchase Orders only for purchases that are--that do
25 not exceed \$10,000, so this is correct. And if you link it back

1 to my Affidavit, my Affidavit speaks directly to purchases, if
2 there is purchases that are valued less than 10,000, then what
3 I'm saying is the Purchase Order is sufficient. Once the value
4 goes above 10,000, then it triggers, as you mentioned
5 rightfully, another set of approval, and so that's where we get
6 into our petty contracts and our major contracts. But below
7 \$10,000, it's--a Purchase Order is sufficient to contract with a
8 vendor.

9 Q. I think if we--just to clarify, if you look at the--at
10 98, at the amendments that were made in 2007, you're right to
11 say that Regulation 172 was amended but it wasn't amended in
12 terms of the figures.

13 A. Yes, I do know that.

14 Q. Okay.

15 A. I know that.

16 I believe that what we actually see there, the
17 intention--I believe you would perhaps have to have an even more
18 word with the Attorney General, but the intention was for all
19 the numbers to be revised in that matter, and I'm aware that
20 there was one section that was revised, and the portion in 172
21 was--remained at the same numbers. I think that correction was
22 made. It was identified and made. But I think the intent of
23 the corrections or the updates to 172 or to change or revise the
24 figures was to ensure that all numbers within the Legislation or
25 the Regulations were amended.

1 But you are correct in noting that the amendment did
2 not address on paper 172.

3 COMMISSIONER HICKINBOTTOM: Can--Dr Glasgow, can I
4 just refer you up the page on page 62. I mean, you'll know
5 these regulations very well, but at the top of page 62 is
6 Regulation 170(2) which says that goods and services shall be
7 procured by tender where the value of the goods or services
8 exceeds \$75,000, unless the Executive Council and the Cabinet,
9 of course, otherwise directs.

10 So, it seems to me, looking at page 62, that
11 Regulation 170(2) sits well with Regulation 172 because, over
12 \$75,000 you have to have a tender process, subject to Cabinet
13 waiver, and then Regulation 172, in respect of at least goods,
14 tells you the approvals you need up to \$175,000; is that right?

15 THE WITNESS: Your assertion is right, but again the
16 intent of the amendment was to ensure that everything in the
17 Legislation--sorry, the Regulations that noted 75,000 should
18 have moved to 100,000.

19 So, as you have rightfully mentioned, 170(2) speaks to
20 75,000 which follows into 172(c) that also speaks to 75,000.

21 COMMISSIONER HICKINBOTTOM: Yes.

22 THE WITNESS: So, what I'm asserting is the intent of
23 Regulation--sorry, the Regulation Amendments of 2007, the intent
24 was to change whatever--wherever you saw 75,000 to 100,000.

25 COMMISSIONER HICKINBOTTOM: I'm sorry, carry on,

1 Dr Glasgow.

2 THE WITNESS: Yes.

3 And so, as I mentioned, that seemingly was not carried
4 through in the entire Regulations, and that was noted. And I
5 believe it was seen and observed and a rightful change that was
6 made, and I believe that was done in the 2020 Amendments.

7 COMMISSIONER HICKINBOTTOM: I think that's right. I
8 think that's right. I think 2020 made those Amendments, but
9 until 2020, what the Regulations said--and I understand what you
10 say was the intent, neither Regulation 170(2) nor Regulation 172
11 were, in fact, changed to \$100,000 in the 2007 Regulations?

12 THE WITNESS: That observation is correct.

13 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

14 BY MR RAWAT:

15 Q. And although if we look at 172, if you have the
16 approval of the Financial Secretary, you could issue a Purchase
17 Order up to \$75,000, is it your evidence that, in practice,
18 Purchase Orders are used for transactions that are up to
19 \$10,000?

20 A. Up to \$10,000, yes.

21 Q. If--if the transaction was to go beyond 10,000, would
22 you expect then to be seeing a Petty Contract in place?

23 A. That's correct.

24 Q. Could we just look at Works Orders, please, which you
25 also deal with, and that's in paragraphs 7 and 8 of your

1 Affidavit, but if you turn to page 69 in your exhibits.

2 A. Okay, I'm there.

3 Q. That's where you have directed the Commissioner's
4 attention to Regulation 189.1 which explains that a contract for
5 work or a service not exceeding \$10,000 in value may be entered
6 into without the execution of a specific contract document by a
7 Works Order. And as you point out in your Affidavit,
8 Dr Glasgow, that's a discretionary--it's an optional instrument.
9 It's not mandatory at all?

10 A. Correct.

11 Q. What you have said, though--and this is at paragraph 7
12 of your Affidavit, if you have it--"Works Orders that are
13 typically used by the works can be clearly defined and they
14 allow the supervising Ministry to manage the progress of the
15 works that have been agreed with the contractor. This offers
16 Ministries a degree of leverage keeping the contractor to
17 account based on the agreed responsibilities and scope."

18 I just wanted to ask you this: How are the agreed
19 responsibilities and scope recorded if you don't have and are
20 not required to have a specific contract document?

21 A. Typically--typically Works Order lists the scope that
22 the contractor is required. If there is any technical work
23 involved, of course, there can be an attachment of conditions or
24 specifications, but suffice to say, the scope is included in a
25 very--and they're usually very self-explanatory. You do this,

1 you do that, this should be done this way, and specifications,
2 everything is produced there.

3 And so, the contractor actually signs this document,
4 so it's somewhat of a contract though it's not a requirement.
5 It's Government's way to say, you know, we can keep the
6 contractor to account based on what they have signed and agreed
7 to.

8 Q. So, does it follow that the Works Orders can, in
9 certain circumstances, go into quite a lot of detail as to
10 what's expected of the contractor?

11 A. That's correct. It has the potential to do that.

12 COMMISSIONER HICKINBOTTOM: Just to help me with the
13 practice of procurement, Regulation 189 of Works Orders refers
14 to a contract to work or a service. Regulation 172 refers to a
15 tender or contract for the supply of goods.

16 Now, you told us that Regulation 172 is, in fact, used
17 for goods or services--

18 THE WITNESS: Works and service.

19 COMMISSIONER HICKINBOTTOM: Yes, exactly. Goods,
20 works, and services.

21 On the face of it, it looks as though Regulation 172
22 might be restricted to goods, and Regulation 189 not to goods
23 but to work and services. How is that dealt with in practice,
24 Dr Glasgow?

25 THE WITNESS: Well, when I said, of course, that 172

1 applies to works, goods, and services, what we have done in
2 practice is to ensure that we use--what should I say?--a level
3 of accountability by ensuring that whatever is done for goods
4 and services, that's at minimum is also seen in works. Now,
5 while 189 speaks to Works Orders which are not necessarily
6 mandated, both are goods, works, and services, they all require
7 a Purchase Order. So, even though I have a Works Order, I still
8 require a Purchase--local Purchase Order to make that effective.
9 That's the Government system, and that's governance mechanism
10 within its accounting system to say that a contractor legally
11 has a binding agreement. So, no funding, no payments can be
12 made unless a Purchase Order is in place.

13 Now, when I say we also use 172 for works, it's simply
14 for that safeguard as well, so once we are below \$10,000, we
15 accept Purchase Orders, so 189 also allows the Purchase Orders,
16 but the trigger is above 10,000.

17 So, we think that it's quite conservative, and it
18 assures accountability across the board that all three, whether
19 you're dealing with works, goods, or services, whether or not
20 the Regulation specifically says works are involved in 172, we
21 find that it's more transparent and accountable to ensure that
22 this goes across the board.

23 Now, I mean, if you read through the particular
24 Regulations, I think we can all agree that it is lacking in
25 terms of doing procurement, and actually making sure that we

1 have procurement across the board in a manner that's best
2 practice, and so we recognize, of course, the deficiencies
3 within here and for some time, we perhaps will get to it later,
4 we have been doing some procurement reform to correct these type
5 of anomalies.

6 COMMISSIONER HICKINBOTTOM: I think that Mr Rawat may
7 well come on to that, I think.

8 THE WITNESS: Yes.

9 COMMISSIONER HICKINBOTTOM: Just to confirm because I
10 think what you said is very clear. But if there is a contract
11 for works or a service of less than £10,000, you have to comply
12 with Regulation 189, but you also have to comply with Regulation
13 172 because you need a Purchase Order as well because I think,
14 to put it bluntly, without the Purchase Order, you won't
15 actually be paid?

16 THE WITNESS: That's correct.

17 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

18 BY MR RAWAT:

19 Q. Before we leave 189, could you, Dr Glasgow, please
20 just take a look at 189(2) which relates to two or more Works
21 Orders shall not be used for the same works or services. Would
22 the correct interpretation of that mean that you cannot use
23 multiple Work Orders for the same works or for the same service?

24 A. I think that's very ambiguous because it doesn't
25 really define what "same works or services" means, and I will

1 tell you why, why I say that.

2 Are we saying that if I'm to just pick some type of
3 work, I'm supposed to clean this particular window, is it saying
4 that more than one Work Order should not be issued to clean this
5 same window?

6 And, of course the opposite side of the spectrum is
7 when we say works or services, are we speaking about projects to
8 say that not more than one Work Order can be issued against a
9 particular project no matter the size? So, I think there is a
10 bit of ambiguity there, so I would hate to say or I cannot say
11 what the intent of this was, but it's not very clear.

12 COMMISSIONER HICKINBOTTOM: But in terms of that, the
13 works or services, aren't they the works or services--so, if you
14 had to build a small shed or something, building the small shed,
15 that's the works. And doesn't it mean that you can't have two
16 or more Works Orders to build the shed? So, if the shed, for
17 example, cost more than \$10,000, you couldn't have two Works
18 Orders sent to the same man for \$10,000 and \$5,000 to build the
19 shed or does it mean something else?

20 THE WITNESS: Did you say to the same person?

21 COMMISSIONER HICKINBOTTOM: Well, yes, or different
22 people. To the same person or different people.

23 THE WITNESS: Okay. I would interpret it that way as
24 well.

25 COMMISSIONER HICKINBOTTOM: Yes, okay. Thank you very

1 much.

2 BY MR RAWAT:

3 Q. And it's a convenient time to deal with it. You
4 suggested, Dr Glasgow, that that particular subsection is open
5 to ambiguity. Have any steps been taken that you're aware of to
6 resolve that ambiguity?

7 A. Yes, I'm glad you asked that question because, as I
8 said, you probably would talk about it, we probably will speak
9 of it a little later, but we have been in some--for some years
10 procurement reform, and we are proud to say that we do have a
11 stand-alone Procurement Act and Regulations that addresses all
12 of these issues, so I'm not sure if you want to speak about that
13 now or we can wait a little bit.

14 Q. I think it's because we're on the question of how Work
15 Orders operate in practice. If it's a good opportunity for you
16 to speak about Work Orders, and it's because you've said
17 actually you're reading of it you suggest it might be open to
18 interpretation. What is going--in terms of the reforms that you
19 speak of, what changes are going to be made in relation to the
20 use of Work Orders?

21 A. Well, if my memory serves me correct, I don't even
22 believe that we mentioned Works Orders in the new Act and
23 Regulations. We simply speak of the threshold and what's
24 required.

25 Q. But in terms of--because if we take the Commissioner's

1 shed analogy, if you've got a shed that's got to be built for
2 15,000, which requires, under the Legislation that we're looking
3 at, a Petty Contract, on one reading, if you read 189(2) to
4 allow you as a Ministry to use Works Orders to get round the
5 need for a Petty Contract, you could issue the same man or two
6 different people with a Work Order for 10,000 and a Work Order
7 for 5,000, and a different interpretation of 189(2) is that you
8 can't do that. Under the new regime, I appreciate that you say
9 it's about thresholds, but will the new regime avoid using sort
10 of multiple orders as a way of getting round thresholds?

11 A. I would have to say "yes".

12 And if I were even to go back, right now, the scenario
13 that you speak to, I know the Ministry of Finance is--the
14 Financial Secretary, this is not something that's supported.
15 It's something that's very difficult to sell. Definitely there
16 are situations that may warrant something like this, but it's
17 far in between--it's far from being the norm. And so I know
18 within the Ministry of Finance this is a flag, and, you know,
19 they would take the task and require a full explanation of
20 what's going on with something like that.

21 But the new Regulation--as I mentioned, the new suite
22 of Regulations, they provide for the contracting and the
23 procurement of works and services and goods in the form of the
24 type of procurement to be used, and so, based on the thresholds,
25 you can, of course, invite--you can have open tender, et

1 cetera--but it not say we are just going to issue. If we're
2 going to issue a Purchase Order to a sole vendor without a
3 competitive process, there are reasons as stipulated within the
4 Regulations for when you can actually do that. And again, it's
5 not the norm, so I would say that it has addressed this issue.

6 Q. Can we turn to Petty Contracts, please.

7 A. Sure.

8 Q. You deal with at paragraph 9 of the Affidavit. And
9 what you--the point you make at that paragraph is that Petty
10 Contracts are used to cover the procurement of goods, services,
11 and works, but there is actually no provision in the 2005
12 Regulations that specifically define "Petty Contracts".

13 A. That's correct. That's just a name that we use
14 locally.

15 Q. It's a term of art that's been established for a long
16 time in the BVI?

17 A. Correct.

18 Q. Can you, as a term of art and as a term that's used
19 locally, how long has it been in use?

20 A. Well, I joined the service in 2003, and so I met it, I
21 met the term being used as that. I'm not--I'm not sure of the
22 history behind the term "Petty Contract", but I have met it in
23 place.

24 Q. And it would seem that the understanding in terms of
25 the Public Service, certainly after 2007 on what you said

1 earlier, Dr Glasgow, was that Petty Contracts--the range of
2 Petty Contracts was between 10,000 to \$100,000?

3 A. That's correct.

4 Q. And that's how Ministries operated in practice, on
5 that understanding?

6 A. Yes.

7 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt,
8 Mr Rawat.

9 I think, probably--it more accurate to say that--I
10 mean, we know what a major contract is. I'm not sure that the
11 term "major contract" appears in the Regulations, but we know
12 what a major contract is, it's a contract over \$75,000 or
13 \$100,000, this limit. And above that, it's a major contract.
14 And it's subject to various procurement--a procurement process,
15 subject to waiver by the Cabinet, but it's subject to a
16 particular procurement process.

17 A contract under that threshold is not subject to that
18 procurement process. It's subject to a different procurement
19 process which is also set out in the Regulations.

20 But you could have--you could have a Petty Contract
21 for something under \$10,000, as I understand it?

22 THE WITNESS: You can.

23 COMMISSIONER HICKINBOTTOM: You don't have to because
24 you can have a Works Order and a Purchase Order, you can.

25 THE WITNESS: Correct.

1 COMMISSIONER HICKINBOTTOM: It's just above and below
2 these levels different procurement process apply.

3 THE WITNESS: That's correct.

4 COMMISSIONER HICKINBOTTOM: Yes. Thank you very much.

5 BY MR RAWAT:

6 Q. And just to take you back to thresholds, we were
7 looking at 170(2) earlier, which is at your page 62.

8 A. I'm there.

9 Q. And that's the provision that says that, once you get
10 above \$75,000, you would have to go to a tender process.

11 And when we--if you look at 66, I'm taking you to 181,
12 which was amended by the 2007 Regulations, so the figures that
13 we see there, where you see in (d) where the contract exceeds
14 \$50,000 and up to \$75,000, that was amended by the 2007
15 Regulations to read \$100,000. And that would seem to be the
16 provision that gives you the range that, once you get above
17 \$100,000, you're in major contract Territory, but it's not easy
18 to reconcile, is it, with 170?

19 A. In terms of the threshold that's written in 170?

20 Q. Yes.

21 170 gives you a threshold of \$75,000 as the point
22 where above you would have to go to tender.

23 A. Okay.

24 Q. 181 seems to--with the amendment seems to suggest that
25 you can operate without a tender up to \$100,000?

1 A. Yes. This is--this is the anomaly that I spoke of
2 earlier where the intent of the Amendment in 2007 was to get rid
3 of everything that said 75,000 and amend it to 100,000. That's
4 why there seems to be that conflict between the two.

5 COMMISSIONER HICKINBOTTOM: That's absolutely right,
6 Dr Glasgow, and then that conflict was resolved in the 2020
7 Regulations.

8 THE WITNESS: That's correct.

9 COMMISSIONER HICKINBOTTOM: Because the 2020
10 Regulations does make everything \$100,000.

11 THE WITNESS: That's correct.

12 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

13 BY MR RAWAT:

14 Q. Which just means that, although the practice of having
15 a range of up to \$100,000 for a Petty Contract may not have been
16 one that was right in law because the change to 170 hadn't, in
17 fact, been put into effect. The intention was there, but the
18 change didn't follow through?

19 A. You are correct in saying that the change didn't
20 follow through. Of course, whatever minutes from meetings in
21 Cabinet, et cetera, et cetera, that authorized that change, I
22 wouldn't have known, but it was announced. It was whatever
23 workshop and informing the public, informing the entire Public
24 Service that the thresholds have now moved from 75,000 to 100,
25 even without--and even for myself looking through this, it

1 wasn't until very recently that I actually looked at it and saw
2 that it works that--that particular section did not have the
3 benefit of the amendment to 100,000. But as you said, the
4 practice has been--the threshold and practice was 10,000 and
5 100,000, and I remember when it was changed back in 2007.

6 So, again, that's the premise behind all of this, and
7 as you can see, there is a clear conflict there, but at face
8 value, the change was not made in the Regulation at that time.

9 Q. But what your evidence is, and it's from direct
10 experience because you were, as you said, in the Public Service
11 from 2003, the intent was made known to all--

12 A. Correct.

13 Q. --the Public Service then proceeded on the basis that
14 they adopted the practice of the threshold of 100,000?

15 A. That's correct.

16 Q. Can I ask now about major contracts, please, and
17 that's paragraph 11 of your Affidavit. And again, you've
18 explained there that it's a local term, that if you go over
19 100,000, you're referring to a major contract.

20 Now, you refer there to the procurement process, and
21 you've identified the Financial Secretary, yourself as Director
22 of Projects or the Procurement Coordinator, as individuals that
23 a request would be made to. What's the role of the Procurement
24 Coordinator?

25 A. If you--you if remember my initial statements

1 concerning Projects Unit, the Projects Unit has two components,
2 the Project Support Services and the Procurement Unit. The
3 Procurement Unit deals with procurement of works above 100,000.
4 By the Regulations, they're actually the Secretariat to the
5 Central Tenders Board, so once a project is expected to be in
6 excess of 100,000, a request is made to the Procurement Unit--if
7 it comes to the Financial Secretary, if it comes to myself, it's
8 then passed on to the Procurement Unit who--again they the
9 trigger--they know exactly what they have to do to get a tender
10 published and received, et cetera, et cetera. So, that's the
11 role of the Procurement Coordinator. They basically act as a
12 Secretariat for the Central Tenders Board.

13 Q. And if we look at 173, which is at page 63 of your
14 exhibits, Dr Glasgow, that's, in effect, what 173 through to 177
15 is, at least in the Regulations, the tender process, isn't it?

16 A. Just browsing through it here, yes, it would appear
17 so. Yes.

18 Q. It may just be one thing I've noticed on your
19 exhibits--and this is a good example--and particularly if you
20 look at 174 and 174(3), there is wording that has been added in
21 red.

22 Do you have that on your--

23 A. Yes.

24 Q. Would you be able to just help with where that wording
25 emanated from?

1 A. To be very honest, I have absolutely no idea.

2 Q. Okay.

3 A. It would appear to me--this is the actual document
4 itself, so you would actually find this wording within the
5 document that was approved back then. It's in red in my
6 document--I really do not know why. But this, perhaps,
7 represents the changes that were made at that specific time.

8 Q. I would agree with you there, but I also share your
9 lack of knowledge, Dr Glasgow, because the wording wasn't
10 introduced in 2007 or 2020, so it may have been, as you point
11 out, wording that was introduced at the time that the
12 Regulations were promulgated, so 2005.

13 In terms of the Central Tender Board, is that in
14 place?

15 A. Could you--could you--when you say "in place", do you
16 mean 173 or--

17 Q. If you look at 174, it says there shall be a Central
18 Tenders Board.

19 A. Okay.

20 Q. And it then gives the membership of the Central
21 Tenders Board. Currently, is there a Central Tenders Board?

22 A. Yes, that's correct. And it's constituted as written
23 in Section 2.

24 Q. And how long has the Board been in place? As far as
25 taking your time in the service, have there ever been periods

1 when there has not been a Central Tenders Board?

2 A. I do not know of a period where there was not a
3 Central Tenders Board. In fact, it was called "Public Tenders
4 Committee" before it was called the "Central Tenders Board", but
5 there has always been an entity that facilitated public tenders.
6 And since I have been around, it has always been constituted in
7 the format that you see there in Section--in paragraph 174(2).

8 Q. And all tenders have to go through the Central Tenders
9 Board, I take it?

10 A. That's correct.

11 Q. If you look, please, at 65 now, at the bottom of your
12 page 65, we find Regulation 180, which says that a copy of each
13 contract document shall be sent by the Accounting Officer to the
14 Accountant General and the Auditor General. What sort of
15 contract documents is that referring to, in practice?

16 A. The contract itself, assigned the contract.

17 Q. Is that just the tender contract?

18 A. No. The contract between the Government of the Virgin
19 Islands and the contractor or the vendor.

20 Q. I phrased my question badly, Dr Glasgow. Sorry. But
21 does it just apply to major contracts?

22 A. I remember a time when it was focused on major
23 contracts. But in recent years--and I know some Ministries
24 continue to do it--all contracts, to my knowledge, since I was
25 at Public Works, have been going to--well, I know that seven

1 different entities: Accountant General, for sure. No payment
2 will be done unless you produce a contract to them, and also the
3 Auditor General, as far as I can remember. These are two of the
4 seven. I think it's seven places that contracts go.

5 Q. And is there a threshold below which contracts don't
6 go?

7 A. No. I'm not aware of a threshold. As I said,
8 especially for (a) the Accountant General, no monies will be
9 paid on a contract unless they have the contract.

10 Q. And does that apply to the Works Orders as well?

11 A. That's correct. Everything--so, the Accountant
12 General will require to see all the supporting documents that
13 goes with the payment, including if it's a Purchase Orders
14 alone, if the Purchase Order is accompanied by a Work Order, if
15 it's accompanied by an invoice; in cases where it's actually
16 works done, pictures. So, payments will not be made unless
17 those are things are in place.

18 Q. And if you look, please, at page 66, which--Regulation
19 184, which deals with advance payment. What--Regulation 184
20 prohibits advance payment on a contract without the approval of
21 the Financial Secretary--what kind of contracts does Regulation
22 184 apply to in practice?

23 A. In practice, Petty Contracts, so anything that's below
24 100,000.

25 Q. But above 100,000--

1 A. I would say it does not apply because above 100,000,
2 the contract document actually makes provisions for an advance
3 payment, so the conditions of contract speaks to an advance
4 payment of a certain amount, and that's what is tendered. The
5 contractors or bidders respond to bids in light of this actual
6 fact. And once it's signed by the Minister of Finance, once the
7 contract is signed, you have a contract agreement, that advance
8 payment kicks in. So there are actually provisions in the
9 contract that take care of this clause.

10 Q. But below the Petty Contract threshold, any contract
11 of any size, including a Work Order, for example, if you wanted
12 to make advance payment, you would have to get the approval of
13 the Financial Secretary?

14 A. That's correct.

15 Q. Could you turn to page 68 in that bundle, please. And
16 it's just a reference to a Contract Register and Regulation 188
17 that sets out the details of a contract that should be recorded
18 in the Contract Register. But again, in practice, Dr Glasgow,
19 what type of contracts does Regulation 188 apply to?

20 A. All contracts. In practice, all contracts. So,
21 whether it be Petty, Major, Purchase Orders, each Accounting
22 Officer is required to have this type of information.

23 Clearly, below, if it's a Purchase Order, of course
24 you won't have a contract number. So, I would say, once it is a
25 signed contract agreement, this triggers. Ministries--these are

1 kept within the Ministry. Every now and again, the Ministry of
2 Finance would ask Ministries to produce them, definitely from
3 the Projects Unit, because we want to ensure that we
4 cross-reference our records with their records.

5 Q. But, in effect, no matter how small the contract size,
6 what there has to be is, within each Ministry, a Central
7 Register of the contracts?

8 A. That's correct.

9 Q. You have--and I take you to paragraph 13 of your
10 Affidavit. You turn there to the discretion that the Cabinet
11 has to waive the tender process. And it can be sought for
12 goods, services, and works. And you give examples, at paragraph
13 14--13, of circumstances in which a waiver may be necessary or
14 may be sought.

15 Aside from those circumstances or examples you give,
16 are there actually any written guidance or policy as to how
17 Cabinet should approach to waiving the tender process?

18 A. Actually, no. There is nothing on the books,
19 currently. And, of course, we have--as I mentioned already, we
20 have flagged things like these, these type of what we call
21 "deficiencies" or "anomalies". We have flagged them because we
22 have gone through an assessment, at least two full assessments
23 of the procurement system. We have flagged this as a red flag.
24 And with the new Regulation--the new Act, as a matter of fact,
25 addresses the points of waivers. And so, it would have been the

1 most--the proper thing or the most logical thing that we should
2 have been focusing on is, of course, defining when these waivers
3 actually should be--come into force because, if you look at
4 Procurement Regulation throughout the world, there are points
5 where you will require a tender waiver.

6 But what we're saying, or what I'm saying is, it just
7 can't be unregulated. And so, we've ensured that the new Act
8 has--and the new Act, by the way, has been passed by the
9 Cabinet. It's just awaiting its first reading in the House, but
10 the Act addresses the point of waivers where, unless for these
11 specific reasons, you may not--or you may waive the tender
12 process only on account of these specific reasons.

13 Q. And is it the intent behind that part of the new Act
14 to reinforce that waiver of tenders should be the exception
15 rather than the norm?

16 A. I would say that, yes.

17 COMMISSIONER HICKINBOTTOM: I'm sorry to interrupt.
18 This was dealt with, at least partly, in the 2020 Regulations--

19 THE WITNESS: Correct.

20 COMMISSIONER HICKINBOTTOM: --which replace Regulation
21 170. Well, it replaced Regulation 170(2) and replaced it with
22 two paragraphs, one dealing with waiver. Have you got that,
23 Dr Glasgow? You probably know it well, anyway.

24 THE WITNESS: Yes.

25 COMMISSIONER HICKINBOTTOM: Regulation (overlapping

1 speakers) 2 of 2020.

2 MR RAWAT: Page 101 of your bundle.

3 COMMISSIONER HICKINBOTTOM: It is.

4 THE WITNESS: 101. I feel like I'm hopping like a
5 bunny here. 101.

6 COMMISSIONER HICKINBOTTOM: It inserts a new
7 Regulation 170(3).

8 THE WITNESS: Okay. I'm there.

9 COMMISSIONER HICKINBOTTOM: And that sets out three
10 circumstances in which tenders can be waived, the last one being
11 any other exceptional circumstances; the other two, obviously,
12 in part, driven by the COVID pandemic, one would have thought;
13 together with the procurement of such goods or services by way
14 of the tender process would, in the determination of Cabinet, be
15 inimical to the public interest if such goods and services are
16 procured. So that's the current position, in fact?

17 THE WITNESS: Yes.

18 And so, of course, it kicks in at what's defined there
19 in 3(a), (b), and (c), but definitely (a) and (b).

20 COMMISSIONER HICKINBOTTOM: Yes.

21 THE WITNESS: It relates to disasters, emergencies, et
22 cetera.

23 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

24 BY MR RAWAT:

25 Q. Could I just ask you for your help in relation to

1 contractors? You have been given a copy of the--at least
2 electronically--of the Commission's Constitution and Legislation
3 Bundle.

4 A. Correct.

5 Q. If you go towards the end of that page 646, please, or
6 645.

7 A. Okay. I'm there.

8 Q. And then if you go to Section 3, which is on 646.

9 A. Okay.

10 Q. That's: "Notwithstanding the provisions of any other
11 Acts, no person shall engage in a business, profession or trade
12 as set out in the first schedule or otherwise without first
13 having obtained a licence for that purpose".

14 I can take you to the first schedule if you want to
15 see it, Dr Glasgow, but it included a long list of professions
16 and different categories of work, including construction,
17 contractor, carpenters, draftsmen, electricians, and plumbers.
18 That seems to be the statutory requirement for the need of a
19 trade licence.

20 Before a contract--or is it a requirement that if you
21 are going to contract with Government, even at the level of a
22 Works Order, then, as a contractor, you need to have a trade
23 licence?

24 A. The practice is, once you're going to do a contract, a
25 signed contract, you need a trade licence. So the practice has,

1 for those works, goods or services--well, let's use works as an
2 example, that's above \$10,000, you require a trade licence.

3 Q. So, if you're doing works below \$10,000, do you
4 require a trade licence?

5 A. That's not the practice.

6 Q. Well, do you know whether you are required to have a
7 trade licence in law?

8 A. If I refer to the Section that you have sent me,
9 "shall not engage in a business, profession or trade as set out
10 without having a particular licence for that purpose", I suppose
11 this gives the backdrop for that. But when I read this, of
12 course, it tells me--if I go, for example, if I go and somebody
13 has asked me to, I don't know, cut the bush in their yard and
14 this is on a private basis, I don't believe the intent of this
15 says that I need to have a trade licence before I can offer
16 petty services to someone.

17 So, with that backdrop, I know the practice has been,
18 once you're going to sign a contract with the Government of the
19 Virgin Islands, it requires you to have a trade licence in
20 place. That has been the practice.

21 Q. I mean, I take your point about cutting a bush on a
22 private basis, but that's a little different from, for example,
23 cutting the bushes at a school or outside a government building
24 under an agreement with the Government.

25 Section 3, I suggest to you, makes clear that if you

1 are going to engage in any profession or trade or business, you
2 need to have a trade licence. If we bring that to the
3 application of practice in relation to engaging with
4 Government--and we will use your example that you gave earlier
5 of cleaning windows. If government contracts with a window
6 cleaner for \$9,999 under a Works Order to clean windows, is that
7 person required to have a trade licence?

8 A. The practice is no.

9 Q. So, they're not asked if they have a trade licence?

10 A. That's correct.

11 Q. If, in fact, the contract was for \$10,001, would they
12 then be asked to produce a trade licence?

13 A. For sure, they will.

14 Q. And so, in terms of having a trade licence, in
15 practice, the threshold that is used is the Petty Contract
16 threshold?

17 A. Yes. 10,000 and above. That's the trade-off.

18 Q. Now, are there any other requirements that a
19 contractor must fulfill in order to enter into a contract with
20 Government?

21 A. Yes. There are some statutory obligations. They have
22 to produce a Certificate of Good Standing for Inland Revenue,
23 Social Security; of recent times, NHI as well. If the
24 contractor is a company, it requires the official company
25 registration, licence of good standing, certificate from

1 Financial Services Company Registry. Those are the statutory
2 obligations.

3 I believe, if my memory serves me correct, those are
4 the requirements--I mean, not speaking to the need to have in
5 place, maybe, a schedule, et cetera, but the statutory
6 requirements, that's what are required.

7 COMMISSIONER HICKINBOTTOM: Are they required, again,
8 for all contracts or only contracts over \$10,000?

9 THE WITNESS: Over \$10,000.

10 COMMISSIONER HICKINBOTTOM: Yes. Thank you.

11 BY MR RAWAT:

12 Q. Can I just take you back to your own Affidavit in your
13 bundle at page 68, please.

14 Give me a moment.

15 A. One moment.

16 Q. Sorry. I need to take you to 66.

17 A. Okay. I'm there.

18 Q. It's taking you back to 181(1), Regulation 181(1),
19 which says that the Financial Secretary shall maintain a list of
20 pre-qualified contractors.

21 The Commissioner heard evidence earlier today--not
22 today, but this week, from the Internal Auditor. And the
23 Internal Audit Department conducted an audit of Petty Contracts
24 between 2007 and 2010. The Audit itself was done in 2012. And
25 what that established, or one of the findings that they made was

1 that, as of April 2012, no such list existed in the Ministry of
2 Finance nor was there any list in any Ministry.

3 Do you know if such a list exists in the Ministry of
4 Finance today?

5 A. Well, if I may take us back--just to preempt your
6 statement. I believe--did I hear you say that the report said
7 that such a list did not exist within the Ministry of Finance or
8 other Ministries?

9 Q. Yes.

10 I will read out to you what the report actually says,
11 Dr Glasgow. I think that may be the fair way to do it.

12 A. Okay.

13 Q. It said this. And it's a report, as I've said, which
14 was produced in April 2012, and its title is "Petty Contract
15 Administration 2007-2010", and it says: "The Public Financial
16 Management Regulations 101 mandates that the Financial Secretary
17 shall maintain a list to be approved by the Minister of
18 pre-qualified contractors for the procurement of services,
19 including construction works. The review has revealed that such
20 a list has not been produced, neither by the Ministry of Finance
21 nor the other Ministries. As a result, there is no record of
22 any assessment done to determine the suitability of a contractor
23 to carry out the contracted works".

24 So, what I've taken from that is that, as of
25 April 2012, a list did not exist. And my question was

1 whether--that's obviously before you joined the unit and became
2 Director of Projects. But are you aware, firstly, if such a
3 list exists today, and if so, when it was first created?

4 A. Well, I can say this without fear of contradiction.
5 As I mentioned in my Preamble, I started at the Public Works
6 Department in 2004, and I was Director in 2007, and I left in
7 2012. Between 2004 and 2012, the Public Works Department has
8 always maintained a list of contractors. It has always
9 maintained a list of registered--they have a specific form, and
10 we had a list, an overwhelming list of contractors. From time
11 to time, we had to produce this list to the Ministry of Finance.

12 Now, I didn't work for the Ministry of Finance, so I
13 have no idea what the Ministry of Finance would have done with
14 the list. But we, at the Public Works Department--that it was a
15 Form C. I know it very well. We maintained a list of
16 contractors, Government contractors, again, for this very
17 purpose. So, I'm not sure at what level the Internal Auditor's
18 Report given the Ministry of Communications and Works, which is
19 a parent Ministry to Public Works; but the Public Works
20 Department, up to the time I was there, has always maintained a
21 list.

22 So, as I mentioned, too, the Financial Secretary would
23 always request this list, and so it was a common thing that we
24 produced the list. I remember it very well because it was in an
25 Access database, and we always had this list. But be that as it

1 may, that is the Internal Auditor's Report.

2 If you trickle down to today, this is something we
3 have always tried to do, to get a proper list, because this
4 actually speaks to a pre-qualification process. And during the
5 procurement reform that we have been working on since 2014, we
6 always talk about a contractor's registration and contractor
7 registration. And the next "C" slips me, but system. It's a
8 system where you--

9 Q. Classification? System classification?

10 A. Classification. Thank you so much for that.

11 Q. I'm going to take you to that next.

12 A. Okay.

13 Q. So, I will let you finish, and then I will take you to
14 the page.

15 A. Okay.

16 So, the Contractors Registration and Classification
17 system. So, over the time since I have been at the Ministry of
18 Finance, it's something that we wanted to streamline, and so we
19 had several different iterations of how do this and to get it
20 right.

21 In recent times, we have actually started to--because
22 we didn't want to preempt the legislation that's coming onstream
23 because it speaks--it's a full section on creating this, and
24 this is what you're going to use. So, we were aware of this
25 Regulation 181, and we always wanted to make sure this works,

1 but we could never get it right. We tested a few different
2 models. But right now--I should say after 2017, we started to
3 build back this list. And, right now, as a consequence of the
4 Amendment to the Regulations 2020, as a part of that policy,
5 emergency policy, we are mandated to maintain this list, and so
6 we use that as an opportunity to make sure that this list is
7 generated and it's going.

8 So, the list is in existence. We have it at my unit.
9 We encourage--we have done, I think it was, three or four
10 different Public Notices for contractors to register. The first
11 step in the process is for them to register their companies.
12 And, of course, the second step would be a full classification
13 through the qualification, et cetera.

14 Q. We will go to that, and I will go to the document in
15 which it's set out in a bit more detail. But before we leave
16 the Public Works Department--so your evidence is, between 2004
17 and 2012, Public Works Department maintained a list. Did it
18 make that list available to other Ministries as well as the
19 Ministry of Finance?

20 A. As far as I can remember, yes, and we were required to
21 send it to the Ministry of Finance.

22 Q. I'm going to capitalize on the fact that you were the
23 Director of the Public Works Department to deal with something
24 else that is mentioned in the Audit Report.

25 COMMISSIONER HICKINBOTTOM: Are we leaving Regulation

1 181?

2 MR RAWAT: Almost--yes, I think so.

3 COMMISSIONER HICKINBOTTOM: Dr Glasgow, can you help
4 me with this again. It's a similar point. In Regulation
5 181(2), it says that, halfway down, an Accounting Officer may
6 select a suitable contractor for providing services required
7 from the list of pre-qualified contractors if the contract sum
8 doesn't exceed \$50,000 with the approval of the Financial
9 Secretary or up to \$100,000 now with the approval of the
10 Minister.

11 Does that apply to Work Orders/Purchase Orders as well
12 or to Petty Contracts and major contracts--I'm sorry, only Petty
13 Contracts?

14 THE WITNESS: Work Orders and Petty Contracts.

15 COMMISSIONER HICKINBOTTOM: Great. Thank you very
16 much.

17 BY MR RAWAT:

18 Q. Taking you back, if I may, to the Internal Auditor's
19 Report of April 2012, what is also said is that--and I will read
20 it out: "Based on research, the Government of the Virgin
21 Islands, through the Ministry of Communications and Works, has
22 approved a listing of agreed prices by which the Department of
23 Public Works must use in preparing Bills of Quantities.
24 However, it was not found that consultants are required to use
25 this price listing when preparing Bills of Quantities".

1 My question to you--and it's picking your brain as the
2 former Director of the Public Works Department. But whilst you
3 were in the Public Works Department, was there a list of agreed
4 prices by which the Department of Public Works operated?

5 A. That's correct.

6 Q. If we go to 104 in your exhibit bundle--

7 COMMISSIONER HICKINBOTTOM: I'm sorry. Which page,
8 Mr Rawat?

9 MR RAWAT: 104.

10 COMMISSIONER HICKINBOTTOM: Thank you.

11 BY MR RAWAT:

12 Q. It's the Policy on Procurement and Emergency,
13 Disaster, Pandemic, and Catastrophic Situation of July 2020.
14 And if we just turn--to just give it context in terms of why
15 this policy was developed, Dr Glasgow, if we go to page 108, you
16 will see there, at the third paragraph down, that what's said is
17 that on the 28th of May 2020: "The Premier announced Phase 2 of
18 the Economic Response Plan to the impact of COVID-19, which
19 included, amongst other packages, a grant in the amount of
20 \$40 million from the Social Security Board to fund an economic
21 stimulus programme".

22 And it continues: "The Premier had outlined the
23 rationale for requesting this grant, expressed his sincere
24 appreciation to the Social Security Board for the approval of
25 the same. The Premier reiterates the Government of the Virgin

1 Islands' commitment to the principles of good governance,
2 accountability, transparency, and value for money and committed
3 that this will be adhered to in the execution of the economic
4 stimulus programme".

5 Now, this is a Government of the Virgin Islands
6 document. It's obviously looking at procurement in an emergency
7 situation. But if we go to page 112--wait, 113, please.

8 Now, that's where it addresses the Contractor
9 Registration and Classification System that you were just
10 mentioning. Do you have that, Dr Glasgow?

11 A. Did you say 113?

12 Q. 113, yes.

13 A. Let me get there.

14 Okay.

15 Q. In terms of the heading "The Framework," and it refers
16 to 181 of the Regulations, which requires the Financial
17 Secretary to maintain a list of pre-qualified contractors. And
18 it then continues: "In keeping with best practice, this list
19 has been referred to as the Contractor Registration and
20 Classification System (CRCS). The CRCS is a critical component
21 of this framework and therefore it must be brought current. The
22 CRCS will be used for all categories of procurement."

23 Now, firstly, you have spoken of that procurement
24 reform has been an ongoing project. And it appears, if I've
25 understood your evidence correctly, to have been part of your

1 remit as Director of Projects since you took on that role in
2 2014; is that right?

3 A. Correct.

4 Q. So, this isn't something that has emerged recently.
5 It has been a project that's ongoing for some years?

6 A. Correct.

7 Q. Now, in terms of the Contractor Registration and
8 Classification System, the reference is that--the words that's
9 used is that it "must be brought current". So, does that mean
10 that the list that was available, the list that existed in
11 July 2020, was seen to be out of date?

12 A. That's correct, because what we had was a simple list.
13 We did not have a semblance--I know, as I mentioned, giving
14 evidence a few minutes ago, we went through various options,
15 iterations of trying to get this list, the qualification
16 component of this list, correct.

17 So, when this was--when this framework was authored,
18 it, of course, realises that we just had a list, a list that we
19 had used from before, and we did have a list. But in terms of
20 classifying the contractors and seeing what their qualifications
21 were, seeing what their successes or their failures in
22 Government projects were, those were not recorded. And so, in
23 keeping with best practice, introduction of this CRCS would, of
24 course, bring any list that we had previously current.

25 Q. And--

1 MR RAWAT: Sorry, Commissioner. Did you--

2 COMMISSIONER HICKINBOTTOM: No.

3 BY MR RAWAT:

4 Q. Just keeping with the point of future development, we
5 see it summarised at the next page, 114, in that you are--or the
6 framework and what the system does is it introduced categories
7 of contractor who will be allowed to work on specific projects,
8 but will have to undertake, as I've understood it, a certain
9 level, or reach a certain level of training in order to qualify
10 for that kind of work?

11 A. Yes and no. Let's make sure that the statement is
12 correct.

13 So, yes. In terms of "yes", we want to ensure that
14 they have the particular training. But what we would do as a
15 part of the Registration is--of course, we get the information
16 and the type of works contractors do, their experience, et
17 cetera. And based on an assessment of where they are, we
18 identify what we think their training needs are. So, it's
19 placed within these categories on this process flow, as
20 mentioned on page 114. Okay. So, whatever gaps there
21 are--because we didn't just want to produce a list because, if
22 you read up in the previous page we were on--I think it was
23 Section 2. If you look at Section 2, it speaks--

24 Q. 108?

25 A. 108. Back to 108.

1 I authored this document, so I should know it off my
2 head; right?

3 Part of it was to ensure that that we not only
4 identify contractors--I'm not seeing it on this page, but a part
5 of it is also to ensure that we train contractors to deliver the
6 best service, and so we didn't just want to make it a list.

7 And even before this, in the Ministry of Finance
8 Projects Unit, we wanted to do more than just have a list of
9 contractors. We wanted to ensure that we were training
10 contractors to actually be successful. And so, by this policy,
11 with small steps, we think we could have gotten them to develop
12 their skills by introducing our training programme into this
13 policy.

14 Q. I think you referred to the training programme at 113.

15 A. 113, okay, I see there.

16 Q. I was trying to summarise it too shortly, but you
17 refer there in the third paragraph to the classes that you will
18 have contractors--

19 A. Okay, okay, okay.

20 Q. --and the training programmes that will be put in
21 place.

22 But is that looking forward to what you intend to do,
23 Dr Glasgow?

24 A. Yes. That's looking forward, yes. So, we have
25 started a process, of course.

1 And just for clarity, any project that will be
2 executed using this policy--of course, the policy speaks--it has
3 to be approved by the Cabinet, but any project that will be
4 executed by this policy, any contractors that will do work or be
5 invited to submit bids or quotations on this particular--under
6 this policy, has to be on the CRCS, so that's a requirement.
7 They have to be registered with the CRCS. So, again, we found
8 this a perfect opportunity get Section 181 of the Regulations in
9 place. And so, the system is set up right now. Once this--once
10 a project has been approved by the Cabinet to be implemented
11 under the policy, contractors or any vendors, et cetera, has to
12 be registered on this list.

13 Q. And is a key difference between what existed before
14 and what this system will introduce, is that you will also be
15 able to measure the performance of contractors?

16 A. Correct. Performance-based, yes.

17 Q. Whereas what you had before, as you described it, it
18 was just a list?

19 A. Yeah, it was a list.

20 It asks for a pre-qualified list, but we found that
21 the pre-qualification part was not being used, so we tried to
22 develop what that pre-qualification would actually look like.

23 Q. So, just to sort of try and understand in terms of the
24 information that has been available to Ministries in past years,
25 between 2004 and 2012, when you were Director of the Public

1 Works Department, what you can tell the Commissioner is that the
2 Public Works Departments had a list which was provided from time
3 to time, on request, to the Ministry of Finance?

4 A. Correct.

5 Q. And again, forgive me if I've asked you this already.
6 But was it also provided to Ministries when they sought--sought
7 that information from you?

8 A. On occasion, Ministries will also ask for that
9 information. So, everybody knew that the Public Works was an
10 owner of this list.

11 Q. And whilst you were at Public Works, did you become
12 aware that the Ministries also had their own lists of
13 contractors?

14 A. The Ministry had--they had their own list. I'm not
15 sure to what extent they had a list. But there was nothing that
16 said the list produced by Public Works, which was by far the
17 most exhaustive list, was the only list that could have existed.

18 Again, we put together that list to assist the
19 Ministry of Finance because, at that time, Petty Contracts--most
20 Petty Contracts or contracts, any kind of contract, most of that
21 regarding works was financed through the Public Works
22 Department.

23 Q. And after 2012 and going through to today--I
24 appreciate that you obviously are working on a much more
25 sophisticated system. But as far as you're aware, after 2012,

1 did the Public Works Department continue to maintain that list?

2 A. I believe they did. I'm not sure up until--I'm not
3 sure they still do. I cannot speak to that. But I know, from
4 time to time, even in my role once I had moved to the Ministry
5 of Communications and Works at the time, every now and again, I
6 would call and ask them for an updated list from what they had,
7 and they could always produce it to me.

8 Like I said, I can't speak to how long that continued
9 or if they still--my guess is that they probably still have a
10 list but I'm not sure to what extent. I have no idea.

11 Q. And in terms of the Ministry itself, what you've told
12 the Commissioner is the Ministry has a list; it is just a list.
13 How long has the Ministry had that list? Has there been a list
14 since 2014 when you became Director of Projects?

15 A. I am unable to say exactly when. I do know, as I was
16 there, I was able to assist with the development of the Ministry
17 of Finance's list, or the Projects Unit list. But even taking
18 the list that I had retained from the Public Works Department as
19 a starting point, like I said, we had several iterations and
20 levels of sophistication. And we actually had a programmer come
21 in to write the Access database for us. IT was involved in it,
22 so it was pretty sophisticated. But we maintained just having a
23 list in the Ministry of Finance that we could have assimilated
24 from the various Ministries and what we had before.

25 MR RAWAT: Thank you.

1 Commissioner, I've reached the end of my questions.

2 I might conclude firstly by thanking Dr Glasgow for
3 the time that he's given to the Commission today, and also for
4 his patience because I think we asked that he be available from
5 2:00, and we started a little later than that. But lastly, but
6 not least, can I also thank him for the way he's given his
7 evidence to the Commission.

8 COMMISSIONER HICKINBOTTOM: Yes.

9 Dr Glasgow, thank you very much. It's been very
10 useful to explain to us, to me, how procurement works in
11 practice, which it is very important we understand that. So,
12 thank you very much for your time.

13 THE WITNESS: Thank you very much.

14 (Witness steps down.)

15 COMMISSIONER HICKINBOTTOM: Right.

16 MR RAWAT: Our next scheduled hearing is on Tuesday.

17 COMMISSIONER HICKINBOTTOM: Half past 9:00?

18 MR RAWAT: Half past 9:00.

19 COMMISSIONER HICKINBOTTOM: Thank you again,
20 Dr Glasgow.

21 THE WITNESS: Thank you.

22 (Whereupon, at 4:46 p.m. (EDT), the Hearing was
23 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