

**BRITISH VIRGIN ISLANDS COMMISSION OF INQUIRY**

**HEARINGS: DAY 25**  
(TUESDAY 13 JULY 2021)

International Arbitration Centre  
3<sup>rd</sup> floor Ritter House  
Wickhams Cay II  
Road Town, Tortola

**Before:**

**Commissioner Rt Hon Sir Gary Hickinbottom**

Mr Niki Olympitis of Withers LLP and Mr Hussein Haeri (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.

Mr Jeremiah Frett gave evidence.  
Mr Glenroy A. Forbes gave evidence.

Court Reporter:

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

Those present:

Session 1

Mr Niki Olympitis, Withers LLP (attending remotely)

Mr Daniel Fligelstone Davies, Silk Legal (attending remotely)

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 (attending remotely)

Session 2

Mr Hussein Haeri, Withers LLP (attending remotely)

Mr Bilal Rawat

Mr Jeremiah Frett (attending remotely)

Mr Steven Chandler, Secretary to the Commission

Ms Juienna Tasaddiq, Assistant Secretary to the Commission

Mr Andrew King, Senior Solicitor to the Commission

Ms Rhea Harrikissoon, Solicitor to the Commission

Mr Dame Peters, Audio-Visual Technician (attending remotely)

Session 3

Mr Bilal Rawat

Mr Glenroy A Forbes (attending remotely)

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 (attending remotely)

P R O C E E D I N G S

Session 1

1  
2  
3 COMMISSIONER HICKINBOTTOM: Mr Peters, we are ready to  
4 go, live-streamed. Thank you very much.

5 Good. Mr Rawat.

6 MR RAWAT: Good morning, Commissioner. Can I, for the  
7 Transcript, introduce the representation, which is all remote.

8 First, Mr Niki Olympitis appears on behalf of the  
9 Attorney General and the elected Ministers; and, secondly,  
10 Mr Daniel Fligelstone Davies appears on behalf of seven Members  
11 of the House of Assembly.

12 We were due to start, Commissioner, at 9:30.  
13 Regrettably, Mr Fligelstone Davies was detained longer than he  
14 expected in another hearing, which is why we started slightly  
15 later.

16 COMMISSIONER HICKINBOTTOM: Yes, thank you.

17 MR RAWAT: The first matter that is before you,  
18 Commissioner, is legal submissions in relation to two matters.  
19 Previously, the participants have been invited to make written  
20 submissions on two issues:

21 The first of this is the definition of the term  
22 "corruption, abuse of office, or other serious dishonesty",  
23 which appears in paragraph 1 of your Terms of Reference.

24 And the second is the applicability of the Salmon  
25 Principles to the work of a Commission of Inquiry.

1           The purpose of this morning is to hear further oral  
2 submissions from participants on those two matters. They have  
3 been asked to focus their oral submissions on addressing any  
4 additional matters rather than repeating the written  
5 submissions, and the participants have been allocated 15 minutes  
6 in which to address you, if they wish.

7           If I could just perhaps set out the framework of each  
8 matter.

9           COMMISSIONER HICKINBOTTOM: Yes, thank you.

10          MR RAWAT: The first matter I suggest that you deal  
11 with is the definitions. You have received written submissions  
12 from the Attorney General on this matter and also written  
13 submissions from Silk Legal. There appears to be broad  
14 agreement as to what the terms cover, and I don't, in general,  
15 desist from that, but perhaps the one area where I would reserve  
16 my position as counsel, Commissioner, is the question of whether  
17 "other serious dishonesty" encompasses the purely criminal,  
18 which is a submission made by the Attorney General.

19          A few questions, in my submission, arise at this  
20 point, and that is what I would invite you to ask the  
21 participants to address you on.

22          The first is, given the submissions that they have  
23 made on the definitions, do they accept that the acts or  
24 omissions of elected officials fall within the ambit of the  
25 definition.

1           And second is, what conduct do they say does fall  
2 within the ambit of the term as set out in your Terms of  
3 Reference.

4           So, I would pause there, and perhaps you might wish to  
5 hear from Mr Olympitis in the first instance.

6           COMMISSIONER HICKINBOTTOM: Yes, thank you very much,  
7 Mr Rawat.

8           Mr Olympitis, I have read the--obviously all of the  
9 submissions, but particularly the submissions made on behalf of  
10 the Attorney General. Thank you very much. They were very  
11 helpful.

12           Just dealing with the first point raised by Mr Rawat,  
13 I had assumed, given the nature of the Terms of Reference, that  
14 you accept that your submissions in respect of the scope of this  
15 phrase "corruption, abuse of office, or other serious  
16 dishonesty", covers public officials in elected office.

17           MR OLYMPITIS: Yes, I think that's right. I don't  
18 think we would argue with that as a principle.

19           COMMISSIONER HICKINBOTTOM: Thank you very much. I  
20 thought that was the case.

21           In terms of ambit of conduct, the written submissions  
22 have helpfully set out the very many different offenses in the  
23 BVI that fall under the general umbrella of "corruption, abuse  
24 of office, or other serious dishonesty" in a criminal context.  
25 As I say, there are a considerable number of offenses.

1           It seems to me that, for my purposes, it's sufficient  
2 that I look at the phrase as a whole and, therefore, if conduct  
3 falls within one element of the phrase, that's really sufficient  
4 from my point of view. I don't really have to decide whether,  
5 if you're right--if you're right--and it has to be criminal  
6 conduct--whether that criminal conduct falls better or  
7 exclusively in one particular crime or another; or, if it falls  
8 within one particular crime, for example, under Section 98,  
9 whether it would--might also fall within another Section dealing  
10 with some other form of corruption.

11           If that's right, and given your submission which, with  
12 respect, I think is right, that "abuse of office", in the  
13 phrase, you say plainly encompasses the offense of misconduct in  
14 public office, and you helpfully referred to cases like Chapman,  
15 which set out really now quite clearly the elements of  
16 misconduct in public office, given that, do you accept these as  
17 propositions:

18           Firstly, that a Public Officer, including an elected  
19 officer, exercising his or her public functions in that office,  
20 must act in the public interest and only in the public interest;  
21 and, if he or she knowingly act other than in the public  
22 interest, then that falls within the phrase as a whole. I  
23 think, on your analysis, it would fall within "misconduct in  
24 public office", but it would fall within the phrase as a whole.

25           MR OLYMPITIS: Yes.

1           COMMISSIONER HICKINBOTTOM: Is that a prop (audio  
2 distortion) for oral submissions, I think it is. I just wanted  
3 to--

4           MR OLYMPITIS: No, no problem with that.

5           COMMISSIONER HICKINBOTTOM: Yes, thank you very much,  
6 Mr Olympitis.

7           Those, I think, deal with the two matters particularly  
8 raised by Mr Rawat. I'm not sure there will be, but is there  
9 anything else you want to add to ambit of conduct other than  
10 your written submissions and that--accepting that proposition  
11 clearly?

12          MR OLYMPITIS: No, I think we're fine on our written  
13 submissions.

14          COMMISSIONER HICKINBOTTOM: Thank you very much, Mr  
15 Olympitis. Thank you for them; they were very clear.

16          Now, Mr Fligelstone Davies, again, just dealing with  
17 those two matters, again with you, do you accept that "acts and  
18 omissions of elected Public Officers" fall within the scope of  
19 "Public Officers"?

20          I think you're on mute, Mr Fligelstone Davies, or at  
21 least I can't hear you.

22          MR FLIGELSTONE DAVIES: Yes, Mr Commissioner, and the  
23 reason for that is that a Public Official is--for the purposes  
24 of the Criminal Code, includes elected officials.

25          COMMISSIONER HICKINBOTTOM: Good. Thank you very

1 much.

2           And in terms of the ambit of conduct, without going  
3 through the same propositions, do you agree with Mr Olympitis  
4 that that conduct would fall within that phrase?

5           MR FLIGELSTONE DAVIES: If it is knowingly done, then  
6 that would necessarily be--probably fall under the category of  
7 "abuse of office".

8           COMMISSIONER HICKINBOTTOM: Quite. I accept that it  
9 has to be knowingly and not accidentally or anything less than  
10 knowingly. I understand that, and I think that's right and it,  
11 as it were, more obviously falls within abuse of office, but as  
12 said that depends on what precisely the conduct is because the  
13 conduct which falls within "abuse of office" could, of course,  
14 fall under another Section of the criminal code as well.

15           Good. Thank you very much.

16           And again, anything else that you want to add on ambit  
17 of conduct over and above the legal submissions that you and  
18 Mr Olympitis have made?

19           MR FLIGELSTONE DAVIES: Yes, Mr Commissioner. Just  
20 one small point.

21           COMMISSIONER HICKINBOTTOM: Yes.

22           MR FLIGELSTONE DAVIES: Is that--and it just came to  
23 mind when I was preparing a bit for today. If the Commission is  
24 going to be making recommendations for that--recommendation that  
25 criminal proceedings be initiated rather than necessary charges



1 or for things to be further investigated by the DPP, I would  
2 suggest that--well, my line of thinking is that the Commission  
3 must base those recommendations mainly on what it considers to  
4 be admissible evidence as to--as rather in a--what would be  
5 otherwise inadmissible hearsay within a court setting.

6 And I make that submission on the basis that, while  
7 the Commission itself is not bound to follow the Rules of  
8 Evidence for the purposes of making its Report as a whole or  
9 even assessing whether or not the systems of governance in the  
10 British Virgin Islands are compatible with international law and  
11 acceptable standards, when it comes to making charges or  
12 recommending that criminal proceedings be done, I--be  
13 instituted, I would suggest that to base a recommendation on  
14 what is otherwise inadmissible hearsay evidence could be  
15 construed as making recommendations that are based on irrational  
16 or unreasonable considerations within the "Rinsby" (phonetic and  
17 unclear) principles. That's just--that's the only other tidbit  
18 that I was--that I wanted to raise before, Mr Commissioner.

19 COMMISSIONER HICKINBOTTOM: Thank you very much,  
20 Mr Fligelstone Davies. That's quite a long way down the line in  
21 terms of recommendations. We're at the moment talking  
22 about--really about findings that the--that I might make in the  
23 Report, but in terms of recommendations, that is a long way down  
24 the line.

25 And, of course, although it's possible that some of

1 the evidence which has been adduced before me may not be  
2 admissible in a criminal court, that's possible. But, of  
3 course, if there were to be a criminal investigation of any of  
4 the matters that are covered by the Report, that, of course, may  
5 result in other evidence coming forward that would be  
6 admissible.

7 But I certainly understand your point, and I'll  
8 certainly take that into account when we come to  
9 recommendations. Thank you very much.

10 MR OLYMPITIS: Commissioner, Commissioner, I--just one  
11 small point--

12 COMMISSIONER HICKINBOTTOM: Yes.

13 MR OLYMPITIS: --in relation to serious dishonesty. I  
14 mean, I just want to make it clear--and I think it is clear from  
15 our written submissions--I want to make it clear that "serious  
16 dishonesty" does have a meaning, and we say "serious dishonesty"  
17 elevates it to criminal dishonesty, not just misconduct; no,  
18 it's got to be "serious dishonesty".

19 COMMISSIONER HICKINBOTTOM: Well, I understand that,  
20 but misconduct in public office, the cases--I mean, you've  
21 raised the cases very properly, cases such as Chapman, that go  
22 into that, go into, as it were, the seriousness of the  
23 misconduct.

24 MR OLYMPITIS: Yes.

25 COMMISSIONER HICKINBOTTOM: And so--I mean, I

1 understand what you say about dishonesty--well, I understand  
2 what you say about dishonesty, and also that the Terms of  
3 Reference refer to "other serious dishonesty".

4 MR OLYMPITIS: Yes.

5 COMMISSIONER HICKINBOTTOM: I understand that point.

6 MR OLYMPITIS: Yes.

7 COMMISSIONER HICKINBOTTOM: And that serious must be  
8 given--

9 MR OLYMPITIS: Some meaning.

10 COMMISSIONER HICKINBOTTOM: Some meaning. Exactly.  
11 Thank you very much.

12 Mr Rawat, is there anything else on that?

13 REALTIME STENOGRAPHER: Your microphone was not on.  
14 We did not catch what you said, Mr Rawat.

15 MR RAWAT: Sorry, Mr Kasdan, I had the microphone on  
16 mute.

17 Just for the Transcript, in response to the  
18 Commissioner's question as to whether I had further submissions  
19 in response, the short answer is "no".

20 COMMISSIONER HICKINBOTTOM: No.

21 And I think you and the participants are generally in  
22 agreement with regard to the scope of that phrase.

23 MR RAWAT: Yes.

24 COMMISSIONER HICKINBOTTOM: I mean, I know you reserve  
25 the position with regard to non-criminal serious dishonesty. I

1 understand that.

2 MR RAWAT: Yes.

3 COMMISSIONER HICKINBOTTOM: And their position is very  
4 clear on that.

5 MR RAWAT: Yes.

6 COMMISSIONER HICKINBOTTOM: It has to be criminal.

7 MR RAWAT: Yes.

8 COMMISSIONER HICKINBOTTOM: But I think that if we  
9 focus on the conduct, that would be helpful.

10 MR RAWAT: Yes.

11 And I remind myself that, of course, your Terms of  
12 Reference require you to establish whether there is information  
13 that "corruption, abuse of office or other serious dishonesty"  
14 in relation to officials where the statutory, elected or public,  
15 may have taken place--

16 COMMISSIONER HICKINBOTTOM: Yes.

17 MR RAWAT: --in recent years.

18 COMMISSIONER HICKINBOTTOM: Yes. Okay, so I think  
19 that--

20 MR RAWAT: That deals with that issue.

21 COMMISSIONER HICKINBOTTOM: Deals with that, yes.

22 MR RAWAT: If I could turn to the second issue, which  
23 is the Salmon Principles. The position there is that, on the  
24 13th of June, Silk Legal submitted that a Commission of Inquiry,  
25 and specifically this Commission of Inquiry, was bound to apply

1 the six Salmon Principles because they represented "the law of  
2 the land".

3 Just perhaps for the benefit of anyone who might be  
4 following these proceedings online, the Salmon Principles  
5 emerged from a Royal Commission of Inquiry chaired by the Rt.  
6 Hon. Lord Justice Salmon, which was appointed in 1966--

7 (Overlapping speakers.)

8 MR RAWAT: Sir, I paused in case--whether  
9 Mr Fligelstone Davies was about to say something.

10 COMMISSIONER HICKINBOTTOM: No, I think--

11 (Overlapping speakers.)

12 MR RAWAT: Right. I'll continue.

13 In February 1966, a Royal Commission chaired by the  
14 Rt. Hon. Lord Justice Salmon was appointed to review the  
15 workings of the Tribunal of Inquiry Evidence Act 1921 and  
16 consider whether it should be retained, and if retained, whether  
17 any changes are necessary or desirable and to make  
18 recommendations.

19 The report of that Royal Commission has come to be  
20 known as the Salmon Report, and amongst its recommendations,  
21 which were focused on the 1921 Act, was six principles which  
22 again have come to be known as the "Salmon Principles", and they  
23 are as follows:

24 "Before any person becomes involved in any inquiry,  
25 the Tribunal must be satisfied that there are circumstances

1 which affect him and which the Tribunal proposes to  
2 investigate".

3           Number two: "Before any person who is involved in an  
4 inquiry is called as a witness, he should be informed of any  
5 allegations which are made against him and the substance of the  
6 evidence in support of them".

7           Three: "(a), he should be given an adequate  
8 opportunity of preparing his case and of being assisted by his  
9 legal advisors". And "(b) his legal expenses should normally be  
10 met out of public funds".

11           Four: "He should have the opportunity of being  
12 examined by his own solicitor or counselor in stating his case  
13 in public at the inquiry".

14           Five: "Any material witness he wishes called at the  
15 inquiry should, if reasonably practicable, be heard".

16           Six: "He should have the opportunity of testing by  
17 cross-examination conducted by his only Solicitor or counsel any  
18 evidence which may affect him".

19           The submission of Silk Legal goes to the procedure  
20 that any Commission of Inquiry established in the Eastern  
21 Caribbean can adopt, and they submit that, in fact, that, on the  
22 basis of the applicability of the Salmon Principles, that  
23 Section 13 of the Commission of Inquiry Act contravenes the  
24 Virgin Islands Constitution Order of 2007. And you'll remember,  
25 Commissioner, that that Act gives you the discretion to allow

1 examination and cross-examination insofar as you consider it  
2 proper.

3           But Silk Legal's submission goes, it seems, further  
4 than that, in that they're saying that the Rules that you have  
5 issued under Section 9 of the Commissions of Inquiry Act, and  
6 specifically Rule 27, also contravenes the Constitution. Rule  
7 27 allows--firstly requires that if any participant or counsel  
8 for a witness wishes to put questions to a witness, they must  
9 first discuss it or seek to put the questions through me as  
10 counsel for Commission. If in the event that I don't agree to  
11 put those questions, then they have the fallback position of  
12 making an application to you to put questions to a witness.

13           In my submission, that requirement that they make an  
14 application to the Commission is consistent with Section 13  
15 because it is the only way in which a Commissioner can determine  
16 whether the questions that are going to be put are proper.

17           So, that gave rise to an invitation to participants to  
18 address you further and address you today on this question, and  
19 that is whether the Commission of Inquiry is required to apply  
20 the Salmon Principles inflexibly or at all.

21           On Silk Legal's submission, the answer to that is  
22 "yes", you are bound to adopt it as a framework. In my  
23 submission--

24           COMMISSIONER HICKINBOTTOM: What they say, as I  
25 understand it, Mr Rawat, is that the Salmon Principles aren't

1 principles at all; they're rules of law, which are mandatory  
2 and, as I understand their submission, sufficient. So, a  
3 Commission of Inquiry has to proceed on this rigid basis, and it  
4 is sufficient in terms of what they call "natural justice" for  
5 the Commission of Inquiry to do that.

6 MR RAWAT: Yes, and that is the way in which, by  
7 adopting--following the law, which is the six Salmon Principles,  
8 or what I think were described in the submission as Salmon Rules  
9 because they are now part of the law, that is--

10 MR FLIGELSTONE DAVIES: Mr Commissioner, in an effort  
11 to assist and avoid time that can be saved, we at Silk Legal do  
12 concede on the point that the Salmon Rules cannot be inflexibly  
13 applied and we have--I've discussed this with counsel for the  
14 Attorney General, and we generally concede and go along with  
15 Attorney General's position on the matter, if that would assist  
16 in expediting matters at all.

17 COMMISSIONER HICKINBOTTOM: Thank you, Mr Fligelstone  
18 Davies. It might well. Thank you.

19 MR RAWAT: It certainly shortens matters because it  
20 amounts to a reversal of the position. If I just, perhaps, for  
21 the Transcript, outline what the position of the Attorney  
22 General is, and that is--and I hope I do that fairly--that the  
23 guiding principle must be fairness and observance of the basic  
24 rules of natural justice, and--but it's not necessary to comply  
25 with the Salmon Rules in respect of every possible--they focus



1 on criticisms that may be made of--every possible criticism made  
2 of a witness, provided the witness is afforded a fair  
3 opportunity to respond.

4 And that, in terms of my own written submissions which  
5 were disclosed to the parties, that they chime with what the  
6 Attorney General has said, and they were served before I saw the  
7 Attorney General's written submissions.

8 But to summarise my position, firstly, that it is not  
9 right to say that, in the Authority, that Silk Legal originally  
10 relied on that the--a Judge of the High Court of the Eastern  
11 Caribbean was purported to make or state the law.

12 Secondly, as Mr Fligelstone-Davis has conceded, that  
13 they are not rules of law. One can find reference to the Salmon  
14 Rules, but when one looks at it, they--such reference always  
15 goes back to the fact that they are guidelines. What there  
16 isn't is a statute or statutory instrument within a Commonwealth  
17 jurisdiction where they have been imported without any change or  
18 consideration straight into law.

19 And my position is that any Commission of Inquiry is  
20 entitled to make its own procedure and regulate its own  
21 procedure, and that is for obvious reasons, the subject matter  
22 of the Commission changes and is different, and it must do that.

23 It isn't, as you have said yourself, Commissioner, a  
24 court of law. You are required to conduct an investigation and  
25 to report. And, in doing so, you will have regard to the need

1 to conduct an effective investigation, an investigation that  
2 proceeds expeditiously and with regard to expenditure of public  
3 funds. But above all, you will have regard to the need to act  
4 with procedural fairness, and part of ensuring procedural  
5 fairness is being able to act flexibly.

6 But it comes down to this, and this is the point that  
7 the Attorney General's submissions are focused on: That what  
8 they must be is a fair and reasonable opportunity to allow  
9 individuals who may be subject to criticism an opportunity to  
10 respond to that, and that is the criticisms that may arise from  
11 the evidence.

12 The rigid approach originally pressed for by Silk  
13 Legal would have actually meant that--proceeds on the, I think,  
14 flawed assumption that the first time you call a witness, there  
15 may be evidence--that there may already be evidence that  
16 of--that gives rise to a potential criticism. And, in the real  
17 world, that's not so. What is key is that in conducting the  
18 investigation, a Commissioner acts with procedural fairness.

19 COMMISSIONER HICKINBOTTOM: Mr Rawat, before I just  
20 come to Mr Fligelstone Davies and Mr Olympitis, the Attorney  
21 General, in her submissions--I'll read it out, which is the  
22 quickest way. In paragraph 4.4, that procedural fairness may  
23 well--I'm quoting now--"involve advance warning of the nature of  
24 the allegation and notice of any relevant documents"--I think  
25 that, just to interpose, relevant evidence, I think, because

1 there may be evidence--there may be oral evidence that the  
2 Commissioner has received--"in order that the witness has an  
3 adequate opportunity to prepare to deal with the allegation",  
4 and then it goes on to say, "as contemplated by" the "Salmon  
5 Principles."...

6 But do you agree with that approach?

7 MR RAWAT: Yes, that--and although there has been a  
8 tendency to refer to notices of criticism as "Salmon letters",  
9 in my submission, that's perhaps not a helpful or modern  
10 approach to adopt. The better way, perhaps, is to describe them  
11 as "criticism letters". And the extent--they are not and should  
12 not be seen as quasi-pleadings. They don't stop a witness being  
13 asked additional questions on other matters. What, really, it  
14 comes back to is the witness being given a fair opportunity to  
15 respond, and that is not just to respond to criticisms that a  
16 Commission of Inquiry may draw to that witness' attention, but  
17 also to criticisms that one participant may wish to make of  
18 another or may wish to make of a witness.

19 And that also takes us back to the importance of  
20 Section 13 and of the Rules because what the protection that is  
21 intended to be afforded a witness is not just protection from  
22 being surprised by questions that are being put on behalf of the  
23 Commissioner, it is also not to be ambushed by another  
24 participant. And so, participants are under an obligation to  
25 give early notice, as well, of any criticisms that they may wish

1 to make.

2 COMMISSIONER HICKINBOTTOM: Yes, because of the  
3 importance of being fair to the person in respect of whom any  
4 criticism is made. Yes, that's very helpful.

5 Anything else, Mr Rawat, on that?

6 MR RAWAT: Not at this point, Commissioner.

7 COMMISSIONER HICKINBOTTOM: Mr Fligelstone Davies,  
8 thank you for your intervention, which I think may well have cut  
9 things short.

10 As I understand it, you effectively agree with the  
11 stance taken by the Attorney General in her short and helpful  
12 submissions; is that right?

13 I'm sorry, I think you're on mute, Mr Fligelstone  
14 Davies.

15 MR FLIGELSTONE DAVIES: I do apologise for that again.

16 Yes. I wouldn't want to go beyond what the Attorney  
17 General, the head of the--the titular head of the Bar, has said.  
18 Suffice it to say, though, probably apart from the fact, maybe  
19 the only point of departure is the fact that how does one  
20 effectively respond to a criticism. If one is to effectively  
21 respond to a criticism, it may entail--and this is just a  
22 suggestion--that some witnesses are recalled so that certain  
23 questions can be put to them, either through Mr Rawat or  
24 yourself or through the participant's counsel, which they think  
25 are material. Of course, the Commission would have advance

1 notice in that respect of the questions that the--that other  
2 counsels may wish to ask of that particular witness, having had  
3 the time to peruse all the evidence forensically.

4 COMMISSIONER HICKINBOTTOM: I mean, that's covered by  
5 the Attorney General's note.

6 MR FLIGELSTONE DAVIES: Yes. I might have missed it.

7 COMMISSIONER HICKINBOTTOM: It refers to the--"it may  
8 benefit from being tested in cross-examination". Well, I think  
9 it depends on the circumstances of the criticism.

10 MR FLIGELSTONE DAVIES: Indeed.

11 COMMISSIONER HICKINBOTTOM: In a particular case, that  
12 may be right, and the cases are, again, clear on that. I mean,  
13 it depends upon the circumstances of the criticism. The  
14 important thing is--and I think this comes out of the Attorney  
15 General's written submissions and what Mr Rawat has said this  
16 morning--it is procedural fairness, and anyone in respect of  
17 whom criticisms are made need to have a fair and full  
18 opportunity to respond to those.

19 And as the Attorney General says, because she sets out  
20 a number of factors, which may, depending upon the nature of the  
21 criticism, be relevant to what fair process requires, is the  
22 extent to which the allegations founded in documents or other  
23 oral evidence, and the possible need for some evidence to be  
24 tested in cross-examination.

25 But it all depends upon, really, I think, the person

1 having prior notice and then having an opportunity to make  
2 submissions on the criticism and how the person considers that  
3 it should be approached in terms of procedure by the Commission  
4 of Inquiry. But, I mean, I have no difficulty with that.

5 The key thing is procedural fairness, and that will  
6 depend upon the circumstances of the criticism, and that, I  
7 certainly accept, depends upon prior notice, proper prior notice  
8 being given to anyone in respect of whom criticism is made, to  
9 enable them properly to prepare their response.

10 MR FLIGELSTONE DAVIES: Absolutely. I mean, I agree  
11 with that entirely.

12 COMMISSIONER HICKINBOTTOM: Good.

13 And, Mr Olympitis, I mean, I've just really outlined  
14 what the Attorney General has said, so I suspect you are going  
15 to agree with it. But is there anything else to add?

16 MR OLYMPITIS: Well, no. I think we've all ended up  
17 in the same place. And we did have one or two minor issues with  
18 Mr Rawat's submission, but we do all end up in the same place,  
19 which is procedural fairness.

20 COMMISSIONER HICKINBOTTOM: Yes.

21 MR OLYMPITIS: I mean Salmon letters, whatever they're  
22 called, and, I mean, and they are called "Salmon letters" in  
23 this jurisdiction. You'll see that in some of the Authorities.  
24 But it doesn't matter. It will all come down to the same thing,  
25 and that is advance notice, knowing what the case is against the

1 individual, and being able to prepare and test it.

2 COMMISSIONER HICKINBOTTOM: Exactly.

3 And, I mean, they're called Salmon letters in other  
4 jurisdictions, too, including--

5 MR OLYMPITIS: Yes.

6 COMMISSIONER HICKINBOTTOM: --England and Wales.

7 But--

8 MR OLYMPITIS: Absolutely.

9 COMMISSIONER HICKINBOTTOM: --and that's fine as a  
10 shorthand.

11 MR OLYMPITIS: Yes.

12 COMMISSIONER HICKINBOTTOM: But the problem is we all  
13 appreciate the purpose of these letters is to put those against  
14 whom criticisms are made on proper notice--

15 MR OLYMPITIS: Yes.

16 COMMISSIONER HICKINBOTTOM: --and not to elevate the  
17 Salmon Principles beyond their proper scope.

18 MR OLYMPITIS: Yes.

19 COMMISSIONER HICKINBOTTOM: Is there anything else on  
20 that, Mr Rawat?

21 MR RAWAT: I don't believe so. I think, as  
22 Mr Olympitis said, we've all, by different routes, reached the  
23 same position--

24 COMMISSIONER HICKINBOTTOM: Yes.

25 MR RAWAT: --as I understand it.

1           COMMISSIONER HICKINBOTTOM: And, for myself, I'm quite  
2 confident, quite sure that that must be the right approach.  
3 Procedural fairness is the lone standard here, and the matters  
4 which I have to take into account, some of them, are helpfully  
5 set out by the Attorney General.

6           MR RAWAT: I think what I would add, though, of  
7 course, is that, firstly, that one of the other factors that  
8 bears upon formulating the procedure is the extent to which the  
9 witness against whom criticisms may be leveled is the other  
10 documents that that witness may have access to.

11           COMMISSIONER HICKINBOTTOM: Yes.

12           MR RAWAT: And another point, perhaps, to make is  
13 that, in the context of an investigation, what notice is being  
14 given, of course, is the potential or best provisional  
15 criticisms, but it is ultimately giving people a fair  
16 opportunity to respond to something that may ultimately lead to  
17 a finding.

18           COMMISSIONER HICKINBOTTOM: No--exactly. There's  
19 simply provisional criticisms that appear to arise or may arise  
20 from the documents and/or the oral evidence that we've heard.

21           Good. Thank you very much. I think that concludes  
22 those two matters.

23           I mean, given that now everybody seems to be in  
24 agreement, really, on both of those matters, subject to the  
25 reservation brought by you, Mr Rawat, on non-criminal



1 dishonesty, is the best way for you, perhaps, to draft a short  
2 note on those two matters in terms of what has been really  
3 agreed between the participants and the Commission of Inquiry so  
4 that there can be no doubt as to the way that we're going to go  
5 forward.

6 MR RAWAT: Yes, I shall do that.

7 COMMISSIONER HICKINBOTTOM: And that can be done,  
8 perhaps, once we've got the Transcript.

9 MR RAWAT: Yes.

10 MR OLYMPITIS: One point I'd like to just raise is the  
11 provision of bundles in advance. I just want to, perhaps when  
12 Mr Rawat drafts up his notes, we can perhaps talk about some  
13 kind of minimum period or something like that.

14 COMMISSIONER HICKINBOTTOM: No--certainly. I mean,  
15 again, the period that would be required to respond must be a  
16 reasonable period. That will, of course, depend upon the  
17 criticisms and the amount of work required do the response.

18 But, Mr Olympitis, you're right, just as a criticism  
19 can't be made at an oral hearing without any notice, any witness  
20 needs to have proper notice to be able to prepare, and that can  
21 certainly be taken into account. And it may be that a protocol  
22 from the COI assists on this, on the way in which we're going to  
23 approach these criticism letters, these Salmon letters, but,  
24 certainly, the degree of notice is something which can then be  
25 worked into that in some form or other.

1 MR OLYMPITIS: But it would be good to have some input  
2 into that.

3 COMMISSIONER HICKINBOTTOM: Yes, yes, certainly.

4 MR RAWAT: The observation I have--I mean, what we  
5 have to bear in mind, of course, is that the purpose behind  
6 Salmon letters was intended not to have someone coming along  
7 giving oral evidence, then suddenly being surprised by a  
8 criticism or--that arises from a piece--particularly if it arose  
9 from a piece of evidence that they were not aware of, and giving  
10 notice of potential criticism is the first stage.

11 The second stage is then determining--and it's then a  
12 matter for you, Commissioner--the best way in which someone can  
13 then provide a response. And it may well be in some cases that  
14 what is simply required is that they have notice, that  
15 they--they have a sufficient opportunity to respond, but they  
16 don't necessarily need to respond in writing. It's as--they  
17 could come along and give their answers.

18 Also the purpose of giving them notice is not only  
19 that they are then aware of question--no, of the areas upon  
20 which they may be questioned, but also that they have an  
21 opportunity to identify and draw to the attention of the  
22 Commission other relevant documents that are in their possession  
23 but which has not been provided to the Commission.

24 COMMISSIONER HICKINBOTTOM: No--exactly.

25 Mr Olympitis, you know this because this comes out of

1 the cases in which--which are in your bundle, but there are  
2 circumstances in which, to respond to a criticism, it's not  
3 necessary to hear oral evidence, but there will be some cases in  
4 which it is necessary to hear oral evidence. There are some  
5 cases in which it will be helpful to have, perhaps, an  
6 Affidavit, but certainly any documents which the individual  
7 wishes to rely upon, of course, in advance.

8 Good. But as I say, I think it may be helpful if we  
9 work on a protocol so that everybody knows how we're going to  
10 approach that stage of the Inquiry.

11 MR OLYMPITIS: Yes.

12 MR FLIGELSTONE DAVIES: Yes. Great. That point, as  
13 helpfully pointed out, by Mr Rawat, that was the Hoffman case,  
14 wasn't it? And he suffered from not responding at all and then  
15 complaining that he hadn't been given an opportunity to respond,  
16 having been given the opportunity in writing, yes.

17 Just as a--all right.

18 COMMISSIONER HICKINBOTTOM: Quite.

19 MR RAWAT: In terms of the next stage of today's  
20 proceedings, Commissioner, we have our next witness scheduled at  
21 11:00.

22 COMMISSIONER HICKINBOTTOM: Yes.

23 MR RAWAT: So perhaps, if I could ask you to rise, we  
24 would, in any event, need to restructure, I think, the remote  
25 hearings so that the witness can come online.

1                   COMMISSIONER HICKINBOTTOM:  Yes.  Thank you very much,  
2 Mr Rawat.

3                   Thank you, Mr Fligelstone Davies.

4                   Thank you, Mr Olympitis.

5                   (Recess.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Session 2

JEREMIAH FRETT, COMMISSION WITNESS, RECALLED

COMMISSIONER HICKINBOTTOM: Good, Mr Rawat. Thank you very much.

MR RAWAT: Thank you, Commissioner.

Commissioner, our first witness of the day is Mr Jeremiah Frett, the Financial Secretary to the British Virgin Islands Government.

Mr Frett has previously given evidence to the Commission, and so he--there's no reason for him to take the oath or to affirm again. He's still bound by his earlier oath and affirmation.

BY MR RAWAT:

Q. So, Mr Frett, can I, before I turn to you, just also for the purpose of the Transcript, just introduce the representation that is present online. Mr Hussein Haeri appears on behalf of the Attorney General and the elected Ministers. There is no representative from Silk Legal now in the Hearing.

COMMISSIONER HICKINBOTTOM: Yes. Thank you, Mr Rawat.

Good morning, Mr Frett. I hope you can see and hear us properly.

THE WITNESS: Good morning, Commissioner. Yes, I can.

COMMISSIONER HICKINBOTTOM: Good. Thank you very much.

BY MR RAWAT:

1 Q. Mr Frett, first of all, thank you very much for  
2 returning to give further assistance to the Commission.

3 Can I just ask you just to remember one thing, and  
4 that is, if you could try and keep your voice up, please, so  
5 that we can all hear you and just also to speak slowly. One of  
6 the lessons that everyone has to learn when doing these hearings  
7 remotely is to try and not speak over each other. I will try  
8 and do that, and if I do cut across, I will stop and give you an  
9 opportunity to finish your answer.

10 A. Thank you, Commissioner.

11 Q. You have, I think, been written to, and it's been  
12 explained to you that there are a number of reports that were  
13 produced by the Auditor General and the Internal Auditor on  
14 which we would welcome your assistance.

15 Now, just again to remind us in terms of background, I  
16 think you've confirmed when you last gave evidence to the  
17 Commissioner that you have occupied senior positions in the  
18 Ministry of Finance since 2003; is that right?

19 A. That is correct, Commissioner.

20 Q. And you were, I think, appointed Acting Financial  
21 Secretary as from the 1st of January 2021?

22 A. It is correct, Commissioner.

23 Q. And prior to that date, Mr Frett, did you hold any  
24 position as Deputy Financial Secretary?

25 A. Yes, I did, Commissioner. I was the Acting Deputy

1 Financial Secretary.

2 Q. And from--over what period were you in that role?

3 A. Just one second, Commissioner.

4 (Pause.)

5 A. It would have been from around August 2019.

6 Q. Thank you.

7 Now, if I turn, first of all, to the issue of the  
8 Assistance Grants Programme that's operated by the House of  
9 Assembly, you have, in fact, recently provided an Affidavit in  
10 relation to that, and I'd like to ask you some question arising  
11 out of that. Do you have a copy of it with you?

12 A. Which one is that, Commissioner?

13 Q. That's your Third Affidavit.

14 A. Okay, Commissioner.

15 Q. And can you just confirm for us, Mr Frett, that you  
16 have the Affidavit and its exhibits with you?

17 A. I do believe this is the one I'm looking at,  
18 Commissioner.

19 Q. Thank you.

20 A. Yes.

21 Q. Now, the Internal Auditor produced two reports, the  
22 one most recently was in 2011, in relation to the process by  
23 which Assistance Grants are approved, and the Commission has  
24 also taken evidence from several Members of the House of  
25 Assembly on this.

1           We know that the Internal Audit Department raised  
2 concerns over the programme in their First Report, which is in  
3 May 2009, and made recommendations. And when the Department  
4 returned to do a follow-up audit in 2011, no recommendation had  
5 been implemented.

6           Were you, Mr Frett, before being notified by the  
7 Commission about these reports, were you aware of the concerns  
8 that had been raised by the Internal Audit Department?

9           A. Commissioner, I do not recall being aware of these  
10 particular reports.

11          Q. Now, if you could just help us with this in terms of  
12 lines of reporting, the reports that were prepared by the  
13 Internal Audit Department relate to the House of Assembly, but  
14 they appear to be addressed--or there's a logo on the front that  
15 says--indicates they're addressed to the Premier's Office, so  
16 we'll go into what role the Ministry of Finance plays in that,  
17 but in terms of reporting lines, does the House of Assembly sit  
18 under the Premier's Office in terms of its general day-to-day  
19 administration?

20          A. Commissioner, to my knowledge, that is not the current  
21 arrangement. The House of Assembly falls under the Deputy  
22 Governor's Office umbrella, I do recall. I stand corrected if  
23 that is not the case.

24          Q. That's you're--that's your understanding as Acting--

25          A. Yes. It's not under the House--it's not under the



1 Premier's Office.

2 Q. Do you know whether, in the past it has ever been  
3 under the Premier's Office?

4 A. Since, in my senior capacity in the service, I do not  
5 ever recall it being under the Premier's Office.

6 Q. Thank you.

7 Now, what--the Affidavit you have and if you've got  
8 that in front of you, that will be helpful.

9 A. Yes.

10 Q. But you make the point that, as Financial Secretary,  
11 you would not have a role in the process by which Assistance  
12 Grants are approved and paid out; is that right?

13 A. That is correct, Commissioner.

14 Q. What you have set out, Mr Frett, though, is the  
15 process, as you understand it, and it obviously starts with an  
16 application that is submitted to a Member of the House of  
17 Assembly and which then goes to the Clerk of the House of  
18 Assembly, and the Clerk will then issue, you explained, a  
19 Purchase Order as permitted under the Public Finance Management  
20 Regulations of 2005; is that right?

21 A. Commissioner, correct.

22 Q. Now, in terms of the exhibits that you have  
23 accompanying that Affidavit, can I ask you to turn, please, to  
24 page 62 in those exhibits.

25 A. Okay.

1 Commissioner, page 62 refers to what?

2 Q. It should refer to Regulation 172 of the--  
3 (Overlapping speakers.)

4 Q. --Finance Management Regulations.

5 A. Go right ahead.

6 Q. Thank you, Mr Frett.

7 A. Thank you.

8 Q. And that, as we understand it, and the Commissioner  
9 recently took evidence from Dr Drexel Glasgow, who you will no  
10 doubt know, and Dr Glasgow explained that that's a provision in  
11 the regulations that deal with Purchase Orders. Would you agree  
12 with that?

13 A. I'm not sure if I'm going to fully agree with that,  
14 Commissioner. If you look at 172, it says the purchase from any  
15 distributor, wholesaler, or retailer. In this instance we are  
16 not purchasing, we are not procuring a goods and services. It  
17 is a mechanism in the JDEdwards software system in how we--how  
18 we transmit, how we--the process, the administration of  
19 processes to get access, to be able to process various payments.

20 So, in the case of Assistance Grants, this should not  
21 apply to that where a Purchase Order is in relation to this  
22 particular area here, but it's for the procurement of goods and  
23 service, and Assistance Grants is not procuring any goods and  
24 services.

25 Q. You've--you're one question ahead of me, Mr Frett.

1           A.    Okay.

2           Q.    You answered it for me, and you're right, it doesn't  
3 look like 172 would apply to the situation that we are  
4 discussing.

5                    And so, what I--given that you said that in your  
6 Affidavit that the issuance of a Purchase Order is governed by  
7 the regulations, did you have any other regulation in mind that  
8 might apply to the use of a Purchase Order in this situation?

9           A.    Can you point me, Commissioner, to the Affidavit point  
10 that the--

11          Q.    Yes.

12                    If you look at your paragraph 6, you say: "The  
13 Clerk's Office accesses the assist grants vote by issuing a  
14 Purchase Order. The issuance of a Purchase Order is governed by  
15 the Public Finance Management Regulation 2005". And, as you  
16 pointed out, 172 doesn't really seem to apply; and so, my  
17 question was whether there was any other regulation that you had  
18 in mind.

19          A.    Commissioner, no. Not to my knowledge, no.

20          Q.    Would a fairer way of putting it be your earlier  
21 answer, and that is that the Purchase Order mechanism has to be  
22 used in order for the Clerk of the House to ensure that,  
23 effectively, payment is made out?

24          A.    Commissioner, yes.

25                    COMMISSIONER HICKINBOTTOM: That--as Mr Rawat said,

1 that's the mechanism by which the money is released.

2 THE WITNESS: Commissioner, yes.

3 COMMISSIONER HICKINBOTTOM: Thank you.

4 BY MR RAWAT:

5 Q. And what you explain is that what the Clerk has to  
6 do--and this is at paragraph 7 of your Affidavit, Mr Frett--is  
7 that: "Following the assurance and approval of a Purchase Order  
8 by the Clerk, a voucher and payment documents requesting payment  
9 to an applicant are sent to the Treasury".

10 Now, so--and I think earlier you've explained that the  
11 payments documents will include an approved application form.  
12 Whose role is it to approve the application form?

13 A. Commissioner, I do not know who in the House of  
14 Assembly approves that application form. I would assume--and I  
15 do not want to speak out of turns here--you will have to speak  
16 with the Accounting Officer, but the Accounting Officer, which  
17 is the Clerk of the House, is responsible for day-to-day  
18 operation and the finances. So, I would say that that person  
19 can be--they would have to say what is the mechanism they have  
20 in place for approval. I do not want to say it's the Clerk.  
21 She can designate that to someone else, so I cannot say at this  
22 time. You have to clarify that with who is the authorised  
23 person in the office.

24 COMMISSIONER HICKINBOTTOM: But the Clerk to the House  
25 is the Accounting Officer.

1 THE WITNESS: That is correct.

2 COMMISSIONER HICKINBOTTOM: Thank you.

3 BY MR RAWAT:

4 Q. And the--but what you can say--and correct me if I'm  
5 wrong, Mr Frett--is that it's not the job of the Ministry of  
6 Finance to approve the application form.

7 A. Commissioner, no.

8 Q. And what comes to you is an approved form, a Purchase  
9 Order and a voucher.

10 Now, what does the voucher do?

11 A. Commissioner, let us go back a step. Those documents  
12 do not come to the Ministry of Finance. Those documents through  
13 the payment process goes to the Treasury Department.

14 Q. That's a fair point, but with that in mind--and you're  
15 right, you say they're submitted to the Treasury Department.  
16 But what is the voucher that is submitted?

17 A. Commissioner, the voucher is just another step in the  
18 payment process. The voucher is one of the final steps before  
19 the document is submitted. You have the--I'm assuming here, but  
20 I'm not complete, but they go through the application process,  
21 the persons; it is approved; the Purchase Order is raised; and  
22 once that Purchase Order is raised and the Purchase Order is  
23 signed off, then the next step is to voucher that document, so  
24 it's an accounting system that we use. And the voucher system,  
25 once the voucher is printed, it's signed off, approved, then

1 that, with all the requisite documents, with accompanied  
2 documents, is submitted to Treasury for payment, that include  
3 the Purchase Orders and other documents.

4 I don't have a sample in front of me, so I can't say  
5 what all documents are required by the Treasury Department for  
6 payment to be executed.

7 COMMISSIONER HICKINBOTTOM: Is the voucher issued by  
8 the Accounting Officer, Mr Frett?

9 THE WITNESS: That is correct, Commissioner.

10 BY MR RAWAT:

11 Q. And you've said that the Ministry doesn't approve the  
12 Purchase Orders. What does--what's the role of the Treasury in  
13 this process?

14 A. Commissioner, let me just go back one step further  
15 with respect to the Ministry not approving the Purchase Orders.

16 What transpires is that the allocation of monies  
17 sometimes are done on a quarterly basis, and there may be times  
18 where a Member may overspend a particular quarterly basis and  
19 the Purchase Order is a mechanism in the system. That Purchase  
20 Order may go on hold if that particular line item is over the  
21 quarterly amount.

22 And the Ministry of Finance would then--we have to  
23 release in some instances that Purchase Order in order for it to  
24 be paid because they--on a normal basis, they are given a  
25 certain amount of money per quarter to spend. And if they go

1 over that, then they will have to come to the Ministry of  
2 Finance and say, The Purchase Order went on hold. This is the  
3 reason why we are seeking for it to be released in order for  
4 them to continue the process.

5 COMMISSIONER HICKINBOTTOM: Mr--

6 A. If there's a case of over-expenditure, if there's a  
7 supplementary--if there is a supplementary, then it's also under  
8 the process there as well.

9 COMMISSIONER HICKINBOTTOM: Mr Frett, is this  
10 fair--and tell me if it's not right--that the Member of the  
11 House approves the application, and then it goes through the  
12 Clerk to the House as the Accounting Officer, and you don't know  
13 precisely--understandably you don't know precisely what happens  
14 there--but from the Accounting Officer comes a Purchase Order  
15 and a voucher, and once those are issued by the Accounting  
16 Officer to the Treasury--and you've explained that some may come  
17 through you in the event of an overspend--but is the Treasury--

18 THE WITNESS: Commissioner, just for clarification,  
19 not to overspend, if they been temporarily may have gone over  
20 the quarterly or the--for that particular quarter, yeah.

21 COMMISSIONER HICKINBOTTOM: Sorry, quite. No, I  
22 understand your evidence on that, but you may become involved at  
23 that stage.

24 THE WITNESS: Yes.

25 COMMISSIONER HICKINBOTTOM: But are the Treasury and

1 the Ministry of Finance in those functions really just dealing  
2 with the payment? So, if the voucher and the Purchase Order all  
3 come through, the Treasury will pay it because that's--

4 (Overlapping speakers.)

5 COMMISSIONER HICKINBOTTOM: --you may become involved  
6 if there is a quarterly overspend?

7 THE WITNESS: Yes.

8 The accounting of the Processing Officers in the  
9 Treasury Department, they would go through the documents, and  
10 once they are in order, payments are made.

11 COMMISSIONER HICKINBOTTOM: No, quite. Thank you very  
12 much.

13 BY MR RAWAT:

14 Q. So, their job is to--is essentially just to process  
15 the payment and issue the funds.

16 A. That is correct, Commissioner.

17 Q. If you look at paragraph 8 of your Affidavit,  
18 Mr Frett, you say: "Once the Treasury has approved the  
19 disbursement of funds, the Ministry no longer has any  
20 involvement in the transfer of funds to the applicant".

21 So, who does transfer the funds to the applicant?

22 A. Commissioner, I do not know the process of the  
23 collections of the checks from the Treasury Department. I do  
24 not want to say whether or not the applicant goes directly to  
25 the Treasury or in some cases the Clerk collects them, or



1 someone from the Clerks collects them, and distributes them to  
2 the individuals. I have seen where they have distributed them  
3 to individuals, collect them on their behalf, but I do not know  
4 what the process is at the House of Assembly with the checks  
5 being--once the checks have been issued, who collect them and  
6 how they're distributed. That is a policy that the Clerk would  
7 have at her office with that particular process.

8 COMMISSIONER HICKINBOTTOM: But you play no part in  
9 that. That's a matter be--

10 THE WITNESS: No. That is a function of Treas--that  
11 is a function of the Ministry of Finance.

12 COMMISSIONER HICKINBOTTOM: Yes, thank you.

13 BY MR RAWAT:

14 Q. Now, as we understand it, I mean, the Treasury is  
15 headed by the Accountant General; is that right?

16 A. That is correct, Commissioner.

17 Q. So, ultimately, it's the Accountant General that  
18 issues the check.

19 A. That is correct, Commissioner.

20 Q. We understand that the current Accountant General is  
21 on leave and also the Acting Accountant General is unavailable  
22 as well. In those circumstances where you have neither an  
23 Accountant General or an Acting Accountant General, how does the  
24 Government actually pay its bills?

25 A. Commissioner, I would not agree that we don't have an

1 Accountant General. Yes, while the Accountant General may not  
2 be available, she still communicates with her staff, and there  
3 are mechanisms in place at the Treasury Department where the  
4 process continues. There are other persons who are signatories  
5 and have other functions.

6 Q. So--

7 A. So, the Accountant General does not have to physically  
8 be there for this process to continue.

9 Q. There are other persons who have the right,  
10 effectively, to sign checks.

11 A. Yes, that is correct.

12 Q. Essentially operate the policy of the Treasury as a  
13 Department.

14 A. Yes.

15 Q. Thank you.

16 If you give me one moment, please, Mr Frett.

17 Now, as you confirmed to the Commissioner, in respect  
18 of the Assistance Grants, it would be the Clerk of the House  
19 that's the Accounting Officer; is that right?

20 A. It should be the Clerk, the Accounting Officer, that  
21 deals with those processes. If I am--I stand corrected if that  
22 is not case. I'm talking from a financial perspective of how  
23 the funding and the payment process goes. It lies with the  
24 Accounting Officer who happens to be the Clerk. If there are  
25 other procedures that are dealt with with the House of

1 Assembly--I think they have a policy document--I don't have that  
2 in front of me--but I think they do have a process on how  
3 Assistance Grants is treated as respect--when it comes to  
4 application and how that is dealt with. They do have their own  
5 internal processes. So I do not want to sit here and say that  
6 the Accounting Officer is solely responsible. You would have to  
7 have that discussion with the Clerk to see--understand what  
8 their processes are and to see whether or not she is the one  
9 that directs all the processes or other persons are involved.  
10 It's their own policy that they internally have.

11 Q. What the Public Finance Management Act of 2004 does  
12 mandate, though, is that an Accounting Officer--and it could be  
13 any Accounting Officer--is personally responsible for funds that  
14 are disbursed; is that right?

15 A. That is correct, Commissioner.

16 Q. Now, in this case, what you have is that on the  
17 assumption that the Clerk is the Accounting Officer, how does  
18 she fill--fulfill that mandate when it's the Treasury that  
19 approves the disbursement?

20 A. Commissioner, in the submission of the documents to  
21 Treasury for payment, they will have to sign off on the document  
22 to show--to say that what is in front of--what they submitted to  
23 the Treasury is accurate, and it meets all the requirements for  
24 payment.

25 I would not say that, because Treasury does not have

1 the power to change the submission. They're more of a payment  
2 processing with respect to those assistance--they just process  
3 the payments. If they found--if they find anomaly or something  
4 of concern, they will go back and start to send the submission  
5 back to the respective Accounting Officer to make the necessary  
6 adjustments. So, what is submitted must be consistent with the  
7 policies, whether it be the legislation or their own internal  
8 policy. And if there is something that is different, the  
9 documents are sent back. They are scrutinized and they will  
10 send back to see if they are consistent.

11           So, Treasury--I don't know if I agree with you  
12 that--how that Accounting Officer can be held liable or  
13 accountable when it's Treasury that makes the final payment.

14           Q. Well, can we dissect that a little more. I mean, it's  
15 not me that says this. It's Section 21(2) of the Public Finance  
16 Management Act, that the Accounting Officer is personally  
17 responsible for funds that are disbursed.

18           Now, what--as I understand the process, the Accounting  
19 Officer in this case, it--I think that the evidence that the  
20 Commissioner has received does confirm that it's the Clerks of  
21 the House. So, the Clerks of the House will submit the  
22 documents, submit the Purchase Order and the voucher, and, as I  
23 understand your evidence, will certify, which is what an  
24 Accounting Officer is required to do under the 2005 Regulations,  
25 certify the accuracy of the disbursement--

1 A. Yes.

2 Q. --and that it's properly supported.

3 Now, that's the stage at which--so effectively, when  
4 the Treasury Department takes hold of those documents, there  
5 will be--the Accounting Officer will have certified that it's a  
6 legitimate payment to make out.

7 A. Commissioner, that is correct, and that is the correct  
8 assumption that those documents are in order for payment, yes.

9 Q. So, is the job really of the Treasury Department to  
10 process the payment? Rather, they're not--the Treasury  
11 Department is not required to look at it afresh from the start  
12 as an application. They can rely on what's gone before and then  
13 just process the payment, or are they required to find anomalies  
14 and send them back?

15 A. Commissioner, the Accountant General and her team have  
16 a vital role to play to ensure that any payments made out of the  
17 Treasury Department--I think it's written--I have to go back to  
18 the Act, I don't have it in front of me--but I think it's that  
19 in the Act that they have a duty to make sure that before  
20 payments are made that they are accurate. So, if they see  
21 something that is inconsistent, they are to go back to the  
22 Accounting Officer and ask for the adjustment or clarification  
23 be made with respect to the payment.

24 Q. And that's--is their focus, because it's about  
25 payment, on ensuring, if you like, that the figures match up?

1           A.    Commissioner, I do not believe it's just about the  
2 figures.  It's about whether or not the policy that may have  
3 developed, whether it's through Cabinet, House of Assembly, or  
4 even if it's an agreement that they may have for payment is  
5 consistent with those things.  Treasury have a responsibility to  
6 make sure that those things happen.

7           Q.    What you've explained is that the amount that's  
8 usually allocated to House of Assembly Members comes in total to  
9 \$1,725,000.  That's at paragraph 9 of your Affidavit, and you've  
10 set out in a table how that breaks down.  Essentially, it's  
11 this, isn't it, Mr Frett, that a District Representative will  
12 have an allocation of \$125,000, whereas a Territorial  
13 Representative will have an allocation of \$150,000?

14          A.    That is correct, Commissioner.

15          Q.    And as you've--

16          A.    That figure, Commissioner, may change from budget to  
17 budget or government to government.  They decide on a policy on  
18 how much each representative may get based--or at-large  
19 candidate--would receive.  That is a policy decision, but it  
20 should--more than likely, it would be through Cabinet.

21                So I don't want--Commissioner, I don't want you to  
22 think that this is a fixed figures that is not--that is not  
23 subject to change.  This is based on the policy.  In next year's  
24 budget, based on our financial situation, that figure may be  
25 \$50,000.  It may be less, it may be more.  So, this is based on

1 the budgetary amount, so it's not a fixed figure.

2 Q. And what you do say is--I mean, firstly, you've said  
3 that it's allocated on a quarterly basis.

4 A. Um-hmm.

5 Q. But then you say--and this is at your paragraph  
6 13--that following the 2019 Election: "The newly elected  
7 government allocated US\$2,741,610" to the "Assistance Grants".

8 Was that just for the House of Assembly assistance  
9 programme?

10 A. Commissioner, I will have to clarify the information,  
11 but from looking at it at a glance, it would have been for the  
12 House of Assembly programme because that is the nature--that's  
13 on the basis on which this document was prepared, and it's my  
14 supporting team providing me the information. But I can clarify  
15 that, but it should have been, I believe it is pertaining to the  
16 programme itself, the Assistance Grant Programme, administered  
17 to the House of Assembly, but allow me to clarify that.

18 COMMISSIONER HICKINBOTTOM: Thank you, Mr Frett.

19 Just whilst on that paragraph, and your mathematics  
20 will be better than mine, but you say the Government allocated  
21 about \$2.7 million for Assistance Grants--

22 THE WITNESS: Right.

23 COMMISSIONER HICKINBOTTOM: --which exceeded the  
24 normal initial allotment of 1.7 million by just over 600,000 in  
25 the two larger figures, is not 626,000.

1 THE WITNESS: I'm looking at that as well,  
2 Commissioner, and that might have been a typo. I will have to  
3 verify that, sir.

4 COMMISSIONER HICKINBOTTOM: Could you just verify the  
5 figures in that because--

6 THE WITNESS: Yes.

7 COMMISSIONER HICKINBOTTOM: --a number of them--one or  
8 more of those figures may be wrong, but if you could come back  
9 to us, Mr Frett, with the accurate figures, that would be  
10 helpful.

11 THE WITNESS: If you allow me, Commissioner, I will  
12 check with the budget unit and verify this figure.

13 COMMISSIONER HICKINBOTTOM: Yes, thank you very much.

14 MR RAWAT: Thank you.

15 BY MR RAWAT:

16 Q. And it can be done simply by a letter to the  
17 Commission, Mr Frett.

18 COMMISSIONER HICKINBOTTOM: Or an e-mail.

19 MR RAWAT: Or an e-mail, yes.

20 THE WITNESS: Okay.

21 BY MR RAWAT:

22 Q. We don't need anything more formal than that.

23 A. All right. I will seek to do that before the end of  
24 the day. And I do apologise for any misinformation that may  
25 have been presented.



1 COMMISSIONER HICKINBOTTOM: Thank you.

2 BY MR RAWAT:

3 Q. Could I just take you to paragraph 7, please, and what  
4 you've explained there is that additional amounts to be  
5 allocated in respect of Assistance Grants may be approved by  
6 Cabinet during the year via supplementary appropriation, and  
7 you've set that out in a table. I just wanted your assistance  
8 just to understand how that process works by looking at the  
9 detail of that table, please. It's at page 102 in your exhibits  
10 to your Affidavit.

11 A. Commissioner, what page number again?

12 Q. 102 please, Mr Frett.

13 A. 102, okay.

14 Q. The exhibits themselves.

15 A. All right. Okay.

16 Okay. Commissioner, I'm seeing that.

17 Q. So, what we've looked at is the operation of the  
18 Assistance Grants from a budgetary perspective between 2018 and  
19 2021. That's what you've set out there. And if we take 2018,  
20 just to understand how the supplementary appropriation process  
21 works, there was a budget in terms of the programme in 2018 of  
22 \$1,976,000, and the actual budget spend was \$1,977,000. And  
23 what you've explained is that the first component of that, as I  
24 understand, is the allocation of \$1,725,000, and then there is a  
25 supplementary appropriation of \$260,000.

1           Now, if I could just ask you just to go to the next  
2 page, 103, is what you've exhibited to your Affidavit, Mr Frett,  
3 is, as you've said, copies of Cabinet Decisions, papers,  
4 Resolutions from 2018 to date, approving the provision of  
5 additional amounts for the Assistance Grants, and I just want to  
6 understand how that approval works.

7           So, what we have is, at page 103, an expedited  
8 extract, and this is Cabinet essentially authorising additional  
9 expenditure under a Schedule of Additional Provision No. 1 of  
10 2018.

11           So, is the process where there is, if you like,  
12 additional monies to be added to the Assistance Grant Programme  
13 that, first of all, it comes before Cabinet, Cabinet then makes  
14 a decision, and then it goes to the House for a resolution?

15           A. That--that is correct, Commissioner. It goes to  
16 Cabinet, and it goes to the House for approval.

17           Q. Now, if I draw your attention to--just to the first  
18 Roman numeral, there is a reference to "recurrent expenditure to  
19 be expended in variation of the appropriated amounts". When you  
20 look through the papers, what you don't find is any reference to  
21 260,000. And if you go through each page, 109, for example--let  
22 me know when you've got it, Mr Frett.

23           A. So, 1009. Go right ahead.

24           Q. 109, yeah. There's a re--that's the actual Resolution  
25 of the House on the 28th of December 2016, and it refers there

1 to recurrent expenditure of \$18,646,000.

2           So, within the body of that Resolution, there is no  
3 specific reference to Assistance Grants. If I ask you to turn  
4 over, what there is, it seems, is an annex or an appendix to the  
5 Resolution. And we can see at the top--and this is page 110--at  
6 the very top, you see, under "Constitutionally Established  
7 Departments, House of Assembly, Supplementary Provision Sought,  
8 260,000", and total approved is 260,000, and it's just written  
9 as "the purpose is to cover the costs of additional assistance  
10 grant expenses to year end for all Members of the House of  
11 Assembly".

12           So, firstly, the question is: When additional--or  
13 appropriations are being approved to the Assistance Grants, is  
14 it just described as "recurrent expenditure"?

15           A. Commissioner, it is in the lump sum that is all  
16 recurrent expenditure.

17           Q. And what we see is, this is the Resolution of 2018.  
18 It's Gazetted on the 28th of December 2018. But is it meant to  
19 cover monies that have already been spent, or is it meant to add  
20 to the grants so that more spending can be done?

21           A. Yeah. Commissioner, in most instances, it may have  
22 been money already spent.

23           COMMISSIONER HICKINBOTTOM: I mean, if you look at the  
24 schedule, the actual schedule, additional provision line which  
25 refers to the £260,000, the purpose is to cover the cost of

1 additional assistance grant expenses to year end for all Members  
2 of the House of Assembly. That looks to the previous year end.

3 THE WITNESS: Hmm.

4 BY MR RAWAT:

5 Q. So, does it--it's--effectively, it's Government paying  
6 its own debt, isn't it? It's money that has already been spent,  
7 and it's just you've gone into debit, if you like, and you're  
8 putting the money back?

9 A. Hmm. Commissioner, I don't know if I summarise it  
10 like that, but I do understand the analogy that you're trying to  
11 use. But it has been a common practice, Commissioner, that  
12 persons may request monies from time to time to the Government,  
13 and it's true it's supplementary funding. They may gain access  
14 to those monies to spend for whatever the purpose may be. And  
15 in some instances it is done--this is done afterwards,  
16 after--and then it goes to the House of Assembly.

17 So--

18 COMMISSIONER HICKINBOTTOM: This is approval of money  
19 already spent?

20 THE WITNESS: That is correct. In some instances--not  
21 all instances; in some instances--money is already spent.

22 BY MR RAWAT:

23 Q. But if we--and this is an example of an instance where  
24 the House of Assembly has--is approving money that it has  
25 already spent?

1           A.     Um-hmm.

2           Q.     But--and so, it's--in effect, under the Assistance  
3 Grant Programme, there is the possibility for Members  
4 to--Members may end up approving more, or more grants in excess  
5 of the money originally budgeted. And in those instances,  
6 that's when you might need a supplementary appropriation to deal  
7 with that?

8           A.     That is correct, Commissioner.

9           Q.     In the table, the schedule of the table at 102, if I  
10 take you back to that, please, Mr Frett.

11          A.     Yes, Commissioner. I'm here.

12          Q.     Before we leave 2018, you see, then, that there is the  
13 schedule of Additional Provision No. 2 for 2018, and that's  
14 42,500, but it's in brackets. Can you just assist us with what  
15 that figure denotes when you put it in brackets?

16          A.     Commissioner, can I get back to you and clarify that  
17 brackets number, please?

18                   COMMISSIONER HICKINBOTTOM: What it seems to be,  
19 Mr Frett, although you can qualify it in due course, is that  
20 there was, in addition to the £1,725,000, there was a  
21 supplementary of £260,000, which we've seen; \$42,000--sorry,  
22 \$42,500 was then backed out, it's a negative--a negative  
23 payment; and then \$5,000, \$1,800 and \$27,000 were reallocated  
24 back--

25                                 (Overlapping speakers.)

1 THE WITNESS: I'm not--Commissioner, I don't want to  
2 say that is not the case, but I think that it is best for me to  
3 sit down with my budget team and get some clarity on what the  
4 negative figure means. I'm sure there is some clarity that can  
5 be given with respect to that, so I don't want to sit here and  
6 assume the assumption at this time.

7 COMMISSIONER HICKINBOTTOM: Perfectly fair, Mr Frett.

8 THE WITNESS: Yes.

9 BY MR RAWAT:

10 Q. And in providing that clarity, Mr Frett, could you  
11 just also assist us with some detail about the operation of the  
12 reallocation warrant, just who warrants, whose job it is to  
13 warrant the reallocation?

14 If you go--if we look at the--and you're going come  
15 back to the Commissioner on the schedule of Additional Provision  
16 No. 2 of 2018. But if I can just take you to some of the  
17 documents that you've exhibited in relation to that, if you go  
18 to page 131, please. Let me know when you have it, Mr Frett.

19 A. I'm still scrolling, Commissioner. Just one second,  
20 please.

21 Q. Of course.

22 A. Okay. I'm there, Commissioner.

23 Q. Thank you.

24 At 131--and please correct me if I've misunderstood  
25 it, but it's a Ministry of Finance memorandum to Cabinet

1 governing the Schedule of Additional Provision No. 2, and that's  
2 the start of the process, in effect. So we see, if we go  
3 through to 135, that it is signed and dated--well, it is dated  
4 and carries the name of The Honourable Andrew Fahie, Minister of  
5 Finance. It's dated the 27th of September 2019.

6 I just wanted to just firstly to ask: You're dealing  
7 with a Schedule No. 2 of 2018, but when it comes before Cabinet,  
8 it is coming in September 2019. So again, this is recurrent  
9 expenditure that appears to be used to deal with  
10 expenditure--monies that have already been expended, isn't it?

11 A. Commissioner, in this instance, it would have been for  
12 monies already expended in 2000--when it would have been? In  
13 2018? That would have been for money already expended in 2018.

14 Q. The next question, though: Is it normal for it--can  
15 you explain why it happened so late? Your memorandum--I mean,  
16 is dated the 9th of May 2019. It's signed off by the Minister  
17 of Finance in November 2019. Is there any reason why it takes  
18 so long, as part of the process, to resolve the issue?

19 A. Commissioner, you will appreciate that I took the  
20 position as Financial Secretary in January--January 2021, so I  
21 do not want to say in advance and draw my conclusion as to why  
22 it could be--I may have my own view, but it may not be the view  
23 of the Financial Secretary at that time. He may have a  
24 different perception on why it took so late.

25 But I would say there is--there could be a number of

1 reasons as to why--why it could have been late in this  
2 particular instance. I don't want to speculate.

3 Q. That's understandable, Mr Frett.

4 A. Yes.

5 Q. But you've obviously--as you explained, you've  
6 occupied senior positions in the Ministry of Finance for almost  
7 20 years now.

8 A. Right.

9 Q. In your experience--and I'm not--I'm not asking about  
10 the specific reasons why this memo, perhaps, or this  
11 appropriation was being processed late in the day. But in your  
12 experience, is that the convention or the practice, that it will  
13 be some months later that the Schedule of Additional Provision  
14 will start making its way through by being introduced to  
15 Cabinet?

16 A. Commissioner, that is a fair assumption. I wouldn't  
17 say it's months later, but in some instances there is a lag from  
18 when monies are approved by Cabinet to when it reaches the House  
19 of Assembly.

20 Q. I tried to--if you'll go, please, to 136.

21 A. All right. I'm here.

22 Q. What you've got at 136 is, again, the Resolution that  
23 has to go before the House. It is not the Gazetted Resolution  
24 but it is--

25 A. Yes.



1 Q. Again, the recurrent expenditure will capture any  
2 additional monies that are being put into the Assistance Grants  
3 Programmes operated by the House of Assembly. And if you'll go  
4 to 137, which is the next page, please.

5 A. Okay.

6 Q. What's--it's difficult to understand. This is the  
7 schedule that appears to be appended to the Resolution.

8 A. Um-hmm.

9 Q. It's difficult to--I wanted your help, if you can,  
10 just to clarify exactly what sums were being put into the House  
11 of Assembly programme. And you will remember--while I'm asking  
12 questions about the Assistance Grants, but under the House of  
13 Assembly there are two items: One is transportation and one is  
14 medical expenses. And reading across, in terms of  
15 transportation, the revised budget of 2018 allowed \$9,553. A  
16 supplementary provision sought was \$10,000, and the  
17 justification or the purpose for that is given as "additional  
18 funding approved for the Leader of Opposition, Honourable Andrew  
19 Fahie, to settle outstanding commitments".

20 And then the medical expenses component, which is  
21 \$66,000, relates to assistance to The Honourable Ralph O'Neal to  
22 settle outstanding National Health Insurance invoices, so that's  
23 a total of 76,000.

24 That seems to be the only details that relate to the  
25 House of Assembly, but those details don't fall within--within

1 the Assistance Grants Programmes, do they?

2 A. Commissioner, I do not know the details of these--I'm  
3 reading as you go along--of these applications here because I  
4 was not in the seat at the time. I would have to do research  
5 and find out what the details were for these requests.

6 Assistance Grants can be given to representatives of  
7 persons to cover whatever purpose they choose to. You have to  
8 look at their policy and see how broad their policy would allow  
9 for matters of this nature.

10 Q. But separate--

11 A. So, for me, Commissioner, to say it's outside our  
12 system grant policy, it would be unfair to say that at this  
13 time. This is something that you will have to look at the  
14 policy at the time and say whether or not this request falls  
15 within that policy.

16 Q. Could we leave it like this, Mr Frett: Insofar as you  
17 can, if you're able to assist with, I think, two questions:  
18 Firstly, the purpose of the entries on the schedule at page 137;  
19 but secondly, just to confirm that they weren't part of an  
20 additional appropriation going to the Assistance Grants scheme?

21 COMMISSIONER HICKINBOTTOM: And--

22 THE WITNESS: Commissioner, from looking at this for  
23 the House of Assembly, and from looking at the areas from my  
24 knowledge, it would have been part of the assistance programme  
25 from looking at the closer review, but I would need to look in

1 more detail as--to see where payments were made from and other  
2 details pertaining to this particular--particular line item.

3 But within that Assistance Grant, they may have a  
4 number of things. They may use that Assistance Grant to assist  
5 persons in medical education; they may assist somebody with  
6 transportation. I do not to want say what this transportation  
7 was for, but I do know is that there was some people, some  
8 representation for transport of students back and to and  
9 fro--from the college. It could be from Virgin Gorda to  
10 Tortola; I do not know, so I don't want to--and that can very  
11 well fall within the Assistance Grant Programme.

12 But in absence of that information, I do not want to  
13 say where The Honourable Fahie got money for transportation.  
14 And Mr O'Neal, for medical, maybe he had a medical bill and  
15 decided to give them assistance with respect to that. So, I  
16 have to look more clearly at the details with respect to those  
17 matters.

18 COMMISSIONER HICKINBOTTOM: Thank you, Mr Frett,  
19 again, for looking at that, but--and this doesn't necessarily  
20 answer the question, but it may help in your answering the  
21 question in due course.

22 On page 110, there is the head of expenditure number  
23 for assisted grants. Page 110, the top line of that table. The  
24 head of expenditure number is 10114051, and that is the head of  
25 expenditure because the total in the approved estimate is

1 1,725,000, and we know that that's the Assistance Grants  
2 expenditure. And that is the same number as--

3 THE WITNESS: All right. Thank you very much,  
4 Commissioner, for that.

5 COMMISSIONER HICKINBOTTOM: That's on page 137.

6 So, simply on that, it looks as though it falls within  
7 the Assistance Grants, but do check that, Mr Frett.

8 THE WITNESS: Okay. Thank you, sir.

9 BY MR RAWAT:

10 Q. Thank you, Mr Frett.

11 If we deal with the remaining supplementary schedule  
12 of additional payments or provision, rather, which is of 2009.  
13 So, in 2009, there was, I think, an additional allocation of  
14 390,000. If you go to page 143 in your Affidavit exhibits--

15 COMMISSIONER HICKINBOTTOM: 2019?

16 MR RAWAT: 2019, yes. I'm going back in time when I  
17 should be going forward.

18 BY MR RAWAT:

19 Q. Page 143, please.

20 A. Just one minute, Commissioner.

21 Okay. I'm there, Commissioner.

22 Q. Now, again, this is the expedited extract of the  
23 Schedule of Additional Provision No. 1 of 2019. It's dated the  
24 24th of June 2021, and it refers again to recurrent expenditure.  
25 If you look through to 151--or 145, actually.

1           A.    Yes, Commissioner.

2           Q.    You will see at the top of the page--and this is the  
3 memorandum, and it's attributed to you, this memorandum, Mr  
4 Frett. It's the 29th of January 2020, so it's a memorandum to  
5 the Cabinet from the Ministry of Finance, and you--and the  
6 memorandum refers there to additional Assistance Grants  
7 \$390,000.

8                   Now, again, given that we're speaking of a 2019  
9 payment, but your memorandum is January 2020, again are we  
10 speaking of dealing with monies that have already been spent?

11           A.    Yes, Commissioner.

12           Q.    If you look at 151, please. Do you have it, Mr Frett?

13           A.    Yes, Commissioner.

14           Q.    Thank you.

15                   That's the breakdown, if you like, the schedule that  
16 actually accompanies the Resolution of the House of Assembly,  
17 which is, again, the 7th of October 2020. And we see, as the  
18 Commissioner has pointed out, the head there is 10114051. And  
19 what then is included in that is a component, at least, of  
20 additional assistance, for example, to civic and social  
21 organisations, education organisation, et cetera.

22                   Do you see that?

23           A.    Yes, Commissioner.

24           Q.    That would include, would it not, the \$390,000?

25           A.    Commissioner, it should have been included in this

1 figure. The total sum approved by supplementary, I think, is  
2 about 852, I think I'm looking at--if it's for the same period.

3 Q. What it seems to have down is broken down at least  
4 some of the detail of the assistance--

5 A. Yes, Commissioner. I should have explained earlier,  
6 Commissioner, that even though you do have an account that you  
7 identified earlier, they are broken down into further  
8 subledgers--

9 COMMISSIONER HICKINBOTTOM: Yes.

10 THE WITNESS: --so that we could not identify which  
11 areas and categories, so it's part of the chart of accounts, the  
12 part of our reporting mechanism that is breaking down even  
13 further. So you may have the main account number and then all  
14 the subledger numbers.

15 BY MR RAWAT:

16 Q. So, the main account may be, if you like, an account  
17 for the House of Assembly?

18 A. Assistance Grants, and then you had the other  
19 subledgers.

20 Q. Assistance Grants may fall under a subledger; is that  
21 right?

22 A. You may have, like, for education, organisations, all  
23 these other different categories that you're seeing there.

24 COMMISSIONER HICKINBOTTOM: Yes. I mean, because of  
25 the 2018 budget, under the main ledger number, \$1.725 million,

1 we know that we are in Assistance Grant territory. But what  
2 you're saying, Mr Frett, is that under that ledger there are  
3 subledgers, for example, reporting organisations and--

4 THE WITNESS: There may be other subledgers to link  
5 that, yes. I will have to verify with my team on the chart of  
6 accounts and how that is--how the information is captured.

7 MR RAWAT: Give me one moment, please.

8 (Pause.)

9 BY MR RAWAT:

10 Q. Again, you don't have to scroll back up to 102, but in  
11 2020, there were two schedules of additional provision. The  
12 first was for \$53,000. And if I deal with that, first of all,  
13 if you go to page 159, that's Schedule of Additional Provision  
14 No. 1 of 2020.

15 A. Yes.

16 Q. Which is dated the 15th, so 159 is the expedited  
17 extract recording Cabinet's decision. And within that schedule,  
18 \$53,000 goes into the Assistance Grants Programme.

19 The question I had--and it may not be one that you can  
20 immediately answer, Mr Frett--was just clarification as to where  
21 on the memorandum that follows, which is at page 160, the 53,000  
22 appears?

23 A. Commissioner, I will not be able to answer that  
24 question immediately. I will have to go through the documents,  
25 sit down with my team that worked on it during that period, and

1 see where that particular funding would have been placed. I'm  
2 sure it would have been captured under one of the categories  
3 here because this--this--this Cabinet background information is  
4 not every single detail of every supplementary would make itself  
5 or describe itself in the background or the decision made. It  
6 will probably be as a part of the attachment.

7 See, it would be impossible to list every particular  
8 item and the rationale of the breakdown or the reason for that  
9 particular supplementary in any Cabinet paper. So, they may  
10 pick out the larger sums and may generalize others, but it is  
11 not possible to capture every single detail in any given Cabinet  
12 paper for supplementary. There should have been a broad  
13 category. And I'm scrolling, but I would have to sit down with  
14 the team and go through that.

15 Q. It's a--it's a short answer that you can give,  
16 Mr Frett. It might be that, as a sum, as you say, just comes  
17 under a bigger head of--

18 A. Yes.

19 Q. --and it's incorporated into that.

20 I mean, I'm trying to just help you. Obviously, this  
21 schedule went through Cabinet before the--it then went before  
22 the House, which did make a Resolution. If we go to 179--if you  
23 start at 175--

24 A. Yes.

25 Q. --you see that's the Resolution?



1 A. Um-hmm.

2 Q. And you have the more detailed breakdown schedule, if  
3 you like, that follows after that. If you go in that schedule  
4 to--we can go to 177, please.

5 A. Okay. I'm there, Commissioner.

6 Q. There is--at the bottom of that schedule, you will see  
7 that there are, then, sums listed there in relation to sporting  
8 organisations, religious organisations, civic, social, so that  
9 may be where one finds the breakdown.

10 A. Yes.

11 Q. There is one item, if you look, can you see--its  
12 Reference No. is 562150, and it refers to Home Care, House of  
13 Assembly. Do you know by any chance what "home care" stands  
14 for?

15 A. Commissioner, you would have to check with the House  
16 of Assembly, and they would be able to clarify what "home care"  
17 in this instance means, if it's for the House of Assembly. I do  
18 not want to speculate, but if you look at the general term, it  
19 would mean--"home care" means some income assistance given in  
20 the maintenance of one home, whether it be a particular  
21 individual. I'm not sure if it's a House of Assembly Member  
22 that the home care was being offered to, so I don't want to  
23 speculate too specific. But I'm sure that if we go back to our  
24 files and look at the request that was made, it would be more  
25 detailed in that particular instance and what the home care

1 request was for. It should have--it should have specified  
2 individual, the amount, and so forth.

3 Q. There may be a question whether--the Clerk of the  
4 House of Assembly will be giving evidence to the Commissioner  
5 this week, so it may be something that she can help us with, but  
6 thank you very much on that, Mr Frett.

7 Just dealing with the last Schedule of Additional  
8 Provision No. 2 of 2020, which covers 5.2 million, obviously the  
9 additional or the large change in the size of the sum is linked  
10 to, as you've set out at page 102, that in that year, 2020,  
11 there was additional coronavirus-related expenditure. And just  
12 to follow it through, if we go to page 338, please.

13 A. I'm there, Commissioner.

14 Q. Again, it's a schedule--a memorandum to Cabinet from  
15 the Ministry of Finance. You don't author this memorandum, but  
16 if you look at the bottom of page 338, we don't in this document  
17 appear to have a sort of sum of 5.2 million or, indeed, even  
18 3.9 million, which is a specific sum on the table at 102.

19 A. Yes.

20 Q. What we do have is 1,300,000 for head 10114051, "House  
21 of Assembly to cover additional Assistance Grants".

22 And would I understand this correctly, that that  
23 additional sum is related to non-coronavirus expenditure?

24 A. Commissioner, I would not--I would not say that. And  
25 you will have to check with the House of Assembly because I

1 believe that's the \$100 million for the--\$1,300,000 to the House  
2 of Assembly to cover the Assistance Grants Programme.

3 At that time, I know that there was--a number of House  
4 Members was inundated with requests from their constituents or  
5 persons residing in their territory, and there was a great need  
6 to provide for that assistance to help this person who may have  
7 suffered some form of hardship as a result of COVID. There was  
8 still a number of persons unemployed.

9 But I do not want to say that is the sole purpose for  
10 which this additional sum of money was given, so you would have  
11 to, through Cabinet or through House of Assembly, to get a  
12 better understanding on the additional money that was provided,  
13 specifically what it was for, what--I'm just speaking generally  
14 on the statement that I made earlier from my own knowledge as a  
15 senior officer of the--of the House of Assembly challenges and  
16 the number of requests being made to them for assistance from  
17 their constituents or their residents.

18 Q. So, could it cover, as a sum, a mix, therefore, of  
19 COVID-19-related requests for assistance as well as non-COVID-19  
20 requests?

21 A. Commissioner, that may very well be the case, but I  
22 cannot confirm that.

23 Q. I'm sorry. I cut across you, so I will let you  
24 finish.

25 A. No. I say, Commissioner, that can be the case but I

1 cannot confirm that.

2 Q. And is it a possibility as well that, as a sum of  
3 money, it may be to deal with monies that have already been  
4 spent--so to replenish the bank, if you like--as well as giving  
5 Members some funds that they might need to meet the additional  
6 requests for assistance that were being received?

7 A. Commissioner, I--this--when this paper was done--this  
8 paper was done in December, and I do not recall being the Deputy  
9 at the time of--you made a statement that it would have been to  
10 cover money already spent. It may have been commitment but I  
11 would not say it was spent because this was very late in the  
12 year when this was done, and I can't remember exactly when the  
13 exact time this request was made, but I'm sure this can be  
14 clarified on when the request was made for that additional  
15 money, and at what time of the year, and whether or not  
16 expenditure had already incurred against this category.

17 Obviously, looking at the time, I do not--it could not  
18 have been spent because Treasury would not have spent any money  
19 with respect to this. This is a Cabinet decision. This is not  
20 a Resolution going to the House, so Treasury would not have  
21 processed any payments for Assistance Grants unless the monies  
22 was there to cover the expenditure. So, I would not say to  
23 cover money already spent in this regard.

24 Q. But I think when we looked at, earlier, Schedule of  
25 Additional Provisions, which, for example, ones that related to

1 2018 but were being processed in 2019, I understood your  
2 evidence to be that that was--would have, if you like, have been  
3 to sort of replenish the assistance--

4 A. Yes. But, for clarity, Commissioner, what--just in  
5 case there is any misunderstanding, the process of the  
6 transaction to the House of Assembly--right?--because when  
7 Cabinet approves it--right?--it may have been that once Cabinet  
8 approved it, monies may have been expended against the vote.  
9 But when you go to the House to approve it, then there is a  
10 different--there's a situation where it goes to the House and  
11 the money may have--some of the money may have been spent  
12 already. So, it would not have been spent on the Cabinet having  
13 approved it in the first instance because Treasury cannot  
14 approve any payments unless there's some sort of funding  
15 approval by the Ministry of Finance. And the Ministry of  
16 Finance more than likely would not have approved--given  
17 permission to Treasury to raise purchase order or check on this  
18 where there has been no source of funding and a Cabinet approval  
19 given.

20 Q. In this case, just so the Transcript complete the  
21 detail, we have the Resolution that deals with--what appears to  
22 deal with the Schedule of Additional Provision--or we have two  
23 Resolutions. We have one at 175, which is August 2020, and then  
24 we have one at 356, which is April 2020 on the paper that we  
25 were looking at. The second will--sorry, give me a moment.

1           The first deals with the 53,000 that we were looking  
2 at, which is Schedule of Additional Provision No. 1 of 2020  
3 because that was put before Cabinet in July 2020, and so the  
4 Resolution is 2020. So the second that we're looking at where  
5 we have been looking at, the 1.3 million, that's December 2020,  
6 and then it appears to be dealt with by Resolution of the House  
7 in 2021.

8           But stepping back from it and so that we do have  
9 clarity about the process, Mr Frett, have I understood your  
10 evidence correctly, there is a sum of money allocated to Members  
11 of the House of Assembly for Assistance Grants which is given to  
12 them on a quarterly basis?

13           A.   Commissioner, just for clarity, yes, it is given.  
14 They have allotment for the year, and for cash-flow purposes and  
15 management of our resources. It's not just for Assistance  
16 Grants only. It is true all across the board that we try to  
17 allocate the funding on a quarterly basis. I think the system  
18 has a mechanism built into it to help us to monitor our cash  
19 flow, so it's not just for Assistance Grants.

20           But, however, we can make adjustment at our request to  
21 a person who may ask for monies in advance because of the nature  
22 of the payment. A payment may be required in January that will  
23 eat up the full amount of the budgetary year. So, then, if they  
24 try to process that payment, it will go on hold so we will have  
25 to release that. So, I do not want the Members of the

1 Commission here to think it is just for Assistance Grants, this  
2 built-in mechanism.

3 Q. But using Assistance Grants as an example, if a Member  
4 has spent their quarterly sum and then another Purchase Order  
5 comes in, the Treasury Department--if there is no money in the  
6 account, the Treasury Department puts the purchase on hold?

7 A. No. The budget--it's through the Ministry of Finance  
8 that process is put on hold.

9 Q. Right.

10 So, your Ministry puts it on hold until the next  
11 quarter?

12 A. Until actually the system will automatically put it on  
13 hold, and until next quarter, all we can override it through our  
14 request, and normally the Financial Secretary or another senior  
15 officer will have to override that to allow access to the  
16 funding for the next quarter.

17 Q. And so--but going back to the need for a Schedule of  
18 Additional Provision, that need may arise because there may be,  
19 effectively, Purchase Orders on hold or you may have had to, as  
20 Financial Secretary, authorize additional expenditure so  
21 that--above and beyond what was originally allocated?

22 A. Yes. That is correct, Commissioner. The  
23 representative may be inundated with requests, and they may want  
24 to see how they can fulfill the requests.

25 Q. So, they may go--they may have to go--in trying to

1 fulfill the requests made of them, they may go over their  
2 budget. And the purpose of--as you explained, Ministry of  
3 Finance can put it on hold or authorize additional payment. The  
4 purpose of the schedule of additional provision is to, in  
5 effect, redress the balance and fill in the shortfall that may  
6 be created?

7 A. That is correct, Commissioner.

8 Q. Thank you.

9 A. However, it will eat up from the next quarterly  
10 allotment. So, if you have 50,000 per quarter and 625,000, that  
11 means you have a reduced amount for the following quarter.

12 Q. But at some--as we've seen, it may be some months  
13 afterwards that it all gets caught up.

14 A. Yes.

15 COMMISSIONER HICKINBOTTOM: The supplementary  
16 provision.

17 MR RAWAT: The supplementary provision.

18 BY MR RAWAT:

19 Q. So, it's still possible for a Member to, based on  
20 their assessment of applications made to them, to go over the  
21 125,000 that they are allocated?

22 A. They may have requests in excess of the 125, but  
23 unless approval is given through the supplementary, Cabinet  
24 approves the supplementary, then they do not have--they cannot  
25 process anything. They will have the request on paper and it



1 may be in the system. They may have a Purchase Order pending,  
2 and they may have applications on their desk, but they will not  
3 be able to process it unless a decision is made to give  
4 additional funding.

5 Q. I see. I will pause there.

6 MR RAWAT: Commissioner, we have been going over an  
7 hour and 20 minutes. I wonder if a short five-minute break for  
8 the Stenographer--

9 COMMISSIONER HICKINBOTTOM: For the Stenographer.

10 Mr Frett we will have a short five-minute break to  
11 give the Stenographer a chance to recover, and we'll come back  
12 in five minutes and finish your evidence. Thank you very much.

13 THE WITNESS: Thank you very much. I assume I stay  
14 online?

15 COMMISSIONER HICKINBOTTOM: Yes, please, Mr Frett.  
16 Yes.

17 THE WITNESS: Okay.

18 (Recess.)

19 COMMISSIONER HICKINBOTTOM: I think we're ready to  
20 restart. Thank you.

21 BY MR RAWAT:

22 Q. Mr Frett, can you see and hear me?

23 A. Yes, Commissioner, quite clear, yes.

24 Q. Thank you.

25 Could I move on to some other topics, please.

1           The Commissioner heard evidence from the Internal  
2 Auditor recently. One of the matters that she explained to the  
3 Commissioner was that her Department, in terms of its reporting,  
4 reported to the Internal Advisory Committee and that that  
5 Committee hasn't been in place since the 31st of December 2016.  
6 The position has changed somewhat.

7           A.    Yes.

8           Q.    I think on the 21st of June 2021, three new people  
9 were appointed to the Committee, and, so it can now reconvene.  
10 If I explain, and you'll be aware of this, it's a five-person  
11 committee with the other two people being either the Financial  
12 Secretary or a Deputy, and the Internal Auditor. The evidence  
13 that the Internal Auditor gave was that she had raised the need  
14 for the Committee with the Financial Secretary, and that would  
15 be you, in February 2021. Now, I appreciate that you have not  
16 been Financial Secretary for that long, but can you help the  
17 Commissioner at all with why it took so long to reconvene?

18          A.    Okay. Commissioner--okay. You hear me, Commissioner?  
19 I just paused, they had a blank.

20          Q.    Yes, we can hear you and see you.

21          A.    Okay. All right. Yes.

22                Yes, Commissioner, there may have been a number of  
23 reasons why it took so long for the Committee to convene. We  
24 did look at a number of candidates, and finally we did settle on  
25 the candidates that we have now, to move forward with. There is

1 not much more I can say with respect to that. Perhaps it should  
2 have been given more priority than it should have--than it  
3 gotten, but nevertheless we are here now, and we're about to  
4 convene our first meeting shortly with respect to the Committee.

5 Q. But from your perspective, was it something that only,  
6 if you like, landed on your desk once you had become Financial  
7 Secretary?

8 A. No, no Commissioner. I had some knowledge of it as  
9 Deputy.

10 Q. And from that perspective, what we have is over a  
11 four-year gap that it took to--

12 A. Yes.

13 Q. --re-establish the Committee, and that spans more than  
14 one administration.

15 A. Yes. Like I said, Commissioner, I have no excuse  
16 for--as Financial Secretary in not having all the lawful bodies  
17 in place, especially when they come to good governance and value  
18 for money.

19 And as Financial Secretary, I will seek to ensure that  
20 all the mechanisms are in place to achieve those things. So I  
21 don't have no excuse as to the role that I played as to why it  
22 did not happen sooner. We are where we are now, and we press  
23 forward.

24 Q. It wasn't intended, the question, as a criticism of  
25 you, Mr Frett. It was more to an understanding of why--what

1 factors may have meant--

2 A. Yeah.

3 Q. --that it took so long to create a committee that is  
4 required by statute.

5 A. Hmm.

6 Q. But I think you've helped as much as you can; is that  
7 right?

8 A. Perhaps I could have done more, be that I'd been more  
9 assertive with respect to that as a role as a Deputy, but as I  
10 said, that is in the past now. We are moving forward. We have  
11 the Committee in place, and--and we have learned from that, and  
12 we move forward.

13 Q. I just want to change now to look at the question of  
14 the Auditor General, one of the points that the Auditor General  
15 or--raised when she was giving her evidence.

16 When one looks at her Annual Statements--and there  
17 haven't been any since 2016, I think, but what has happened with  
18 the Attorney General is that since--the Auditor General, forgive  
19 me--is that, since 2013, there have been significant delays in  
20 her receiving Financial Statements, and she's explained that the  
21 gaps--and this--one can get this from her Reports--that the gaps  
22 have varied between five and two years. So, for example,  
23 receiving accounts in relation to 2012, the year ending 2012,  
24 the Auditor General didn't receive those until 2017.

25 A. Yes.

1 Q. That was perhaps the worst gap because she was able to  
2 then submit her Reports in January 2018, and the gap has been  
3 reduced since then. So, for example, the most recent accounts  
4 that the Auditor General has received relate to 2016. She  
5 received those in 2018 and then revised versions in 2019.

6 What the Auditor General's position is that she has  
7 not been able--seen the Government's Financial Statements for  
8 any year after 2016. Can you explain why that is, Mr Frett?

9 A. Commissioner, I do not believe your statement is quite  
10 accurate. The 2017 accounts, they were submitted to the Auditor  
11 General. There were some queries with respect to the 2017  
12 accounts. The, the person, the consultant at the time is back  
13 with us, and he was rehired to tidy up the 2017 accounts. So,  
14 within the next six months, we expect the 2017 and '18 accounts  
15 to be completed. So, the Auditor General did have at her  
16 possession the 2017 accounts and before--in the next six months  
17 if not before, she should have the 2018 and shortly thereafter  
18 the others.

19 Commissioner, I would say that as a senior government  
20 official and understanding the Constitution and PFM Act and all  
21 the different good governance requirements, that we should  
22 submit accounts in a timely manner that is outlined in the  
23 statutes and the Constitution, so I'm not going to be finding  
24 excuses here.

25 We are making the necessary steps to make sure this

1 happens. That is one of the priorities that I had once becoming  
2 the Financial Secretary. It was top on the list: Get the  
3 financial--the Audited Financial Statements up to date.

4 We had some challenges with the system and other  
5 reasons, but these matters are well advanced in being rectified,  
6 and it's something that I am passionate about to make sure that  
7 it happens.

8 The Minister of Finance, the Premier, whenever we have  
9 a meeting, he's--he got very upset with us several times in  
10 saying that we are in breach of the Constitution, and it's him  
11 as the Minister of Finance is going to be held accountable, so  
12 he is constantly pushing us here, the Minister of Finance. He  
13 said, Whatever resources you need, I will provide them. So, in  
14 that regards, we have hired some consultants. We're going to  
15 beef up the staff of the Treasury to make sure that these  
16 accounts get done.

17 And it's not just about the accounts, Commissioner.  
18 It's also about transferring that knowledge. This time around,  
19 the Consultant has been cleared. He must transfer--not just  
20 come to do the accounts, but transfer that knowledge to the  
21 staff.

22 We also, as well advanced as well, we already reach  
23 out to CARTAC, and they're going to offer some additional  
24 training on the new system, the IPSAS system that we adopted,  
25 the accounting system that we decided to switch to starting in

1 2018. So, between the computerization, the new computerizations  
2 upgrade of the JDE system, as well as adapting a new accounting  
3 reporting standard system, the IPSAS, it posed some challenge,  
4 but we are moving forward, we are getting over those hurdles and  
5 challenges that were incurred.

6 And, Commissioner, we are making it a priority because  
7 FCDO and the Premier, and also it's the right thing to do. They  
8 are concerned, and we are working tirelessly, and I can assure  
9 you, once under the Financial Secretary, it will remain a  
10 priority to get those accounts done. There is nothing more I  
11 can say with respect to that. We are putting the resources  
12 there to get it done. What's in the past we cannot correct, but  
13 moving forward we can make a difference by doing what is  
14 necessary.

15 COMMISSIONER HICKINBOTTOM: I understand that, your  
16 answer, Mr Frett, with regard to the current position or the  
17 future position. But is this right, and correct me if it's not  
18 right, but this was the picture painted, I think, by the Auditor  
19 General: The 2012 accounts hadn't been done by 2017; and in the  
20 period 2017, I think, to the beginning of 2019, delivery of the  
21 accounts and finalisation of the reports as required, as you  
22 say, under the Constitution and the statutes, were done and they  
23 had to be done because of loans that were required following the  
24 2017 hurricanes. But since then--and as I say, those had to be  
25 done to obtain the loans--but since then, there have been

1 delivery of no accounts, save for the ones that you've referred  
2 to today.

3           So, the past performance has been not just very poor,  
4 but accounts have only been delivered when there's--when--it's  
5 been a last resort to deliver them. That seems to be the  
6 picture that's painted.

7           THE WITNESS: Commissioner, no doubt that's the  
8 picture that is painted, but I don't know if that's quite an  
9 accurate picture. The previous Financial Secretary will be  
10 before you this afternoon, and the previous one can attest to  
11 why they were not presented. They're best to speak to that.  
12 But I would say that Mr--in fact, that is one of the  
13 priorities--priority that Mr Forbes, once he came back into  
14 office, I think it was in 2017, he was given a mandate, I think,  
15 to get these things done, and he and his team and the person  
16 that were hired, worked tirelessly to try their best to get  
17 these accounts up to date. Like I said, there was a pause in  
18 the delivery of future accounts since 2017 because of the  
19 introduction of the new accounting software system upgrade, as  
20 well as--of instruction of a new accounting reporting standards  
21 that we adopted.

22           So, those caused a pause for no other but going in--in  
23 the previous years, I think the former FS would best speak as to  
24 why it was not done.

25           (Overlapping speakers.)



1 THE WITNESS: We are building capacity. One of the  
2 issues is capacity, having resources available, and we are  
3 working towards making sure that the resources are available in  
4 the future, that we do not incur such another situation.

5 COMMISSIONER HICKINBOTTOM: Yes, thank you, Mr Frett.

6 THE WITNESS: Yeah.

7 BY MR RAWAT:

8 Q. Let's move on, then, Mr Frett. One of the reports  
9 that the Internal Auditor produced and which was canvassed with  
10 her when she gave her evidence before the Commissioner, was a  
11 report that she produced on Petty Contract administration, and  
12 it covered 2007 to 2010. The report itself is dated April 2012.  
13 It's not--what I wanted to ask you, and it's about the present  
14 position, but one of the issues that the Internal Auditor raised  
15 was the issue of contract/project-splitting, and what her Report  
16 said was that any contract entered into for an amount not  
17 exceeding \$100,000 is deemed a Petty Contract; any project being  
18 undertaken by Government that exceeds the Petty Contract limit  
19 is deemed to be a Major Project and must be put out for tender.  
20 However, we have noticed a well-established practice of projects  
21 being into multiple parts, valued at less than the major  
22 contract requirement, and that she then says that it presents  
23 risks because it allows Ministries to circumvent the tendering  
24 process completely. Now--and this is back in 2012.

25 One of the recommendations that was made, and it was a

1 report addressed to the Ministry of Finance, was that Government  
2 seek a legal opinion as to the legality of splitting projects  
3 into smaller components and awarding Petty Contracts without  
4 first seeking and receiving Cabinet's approval. And the  
5 response from the Ministry of Finance was: This is already  
6 established.

7 Now, against that background, if I take you to the  
8 present position, what is the Ministry of Finance's policy over  
9 the use of Petty Contracts and any practice whereby a Major  
10 Contract, that is a contract over \$100,000, is broken up into  
11 Petty Contracts? What does the--what's the Ministry of  
12 Finance's approach to that?

13 A. Commissioner, I am aware of the concern raised by the  
14 Internal Auditor has also raised by the Treasury Department and  
15 others about contract-splitting. I recall having this candid  
16 discussion with other Ministers of Government and determining  
17 what is deemed contract-splitting.

18 I will put it to you, Commissioner that, here in the  
19 Virgin Islands, in a private setting, you may be building your  
20 home, you may have a contract with a main contractor. They may  
21 not have a plumber on their team. They may have--they may not  
22 have an electrician, so each one of those persons may be  
23 independent from the contract but they are working together in  
24 unison to get the project completed; right?

25 Now, with respect to the discussion we've had over the

1 years--it's not just since I became the Financial Secretary--is  
2 what is deemed contract-splitting if there is no clear guidance  
3 on that we receive as well? I would agree that  
4 contract-splitting, in its rough form, is that, when an  
5 individual gets two or three contracts, three \$99- or \$80,000  
6 contract, for the same job, for the specific works to be  
7 completed, that, in my view, is contract-splitting, and as  
8 Financial Secretary, I will take a hard line against such  
9 procedures.

10           If--so, example, if there's a road to be built in a  
11 particular district, there's only one asphalt plant here in the  
12 Virgin Islands. It may require some other aspect of that road  
13 building that to build drains for that particular project. It  
14 is--is it wrong for hire someone else for that particular  
15 project to do the drainage work and bring in someone to do the  
16 asphalt, the laying of asphalt on the surface separately? How  
17 some persons take it to be, give that to--give that entire  
18 contract to one person, say the person who's laying the asphalt,  
19 the one that has the most significant--but that person may not  
20 have no expertise in the other field that they may be working  
21 in.

22           But the issue of contract-splitting had to be further  
23 discussed. There's no clear position on that. There's a number  
24 of projects that have success stories that, where that system  
25 has been used, the breaking up of major projects into pieces,

1 the procurement legislation that was just recently passed, the  
2 amendment to the PFM Regulation, Public Finance Management  
3 Regulations, in 2010--'20, it was recently passed that in the  
4 event of a catastrophic event, a pandemic that, through Cabinet,  
5 they can approve how a particular project is to be administered,  
6 and that may very well be deemed contract-splitting in the rough  
7 form as the Auditor General may have it.

8 I know one particular project, the Eastern "launch  
9 this project" (phonetic). Instead they had the policy. Once  
10 the policy has been made, because even outside of the amendment,  
11 there's a section in the PFM Regulation that allows Cabinet to  
12 make a decision on how that procurement process, any procurement  
13 process, is to be administered, that is a policy decision. And  
14 for that particular project I just made reference to, it appears  
15 the decision being made under the new legislation is to have  
16 multiple persons participating in that project.

17 The--I think that, in all fairness with respect to  
18 value for money, when the decision is made to split a project  
19 into different segments, I think that it should be done with a  
20 clear analysis to see if it really brings value for money in  
21 those instances, not just for the project but to the economy as  
22 well, so I think there needs to be more analysis with respect to  
23 that (drop in audio), just saying just break it up into two  
24 different pieces.

25 I think that's in a nutshell of what I think with

1 respect to that. Like I said that project, I have a very good  
2 Project Team, and I will be having more discussions, something  
3 that is ongoing, within the Ministry of Finance.

4 But it is for--I don't want, Commissioner, for you to  
5 think that the procurement process is not functioning in the  
6 Virgin Islands with respect to projects over \$100,000. In my  
7 years, it is not a significant amount, because the impression is  
8 that all projects--there's a huge amount of projects that are  
9 breaking into pieces, and that is not the case. There may be  
10 instances where it's done. And once the other  
11 finance--sometimes we have to take a position in the Ministry of  
12 Finance that we don't believe there's been value for money, and  
13 we may object to the use of splitting up of those contracts in  
14 some instances.

15 So, there is no clear-cut--it's based on the situation  
16 and the amended legislation that allow us to do that, as well.

17 COMMISSIONER HICKINBOTTOM: But there's no written  
18 policy.

19 THE WITNESS: There is none.

20 And the new procurement bill, how it's written.  
21 It's--it probably more than likely avoids some of those  
22 situation, is not in the new procurement bill. So, the new  
23 procurement bill addresses some of those issues. They still  
24 talk about Petty Contract, but I do not recall seeing  
25 that--where that--it can arbitrarily been done with the

1 departments that just, at their own will, break it up because  
2 Treasury, in the payment process, will flag those situations.

3 COMMISSIONER HICKINBOTTOM: Thank you.

4 THE WITNESS: And bring it to the Ministry's attention  
5 that this is what--that they are circumventing in the system and  
6 it's best--and it's best that the procurement process be  
7 administered in those instances.

8 BY MR RAWAT:

9 Q. Thank you.

10 Let's move on to a different topic, and that is the  
11 Internal Auditor's Report relating to COVID-19 stimulus.

12 Do you have a copy of that with you, Mr Frett?

13 COMMISSIONER HICKINBOTTOM: Page?

14 MR RAWAT: 3050.

15 COMMISSIONER HICKINBOTTOM: Thank you.

16 MR RAWAT: It's 3050, if you need it, Mr Frett.

17 COMMISSIONER HICKINBOTTOM: Yes, thank you, Mr Rawat.

18 THE WITNESS: Sorry about that. I did not realize  
19 that I was muted, but I'm there so...

20 BY MR RAWAT:

21 Q. Thank you.

22 The Internal Auditor gave evidence about this and if  
23 you look at 3052--

24 A. Yes, Commissioner.

25 Q. --he explains that the report was being provided as an

1 update to Ministry of Finance. It's dated October 2020, but the  
2 Internal Auditor clarified that it was, in fact, produced in  
3 May 2021.

4 A. Yes.

5 Q. Internal Audit Reports are labeled "Draft Audit  
6 Report" where the Ministry or Department that it's sent to has  
7 not provides a Management Response, and when they haven't got a  
8 Management Response, they finalise those; I understand they  
9 finalise the report but still leave it as being called "draft".  
10 I just wanted to ask some questions about that.

11 If you go, please, to 3053.

12 A. I'm there, Commissioner.

13 Q. You'll see in the second paragraph down: "To promote  
14 transparency and accountability in the distribution of these  
15 funds"--this is the COVID-19 stimulus funds--"the Premier  
16 charged the Internal Auditor (Director of Internal Audit) to  
17 provide monthly reports to the Minister of Finance for  
18 transmission to the Cabinet".

19 And if you go to 3056--

20 A. Yes, Commissioner.

21 Q. What the Internal Auditor observes is that: "Despite  
22 multiple requests for information of a formative nature,  
23 pertinent to the administration of the programmes, such  
24 information was not provided in a timely manner or not at all.  
25 Information such as programme objectives, performance measures--

1 (Overlapping speakers.)

2 BY MR RAWAT:

3 Q. --eligibility and evaluation criteria were in most  
4 cases either absent from the documents presented or changed  
5 significantly from what was envisaged".

6 So, she explains there that the review and final  
7 conclusions in this report are based on the information  
8 provided. But when I asked the Internal Auditor whether she had  
9 been able to provide monthly reports, she said no, and explained  
10 that it was because of a lack of information.

11 So, taking that point first, why wasn't there  
12 engagement on a monthly basis with the Internal Auditor as  
13 envisaged?

14 A. Commissioner, is that engagement between the Internal  
15 Auditor and the Ministry of Finance or between the Internal  
16 Audit and the Premier's Office?

17 Q. Well, it's with the Ministry of Finance. If the  
18 answer is that it didn't fall to the Ministry of Finance to  
19 provide information, then please give that answer.

20 A. Commissioner, I think that once the--my predecessor  
21 comes this afternoon, he can be able to answer some of those  
22 questions more articulately than I can. However, I would say  
23 that we, from my research in providing information to you,  
24 Commissioner, I did note that where the Internal Auditor wrote  
25 to the Ministry of Finance requesting that information not per



1 se from us but assistance in getting certain information  
2 from--that she needs in order to conduct her review--or her  
3 monthly review of the programmes and administering of the  
4 programmes. We, in turn, would have written to the Premier's  
5 Office asking them to provide such information to the Internal  
6 Auditor to provide an update on the requested information.

7 I did not have an opportunity to sit down with the  
8 Internal Auditor to go through her Report. I was actually  
9 surprised that it made its way to the Commission of Inquiry  
10 without having that opportunity to discuss the content. I had  
11 to go on medical leave, and next thing I know it's before the  
12 Commission of Inquiry. So, in all fairness, I did not get an  
13 opportunity to discuss the content because it was in draft form.

14 And secondly, Commissioner, I did not--I was not able  
15 to have that dialogue with the PS prior to, to say to her this a  
16 report--I did share it with her. I did share the report with  
17 the PS of the Premier Office Accounting Officer and raised these  
18 concerns. I subsequently wrote to the Internal Auditor and let  
19 her know that I will follow up with the--I shared the  
20 information with the PS, and I would like for her to also sit  
21 and see what are some of the issues. But in discussing the  
22 matter with the PS, there appears to have been some level of  
23 communications--some communication between the two entities,  
24 how--whether that it produced documents or not. That's  
25 something different, but to say there is no communication or--so

1 there was--there were dialogue--there was dialogue between the  
2 two entities.

3           So, I would say, Commissioner, the situation was very  
4 fluid with COVID-19. At the same time that the Internal Auditor  
5 may have been requesting information, the policy rolled out, the  
6 policy--the programme rolled out what happened since,  
7 simultaneously. And I commend, actually, the Premier's Office  
8 for the magnitude of the requests and the situation that they  
9 were dealing with. And having not just the Internal Auditor  
10 asking for information, but also the Auditor General asking us,  
11 have her own report going on at the same time.

12           I'm not here to defend her or anything like that. I'm  
13 just here to clarify, to say that there must be a reasonable  
14 explanation as to why the information to submit to the Internal  
15 Auditor was not presented, and how can we rectify that going  
16 forward in future--in the future, the timely submission of  
17 documents to the Internal Auditor in order for them to execute.

18           But this was not an Internal Audit that was going on  
19 at the time. The Premier and the Minister of Finance was  
20 actually the one who insisted to the then-Financial Secretary  
21 and myself in a meeting, that the Internal Auditor must be a  
22 part of this process. And I would not have seen that the former  
23 Secretary would go against the Premier's wishes to not provide  
24 to the Auditor General. So, there must be some reasonable  
25 explanation or misunderstanding with respect to whether or not

1 the information requested was provided. I know that we did  
2 follow up with the Ministry of Finance. And I do not see the  
3 former Secretary willfully not--not providing that information.  
4 There should have been explanation. I cannot speak for her with  
5 respect to that, but I'm sure there is an explanation.

6 And I think it would have been more prudent, before  
7 the report was disseminated, if we had sat down as respectful  
8 persons in the Public Service, the Senior Managers, senior  
9 person in Government, to discuss these matters. I'm not sure  
10 how forceful the--I know she wrote to us, to be communicated  
11 there. But I'm not sure how forceful the Internal Auditor was  
12 for insisting that this information be provided. But she plays  
13 a very critical role in the good governance process of the  
14 service, and they have done tremendous work on behalf of the  
15 Ministry, the Ministry of Finance. And I do commend them and  
16 the small team that they have to produce such information.

17 But, in hindsight, maybe the communication between the  
18 agencies could have been improved to avoid this current  
19 situation.

20 Q. You were not--save for getting requests from the  
21 Internal Auditor for assisting in terms of the provision of  
22 information, you, yourself, as Financial Secretary, were not  
23 directly involved in any discussions that may have happened  
24 between the Premier's Office and the Internal Auditor?

25 A. No. I do not--I don't recall that. But it's just

1 based on my discussion, my discussion with the former Secretary  
2 subsequent to the Report that came out. Only other  
3 correspondence, like I said, is what I would have submitted to  
4 her, forward the requests from the Internal Auditor to her for  
5 fulfilling that.

6 Q. You were a sort of conduit by which--

7 A. Yes.

8 Q. --requests could reach the Permanent Secretary, but  
9 had no direct involvement.

10 Was it also the same case with the Auditor General?  
11 You were not involved or party to the dialogue between the  
12 Permanent Secretary and the Auditor General; is that--

13 A. No. No, Commissioner, I was not involved in the  
14 dialogue between the two parties with respect to that.

15 COMMISSIONER HICKINBOTTOM: Thank you very much,  
16 Mr Frett.

17 BY MR RAWAT:

18 Q. The stimulus grants audit seems to cover a number of  
19 Ministries, and I just want to clarify the precise role of the  
20 Ministry of Finance in it. If we look at 3057, please --

21 A. Yes, Commissioner.

22 Q. -- this is the section of the Internal Auditor's  
23 report relating to SME Grants, small to medium enterprises  
24 grants. And Cabinet approved a grant programme of \$6.5 million  
25 for a grant from the BVI Social Security Board.

1           You will see at the top of this page that what was  
2 provided for was that there would be a committee from  
3 representatives from the Premier's office, the Ministry of  
4 Finance, and the Department of Trade to oversee the programme.

5           Did you have any involvement in that Committee?

6           A.   Commissioner, this is the one for small businesses?

7           Q.   Yes.

8           A.   Commissioner, I don't remember being on that  
9 particular committee. I could stand corrected, but I don't  
10 remember being involved on that. I was on the main committee  
11 for stimulus, I think that one is called. I was on the  
12 implementation, Stimulus Implementation Committee, and another  
13 committee I was on. But dealing directly with the one for  
14 businesses, I don't remember participating, actively  
15 participating in this particular one.

16           And Commissioner, you will appreciate that the  
17 Financial Secretary or his Deputy, which was myself at the time,  
18 we--it was madness in the place at that time, and we were pulled  
19 in so many different directions. So, even though you may have  
20 been on a committee, you may not have been actively involved for  
21 various reasons. So, I don't remember this one. I would have  
22 to go back. I remember something like this but I don't  
23 remember. I think one of my colleagues was on this committee.

24           Q.   In situations like that, where you have a grant  
25 programme--and it appears that in this case you've got the

1 Premier's Office; the Ministry of Finance; Department of Public  
2 Trade and Investment. Consumer Affairs are involved. So, three  
3 entities are involved. Who would be the Accounting Officer in  
4 this case?

5 A. Commissioner, the Accounting Officer with respect to  
6 what, the dissemination of the funds?

7 Q. Yes. In relation to this grants programme, who would  
8 be the Accounting Officer?

9 A. Commissioner, from my knowledge, I believe this  
10 particular programme was disseminated through the Premier's  
11 Office.

12 Q. Now, what it says is that the Committee started off  
13 with an extensive application--this is at 3057--and eligibility  
14 and approval criteria. But, then, because of time constraints  
15 and unavailability of requisite data, the criteria were slimmed  
16 down, if you like, and essentially it was whether you had a  
17 valid trade license and fewer than 20 employees. And they then  
18 treated the businesses into five groups.

19 Although I think I may know the answer to this, but  
20 would you say you can't recall being involved in a Committee, in  
21 any way involved, as Deputy Financial Secretary or Financial  
22 Secretary, in setting the criteria for this programme?

23 A. Commissioner, I was not involved in setting the  
24 criteria for this programme. But I would observe, Commissioner,  
25 that after the--maybe during our postmortem on these different

1 programmes and looking at the different Auditor Reports, I do  
2 believe that, we, as a Territory, we were in unchartered waters.  
3 We never had to provide a similar package like this, and we was  
4 learning as we go, in many instances.

5 And, Commissioner, they just noted that the programme  
6 was killed for various reasons. We were trying to--in general,  
7 not for this particular programme, but we were trying to  
8 introduce immediate Stimulus Packages as if using the  
9 current--our current legislation and our current structures to  
10 do so. In hindsight, maybe that was an error.

11 If you look at the United States, it is through  
12 legislation they passed the stimulus. And they decided, because  
13 of that immediate stimulus, you have to be able to get that  
14 money as quickly as possible to the individuals to whom you  
15 hoped to help.

16 So, our technical persons try their best to come up  
17 with the best feasible programmes within a policy document  
18 within the current structure that we have our laws and our best  
19 practices that they are aware of.

20 And, perhaps, in hindsight is that we are a little bit  
21 overambitious in the number of criteria that we are asking  
22 respondents or persons who were applying to adhere to. In the  
23 United States, every single individual got X amount of--I think  
24 it was \$1,200 or something like that, once you're a US citizen  
25 or resident, once you got that money. The businesses--the

1 criteria for giving these individuals stimulus was not as  
2 stringent as we introduced, perhaps because we--our learning  
3 curve was very steep and we were learning as we go.

4 In addition, Commissioner, we have since changed our  
5 procurement rules that allows us to deal with procurement  
6 matters during crisis of pandemics or natural disaster. And we  
7 still have not dealt with how do we deal with stimulus grants or  
8 assistance to persons. That is something--I was speaking with  
9 someone last week or a couple of weeks ago. I said this is  
10 something we maybe need to look into. We need to have  
11 legislation or a separate legislation when stimulus is given,  
12 that is passed quickly through the House of Assembly, saying  
13 this is the grant we're going to offer, these are the criteria,  
14 this is how we're going to address these issues. But to try to  
15 do it in the environment, the normal environment in which we  
16 were going to do, resulted in some unachievable results,  
17 objectives, as a result of the different policies that were  
18 introduced.

19 So, that is a lesson learned from this whole exercise.  
20 And, hopefully, in the near future we can come up with a clear  
21 guidelines, not just with what is there. I know that Social  
22 Development is working keenly on a stimulus. Imagine that,  
23 months after, they're still working on income support stimulus.  
24 It is no fault of theirs. But they're coming up with a  
25 comprehensive policy that, hopefully, we can adopt in the future



1 going forward.

2           So, for the others that the Auditor General or the  
3 Internal Auditor addressed as having some shortcomings, we are  
4 to look at them and regroup and come up with better policies  
5 with respect to those.

6           COMMISSIONER HICKINBOTTOM: Mr Frett, in relation to  
7 this programme, though, as I understand your evidence, you were  
8 not involved in setting the criteria and you were not involved  
9 in the implementation of it.

10           THE WITNESS: Commissioner, I do not recall having  
11 been involved with the criteria for those small businesses.

12           COMMISSIONER HICKINBOTTOM: Nor were you, as I  
13 understand it, involved in the implementation of it.

14           THE WITNESS: No.

15           COMMISSIONER HICKINBOTTOM: Thank you very much,  
16 Mr Frett.

17           BY MR RAWAT:

18           Q. Let's move on then to the other programmes that the  
19 Internal Auditor dealt with. And I think, if you could bear in  
20 mind the two points that the Commissioner has just put to you,  
21 so we can then understand what your role, if any, was. If you  
22 go to page 3062, which is the Traffic Transformation and  
23 Transportation Programme.

24           Now, the synopsis at the top there speaks of a  
25 programme piloted by the Ministry of Transportation and Public

1 Works and funded through the Premier's Office. So, in relation  
2 to this specific programme, were you involved in its  
3 implementation at all?

4 A. Commissioner, no, not with the implementation. Only  
5 thing I may have been involved with is if there is a document to  
6 be signed with respect to spending or some budgetary process or  
7 something of that nature. But with respect to the day-to-day  
8 operation of that, no.

9 Q. So, the setting of criteria, the drafting of a policy  
10 document, that did not come within your remit within the  
11 Ministry of Health?

12 A. Commissioner, no.

13 Q. If you go, then, to 3064.

14 A. Okay. I'm there, Commissioner.

15 Q. You have the COVID-19 Assistance Grants Initiative  
16 through the House of Assembly, and that was in addition to the  
17 Assistance Grants Programme that we looked at.

18 Now, again, did you, as Deputy Financial Secretary or  
19 Financial Secretary, have involvement in the implementation of  
20 that programme at all?

21 A. Commissioner, no. Same response as above, as I noted  
22 earlier.

23 COMMISSIONER HICKINBOTTOM: Thank you, Mr Frett.

24 BY MR RAWAT:

25 Q. If you go through, Mr Frett, to 3068.

1           A.    Yes, Commissioner.

2           Q.    You've got there the next programme, which is Support  
3 to Daycares, Private Schools and Religious Organizations.

4                   Now, that's--the evidence from the Internal Auditor  
5 and the Auditor General was that that programme was mediated  
6 through the Premier's Office. Can you confirm that you, as  
7 Deputy Financial Secretary or Financial Secretary, had no  
8 involvement in implementation of that programme?

9           A.    Commissioner, I was not involved in that programme.

10          Q.    And then if you turn to 3069, please, Mr Frett.

11          A.    I'm there, Commissioner.

12          Q.    We have then the fifth programme that the Internal  
13 Auditor reviewed, Support to Agriculture and Fisheries. The  
14 Auditor General looked at this sheet. She produced a report  
15 which reports grants to farmers and fisherfolk.

16                   Now, again, the evidence that the Commissioner has is  
17 that this programme was mediated through the Premier's Office.  
18 So, again, you as Deputy Financial Officer--Financial Secretary,  
19 forgive me--and now Acting Financial Secretary, can you confirm  
20 you had no involvement in the implementation of this programme?

21          A.    Commissioner, I was involved. I was a Member of the  
22 Committee that was involved in this particular programme. I was  
23 not an active Member, as I should been, because of various  
24 reasons. I think I only attended maybe two meetings, and I  
25 subsequently asked another officer in the Ministry of Finance to

1 attend those meetings on my behalf, and I think that officer  
2 only attended one subsequent meeting.

3 So, while the Ministry of Finance was on the  
4 Committee, our active participation in the meetings was somewhat  
5 limited due to inactive attendance and other reasons.

6 But I have--information was shared with me, so I'm  
7 familiar with some of the content of the--of the policy that  
8 eventually came out.

9 Q. But in terms of the implementation, that policy  
10 approval of applications, your criteria performance measure,  
11 these were matters that were not within the ambit of the  
12 Ministry of Finance; is that right?

13 A. Commissioner, no.

14 COMMISSIONER HICKINBOTTOM: Thank you.

15 BY MR RAWAT:

16 Q. Can we move on to my last topic, please, Mr Frett.  
17 And it's really just some clarification and clarity about  
18 reporting lines, please.

19 As we understand it, the Customs Department sits under  
20 the Ministry of Finance; is that right?

21 A. That is correct, Commissioner.

22 Q. The Commissioner of Customs, Wade Smith, has given  
23 evidence to the Commissioner on three occasions now. I want to  
24 ask--if my memory is not playing me false, he described himself  
25 as "technical people". So, the decisions as to how Customs

1 operate, given that it sits under the Ministry of Finance, can  
2 you explain how the relationship between Customs and the  
3 Ministry of Finance is meant to work?

4 A. Commissioner, the Customs Department is a  
5 law-enforcement department, and they have a number of  
6 responsibilities with respect to border security, importation of  
7 goods and export of goods, so they have quite a broad scope.  
8 They're also part of the Joint Task Force and other committees  
9 that they are involved with.

10 My view of any Department that falls within the  
11 Ministry of Finance, they report directly to the Financial  
12 Secretary. There are some areas, such as relationship with  
13 international bodies such as maybe the U.S. Coast Guard or the  
14 National Security Council, where the Financial Secretary is not  
15 a member of those particular bodies, and as Commissioner of  
16 Customs, he may interact directly with those agencies. But it  
17 does not remove the fact that, as Financial Secretary, there  
18 should still be some line of reporting or communication to the  
19 Financial Secretary on such matters.

20 There may be sensitive matters that he may not be able  
21 to disclose that maybe are under investigation. But, as a  
22 general item, he should report on a regular basis on the  
23 performance of the Customs Department as the Accounting Officer.  
24 That is, the Commissioner as Accounting Officer under the  
25 reporting and whether or not they're meeting their strategic

1 plans, goals, objectives, and how they are administering  
2 resources, financial and other resources that have been changed  
3 to them. So, they do have that clear line of reporting to us.

4 Q. Is the Commissioner--does the Commissioner of Customs  
5 hold an Accounting Officer role?

6 A. Commissioner, yes. He's the Accounting Officer for  
7 the Customs Department.

8 Q. The reason for my questions is because the Internal  
9 Auditor has recently done an audit report in 2020 in relation to  
10 Customs, and she made a number of recommendations. One of the  
11 issues that arose from that report is how Customs identify  
12 conflicts of interest, so, for example, how it deals with--the  
13 example that appears in the report is that it's addressing an  
14 allegation that a number of Customs Officers, by brokerage  
15 services, whether legitimately or illegitimately, have a private  
16 interest (drop in audio) and the Internal Auditor raised that as  
17 a potential conflict, and she described it as a "significant  
18 conflict" because they may affect an ability to influence the  
19 processing of Customs Declarations, it may cause--give an unfair  
20 advantage to a person, depending on the brokerage services that  
21 you use.

22 And what she noted was, absent appropriate (drop in  
23 audio) to manage or minimize this conflict, the current process  
24 is ripe for fraud.

25 Now, we did hear from Wade Smith on this. But from

1 the perspective of you as Financial Secretary, is that  
2 something--in terms of how a department that sits under the  
3 Ministry manages conflicts of interest, would that be something  
4 that would be brought to your attention?

5 A. Um-hmm. Commissioner, yes.

6 Q. And what role, then, does the Ministry of Finance play  
7 in ensuring that the Department is adequately--has adequate  
8 measures in place to manage potential conflicts of interests?

9 A. Commissioner, the report referred to, it was presented  
10 to my predecessor, and he will be before you this afternoon, and  
11 he would be best to answer that because I subsequently had a  
12 meeting with Internal Audit once the report came to my  
13 attention, but the discussion in relation to the report, it was  
14 discussed with the former FS. It was presented to the former  
15 FS. It was discussed. I understand they had a meeting  
16 themselves. The Commissioner of Customs responded to the  
17 report. This is what I was duly informed, that the Commissioner  
18 of Customs responded to the report that was presented by the  
19 Internal Auditor, clarifying any of the concerns that were--that  
20 was raised in the document.

21 I subsequently discussed the matter with the  
22 Commissioner of Customs, and the necessary steps are being taken  
23 to remedy that situation, he wrote to us, and that such matters  
24 would have to go through the Deputy Governor's Office, I do  
25 believe, to address that particular concern with brokerage

1 services within the Customs Department.

2           So, he did make recommendation with respect to  
3 officers who are engaging in such services and the appearance  
4 that it would give of conflict. But approval to operate  
5 brokerage services, they have to get a special interest--not  
6 interest--approval from the Deputy Governor's Office to engage  
7 in such services. I can't, a hundred percent, say whether or  
8 not the alleged officers get approval from the Deputy Governor.  
9 I have to go back to the report. But I know that is a matter  
10 that's being discussed. This is something on the front burner  
11 about public officers engaging in business that deal  
12 directly--especially those that they directly have some level of  
13 influence over.

14           Q. So, your evidence is that it currently sits with the  
15 Deputy Governor's Office, and when it--

16           A. No. No. I'm saying that is a matter that have to be  
17 further discussed with the Deputy Governor and how do we move  
18 forward and rectify the situation. Deputy Governor's Office,  
19 yes.

20           Q. Is there a timeline for when these discussions will be  
21 completed? Correct?

22           A. Commissioner, like I noted, this particular  
23 document--since I took office, I work for about six--five, six  
24 months without any Deputy, and it is--we are working towards  
25 building the team here at the Ministry of Finance. So--and in



1 light of the COVID-19 continuing and the spike that we are  
2 currently having, and also the Commission, the Commission of  
3 Inquiry, I have put tremendous amount of resources behind the  
4 Commission of Inquiry where they're working weekends, late  
5 nights, trying to meet the stringent timelines that are being  
6 presented to us, and my team currently is burned out with  
7 respect to everything that is happening around then, and I can  
8 only ask so much of them to perform. To me, I'm not sure how  
9 they're doing it, performing at such high level, notwithstanding  
10 the magnitude of things that are being asked of them, and I  
11 commend them for the work they are doing.

12           So, I don't want to specifically put a timeline to say  
13 next week I'm going to reach out to the Deputy Governor.  
14 Anything that is emanating from the Commission of Inquiry,  
15 obviously, it is of importance and should be given the priority  
16 it deserves. So, I'm making note, and I will--I will make note  
17 as we speak. And I personally will ask my HR Manager or someone  
18 else to advance this particular matter on how we can address  
19 conflict of interest with respect to persons performing this.

20           Q. Before you note, that wasn't the request. Your  
21 evidence was that, as a result of internal discussions arising  
22 out of the report--so, irrespective of the Commission of  
23 Inquiry, there had been a discussion ongoing with the Deputy  
24 Governor's Office about how one deals with Public Officers who  
25 have a conflict of interest by taking on a private job. And my

1 question was merely to ask what progress there was on those  
2 discussion. Those are discussions that had been initiated  
3 irrespective of the Commission.

4 It was simply whether you had, in discussions between  
5 yourselves, the Commissioner of Customs, and the Deputy  
6 Governor's Office, an idea as to when you would make a decision  
7 or--

8 (Overlapping speakers.)

9 Q. --and the answer seems to be that there isn't, yet, a  
10 definite date when you will reach a concluded view.

11 A. Commissioner, I will make it a priority. Anything  
12 emanating from the Commission of Inquiry is of importance. And  
13 I'm sure my colleagues are listening in to my evidence given  
14 here and they have taken heed. And I will seek, before the end  
15 of the week, to have that discussion continued--because I'm  
16 having the discussion with the Commissioner, but to perhaps  
17 advance it further with the Deputy Governor to see how such  
18 matters can be resolved.

19 COMMISSIONER HICKINBOTTOM: Well, thank you, Mr Frett.  
20 As Mr Rawat said, it would be simply helpful to know where that  
21 had got to, so far.

22 Is there anything else, Mr Rawat?

23 MR RAWAT: There is nothing else. And that, in fact,  
24 is the conclusion of my questions.

25 I would like to, firstly, thank Mr Frett for giving up

1 his time to assist the Commission further, but also thank him  
2 for the way he's given that evidence.

3 COMMISSIONER HICKINBOTTOM: Yes.

4 Mr Frett, can I thank you both for your time this  
5 morning and your evidence this morning, which has been very  
6 helpful, but also for the assistance you and your colleagues  
7 have given to the inquiry. I understand that, although requests  
8 tend to go to Ministers, the burden of responding to them  
9 usually falls upon Permanent Secretaries, in your case, the  
10 Financial Secretary, and those who work with them. So, thank  
11 you very much.

12 Good. Anything else?

13 MR RAWAT: Our next witness is at 2:00.

14 COMMISSIONER HICKINBOTTOM: Good. Thank you,  
15 Mr Frett.

16 THE WITNESS: Thank you so much, Commissioner and your  
17 team, for the work you are doing.

18 COMMISSIONER HICKINBOTTOM: Thank you, Mr Frett.

19 MR RAWAT: Thank you, Mr Frett.

20 (Witness steps down.)

21 (Recess.)

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Session 3

GLENROY A FORBES, COMMISSION WITNESS, CALLED  
COMMISSIONER HICKINBOTTOM: I think we're ready to

recommence.

Mr Rawat. Thank you very much.

MR RAWAT: Thank you, Commission of Inquiry.

Our next witness is Glenroy Forbes. Mr Forbes is, as  
with other witnesses now, giving his evidence remotely.

BY MR RAWAT:

Q. Mr Forbes, I understand that you will be willing to  
give your evidence on affirmation; is that right?

A. Yes, sir.

Q. And if I can ask you, I will read out the words of the  
affirmation if you then repeat them after me, that will deal  
with it.

So, the words of the Witness Affirmation are: "I do  
solemnly, sincerely, and truly declare and affirm".

A. I do solemnly, sincerely and truly affirm.

Q. I do solemnly, sincerely and truly declare and affirm.

A. I do solemnly declare--what? I'm not getting that  
right, sir.

Is it possible--is it possible for you to--

(Overlapping speakers.)

A. Can we share the screen, please, I can read it out?  
Is that possible?

1 Q. I'm not sure that it is.

2 Let me try and do it in smaller words.

3 A. All right.

4 Q. I do solemnly.

5 A. I do solemnly.

6 Q. Sincerely and truly.

7 A. Sincerely and truly.

8 Q. Declare and affirm.

9 A. Declare and affirm.

10 Q. That the evidence.

11 A. That the evidence.

12 Q. I shall give.

13 A. I shall give.

14 Q. Shall be the truth.

15 A. Shall be the truth.

16 Q. The whole truth.

17 A. The whole truth.

18 Q. And nothing but the truth.

19 A. And nothing but the truth.

20 COMMISSIONER HICKINBOTTOM: Thank you very much,

21 Mr Forbes.

22 BY MR RAWAT:

23 Q. Thank you, Mr Forbes, for attending remotely to give  
24 your evidence today.

25 Can we deal with some formalities. Can you give the

1 Commissioner your full name, please?

2 A. My name is Glenroy Alexander Forbes.

3 Q. Now, as we are going through, can I ask you just to  
4 remember to keep your voice up, please, and to speak slowly.  
5 And it helps if both you and I try not to speak across each  
6 other, which can sometimes happen because there can be a slight  
7 delay on a remote link. So, if we take our time we should be  
8 able to avoid that.

9 Now, you have had previous service in the Public  
10 Service, particularly as Financial Secretary but could you--and  
11 you have acted as Financial Secretary and indeed Deputy  
12 Financial Secretary on more than one occasion, the most recent  
13 time taking the post in 2017. Could you give the Commissioner  
14 an outline of your professional background before you took on  
15 the role of Financial Secretary in 2017, please.

16 A. I began my Civil Service career as a teacher. And  
17 soon after I qualified as a trained teacher by attending the  
18 University of the West Indies, a teachers' training programme,  
19 which was conducted at Erdiston College in Barbados.

20 I taught for a while, and then I did a degree, a  
21 Bachelor's degree in social sciences with a concentration in  
22 economics at the College the Virgin Islands, now the University  
23 of the Virgin Islands.

24 And then I did a Master's degree in Maryland in the  
25 United States in economics. I worked for a while in the US

1 Virgin Islands as a senior analyst in the Bureau of Labor  
2 Statistics, and then I returned to the BVI where I was appointed  
3 as Deputy Financial Secretary in 1986. I was subsequently was  
4 appointed to act as Financial Secretary, I think it was in 1991,  
5 and I was subsequently confirmed maybe in 1992 to '93.

6 I left that post on study leave, and I think I went to  
7 the United Kingdom, the Wales categories where I read for law.  
8 That was in 1998. I was subsequently called to the Bar of  
9 England and Wales as a non-practicing Barrister in 2001, I think  
10 it was.

11 And shortly after that, I was called to the Eastern  
12 Caribbean Supreme Court and rose to the position as a Barrister.

13 I then worked for a while with one of the local firms,  
14 I think it was "Hanis" (phonetic), and then I was called back,  
15 still being a civil servant because I was on secondment, I was  
16 called back to the Ministry of Finance where I stayed in 2001 I  
17 was called back, I think 2002, where I stayed for until 2005  
18 when I retired.

19 And then in 2017, I was invited to come back by the  
20 then Minister of Finance and Premier, the Honourable D Orlando  
21 Smith to assist him in his finance subject, with his finance  
22 subject.

23 I left that post on 31st--it was on contract, I left  
24 that post on the 31st of December 2020.

25 Q. In terms of when you stepped away in 2005, who

1 replaced you as Financial Secretary then?

2 A. I believe a young lady by the name of "Katelyn"  
3 (phonetic) Fraser, Ms Fraser had acted for a while, and Mr Neil  
4 Smith was subsequently appointed as Financial Secretary.

5 Q. And when you returned most recently, was it to take  
6 over from Mr Smith?

7 A. Yes. Yes, Commissioner.

8 Q. A number of matters that I would like to cover you  
9 with, please, Mr Forbes. The first relates to the work of the  
10 Internal Auditor.

11 The Internal Auditor has given evidence to the  
12 Commissioner, and she's explained that her Department reports to  
13 the Internal Audit Advisory Committee.

14 A. Um-hmm.

15 Q. A committee which was last in place on 31st of  
16 December 2016.

17 So you, when you returned in 2017, would have returned  
18 to a situation where the Committee had not been reestablished.  
19 As we understand it, both from the Internal Auditor and from  
20 Jeremiah Frett who has just given evidence, steps have been  
21 taken now to re-establish the Committee, but there was a gap  
22 between the 31st of December 2016 and June 2021, when the  
23 Committee was not established or sitting.

24 Could you explain--and the evidence of the Internal  
25 Auditor was that she wrote to the Financial Secretary, which



1 would be you and Mr Frett, raising up--raising the need to  
2 resurrect the Committee, but can you explain to the Commissioner  
3 why steps were not taken during your tenure to re-establish the  
4 Committee?

5 A. Commissioner, as I recall, I remember the Director of  
6 Internal Audit actually approaching me and explained that  
7 situation to me. I think we had gotten to the point where we  
8 were about to suggest persons for that particular role who can  
9 serve on a Committee. But with all the intervening  
10 circumstances, I think we didn't get back to that, that  
11 particular issue.

12 Q. And so, was it just something that because of other  
13 circumstances, dropped down the priority list?

14 A. I would say so, sir. There were, as you can perhaps  
15 imagine, there were a lot of competing demands on my time and  
16 the time of the Ministry of Finance. And, you know, that maybe  
17 along with other things, perhaps dropped to a lower priority on  
18 that list of priorities.

19 Q. The next matter I would like to canvass with you,  
20 please, Mr Forbes, is the work of the Auditor General. The  
21 Auditor General produces Annual Reports, and part of what she  
22 sets out is her audit of government.

23 Now, the Commissioner has the Annual Reports for the  
24 year-end 2008 onwards, and those Reports go to 2016. What they  
25 show--and you can get from them--are the dates on which the

1 Financial Statements of Government were submitted to the Auditor  
2 General, and the date of which she then submitted her Report  
3 having reviewed the accounts and authorized them.

4           And what they show is, between 2008 and 2011, the sort  
5 of average gap between the Auditor General receiving Financial  
6 Statements and dealing with them was 22 months. For 2012, for  
7 the year-end 2012, the accounts reached the Auditor General on  
8 the 12th of January 2017, so that's shortly, I think, before you  
9 resumed your role as Financial Secretary. I think you returned  
10 to that position in June 2017, so you inherited a situation  
11 where there was a long gap between the year-end and Financial  
12 Statements reaching the Auditor General, and that gap has come  
13 down, so five years has dropped down to four, then three, then  
14 two.

15           But do you know why there was such a delay, why--you  
16 referred to this, for example, in relation to 2012, the accounts  
17 didn't reach the Auditor General until 2017?

18           A. Commissioner, I cannot say with any certainty the  
19 reasons for that. As I already pointed out a while ago by  
20 yourself is that, I inherited that situation, and I can recall  
21 quite vividly when I was first approached to return to the  
22 Ministry of Finance. I was told by the then Premier that, as  
23 Minister of Finance, he has little to no confidence in the  
24 figures that are being produced by the Treasury and sent to him  
25 via the Ministry of Finance, and he asked me to come back and

1 see if I can rectify that situation for him or help him to  
2 understand it, which I did.

3 I discovered that there had been quite a backlog of  
4 un-presented Annual Reports to my dismay. Actually, I can  
5 report, based on my recollection, is that the last report that  
6 was submitted prior to me getting there would have been the 2011  
7 Report. And even with that being submitted, there were a number  
8 of, I'm going to say procedural issues in terms of legalizing  
9 the spending that was done in those prior years, which were not  
10 done. They included supplementary budgets that were not  
11 presented after the Auditor General had made her Report because  
12 invariably, when the Auditor General makes her Report, she would  
13 say that "head X" or "ex head B" has been over-expended, and  
14 then I believe for the Ministry of Finance to advise the  
15 Ministry of Finance on taking a supplementary estimate to the  
16 House to make sure that that spending is actually legalised.

17 And further that, there was a situation where dating  
18 back to 2007, if I recall, there were no appropriate  
19 Supplementary Appropriation Bills passed into Acts at the House  
20 of Assembly, so all that, the team of the Ministry of Finance,  
21 with my assistance or guidance, had to produce even before we  
22 got to the actual 2012 that was--that was--2013 because 2012, as  
23 you said a while ago, was already submitted by the time I got  
24 there.

25 So, I'm just laying the groundwork as to what I was

1 being faced with at the time.

2 Q. But, I mean, looking at the--having regard to the  
3 Auditor General's evidence, one of the issues she pointed out  
4 was that when Financial Statements were being submitted to her,  
5 they were not in the proper format. There were issues around  
6 the use of or how they were being presented that meant that she  
7 had to send them back, they had to be revised and they had to  
8 come back to her, and that obviously introduced delay, so she  
9 was dealing essentially with the Years 2012 through to 2016,  
10 they were finally dealt with by 2018, and that was a year in  
11 which she did her work. But acknowledging that you arrived, you  
12 effectively inherited that situation, did you identify any  
13 factors that had caused that set of circumstances?

14 A. One of the things that I observed is that there were  
15 legislations passed or enacted that mandated that we move to a  
16 different form of presenting the accounts for the Financial  
17 Statements. And in fact the--there was a--I met a consultant  
18 hired and working in the Treasury with the Accountant General  
19 assisting with those matters in terms of getting the accounts up  
20 and other matters, and my observation was that for whatever  
21 reason, the Government or the Accounting General was not able to  
22 present those accounts in a format that needed to be submitted  
23 because it furthered itself and the Ministry of Finance were not  
24 sufficiently familiar with the process of the technicalities of  
25 actually presenting the accounting that format.

1           And if you go deeper down into the entire thing, I  
2 think it wasn't until--until 2016--2016, yes, 2016, was when  
3 they made a full attempt to introduce this IPSAS system. And  
4 (drop in audio) with that, there were a number of factors which  
5 would have prevented the BVI Government from doing just that,  
6 and one of the things which I think the Auditor General pointed  
7 out was that the whole recording of assets and how we manage  
8 assets was not properly or were not presented in the statements  
9 the way they should be presented if you're talking about moving  
10 to the IPSAS system or away from a cash-based system.

11           Q.    So, do you, in terms of identifying factors that had  
12 significant effect, that inability to implement the IPSAS system  
13 with any speed is what made life difficult?

14           A.    Well, that was one of the factors, and that is one  
15 that has prevented the 2016 account from being submitted in a  
16 format that the Auditor General could actually do her work  
17 because neither the Ministry of Finance nor the Treasury itself  
18 was properly prepared to deal with--public resource, I should  
19 say, to deal with the new system that was--should have been  
20 introduced way back in 2013 or whenever it was.

21           Q.    You were Financial Secretary between 2017 and 2021.  
22 The evidence of the Auditor General was that she's now dealing  
23 with 2017, so she hasn't yet finished her work on 2017. But  
24 during your time as Financial Secretary, 2017 to 2021, what  
25 steps were you able to take to improve the situation that you

1 had encountered?

2       A. Well, one of the things that I must admit that, when I  
3 got there I said earlier I met a Consultant assigned to the  
4 Treasury, Ministry of Finance, that was working on not only  
5 getting the backup accounts but also introducing the Treasury  
6 staff, the workers too, this new system, the IPSAS system, with  
7 all the issues that we've had with presenting the 2016, I had  
8 even called back the Consultant, the same one came back but I  
9 reached out to CARTAC, one of the agencies that had been working  
10 with us for a number of years, I've called back CARTAC, and they  
11 happened to send the same Consultant that we had before, since  
12 he was very familiar with what was happening in Treasury, and it  
13 was at that point that we were able to actually get the 2016  
14 submitted to the Auditor General so she can do her work.

15               But I want to confirm what the Auditor General has  
16 said because with--I am not an accountant, but with my  
17 interaction with Treasury because it is one of my  
18 responsibilities or duties along with the Accountant General to  
19 actually present the accounts for auditing, and there had been a  
20 lot of back and forth between the Treasury Department and the  
21 Auditor General office. At one point, the Auditor General  
22 commented to me that it was because of the ability to  
23 communicate and they considered it was very responsive that she  
24 was able to quickly get to work on that backlog of Audit Reports  
25 that we keep on referring to.

1 Q. Thank you.

2 Again, just in focusing on perhaps particularly the  
3 time period that you spent most recently as Financial Secretary,  
4 the evidence that the Commissioner has received includes  
5 evidence from Members of the House of Assembly and the Internal  
6 Auditor about the operation of the grants programme that's  
7 within the purview of the House of Assembly, so as we understand  
8 the evidence, the House of Assembly Members get either 125,000  
9 or \$150,000, to deploy as Assistance Grants to constituents.

10 Your successor, Mr Frett, has explained that the  
11 process is that an application form will go through the Clerks  
12 of the House of Assembly, and then she will issue a Purchase  
13 Order which then goes to the Treasury Department which pays out  
14 on the Purchase Order. And his evidence was that the Ministry  
15 of Finance doesn't have any direct involvement in that process.  
16 Was that the position when you were Financial Secretary?

17 A. I should say, Commissioner that, in my earlier days as  
18 Financial Secretary, that particular word didn't even exist. On  
19 my return to the Ministry of Finance back in 2002, I saw that  
20 particular vote in the budget estimates, and that would have  
21 been questions about how that is done and how it is handled.

22 I have--I have sat with Members of the House of  
23 Assembly, not necessarily these Members of the House of  
24 Assembly, the current Members of the House of Assembly, but with  
25 prior Members, and has encouraged them or--yeah, encouraged them

1 because I don't really advise them--that they should set up  
2 guidelines as to how--or good guidelines as to how that money  
3 should be disbursed.

4           With respect to what Mr Frett may have said about the  
5 process, I believe he's correct in what he said about the  
6 process because the Clerk is the Accounting Officer, the Clerk  
7 of the House of Assembly is the Accounting Officer for  
8 Legislative Council's vote, and any charges against the monies  
9 at her disposal--because she's an Accounting Officer--she will  
10 ask for the supporting documentation, and once she's satisfied  
11 that she has the appropriate documentation, she will raise the  
12 voucher, and assuming that there is a budget for whatever she's  
13 trying to purchase, then that voucher will go to the Treasury  
14 Department, and the Accountant General, as part of her duty, is  
15 to satisfy herself that whatever charges come to her, that she  
16 is satisfied that is a proper charge against the public purse.

17           Q.    And that's a responsibility that falls on her because  
18 she's the Accounting Officer?

19           A.    No--yes. The Clerk, because she's an Accounting  
20 Officer, she has to make sure that she can only raise a Purchase  
21 Order against moneys that were allotted to her through the  
22 budgetary process for that particular purpose. When it gets to  
23 the Accountant General now, her job is to ensure that whatever  
24 the charge is, it is a proper charge determined by herself, that  
25 is a proper charge against the public purse. If she feels it's



1 not a proper charge, she sends it back or she rejects it.

2 And invariably the way things work, whether the Clerk  
3 would return to me as the Executive Minister of Finance and say  
4 this is what has happened, and then the Minister of Finance will  
5 make a determination as to what should happen.

6 Q. So, in your experience, if the Accountant General had  
7 a concern about a particular charge under this programme--

8 A. Um-hmm.

9 Q. --then it would be brought to your attention as  
10 Financial Secretary?

11 A. Not necessarily, Commissioner. She would first send  
12 it back to the Accounting Officer who, in this case, would be  
13 the Clerk of the House of Assembly, okay? If there is some  
14 disagreement or impasse between both officers were to occur,  
15 there were no middle ground to be found, then invariably it will  
16 be pushed up to the Ministry of Finance. And the Minister of  
17 Finance, of course, would make a determination as to what should  
18 happen.

19 Q. In your--in your time, your most recent time as  
20 Financial Secretary, did that happen in relation to the  
21 Assistance Grants scheme?

22 A. I don't--I don't recall, no. I don't recall. I mean,  
23 personally, I had to weigh in on a matter. I know--normally,  
24 when those inquiries are made, they're normally made to the  
25 Budget Coordinator. And depending on what it is, if it needs

1 the input of the Financial Secretary, he would have contacted  
2 me, but I don't recall any of those matters being addressed to  
3 me directly. They may have been, but I can't recall.

4 Q. You said just now that you had to weigh in on a  
5 matter. In what circumstances do you have to weigh in?

6 A. Again, if there was a question where the Accountant  
7 General, for whatever reason, felt that the charge being  
8 submitted to her for payment, because she's the paymaster, if  
9 the charge is not a proper charge, in her opinion, if that's not  
10 a proper charge, then she bounces it back to the Accounting  
11 Officer; okay? I'm saying if there is a case where no middle  
12 ground can be found between the Accounting Officer and the  
13 Accountant General, then the Minister of Finance might be called  
14 upon to try to come up with a solution with respect to payment,  
15 whether or not the payment can be made or it cannot be made.

16 I will go on to give a little more detail saying that,  
17 normally, although everything is written to the Financial  
18 Secretary, basically, because that's how the process works, but  
19 since this is a budget matter, the most logical officer who  
20 would deal with it at the very beginning at the Ministry of  
21 Finance would be the Budget Coordinator, okay? And if he had an  
22 issue and he couldn't get it resolved, he would involve me, and  
23 then I would have to weigh in as Financial Secretary and say  
24 this is what I think should happen.

25 Q. You said earlier, as well, that you had discussions

1 about an Assistance Grants Programmes with prior--with prior  
2 Members of the House of Assembly. You have had--and you said,  
3 when it came in, which was, I think, you encountered it on your  
4 second stint as Financial Secretary--

5 A. Um-hmm.

6 Q. --that there were questions raised about it. Can you  
7 tell the Commissioner a little bit more about the sort of  
8 discussions that you had with previous Members, and also what  
9 questions there were about this scheme?

10 A. Well, there were questions as to eligibility of  
11 persons to benefit from the particular scheme or the Assistance  
12 Grants Programme. And, you know, I think Members  
13 discussed--Members of the House of Assembly discussed among  
14 themselves what they would consider areas that would potentially  
15 qualify for--for assistance. I remember there were issues as to  
16 whether a Member can give assistance to his immediate family,  
17 and those type of questions that were aired and discussed. And  
18 I think, finally, they came up with some guidelines, and they  
19 also came up with a form that persons who were applying for such  
20 assistance had to fill out and submit.

21 And I think--I don't know the details because I've  
22 never actually seen one of the forms, to be quite honest, or I  
23 don't recall seeing one of the forms. But I understand that the  
24 Member receiving the application or the request would then  
25 approve it subject to final approval of the request going

1 forward, by the Clerk, who is the Accounting Officer for the  
2 particular vote.

3 Q. I see. Thank you.

4 What we also know from the Internal Auditor is that  
5 there are, obviously, Assistance Grants Programmes operated by  
6 different Ministries. And, in 2014, the Internal Auditor did an  
7 audit of those Assistance Grants Programmes, which looks at five  
8 Ministries that administer such grants, and raised concerns over  
9 them. And the critical key concern was that whether someone  
10 should get a grant was essentially at the sole discretion of the  
11 Minister, and that there were a number of deficiencies and  
12 inconsistencies in the way these programmes were being  
13 administered.

14 Now, this was published in August 2014. You were not  
15 in Public Service at that time. Upon your return in 2017, did  
16 you ever become aware that concerns had been raised about  
17 assistance programmes operated by the Ministries?

18 A. I would say "yes", but if you ask me about specifics,  
19 I can't remember, but I know there were questions that were  
20 raised with the Ministry of Finance about the way those  
21 programmes were being administered.

22 But I just want to say to you, Commissioner, that  
23 the--those supply votes are those votes that are in the budget.  
24 And, based on submissions made to the Ministry of Finance, the  
25 Minister of Finance basically approves the--let's call them

1 "bits" that come from the various agencies, whether they be  
2 Ministries or Department, to be part of the Annual Budget.

3           Once that money is approved by the House of Assembly  
4 and the Appropriation Act for the particular year--right?--it  
5 is--since the Ministry of Finance is the Ministry tasked with  
6 ensuring that the monies that are spent in accordance with the  
7 Appropriation Act--right?--the Ministry of Finance would  
8 normally become involved if there was an appearance that there  
9 is any misappropriation of those funds, in other words, funds  
10 that are being spent for purposes for which they were not  
11 intended.

12           If you ask me, Commissioner, if that's an easy job?  
13 Is it doable? It is not an easy job. But, during my time  
14 there, and I believe, even time when I was not there, I believe  
15 that persons who have preceded in the Ministry of Finance and  
16 who came after me in the Ministry of Finance, I believe they are  
17 concerned, or they were concerned themselves, in making sure  
18 that the monies are spent in accordance with the appropriation  
19 bill.

20           Q. Can you help a little further with the sort of process  
21 in terms of appropriation? The position seems to be that  
22 additional provision for the budget can be made by this process:  
23 Firstly, that it goes to Cabinet as a proposal. Cabinet then  
24 approves a Resolution that's put to the House, and the House  
25 then approves that Resolution, and, therefore, approves the

1 additional funds.

2 Now, it appears to be at the moment there is a lag in  
3 terms of dealing with Appropriation Acts. So, firstly, is that  
4 the right process, and is there such a lag?

5 A. If I can try and explain, Commissioner, there are  
6 two--for lack of a better word--there are two Appropriation  
7 Acts. Let me put it that way. There is the annual  
8 Appropriation Act which approves the budget, okay? The budget  
9 is actually the--the budget document is actually a schedule to  
10 that particular Act, okay? If there is need for additional  
11 spending or additional monies over and above what is covered in  
12 the annual Appropriation Act, then there is a request for a  
13 supplementary budget, okay? That supplementary budget, in local  
14 parlance, is normally referred to as a SAP, Schedule of  
15 Additional Appropriations, okay? Provisions. I'm sorry.  
16 Schedule of Additional Provisions.

17 The process, as well as I know, the process is that  
18 Ministries or Agencies who have a request for additional  
19 funding, for whatever reason, they make an application to the  
20 Ministry of Finance. The Ministry of Finance would normally  
21 agree what--because it's put into a Schedule--will agree with  
22 the Ministry of Finance which of those requests he is willing to  
23 take forward, okay? When they agree, between the Ministry of  
24 Finance--the Minister of Finance agree, that schedule, he takes  
25 it is to Cabinet on a Cabinet paper; and that's the Minister of

1 Finance, all right? Cabinet then makes a decision as to whether  
2 or not a Resolution--or a Motion, I should say--is actually  
3 introduced in the House of Assembly for the particular money  
4 vote, which is the supplementary budget that is being proposed;  
5 right?

6 So, what happens is that--is that the House of  
7 Assembly actually passed that--normally passes the Resolution.  
8 And almost without change sometimes, we find there is additional  
9 monies added to that particular supplementary budget, okay? So,  
10 the supplementary budget is passed by way of Resolution, okay?  
11 That authorizes the Accountant General to actually incur  
12 expenditure against the public purse.

13 Now, later in the process, there needs to be a  
14 Supplementary Appropriation Bill which would pull together all  
15 those supplementary estimates that relate to a particular year.  
16 If there are two or three, they are put together in a Schedule,  
17 and then we have introduced in the House a Supplementary  
18 Appropriation Bill, which is, when approved by the House of  
19 Assembly, that legalises the spending that took place over that  
20 particular year.

21 Now, there have been--there have been delays between  
22 submitting the Supplementary Appropriation Bill, or even  
23 sometimes submitting the Resolution or the Motion for Resolution  
24 in the House, simply because sometimes there are provisions in  
25 the Public Finance Management Act that allow the Minister to

1 advance monies not necessarily in the original Appropriation  
2 Act, if there is a need for additional expenditure there for  
3 emergency, contingencies, whatever that might be. And they're  
4 quite clear as to when that can happen.

5           Unfortunately, I have seen situations where  
6 expenditure was incurred, sometimes commitment given, not  
7 necessarily money spent because the system that is supposed to  
8 operate--and I cannot say how it operates, the way it should  
9 operate--is that when there is--when any agency needs to expend  
10 money for whatever reasons, whether on goods and services on  
11 behalf of the Government, they should raise a Purchase Order. A  
12 Purchase Order can only be raised in the system, in our  
13 accounting system, if there is money for that purpose, if there  
14 is money allotted in the Appropriation Act for that particular  
15 expenditure.

16           So, unless there was some breach in the system, the  
17 Government should not be able to spend money that was not  
18 appropriated and that appropriated had been in the Supplementary  
19 Appropriation Act, the Supplementary Appropriation Act, or they  
20 can spend if you have--before the Supplementary Appropriation  
21 Act is passed, you can--the Accountant General can authorize  
22 expenditure if there was a Resolution, a formal Resolution in  
23 the House, for that particular expenditure.

24           Q.   Is the effect of a Supplementary Appropriation Act--or  
25 can the effect of a Supplementary Appropriation Act be to



1 legalise spending that has already occurred?

2 A. In fact, it does legalise money already spent because,  
3 remember, I said that to get a SAP, to get a Supplementary  
4 Budget, normally there is a Resolution that is passed in the  
5 House. There is a Motion moved by the Minister of Finance, and  
6 a Resolution is passed in the House to spend, okay? And  
7 that--on the approval of that particular Motion, or that  
8 Resolution, agencies can incur expenditure, can actually spend  
9 money, okay?

10 Now, to legalise that whole process, once it was money  
11 gained by a SAP, by a supplementary budget--call it what you  
12 may--we need to have a Supplementary Appropriation Act of  
13 Parliament.

14 So, the short answer to your question is yes, a  
15 Supplementary Appropriation Act can legalise, and it does  
16 legalise spending that occurred earlier, in an earlier period.

17 Q. Taking you back to the SAP, though, can that be used  
18 to, if you like, replenish an account from which money has been  
19 spent? So, if we take the House of Assembly Assistance Grants  
20 as an example, the evidence that the Commissioner has received  
21 today shows that there was a supplementary--a Schedule of  
22 Additional Provision that was related. It's headed No. 2 of  
23 2018, but it actually is dated the 9th of May 2019, so it  
24 appears to have gone through after the event.

25 And the question I have is this: Let's assume that

1 the House of Assembly Assistance Grants has a particular budget.  
2 Can it overspend that budget and then make good the shortfall by  
3 having a Schedule of Additional Provision that essentially comes  
4 later, after the money has been spent, and makes good the budget  
5 or fills the gap?

6 A. There are instances where the Minister of Finance can  
7 advance monies, monies not necessarily appropriated in the  
8 annual Appropriation Act, right? But then he would be required  
9 to regularize that particular spending as soon as is practicable  
10 for him to take a Resolution to the House of Assembly.

11 So, yes, again, that can happen. And one of the  
12 things that I encountered at the Ministry of Finance when I went  
13 back is that the Ministry of Finance itself was actually  
14 authorizing over-expenditure on certain votes and persons  
15 incurring those expenses, and that is not within the ambit of  
16 the law as it relates to public finance.

17 Only in those circumstances where the Act itself, or  
18 the Regulations under the Act, permits the Minister of Finance  
19 to advance monies that were not appropriated in the  
20 Appropriation Act for that particular year.

21 Now, I'm going to say this, and I hope I don't confuse  
22 the Panel, Commissioner. But I want to say that one of the  
23 things where you find the legalisation or the Supplementary  
24 Appropriation Bill come in long after--you will understand  
25 why--come in long after the expense was incurred is because,

1 aside from the Supplementary Budget that may be approved during  
2 the course of that particular financial year, invariably, when  
3 the Auditor General audited the account for that particular  
4 year, she would say that this particular vote, which is the  
5 agency or Department of the Ministry, had been overspent by  
6 whatever amount of money.

7           If you hold the Ministry of Finance to put together a  
8 Supplementary Budget to correct all those over-expenditures that  
9 the Auditor General has pointed out, and when you get that  
10 approved by Resolution, then all those supplementary estimates,  
11 all those resolutions are put together, and the Schedule  
12 attached to the proposed Resolution, are put together in the  
13 form of a Supplementary Appropriation Bill and taken to the  
14 House.

15           Q.    Thank you.

16           Can I move on to a different topic, and that is the  
17 use of Petty Contracts. The evidence that we have is that,  
18 depending on the value of the service or the goods that  
19 Government is purchasing, you can use different types of  
20 processes. So, up to \$10,000, it's going to be Work Orders.  
21 Between 10,000 and 100,000, it's going to be Petty Contract.  
22 And above 100,000, it's a Major Contract, and you have to put it  
23 out to tender unless Cabinet decides to waive it.

24           Now, one of the concerns that has been raised in  
25 evidence before the Commissioner is that of contract-splitting,

1 where a way of avoiding putting--the need to put a Major  
2 Contract out to tender is to split it into a number of Petty  
3 Contracts. And this was, for example, an issue that was  
4 highlighted to the Commissioner by the Internal Auditor, and the  
5 Internal Auditor Department did a report on this in April 2012.

6 Taking it forward in time to the time that you,  
7 Mr Forbes, were Financial Secretary, 2017-2021 in this case,  
8 what was the Ministry of Finance's position in relation to the  
9 use of Petty Contracts?

10 A. Commissioner, the issue of contract-splitting has been  
11 a matter that has exercised the Ministry of Finance and, I  
12 guess, our Financial Secretaries for quite a while, during my  
13 first stint, my second stint, and even on my return to the  
14 Ministry of Finance. The Ministry of Finance as far as I'm  
15 aware, or at least when I was there, was that there are times  
16 when a particular--particular contracts may be necessary. But,  
17 strictly speaking, the law says the excess that--that is  
18 anything, any expense that is 100,000 or above is to be the  
19 subject of a Major Contract, and, hence, the tendering process,  
20 open tender; right?

21 The approach that I have taken was that anything that  
22 is over the 100,000--over the 100,000, it is a Major Contract,  
23 okay? That is the proposition. That is what the law says. If  
24 you're going to derogate or you're going to deviate from the  
25 law--right?--you have to show evidence for doing so.

1           I don't know if I could emphasize again--anything, any  
2 projects that are over 100,000, as far as I'm concerned, it is  
3 looked at and should be looked at as Major Contract, A Major  
4 Contract. However, there are instances where Petty Contracts  
5 might prove very useful, whether for--whether for efficiency;  
6 whether for expediency; whether you want to acquire another  
7 objective, which may be sharing the work among different players  
8 because you want to make sure that persons have a job and can  
9 own--all those things. But like any particular proposition,  
10 there is evidence that can report that particular proposition  
11 and it needs to be quoted into evidence.

12           Q. But was there any specific guidance or position in  
13 terms of the Ministry of Finance in your time?

14           A. Yes. During my earlier stint, I have wrote a number  
15 of circulars offering guidance as to how we should be dealing  
16 with cases where persons are presuming to be using the Petty  
17 Contract route. And one of those--one of those rules was that,  
18 if you're going to split up a particular contract into smaller  
19 portions to make sure it falls under the Petty Contract, the  
20 Petty Contract limit or the Major Contract limit, then you  
21 shouldn't be--evidence of you offering multiple contracts to any  
22 one operator is evidence, sufficient evidence to show that you  
23 are contract-splitting.

24           And when that claim is made, it's left to the  
25 Accounting Officer to convince the Finance Secretary or, in the

1 first instance, the Accountant General--because it gets to the  
2 Accountant General before it gets to me--as to why there's a  
3 need to actually break up that particular contract into smaller  
4 portions.

5 Q. And those circulars, I mean, would they have gone  
6 around Government to individual Ministries, setting out what the  
7 position of the Ministry of Finance was?

8 A. Every single Accounting Officer was in receipt of  
9 those circulars because they were Finance circulars, and they  
10 would go to all the Accounting Officers, copied to the  
11 Ministers, the Governor, and Auditor General and so on.

12 Q. I see.

13 If you'll give me one moment, please, Mr Forbes.

14 (Pause.)

15 Just to move on to one more topic, and that is: The  
16 Internal Auditor produced an audit report on the COVID-19  
17 stimulus grants programmes and the stimulus programme. It was  
18 produced in May 2021. I believe you have been sent a copy for  
19 the purpose of giving evidence to the Commissioner; is that  
20 right?

21 A. The COVID--I don't remember seeing it in the bundle,  
22 Commissioner, but I know of it. Uh-huh.

23 Q. Those sitting behind me have confirmed that it was  
24 sent to you, Mr Forbes.

25 A. All right. I'm not disputing that, but I don't

1 remember reading it. But, proceed, sir.

2 Q. And you confirm that you have received it?

3 A. If you said it's sent to me in a bundle of documents  
4 that was sent to me, I believe it is in the bundle.

5 Q. Do you have that bundle with you?

6 A. I'm trying to bring up--it was an Internal Auditor's  
7 bundle?

8 Q. Yes.

9 MR RAWAT: One way around it, Commissioner, if  
10 we--it's probably a good time to go to a break.

11 COMMISSIONER HICKINBOTTOM: And send it through to  
12 Mr Forbes.

13 MR RAWAT: If we have a five-minute break, that allows  
14 Mr Forbes to locate it, and I can--

15 THE WITNESS: Can you tell me--I have some documents.  
16 Can you give me the reference again, please? I will see if I  
17 have that.

18 BY MR RAWAT:

19 Q. It's in the Internal Auditor's bundle, and it's at  
20 page 3050.

21 A. 3050, all right. 3050, uh-huh.

22 Yes, it is in a bundle, yes. I do have it.

23 Q. That's good. Thank you.

24 You should see the front is dated October 2020.

25 A. Yes, sir.

1 MR RAWAT: Commissioner, perhaps we ought to still  
2 give the Stenographer a five-minute break.

3 COMMISSIONER HICKINBOTTOM: Yes.

4 BY MR RAWAT:

5 Q. What we will do, Mr Forbes, is pause for five minutes  
6 to allow the Court Stenographer a break. And when we come back,  
7 I can resume my questions on this topic, all right?

8 A. Sure, Commissioner.

9 COMMISSIONER HICKINBOTTOM: Thank you, Mr Forbes.  
10 Just maintain the link, Mr Forbes, and we'll be back in a few  
11 minutes. Thank you very much.

12 (Recess.)

13 MR RAWAT: We're ready to start, Commissioner.

14 COMMISSIONER HICKINBOTTOM: Thank you. We're ready to  
15 resume. Thank you, Mr Rawat.

16 MR RAWAT: Thank you, Commissioner.

17 BY MR RAWAT:

18 Q. And thank you, Mr Forbes, for coming back.

19 Hopefully, you have now got the report that I wanted  
20 to take you to. If you turn over to page 3052.

21 A. Yes, sir.

22 Q. You will see there that the Internal Audit Department  
23 gives the context to their Report which is that the announcement  
24 by The Honourable Premier on May 28, 2020, of details of an  
25 Economic Response Plan, and there is a table that shows how



1 those plans are going to--or those sums are going to be broken  
2 down and allocated.

3 If you turn over to 3053, please, Mr Forbes.

4 A. Um-hmm, yes.

5 Q. There is a part of it where the Internal Department  
6 Report refers to the Premier charging the Internal Auditor, or  
7 the Director of Internal Audi, with the task of providing the  
8 monthly reports to the Minister of Finance for transmission to  
9 Cabinet. The evidence of the Internal Auditor was that her  
10 Department was not able to fulfill this role because they were  
11 not provided with the necessary information.

12 Now, this programme began in May 2020, and whilst you  
13 were still Financial Secretary. Can you assist the Commissioner  
14 at all as to why it wasn't possible to provide the Internal  
15 Audit Department with the information it needed so that it could  
16 produce these monthly reports?

17 A. Commissioner, I think before I answer that question  
18 because it's not an easy question to answer, I have to give some  
19 backdrop or some indication as to the climate that was existing  
20 at that--at that point.

21 Sometime maybe--maybe--may have been--and this is from  
22 memory--the Minister of Finance had established coronavirus  
23 economic and stability economic--and--Coronavirus Economic and  
24 Stability Task Force--okay?--and appointed me as Chair of that  
25 particular Task Force, and that was--the Task Force was tasked

1 with reporting on--or advising on a government response to the  
2 coronavirus pandemic, okay?

3 I swiftly set up within the Task Force itself a  
4 working group--I call it a "Focus Group"--and that Focus Group  
5 was to try and gather information because we started with--I  
6 would say with a lot of information, highlight information what  
7 were the things that plagued us or plagued me from the very  
8 beginning is that there were obviously these needs brought about  
9 by the virus and the impact on the entire Territory, but then we  
10 had no registered per se--I want to say a Global Register of  
11 those persons who had or were in need, and were things that the  
12 Task Force Working Group set up by doing--trying to collect that  
13 information as best as they could.

14 One of the things the Task Force did was to come up  
15 with an immediate response programme, and it was roughly costed  
16 at about \$39 million, I think it was; okay? And what my office  
17 did at that time was to establish what we call an  
18 "Implementation Committee" drawn from persons within the  
19 Ministry of Finance. I think we had a representation from the  
20 Premier's Office and maybe a couple of other offices, and this  
21 Committee was to work with the various agencies that were--that  
22 I should say it was--it was anticipated that various programmes  
23 would have been taken on by the respective agency.

24 For example, if there was some for farmers and  
25 fishermen, if there was stimulus for them, then the Agriculture

1 Department or the Ministry for Agriculture would be the  
2 implementing agency, and this Implementing Committee will work  
3 with that agency to make sure you compute criteria for  
4 qualification and all that sort of thing.

5 I can go on and say that, I was head of that  
6 particular implementation--I was Chair of it. I had no Deputy  
7 at the time, Mr Frett, who should have been in my stead actually  
8 appearing at the Committees. But again, things were  
9 helter-skelter around the Ministry of Finance. I'm not too sure  
10 if the Commissioner--if you're aware of the states of affair  
11 around the Ministry of Finance around that time because  
12 remember--or I should say I went to the Ministry of Finance in  
13 June of 2017. By August of 2017, we had the floods which caused  
14 serious damage, very much damage to a--a lot of damage to  
15 infrastructure, to private property, to homes or what have you  
16 because of flooding.

17 Then in August--then in September of the same year  
18 2017, we had two category 5 hurricanes, so the Ministry of  
19 Finance was busy-busy trying to make sure that we tried to  
20 allocate or find funding, allocate funding to make sure that the  
21 funding that we were able to allocate, it was spent effectively  
22 and efficiently. If you ask me whether certain things could  
23 have been done better, I would be the first to admit yes, I  
24 believe certain things could have been done better, but it  
25 was--at that time all of our resources were taxed to the hilt.

1 We--we were--we were--I sometimes refer to myself as being a  
2 permanent state of crisis management ever since I entered the  
3 Ministry of Finance until I left because of what happened, and  
4 then I didn't get as far as when we had the COVID pandemic in  
5 early 2020, you know.

6           So, as to whether or not the  
7 implementing--Implementing Committee was very effective in  
8 offering some guidance to the various agencies and implementing  
9 the various programmes, the stimulus programmes, I don't think  
10 because I got reports that there were difficulty in getting--in  
11 getting information from some of the agencies for whatever  
12 reason, and sometimes it's understandable why there might have  
13 been difficulty because there was a lot of pressure on the whole  
14 Public Service--not only the Ministry of Finance but the whole  
15 Public Service--to deliver in a crisis, in a crisis where no one  
16 have ever been through that before. No one had experienced that  
17 (drop in audio), and you are basically alone as we went along.

18           And don't believe for one moment because I remember  
19 the Attorney General (drop in audio), the Internal Auditor  
20 writes then to myself and saying--(drop in audio).

21           (Pause.)

22           A. Hello, can you hear me?

23           Q. Yes, we can.

24           A. Oh, you can. Because I saw something pop up on my  
25 screen saying the internet is unstable. All right. Sorry about

1 that.

2           The Internal Auditor wrote to myself and said that she  
3 wanted certain information. One of the things that the Focus  
4 Group of a Task Force was tasked with doing was to come up with  
5 a policy for each of the--each of the "Stimulus Packages", if  
6 you want to call it that, was able to do that. They were not  
7 able in every single instance to come up with a policy, but some  
8 of them have policies, and then the Implementation Group or  
9 Committee was then to work with various agencies in trying to  
10 implement the Stimulus Packages.

11           Q. So, just to take you back to the question and just if  
12 we could try and narrow down the answer a little bit, the  
13 question I put arises from the Internal Auditor's Report and her  
14 evidence which was that she couldn't respond in the way that she  
15 had wanted to the Premier's request for monthly reports because  
16 of a lack of information. And is your evidence that the reason  
17 there was a lack of information to the Internal Auditor was that  
18 because the Focus Group and the Implementation Committee could  
19 not deliver on their respective roles?

20           A. My evidence is that I don't think there was any  
21 deliberate effort to deny the Internal Auditor the information  
22 that she requested because, as you rightly know, the Internal  
23 Audit Unit for that Department falls under the Ministry of  
24 Finance, and it is in the interest of the Ministry of Finance to  
25 make sure that they get whatever information they need to carry

1 out their work. And I'm saying in some instances I believe the  
2 information was available. I don't think anyone was blocking  
3 the information from the Internal Auditor; at least that's the  
4 impression I had.

5 COMMISSIONER HICKINBOTTOM: I'm sorry, Mr Rawat, but  
6 Mr Forbes, the Internal Auditor did not get this information,  
7 and the whole point of her being asked by the Premier to provide  
8 monthly reports was so that that could be input into the process  
9 of implementation. That was the whole point of having monthly  
10 reports. At the moment, I'm still not sure why the Internal  
11 Auditor did not get this information.

12 THE WITNESS: I cannot--I cannot supply a different  
13 answer to you on that question, Commissioner. I, too, was  
14 tasked by Cabinet as Financial Secretary and Chairman of the  
15 Task Force to supply by monthly report to Cabinet, and I was  
16 only able to supply one such report to the Minister of Finance  
17 again because I could not get the relevant information that I  
18 needed, and I say sometimes I believe it was because the  
19 information was not--was not forthcoming or not in a format we  
20 could actually act on it. And I think the Internal Auditor had  
21 the same problem where she was not getting the information that  
22 she needed to do her job.

23 BY MR RAWAT:

24 Q. Just to clarify, in terms of you have spoken of the  
25 Task Force which you chaired and that within it had what you

1 called a "Focus Group". The Implementation Committee sat  
2 outside this Task Force as part of the Ministry of Finance, did  
3 it?

4 A. Yes, it was. It was not--it was headed--it was headed  
5 by a Ministry of Finance official, so I was the head of the  
6 particular Implementation Committee, but my Deputy was the one  
7 who was supposed to actually turn up at the meetings and, you  
8 know, on my behalf and work on it. So, there were persons who  
9 sat on the Ministry of Finance who were on that particular  
10 Implementation Committee.

11 Q. So, what you did--it was your aim in relation to  
12 setting up that Implementation Committee to bring together the  
13 different departments that would have a role in implementing the  
14 various elements of the COVID-19 stimulus programme?

15 A. Yes, but let me just say this; right? The  
16 Implementation Committee was an ad hoc body that was set up, and  
17 they were to work with the various agencies who would have had  
18 control of or have the responsibility for implementing the  
19 various stimulus programmes.

20 Q. If we look at page 3055 in that document, then, and  
21 just deal with it in this way because it would be helpful to  
22 know to what extent the Ministry of Finance was directly  
23 involved, or you as Financial Secretary were directly involved,  
24 in the various programmes. We have them listed in a table  
25 there. Can you see that? "Grant Area".

1           So, if we take those as they're listed, the first of  
2 those is headed the "House of Assembly Initiative". That was  
3 a--it was a separate initiative to the normal assistance  
4 programmes in that Members of the House of Assembly were given a  
5 sum of money which was around \$300,000 to use and distribute as  
6 COVID-19 Assistance Grants.

7           Were you, as Financial Secretary, involved in  
8 implementing that programme?

9           A. I would say "yes" to the extent that, as Financial  
10 Secretary, I advised the Minister of Finance, who is also The  
11 Honourable Premier, that there needs to be some agreed  
12 guidelines as to how the Members of the House of Assembly should  
13 actually disburse or distribute those funds that return on to  
14 their charge, okay? The Minister of Finance at that time did  
15 convene an informal meeting of the House of Assembly and asked  
16 me to make a presentation to Members of the House of Assembly,  
17 which I did. I actually draft up some rough guidelines, very  
18 not easy because there was not much time given to me to do that,  
19 and I met with the Members of the House, and they basically  
20 agreed some guidelines as to how they would distribute the  
21 monies.

22           Now, if you asked me if I went back and checked to see  
23 that there were--the monies were distributed in accordance with  
24 the guidelines that were agreed with them, I would have to say  
25 "no", I have not done that.



1 Q. So, that fell to others to do that in terms of sort of  
2 ensuring that the process went through according to the  
3 guidelines that purchase orders were raised and monies were paid  
4 out?

5 A. Yes.

6 Q. That sort of level of implementation was for someone  
7 else?

8 A. Yes.

9 But again, the monies were actually at the disposal of  
10 the Accounting Officer of the House of Assembly, so that  
11 Accounting Officer was to make sure that all expenditures  
12 against that particular programme were done in accordance with  
13 Government Procurement and Rules.

14 Q. Thank you, thank you.

15 If we look at the next programme, it's headed in that  
16 table the "SME Initiative", so it's grants to small and medium  
17 enterprises, which is 6.5 million, from memory.

18 Now, what's explained in the Report is that that's  
19 involved a committee being established from the Premier's  
20 Office, the Ministry of Finance, and the Department of Trade and  
21 Investment Promotion and Consumer Affairs. So, was the Ministry  
22 of Finance involved in implementing that commit--that  
23 initiative?

24 A. Again, the Implementation Committee that was  
25 established to help guide implementation was also assigned to

1 that particular implementing group, so yes, the Ministry of  
2 Finance was a part. I was not personally involved, although I  
3 am not in any way shying away from responsibility because the  
4 responsibility is mine. But again the Committee, the  
5 Implementation Committee, should have been working with that  
6 particular group.

7 Q. But as far as I understand your evidence about the  
8 role of the Implementation Committee, Mr Forbes, is that it had  
9 an advisory function.

10 A. Um-hmm.

11 Q. It was there to assist and work alongside the  
12 Department that was going to run the programme; is that a fair  
13 way of putting it?

14 A. Yes, Commissioner.

15 Q. And so, in terms of ultimately deciding what criteria  
16 would apply, how eligibility would be assessed, what level of  
17 payments might be made out, those details, was that for the  
18 Implementing Department rather than that Committee that you set  
19 up?

20 A. Well, the Committee, I stated earlier, was offered  
21 some guidance, but the final decision was not left to the  
22 Committee. The Committee was not executive in that nature.

23 Q. And so, if we take--you have spoken about the House of  
24 Assembly, but if we take the SME Initiative, then, in terms of  
25 making the final decisions, was that a matter for the Ministry

1 of Finance in any way?

2 A. No, that was not. I believe--and I might be wrong on  
3 this--I believe the Department of Trade under the Premier's  
4 Office may have been the lead agency in actually implementing  
5 that particular programme.

6 Q. If we look at the next programme in the table,  
7 Mr Forbes, please, it's "Farmers and Fishermen Initiative", the  
8 evidence we received is that the lead agency there was the  
9 Premier's Office. Is that your recollection?

10 A. Well, that's what was reported to me, Commissioner.

11 I want to go back to what I said earlier in terms of  
12 setting up the Implementation Committee which was--well, I  
13 should say, when the Coronavirus Task Force prepared a document  
14 and submitted it to the Ministry of Finance in terms of the  
15 Government response, what should be the Government response to  
16 the coronavirus--right?--the assumptions there were that the  
17 agencies themselves, the agencies of the Department who the  
18 subject would have fall under would have been the implementing  
19 agency or the Department or the Ministry; right?

20 Now, obviously it would appear that that did not  
21 happen in a number of cases in terms of the implementing the  
22 stimulus grants--right?--but the report that came to me was yes,  
23 the Premier's Office was the office that was dealing with  
24 the--the one who were dealing with farmers and fishermen.

25 Q. And who gave you that report?

1           A.    The members from the Implementation Committee reported  
2 to me that that was the case.

3           Q.    But again, it's a programme that the Ministry of  
4 Finance was not the--what should we call it?--the lead  
5 implementing agency on.

6           A.    The Ministry of Finance was not the lead implementing  
7 agency. The Ministry of Finance was providing guidance--was  
8 supposed to provide guidance.

9           Q.    If you look at the next initiative, which is the  
10 "Education, Religious, and Civic Initiative", again, is it the  
11 same situation there in terms of the Ministry of Finance not  
12 being a lead implementing agency but there to provide guidance?

13          A.    Yes, that was the intention, that the Ministry of  
14 Finance would provide guidance as--to the implementing agency.

15          Q.    And in that case, who did you understand to be the  
16 implementing agency?

17          A.    I understand that--that it was done within the  
18 Premier's Office.

19          Q.    Any other agencies, or just the Premier's Office?

20          A.    What I learned is that the Premier's Office probably  
21 took the lead on that particular subject, and that's initiative.  
22 There may have been other agencies. I don't know. I can't--I  
23 can't recall exactly who the other agencies were.

24          Q.    The last initiative of the five that were reviewed by  
25 the Internal Auditor is the "Transportation Initiative"; and

1 again, is that the same position the role of the Ministry of  
2 Finance was not as a lead implementing agency but as there to  
3 give guidance and advice?

4 A. That is what the--what that evolved to, basically  
5 that. The Ministry of Finance there because we were not the  
6 lead implementing agency.

7 Q. You said that it "evolved to". That suggests it  
8 started in relation to this relationship at least being  
9 something different, so what was it going to be for the Ministry  
10 of Finance?

11 A. Well, I said earlier that it was envisaged that, in  
12 implementing the initiative under the stimulus grant, that the  
13 agency under whom this particular subject fell would have been  
14 the lead implementing agency, and the Ministry of Finance,  
15 through its Implementing Committee, would offer guidance or some  
16 say as to how you go about the process.

17 Q. And in this case, which agency did you understand was  
18 the lead implementing agency?

19 A. Again, I understand the Premier's Office had taken the  
20 lead.

21 Q. Now, what we have--just give us some dates. What we  
22 have is the Premier making the announcement of the Economic  
23 Response Plan on May the 28th, 2020. If you look at that table  
24 that we were looking at, it gives various dates for the first  
25 payment under these five initiatives, the earliest one being

1 July 31, 2020.

2 A. Which page--which page are you looking at, sir?

3 Q. 3055, back to that table that I was going through you  
4 with.

5 A. Okay, um-hmm.

6 Q. So, how soon after the 28th of May 2020 was the Task  
7 Force set up?

8 A. I can't--I can't--I can't recall if that unit Task  
9 Force was set up.

10 Q. I mean, was it a matter of days or weeks after the  
11 Premier had made his announcement?

12 A. Before the Premier made his announcement, the Task  
13 Force was already in operation. We were already working towards  
14 advising on a government response to the COVID virus.

15 Q. So, as a Task Force, were you able to feed into the  
16 plan that the Premier announced?

17 A. The--I want to be--I want to be quite clear on this,  
18 Commissioner. The Task Force that was established by the  
19 Premier had actually produced an interim report to the Premier;  
20 and, as part of that Interim Report, there was--there was a  
21 report in which the Committee was recommending or suggesting  
22 certain immediate relief to certain sectors or certain areas of  
23 the community, okay? When the Premier announced his  
24 governmental administrative COVID response--right?--the--all of  
25 the elements of the programme that were in his announcement was

1 not necessarily contained in what the Task Force has submitted;  
2 right?

3 As Financial Secretary, the Premier and Cabinet made a  
4 decision, and my job, as I perceived it, was to make sure that  
5 the Government's programme was implemented in the most  
6 cost-effective way, and that is why I went on to set up these  
7 various subcommittees to try my utmost to make sure we get a  
8 true bang for the intended money to be spent.

9 Q. Just again, I mean, the Committee that you have most  
10 spoken about is the Implementation Committee.

11 A. Um-hmm.

12 Q. And that was, as I understand your evidence, created  
13 to help in the implementation of these five programmes that  
14 we've been looking at. How soon after May the 28th was the  
15 Implementation Committee set up?

16 A. Very shortly after. Extremely shortly after.

17 Q. And as I understand it as well, it wasn't just a  
18 Ministry of Finance Committee. You had people on the Committee  
19 from those agencies that you expected to be the lead  
20 implementing agency; is that right?

21 A. They were persons from other agencies. I cannot say  
22 definitively they were represented from each agency in terms of  
23 implementing the programme. But those persons would have been  
24 on the group or the committee that were actually implementing  
25 the particular initiative, but the Implementation Committee, the

1 ad hoc Committee, that I set up was--I cannot say there was  
2 someone of representation from each agency on that particular  
3 Committee. There were some.

4 Q. And your intention was that that would be--that would  
5 be a committee which would be chaired by your Deputy?

6 A. Yes.

7 Q. If you just give me a moment, please, Mr Forbes.

8 A. Sure.

9 (Pause.)

10 Q. Thank you, Mr Forbes.

11 MR RAWAT: Commissioner, I have reached the end of my  
12 questions for Mr Forbes today. Can I conclude, first of all, by  
13 thanking him for giving up the time to attend and give the  
14 evidence that he has done, but also secondly and importantly to  
15 thank him for the way in which he has done so.

16 COMMISSIONER HICKINBOTTOM: Yes, can I echo that,  
17 please, Mr Forbes. Thank you very much both for your time and  
18 your helpful evidence, the evidence you have given this  
19 afternoon. It's very much appreciated. Thank you.

20 THE WITNESS: Thank you, Commissioner.

21 (Witness steps down.)

22 MR RAWAT: That concludes our evidence for today,  
23 Commissioner. We have three witnesses listed for tomorrow, and  
24 we begin at 10:00.

25 COMMISSIONER HICKINBOTTOM: Good. Thank you,



1 Mr Rawat. Thank you.

2 (Whereupon, at 3:44 p.m. (EDT), the Hearing was  
3 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 horizontal line.

DAVID A. KASDAN